

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HCVSVG2015/0092

BETWEEN:

GLORIA JANET BRIGGS-ANTROBUS

(Executrix of the Estate of Walter Beverly Briggs, Deceased)

FIRST CLAIMANT

GLORIA JANET BRIGGS-ANTROBUS

(Trustee of the Will of Walter Beverly Briggs, Deceased)

SECOND CLAIMANT

SUZANNE FORDE RANGER

(Trustee of the Will of Walter Beverly Briggs, Deceased)

THIRD CLAIMANT

-AND-

CAROL NATASHA VEIRA

DEFENDANT

Appearances: Mr Joseph Delves and Ms Heidi Badenock for the Claimants/Respondents, Mr. Stanley John Q.C. and Ms Keisal Peters for the Defendant/ Applicant.

2015: Sept. 23

Oct. 21

DECISION

BACKGROUND

- [1] **Henry, J.:** Mrs Gloria Janet Briggs-Antrobus in her dual capacities of executrix of the estate and trustee of the will of Walter Briggs deceased, along with Suzanne Forde-Ranger¹ have brought a claim against Carol Natasha Veira. Mrs Briggs-Antrobus and Ms Forde Ranger claim that Ms Veira bought lands at Cane

¹ As co-trustee of the will of Walter Briggs deceased.

Garden which formed part of the estate of the deceased Walter Briggs.² They contend that Ms Veira has encroached on reserve lands belonging to his estate. They seek declarations that Ms Veira's land measures just under 15,000 sq. ft.³ and that she has exceeded her boundaries. They also seek damages for trespass and an order mandating that Ms Veira vacate the area encroached on ("the disputed land"). Ms Veira contends that neither Mrs Briggs-Antrobus nor Ms Forde Ranger has legal standing as executrix or trustees respectively to maintain this action on behalf of Walter Briggs' estate. She has applied for orders striking out:

1. Mrs Briggs-Antrobus and Ms Forde Ranger as parties to the claim;
and
2. the statement of case.

ISSUES

[2] The issues for consideration are:

1. Whether Mrs Briggs-Antrobus, executrix of the Estate and trustee of the Will of Walter Beverly Briggs, deceased and/or Suzanne Forde Ranger as co-trustee can legally maintain this claim on behalf of Walter Briggs' estate? and
2. Whether the court should make an order striking out the Fixed Date Claim Form and Statement of Claim?

ANALYSIS

Issue No. 1 – Can Mrs Briggs-Antrobus, executrix of the Estate and trustee of the Will of Walter Beverly Briggs, deceased and/or Suzanne Forde Ranger as co-trustee legally maintain this claim on behalf of Walter Briggs' estate?

² See paragraph 3 of the Statement of Claim filed on June 19, 2015; and recitals 1 through 6 of Deed of Conveyance No. 2978/2010 exhibited to the Claim Form and Statement of Claim.

³ Amounting to 14,988 sq. ft.

[3] Mrs Briggs-Antrobus and Ms Forde Ranger describe themselves respectively as the executrix of the estate and trustees of the will of the late Walter Briggs. They seek recovery of land which they claim form part of the deceased's estate. Ms Veira contends that neither of them has the requisite authority to bring this claim because the disputed land consists of part of a road which passed to her under the presumption *ad medium filum*. Essentially, she maintains that where a conveyance purports to transfer land which is bounded by a public road, there is a presumption that half of the road is transferred to the transferee. The central issue in the substantive claim concerns ownership of the disputed land. The parties on both sides of the divide claim ownership of the disputed land.

Gloria Briggs-Antrobus as executrix

[4] An executrix represents a testator's estate from the date of his death. From that time the executrix is empowered to institute actions on behalf of the deceased's estate,⁴ and may bring an action to recover possession of land devised under his will. Ms Veira does not dispute that Mrs Briggs-Antrobus is the executrix of Walter Briggs' estate. In fact, she alleges that Mrs Briggs-Antrobus made the transfer to her in that capacity.⁵ Mrs Briggs-Antrobus has given no evidence and no witness has testified on her behalf. Mrs Briggs-Antrobus and Ms Veira are at odds regarding ownership of the disputed land. In her capacity as executrix of Walter Briggs' estate, Mrs Briggs-Antrobus is authorized to represent the estate. She is therefore a proper party to the instant claim, which is an action to recover the late Walter Briggs' property. I therefore make no order that she be struck out as a claimant in her capacity as executrix of Walter Briggs' estate.

⁴ See **Meyappa Chetty v. Supramanian Chetty [1916] 1 A.C. 603 at 608.**

See also section 2 (1) of the Administration of Estates Act Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines 2009, which defines "personal representative" as follows:

"personal representative" **means the executor, original** or by representation, or administrator for the time being of a deceased person,...". (bold mine)

⁵ See paragraph 5 of the Notice of Application and paragraph 2 of Ms Veira's Affidavit. See also Deed of Conveyance No. 2978 of 2010.

Gloria Briggs-Antrobus and Suzanne Forde Ranger as co-trustees

[5] Mrs Briggs-Antrobus and Ms Forde Ranger claim that the deceased Walter Briggs by his will, created a trust for sale of which they are co-trustees.⁶ Reference is made to other trustees in the Conveyance to Ms Veira. Neither the will nor trust deed was exhibited to the claim form or statement of claim. However, by referring to them, the claimants have satisfied the mandatory requirements to identify documents which are relevant to their case.⁷ No evidence has been led by Mrs Briggs-Antrobus or Ms Forde Ranger. Ms Veira does not challenge the veracity of Mrs Briggs-Antrobus' or Ms Forde Ranger's claims that they are trustees for sale.

[6] A trustee for sale has very wide powers of management of the trust property pending sale.⁸ Their powers include the ability to sue to recover trust property.⁹ By initiating the instant claim, Mrs Briggs-Antrobus and Ms Forde Ranger have evinced an intention to recover trust property. Accordingly, they have acted consistent with their powers. Determination of the issue of ownership of the disputed land would involve consideration of facts and law. Neither Mrs Briggs-Antrobus nor Ms Forde Ranger has produced evidence. It would be premature to attempt to resolve the factual dispute before such evidence is tendered. However, if Mrs Briggs-Antrobus' and Ms Forde Ranger's assertions are correct, they possess the necessary *locus standi* to represent Walter Briggs' estate as his trustees for sale. In the premises, I make no order that they be struck out as claimants.

⁶ See paragraph 1 of the Statement of Claim.

⁷ See rule 8.7(3) of the Civil Procedure Rules 2000 ("CPR").

⁸ See Trustee Act Cap. 494 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 30.

⁹ Ibid. at section 17 (2) of the Trustee Act. See also Halsbury's Laws of England 4th ed. Vol. 48 para. 828; see also **Re Brogden, Billing V Brogden (1888) 38 ChD 546, CA.**

Issue No. 2 – Should the court make an order striking out the Fixed Date Claim Form and Statement of Claim?

[7] The court may strike out all or part of a statement of case if the defaulting party has failed to comply with a rule, practice direction, order or direction in the proceedings or if the statement of case discloses no reasonable ground for bringing the claim.¹⁰ The court may also do so if the statement of case is an abuse of the process of the court or likely to obstruct the just disposal of the proceedings.¹¹ While Ms Veira impugns the claim form and statement of claim on the basis that they disclose no reasonable ground for bringing a claim, and are an abuse of the court's process,¹² she makes no assertion¹³ that Mrs Briggs-Antrobus and/or Ms Forde Ranger has failed to comply with a court order, direction, practice direction or rule.

[8] In assessing Ms Veira's contentions that the claim does not disclose a reasonable ground for bringing it, is frivolous, vexatious and an abuse of the process of the court, I will consider the principles of law which guide the court when determining an application to strike out a statement of case. In this regard,

¹⁰ CPR rule 26.3(1) (a) and (b) which states:

- "26.3 (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that-
- (a) there has been a failure to comply with a rule, practice direction, order, or direction given by the court in the proceedings;
 - (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
 - (c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or

¹¹ CPR rule 26.3(1) (c) which states:

- "26.3 (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that-
- (a) ...;
 - (b) ...;
 - (c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or ...

¹² See paragraph 1 of the Notice of Application filed on September 23, 2015.

¹³ See Notice of Application and Affidavit filed on September 23, 2015.

it is noted that the court exercises this “sparingly and only in the most clear and obvious cases ... because it errs on the side of having trials on the merits of cases.”¹⁴ The court is required to review and examine the statement of case to see if a cause of action is established. However, it is not required to conduct a detailed and minute examination of the facts, allegations and documents because it is assumed that the allegations contained in the pleadings are truthful.¹⁵

[9] In conducting this exercise, the court is not concerned with analyzing the evidence to ascertain prospects of success or whether a party can prove his case.¹⁶ Even when the case is weak and not likely to succeed,¹⁷ the court should not strike out the statement of case if the statement of claim or particulars discloses a cause of action or raise a question which the judge must decide. In exercising its discretion, the court is required to give effect to the overriding objective to deal with cases justly.¹⁸ In assessing the instant claim, reference will be made to Ms Veira’s affidavit for context only.

[10] In essence, Mrs Briggs-Antrobus and Ms Forde Granger claim¹⁹ that they are trustees for sale of the estate of the late Walter Briggs, while Mrs Briggs-Antrobus is executrix of the deceased’s will. They contend that the trust property comprises estate lands which are part of a proposed land development site. They allege that Ms Veira bought three lots from the estate, subject to a restrictive

¹⁴ See **Julian Prevost v Rayburn Blackmore et al DOMHCV2005/0177** Per Rawlins J (as he then was) at para. 6.

¹⁵ **M4 Investments v CLICO (Barbados) Ltd. (2006) 68 WIR 65 at page 82.**

¹⁶ **Lonhro Case [1991] 4 All E.R. 965.**

¹⁷ **Re: Davey v Benton [1893] 1 QB 185; Wenlock v Maloney [1965] 2 All E.R. 871, CA.**

¹⁸ CPR 1.2 which provides:

“1.2 The court must seek to give effect to the overriding objective when it-
(a) exercises any discretion given to it by the Rules; or
(b) interprets any Rule.”

¹⁹ See Fixed Date Claim Form and Statement of Claim filed on June 19, 2015.

covenant not to erect any permanent building or structure on the reserve land. They allege that in breach of the restrictive covenant Ms Veira has encroached on the reserve lands by constructing a wall on a delineated 26 ft road.

[11] Ms Veira admits that she did purchase lands from Mrs Briggs-Antrobus, executrix of Walter Briggs's estate, evidenced by Deed of Conveyance No. 2798/2010. Ms Veira contends that on a true construction of the Deed of Conveyance, she is entitled under the *ad medium filum* rule to half of the road described in the Schedule²⁰. She submits that the road is not part of the reserve lands. She submits further that there is no information in the statement of claim to rebut that presumption.²¹ Ms Veira argues that for these reasons neither Mrs Briggs-Antrobus nor Ms Forde Granger is entitled to possession of the disputed land. Mrs Veira deposes that the subject road has existed since she was a child and extended only 10 to 15 feet in width at that time. She avers that Walter Briggs' estate owns property²² adjacent to hers which can be utilized to reconfigure the subject road. She has given an undertaking²³ to make appropriate compensation to Walter Briggs' estate for use of that lot for this purpose. She has filed no defence to the claim.

[12] The presumption relied on by Ms Veira posits that any man in possession of a plot of land adjoining a highway is in possession of the soil of the highway *usque ad medium filum*.²⁴ In their suit, Mrs Briggs-Antrobus and Ms Forde Granger have clearly articulated a claim to the disputed lands on behalf of Walter Briggs' estate. Inherent in their claim is an assertion of unfettered title to the disputed

²⁰ See paragraph 4 (a) of Ms Veira's Notice of Application and paragraph 9(a) of her Affidavit.

²¹ See paragraph 4 (b) of Ms Veira's Notice of Application and paragraph 9(b) of her Affidavit.

²² Lot 14.

²³ See paragraph 12 of Ms Veira's Affidavit.

²⁴ **Doe v Pearsey (1827) 7 B. & C. 304; London and North Western Ry. Co v Westminster Corporation [1902] 1 Ch. 269.**

land. Implicitly, they reject any superior claim to the land by anyone including Ms Veira, whether through rules of statutory interpretation, legal presumptions or otherwise. There is no rule of law or rule of court which stipulates that a party must expressly rebut a presumption of law or rule of construction in his/her pleadings, provided that the statement of case contains all the facts, factual allegations and arguments on which he/she intends to rely. I am satisfied that Mrs Briggs-Antrobus and Ms Forde Granger have outlined the factual bases on which they are pursuing their claim which they are at liberty to amplify when evidence is presented. As executrix and trustees, they possess the requisite legal standing to represent the interests of the late Walter Briggs and beneficiaries of the trust property.

[13] The Fixed Date Claim Form and Statement of Claim establish a reasonable ground for bringing a claim to recover the disputed land. The presumption of law that a road passes *ad medium filum* can be rebutted by evidence, regarding the surrounding circumstances.²⁵ Further, it has not been established that the presumption extends to cases where land is laid out as part of a building or housing development comprising roadways.²⁶ In the circumstances, this is an issue which can best be resolved at trial when all relevant factual positions are before the court. It would be precipitate to determine them at this juncture, and it would not be in the interest of justice to do so.

[14] Having considered the applicable legal principles and the overriding objective, I find that the claim form and statement of claim disclose a reasonable ground for bringing the action and I make no order for them to be struck out. Mrs Briggs-

²⁵ **Beckett v. Corporation of Leeds (1871) L.R. 7 Ch. App. 421; The Duke of Devonshire and others v Pattinson and the Mayor, Aldermen and Citizens of Carlisle (1887) 20 Q.B.D. 163 and Mappin Brothers v. Liberty & Co. Limited [1903] 1 Ch. 118.**

²⁶ **See Leigh v Jack 5 Ex. D. 264 at 274 per Cotton L.J.** where he stated that it is:
“... very questionable whether the presumption can ever be held to extend to those cases, where land is sold in plots for building purposes, even though the roads have been actually laid out.”

Antrobus and Ms Forde Granger did not get an opportunity to respond to the application as it was filed the same day that the matter was listed for first hearing. Accordingly, in accordance with CPR 64.6 and 65.2, I make no order as to costs.

ORDER

[15] It is therefore ordered:

1. Carol Natasha Veira's application for an order striking out Gloria Janet Briggs-Antrobus Executrix of the Estate of Walter Briggs, and Gloria Janet Briggs-Antrobus and Suzanne Forde Ranger trustees of the will of Walter Briggs as parties to the instant claim, is dismissed.
2. Carol Natasha Veira's application for an order striking out the Fixed Date Claim Form and Statement of Claim is dismissed.
3. No order as to costs.

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Esco L. Henry
HIGH COURT JUDGE