

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2008/0118

BETWEEN:

BERT DAVIS

CLAIMANT

-AND-

CHRISTIAN WALDRON

DEFENDANT

Appearances: Dr Godwin Friday for the Claimant, Defendant in person.

2015: Jun. 17
Jul. 23

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Mr Clofee K. P. St. Hillaire also known as Theophilus Waldron, deceased owned over 8,000 acres of land at O'Car Reform, Bequia in the State of Saint Vincent and the Grenadines. Between 2001 and 2003, Mr St. Hillaire appointed Mr Bert Davis as his attorney to among other things sell portions of his property at Bequia on a commission fee basis and generally to maintain it and oversee its upkeep. Mr St. Hillaire passed away in subsequently. His son Christian Waldron obtained grant of Letters of Administration to his estate and is therefore the administrator.¹ Mr Davis claims that while he was Mr St. Hillaire's attorney, he lent money to Mr St. Hillaire and was never repaid. He alleges also that he sold lands on the decedent's behalf and did not receive the agreed

¹On October 7, 2005 by Grant number 165/2005.

commission. Further, he asserts that based on an agreement with Mr St. Hillaire, he paid his funeral expenses and has not been reimbursed by the estate. He has brought this action against Mr Christian Waldron to recover those sums totalling \$113,810.33. Mr Waldron contends that Mr Davis has been fully paid and compensated for his services and loans. He maintains that neither Mr St. Hillaire's estate nor he is not indebted to Mr Davis..

ISSUE

- [2] The issue in this case is whether Christian Waldron is indebted to Bert Davis for the sums claimed.

Preliminary Observations and Findings

- [3] Before dealing with the central issue in this case, it is necessary to address some peripheral concerns regarding the conduct of the proceedings. Bert Davis initiated this suit by fixed date claim form.² Instead of a statement of claim, an affidavit was filed and served³ with the claim form. The Civil Procedure Rules 2000 ("CPR") mandates that a statement of claim be filed with the claim form unless a rule or practice direction permits the filing of an affidavit or other document instead.⁴ No rule or practice direction permits the use of an affidavit in the instant case. The procedure used is therefore irregular. It is however not

² Filed on April 8, 2008.

³ On May 9, 2008. See Acknowledgment of Service filed on May 29, 2008.

⁴ See CPR 8.1 (1) which provides:

"8.1 (1) A claimant starts proceedings by filing in the court office the original and a copy (for sealing) of-

- (a) the claim form; and (subject to rule 8.2)
- (b) the statement of claim; or
- (c) if any rule or practice direction so requires – an affidavit or other document."

invalidated on that basis, as the court may make an order to put matters right if no consequence is specified for such default.⁵

- [4] Having examined the affidavit and exhibits filed and served with the claim form I am satisfied that they contain sufficient details regarding the nature of the claim and the reliefs sought to enable Mr Waldron to appreciate the case which is made against him. I do not think he will be prejudiced by an order to put things right. I have also considered the overriding objective of the CPR to deal with cases justly by among other things saving expense and seeking an expeditious disposal of cases. I consider this to be an appropriate instance in which to make such an order. I am mindful that this suit was initiated in 2008, some 7 years ago. It appears that it was placed on the cause list only 4 times in 2009 during which no case management was conducted. Thereafter it was set down only on two occasions this year and on one occasion one of the parties was absent. In the round, I find that it is just to make an order to put things right. I accordingly order that the affidavit of Bert Davis filed on April 17, 2008 be deemed to be properly filed for the purposes of CPR 8.1(1) (b).

Absence of Certificate of Truth

- [5] The CPR stipulates that every statement of case be verified by a certificate of truth signed by the party personally and where he is unable to sign it, by his legal practitioner.⁶ The term “statement of case” refers to the claim form, statement of

⁵ See CPR 29.9 (1) and (2) which provides:

- “26.9 (1) This rule applies only where the consequences of failure to comply with a rule, practice direction, court order or direction has not been specified by any rule, practice direction or court order.
- (2) An error of procedure or failure to comply with a rule, practice direction, court order or direction does not invalidate any step taken in the proceedings, unless the court so orders.
- (3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.
- (4) The court may make such an order on or without an application by a party.”

⁶ CPR Part 3.12 (1), (2), (3) and (7) which states:

claim and other pleadings.⁷ If a statement of case does not contain the certificate of truth, the court may strike it out.⁸ This power is discretionary and must be exercised judicially taking into account the overriding objective.⁹

[6] Mr Davis' claim form and affidavit in support do not have the certificate of truth. However, the affidavit was sworn before the Deputy Registrar of the High Court and included an averment that the matters deposed thereto are true and correct to the best of "his knowledge information and belief." I note that the claim form merely lists the reliefs sought by Mr Davis while the affidavit sets out the

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- "3.12 (1) Every statement of case must be verified by a certificate of truth.
(2) The certificate of truth should be signed by the party personally.
(3) If it is impracticable for the party personally to sign the certificate required by paragraph (1) it may be given by that person's legal practitioner.
(7) A certificate of truth given by a party personally must be in the following form-
'I [name] certify that I believe that the facts stated in the [name document] are true.'"

⁷ See CPR 2.4 which states:

"statement of case" means –

- (a) a claim form, statement of claim, defence, counterclaim, ancillary claim form or defence and a reply; and
- (b) any further information given in relation to any statement of case under Part 34 either voluntarily or by order of the court;"

⁸ CPR 3.13 (1) which provides:

"3.13 (1) The court may strike out any statement of case which has not been verified by a certificate of truth."

⁹ See **Fok Hei Yu and John Howard Batchelor v Basab Inc. et al BVIHCMAP2014/0010 per Dame Janice M. Pereira CJ. at para. [11]** where commenting on the court's exercise of its discretion under Civil Procedure Rules 2000, Part 19.3, she said:

"While rule 19.3 states that the court may add, substitute or remove a party and sets out, among other things, the procedure for so doing, and while it is also true that the discretion given to the court is in the widest terms, it is also true and trite law that a discretion must be exercised judicially. In other words there must be a basis warranting the exercise of the discretion."

See also CPR 1.2 which states:

- "1.2 The court must give effect to the overriding objective when it –
- (a) exercises any discretion given to it by the Rules; or
 - interprets any rule."

allegations of facts on which he relies to prove his case. The averment of truth in the affidavit is similar to the words of the certificate of truth and is of the same import and effect. In my opinion, inclusion of a certificate of truth in the affidavit in these circumstances would be superfluous. In these circumstances, where the claim form merely lists the reliefs claimed and contain no allegations of fact other than those in the affidavit, absence of the certificate from the claim form would not be prejudicial to Mr Waldron. I am satisfied that Mr Waldron would not be prejudiced if the matter proceeds without the certificate of truth while Mr Davis would be prevented from pursuing his claim if it is struck out for this failure. I consider it just to make no order striking out Mr Davis' statement of case and make none. I turn now to consider the issue which is before the court.

ANALYSIS

Issue – Is Christian Waldron indebted to Bert Davis for the sums claimed?

[7] Mr Davis has brought action against Mr Waldron in his personal capacity and not as the legal personal representative of Mr St. Hillaire's estate; although reference is made to him as administrator, in the claim form and affidavit in support. Mr Davis made no application for Mr Waldron to be added as a defendant in his capacity as legal personal representative. Further, Mr Davis has made no allegations against Mr Waldron personally. In his affidavit and oral testimony, he testified that the loans were made by him to Mr St. Hillaire deceased, that he paid funeral expenses pursuant to an agreement he had with the deceased and commissions were due to him under an agreement he had with Mr St. Hillaire. He testified that he loaned Mr St. Hillaire monies several times and had him sign promissory notes. He admitted that he had no agreement with Mr Waldron. Mr Davis has not proved that Mr Waldron owes him any monies and his claim must accordingly be dismissed as against Mr Waldron. I so order.

[8] As administrator, Mr Waldron is required by law to collect all property owned by the deceased and pay his debts.¹⁰ The facts of this case raise particular concerns for the court. Mr Davis makes claims in respect of liabilities which are listed the supporting documentation leading to the grant. Letters of Administration are issued by the Probate division of the Supreme Court and during their currency, the administrator and his sureties owe certain statutory obligations to the court to ensure that the estate of the deceased is administered in accordance with the applicable legislation. I am concerned that in this instance, the administrator appears not to understand his obligations. The court must be diligent to prevent irregularities with the administration process.

[9] At the end of the trial, Mr Waldron was ordered to deliver the original grant of Letters of Administration to the learned Registrar and he has done so. Having regard to all that has unfolded during the course of these proceedings, it is prudent to direct that the court reviews the process of administration of the estate to date and if necessary issue directions to regularize, expedite and further the administration. It is accordingly ordered that:

1. Bert Davis' claim is dismissed.
2. The learned Registrar shall retain the original grant until further order.
3. Christian Waldron is restrained from taking any further steps in the administration of the estate of Clofee K.P. St. Hillaire until further order.
4. Christian Waldron is directed to file in the Probate Division of the High Court a full inventory of the estate of the deceased and proper accounts of his administration of the estate from October 7, 2005

¹⁰ See sections 39 and 46 of the Administration of Estates Act Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

the date the grant was issued, up to today's date – July 23, 2015; such inventory and accounts to be filed no later than November 2, 2015.

5. Liberty to apply.
6. The justice of this case is best served by making no order as to costs. Each party is to bear his own costs.

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Esco L. Henry
HIGH COURT JUDGE