

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HCVSVG2014/0156

IN THE MATTER OF All That Lot or Piece or parcel of Land Situate At Ratho Mill in the Parish of Saint George Admeasuring 15,751 Square Feet and Delineated and shown in Survey Plan G27/53 With All Buildings and Erections Thereon Described in the Schedule to Deed Of Assent Number 1245 of 1999.

BETWEEN:

HUGH GORDON FORDE *of 1Suffolk Road Belmont,
Port-Of-Spain, Trinidad and Tobago*

CLAIMANTS

HUGH GORDON FORDE *Widower and Personal
Representative of the Estate of Norma Forde, deceased*

-AND-

FRANK JOHN
*of 998 Maitland Drive, Virginia Beach, VA,
23454, United States of America*

DEFENDANT

**DECISION ON APPLICATION FOR ENTRY OF JUDGMENT IN DEFAULT OF
DEFENCE**

Appearances: Appearances: Mr. Sten Sargeant for Claimants.

2014: March 16

BACKGROUND

[1] **Henry, J. (Ag.):** Mr Hugh Gordon Forde is Frank John's brother-in-law, having being married to his sister Norma Forde, deceased. Frank John and Norma Forde's mother, Adina John deceased, made a willⁱ in which she left her house at

Ratho Mill to Norma Forde. Norma Forde subsequently transferred her interest in the house to Frank John. She lived in the house with Hugh Forde up to her death on January 23, 2007. Hugh Forde claims that Frank John forced him to leave the house soon thereafter. He claims further that he and Norma Forde occupied the house under the terms of a trust of which Frank John is the sole trusteeⁱⁱ. He alleges that Frank John agreed to undertake repairs to the house and to allow his late wife and him to occupy it for the rest of their lives, in exchange for a gift to Frank John of the house after their deaths. Mr Forde claims also that because he and his late wife were too old to qualify for a mortgage, Mr John in furtherance of that agreement obtained a mortgage to pay for the repairs. In addition, he claims that he and Mrs Forde expended USD\$78,122.00 repaying the mortgage as agreed with Frank John.

- [2] Mr Forde brings this action in his personal capacity and also as widower and personal representative of the estate of Norma Forde deceased. He has applied for judgment to be entered in default of defence and seeks among other reliefs an order that Mr John executes and deliver to him a Deed of Settlement of the property in their joint namesⁱⁱⁱ and a declaration that Mr John holds the property as tenant in common with or on trust for sale for Mr Forde and him in 75%/25% ratio.^{iv} The court must decide whether to enter judgment in default of defence as prayed.

ISSUES

- [3] The sole issue for the court is whether judgment in default of defence should be entered for Mr Hugh Gordon Forde.

ANALYSIS

Is this a proper case in which to enter judgment in default of defence?

- [4] Mr Forde has applied pursuant to Civil Procedure Rules 2000 ("CPR") 12.1, 12.4 and 12.10(4) for entry of judgment in default of defence. Rule 12.1 explains the

scope of Part 12, which provides for entry of judgment without a trial (default judgment) in cases where a defendant has failed to file an acknowledgment of service or a defence. Default judgments are not available if the claim is one in probate proceedings or a fixed date claim.^v Probate proceedings involve claims for the grant of probate of a will, or letters of administration of the estate of a deceased person, for the revocation of such grant; or for a grant pronouncing for or against the validity of an alleged will.^{vi} The claim brought by Mr Forde seeks no such relief and is accordingly not a probate claim.

[5] Mr Forde has commenced his action by general claim form. *Ex facie* it is not a fixed date claim. The court must however in the peculiar circumstances of this case examine the claim as outlined to determine whether it is one which is mandated to be commenced by fixed date claim form under the CPR. If it is, the prohibition against the award of a judgment in default of defence^{vii} will be applicable. A fixed date claim form must be used to commence proceedings for possession for land or whenever its use is required by a rule or practice direction.^{viii}

[6] Essentially, Mr Forde is claiming that he has been dispossessed of land in which he has a beneficial interest pursuant to a trust under which he and his late wife are beneficiaries. He seeks relief both in his personal capacity and also on behalf of his late wife's estate by way of execution of the trust. Alternatively, he seeks reimbursement of monies paid towards the mortgage. The part of his claim which relates to an order for possession of his interest in the property at Ratho Mill brings his claim squarely within the provisions of CPR which mandates use of a fixed date claim form. Likewise, claims involving the determination of any question or relief relating to the execution of a trust are administration claims and must be brought by fixed date claim form.^{ix} Although Mr Hugh Gordon Forde has not used the fixed date claim form to initiate his claim, he is required to do so. His failure does not change the nature of his claim from a fixed date claim. For these reasons, he cannot a default judgment for failure by Mr Frank John to file a defence. I therefore hold that Mr Hugh Gordon Forde's application for a default judgment is dismissed.

[7] The court observes further that Mr Hugh Forde appears not to have obtained leave of the court to represent the estate of Norma Forde. No Letters of Administration or Probate were exhibited to or referenced in his claim. In the absence of those particulars Mr Hugh Forde has not established to the court's satisfaction that he has the necessary *locus standi* to represent his deceased's wife's estate. In this regard, the court has taken into consideration the definition of "administrator" and "legal representative".^x Likewise, only an administrator may bring an administration claim in the estate of an intestate.^{xi}

ORDER

[8] It is accordingly ordered that:

1. Mr Hugh Gordon Forde's application for judgment in default of defence is dismissed.
2. No order as to costs.

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Esco L. Henry
HIGH COURT JUDGE (Ag.)

ⁱ Dated 24th April, 1985, annexed to the Claim Form and marked “A”.

ⁱⁱ See paragraph 7 of Statement of Claim filed on August 26, 2014.

ⁱⁱⁱ See paragraphs a and e of the Notice of Application and paragraph 5. d of the Affidavit of Arthur Williams in support filed on January 13, 2015.

^{iv} Ibid. at paragraphs c and d of the Notice of Application and paragraph 5. a & b of Arthur Williams’ Affidavit.

^v See CPR rule 12.2 which provides:

“12.2 A claimant may not obtain default judgment if the claim is-
(a) a claim in probate proceedings;
(b) a fixed date claim; or
(c) an admiralty claim in rem.”

^{vi} CPR 68.1 (2).

^{vii} Supra. at note iv.

^{viii} CPR 8.1 (5) (b) & (c).

^{ix} CPR 67.1 which provides:

“67.1 (1) This Part deals with –

- (a) claims for –
 - (i) the administration of the estate of a deceased person; and
 - (ii) the execution of a trust under the direction of the court; which are referred to as “administration claims”; and
- (b) claims to determine any question or grant any relief relating to the administration of the estate of a deceased person or the execution of a trust.
- (2) Such claims must be brought by a fixed date claim in Form 2.
- (3) In this Part-
 “administration claims” mean claims for –
 - (a) the administration of the estate of a deceased person; and
 - (b) the execution of a trust under the direction of the court.”

^x See section 2 (1) of the Administration of Estates Act Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines 2009 which defines “administrator” and “personal representative” as follows:

“‘administrator’ means a person to whom administration is granted.”

“‘personal representative’ means the executor, original or by representation, or administrator for the time being of a deceased person,…”.

^{xi} CPR 67.2 (10) (a).