

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HCVSVG2015/0014

BETWEEN:

DELORIS JACKSON GOULBOURNE
of Edmonton Alberta, Canada

CLAIMANT

-AND-

THE BANK OF NOVA SCOTIA
of Halifax Street, Kingstown, St. Vincent

DEFENDANT

Appearances: Mr Sten Sargeant for the Claimant, Mrs Maferne Mayers-Oliver and Ms Lakeisha John for the Defendants.

2015: Mar. 18 & 25

JUDGMENT

BACKGROUND

- [1] **Henry, J. (Ag.):** This case arises out of a series of transfers of land among three siblings - Messieurs Shawn and Anthony Jackson and their sister Mrs Deloris Jackson Goulbourne. In 2006, Mr Shawn Jackson gave a parcel of land to his brother Anthony Jackson,ⁱ who three years later mortgaged it to the Bank of Nova Scotia ("BNS") to secure a loan of \$29,000.00.ⁱⁱ Three months later, Anthony Jackson transferred the equity of redemption in the property to his sister Mrs Deloris Jackson Goulbourne.ⁱⁱⁱ At that time, Mr Jackson had not repaid the loan.

[2] BNS claims that it sold the property in 2012 and deposited the excess proceeds into Mr Anthony Jackson's account at BNS. BNS asserts that it did so pursuant to its power of sale. Mrs Goulbourne Jackson has now brought a claim against BNS seeking among other things:

1. a declaration that she is entitled to the residue of the sale;
2. a declaration that the power of sale was wrongfully exercised; and
3. an order for an account to be taken to determine the sum due to her after the sale.

BNS has applied for Mr Anthony Jackson to be added as a defendant. Mrs Jackson Goulbourne objects to the joinder.

ISSUES

[3] The sole issue for the court to consider is whether Mr Anthony Jackson should be added as a defendant in these proceedings.

ANALYSIS

Issue – Should Mr Anthony Jackson be added as a defendant to these proceedings?

[4] BNS filed^{iv} a Notice of Application pursuant to Part 19 of the Civil Procedure Rules 2000 ("CPR") for an order that Anthony Jackson be added as a defendant to the proceedings. The application is supported by the affidavit^v testimony of Anne Arrindell, BNS' Cross Border Adjustor (Site Rep). BNS' application contains 14 grounds comprising factual and legal assertions which are repeated in identical terms in Ms Arrindell's affidavit. Essentially, BNS contends that the joinder of Mr Anthony Jackson as a defendant in the instant case is necessary because Mr Jackson failed to notify BNS of Mrs Jackson Goulbourne's interest in the property, and disposed of the sum of \$22, 781.85 (being part proceeds of the sale) which were deposited into his account by BNS.^{vi} BNS submits further that those actions

connect Mr Jackson to the dispute in the instant case and it is therefore necessary that he be added as a defendant.^{vii}

[5] Mrs Jackson Goulbourne opposes the joinder of her brother on the basis that BNS' application does not indicate under which sub-rule it is brought. BNS' application does not specify the sub-rule which it seeks to invoke but this is not fatal to its application. Paragraph 2 of the Application refers to Civil Procedure Rules 2000 ("CPR") Part 19. While it is ideal for an applicant to specify the particular sub-rule under which an application is made, the CPR requires only that an applicant state the grounds on which it is made and indicate what order he or she is seeking.^{viii} BNS has complied with those two requirements. Accordingly, its application cannot be invalidated for failing to specify the particular sub-rule.

[6] Mrs Goulbourne Jackson submits that the court may add a new party only if that party can resolve **all** the issues or **a single issue** in the proceedings. She relies on CPR 19.2 (3) (a) and the case **Umm Qarn Management Co. Ltd. v Valarie Ann Bunting et al**^{ix} in support of this contention.^x Mrs Jackson Goulbourne contends further that she has not brought action or pleaded anything against Mr Anthony Jackson and there is no evidence that he wishes to be a party. Although this is so, those are not factors which the court must consider in connection with BNS' application to add him as a defendant.

[7] CPR Part 19 confers very wide discretion on the court to add a new party to proceedings.^{xi} The court may do so of its own volition or pursuant to an application by an existing party or a person who wishes to be so joined.^{xii} In exercising its discretion the court must do so judicially and have regard to the overriding objective^{xiii} to deal with cases justly. It is clear that the twin objective of CPR Part 19 is to ensure that the court:

1. disposes of all the issues which arise on a claim; and
2. as far as possible involve all relevant parties who can assist the court to do so.

This approach advances the overriding objective of the CPR by contributing to the expeditious resolution of matters and saving additional expense and resources occasioned by multiple suits.

[8] The only considerations for the court are^{xiv} whether:

1. it is desirable for him to be added to enable the court to resolve all the issues in the case;
2. one or more of the issues in the case involve him and are also connected to the matters in dispute between the parties; and
3. adding him will further the overriding objective.

[9] Although CPR 19.2 (3) (b) uses the expressions “an issue” and “all issues”, that provision would be applicable even if more than one, yet not “all” of the issues are connected to Mr Jackson. This is because the singular includes the plural.^{xv} BNS’ application is not rendered invalid merely because his involvement can assist the court in resolving more than one, but not all the issues in the claim. Likewise, it is not defeated because Mrs Jackson Goulbourne has not pleaded matters against Mr Jackson in her claim, or because there is no evidence that he wishes to be a party. Those are not requirements under the CPR or in law.

[10] Mrs Jackson Goulbourne contends that the court is concerned with whether BNS was her trustee in respect of the funds deposited into Mr Jackson’s account and whether BNS perpetrated a breach of that trust by parting with the funds. In this regard, she submits that Mr Jackson’s participation in the proceedings is not required to enable the court to resolve that central issue. She argues also that Ms Arrindell’s Affidavit is insufficient to support BNS’ application as the only issue it raises is whether Mr Jackson gave BNS notice that he had gifted the subject property to her. She submits that it is not necessary for Mr Jackson to be added as a party to resolve that issue.

[11] The court in arriving at its decision is not restricted to considering only the evidence led in support of an application for joinder. On the contrary, the court must consider “all the matters in dispute” between the parties^{xvi} and any issues involving the proposed new party which are “connected to the matters in dispute”^{xvii} which make it desirable for him to be added. The court does so by examining the pleadings^{xviii} which I now do.

[12] Mr Anthony Jackson’s gift to his sister transferred to her the equity of redemption under his mortgage with BNS. He was accordingly no longer entitled to receive any of the proceeds which became payable by BNS on exercise of its power of sale. BNS claims that such proceeds were in fact paid into Mr Anthony Jackson account.^{xix} Mrs Jackson Goulbourne is not placed to admit or deny that this happened and she has not done so. The determination of that issue is connected directly to Mrs Jackson Goulbourne’s claim for a declaration that she is entitled to the residue of the sale and general damages. Presumably she sued BNS because she did not receive those proceeds. Only BNS and Mr Jackson can assist the court on this issue and Mr Jackson is not a party. The court must have his input to resolve that issue. In the premises, it is desirable that Mr Jackson be added as a party to enable the court to do just that.

[13] Based on the pleadings, the court is also concerned with determining whether Mr Anthony Jackson received the residue of the sale and if so whether he holds it on trust for Mrs Jackson Goulbourne or BNS. This issue is connected to other issues in this case and can only be determined if Mr Jackson is added as a new party. For the foregoing reasons, I find that in order for the court to deal with this case justly and resolve that issue, it is necessary that Mr Anthony Jackson be added as a defendant.

ORDER

[14] It is accordingly ordered:

1. Anthony Jackson of the territory of the Virgin Islands be added as a defendant in this matter pursuant to Civil Procedure Rules 2000, Part 19.2 (3) (b) and 19.3 (1) and (2) (a).
2. The Defendant Bank of Nova Scotia shall serve this judgment on the claimant and added defendant Anthony Jackson on or before April 30, 2015;
3. The Defendant Bank of Nova Scotia shall serve the Fixed Date Claim Form, with statement of claim accompanied by the other forms prescribed in CPR 8.14 on the added defendant Anthony Jackson on or before April 30, 2015;
4. The added defendant shall file his acknowledgment of service and defence within the timelines outlined in CPR Part 7.
5. The Claimant Deloris Jackson Goulburne shall pay to the Defendant Bank of Nova Scotia Ltd. costs of \$800.00.
6. Civil Claim HCVSVG2015/0014 shall proceed thereafter in accordance with the CPR.

[15] The court is grateful to counsel for their submissions.

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Esco L. Henry
HIGH COURT JUDGE (Ag.)

ⁱ By Deed of Gift No. 4263 of 2006 – exhibited to the Fixed Date Claim Form and marked “A”.

ⁱⁱ By Indenture of Mortgage No. 2051 of 2009 dated June 1, 2009 - exhibited to the Fixed Date Claim Form and marked “B”.

ⁱⁱⁱ By Deed of Gift No. 343 of 2010 dated September 9, 2009 - exhibited to the Fixed Date Claim Form and marked “C”.

^{iv} On March 10, 2015.

^v Filed on March 10, 2015.

^{vi} Grounds (11), (12) and (13) in the Notice of Application and paragraphs 13, 14 and 15 of Affidavit of Anne Arrindell.

^{vii} Ibid. at ground (14) in the Notice of Application and paragraph 16, Affidavit of Anne Arrindell.

^{viii} CPR 11.7 (1) which provides:

“11.7 (1) An application must state –

- (a) briefly, the grounds on which the applicant is seeking the order; and
- (b) what order the applicant is seeking.”

^{ix} **[2000] 1 C. P. L. R. 20.**

^x Skeleton argument of the Claimant filed on March 16, 2015 at paragraph [4].

^{xi} CPR 19.2 (3), (6); 19.3 (1) and (2) which provide 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
- (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.”

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

- (2) An application for permission to add, substitute or remove a party may be made by –
 - (a) an existing party; or
 - (b) a person who wishes to become a party.”

See also **Fok Hei Yu and John Howard Batchelor v Basab Inc. et al BVIHCMAP2014/0010** per Dame **Janice M. Pereira CJ. at para. [11]** where 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. That basis, in our view, is captured in the general principles set out in rule 19.2 (3). ...”

^{xii} Ibid. at Rule 19.3 (1).

^{xiii} Ibid. at para. [11] of the **Fok Hei Hu** case. 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
- (b) interprets any rule.”

^{xiv} Ibid. at para. [11] **Fok Hei Hu** case.

^{xv} Section 3 (3) Interpretation and General Clauses Act Cap. 14 of the Revised Laws of Saint Vincent and the Grenadines and CPR 2.3 which state respectively:

“3 (3) In every written law, except where a contrary intention appears, words and expressions in the singular include the plural and words and expressions in the plural include the singular.”

“2.3 The Interpretation Act of the Member State or territory where a claim proceeds applies to the interpretation of these Rules in those proceedings.”

^{xvi} In the exercise of its discretion under CPR 19.2 (3) (a).

^{xvii} In the exercise of its discretion under CPR 19.2 (3) (b).

^{xviii} **Bryne v. Browne (1889) 22 Q.B. D. 657 at page 666 per Lord Esher** where he said:

“It is not necessary that the evidence in the issues raised by the new parties being brought in should be exactly the same; it is sufficient if the main evidence and the main inquiry, will be the same; and the Court then has power to bring in the new parties and to adjudicate in one proceeding **upon the rights of all the parties** before it.” (bold mine)

See also **Gurtner v. Circuit and Another [1968] 2 Q. B. 587 at pages 595 and 596 per Lord Denning** where he explained:

“It seems to me that when two parties are in dispute in an action in law, and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion, may allow him to be added as a party on such terms as it thinks fit. By doing so, the Court achieves the object of the rule. It enables all matters in dispute “to be effectually and completely determined and adjudicated upon” between all those concerned in the outcome....”

Both cases were applied in **Treasure Bay (St Lucia) Limited v Gaming Authority et al SVGHCV2011/0456** and **Gulf Insurance Ltd. v. Creque's Insurance Ltd. BVIHMT2012/0256**.

^{xix} See paragraph 11 of BNS' Defence.
