

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2008/0217

BETWEEN:

WINSTON HINKSON

CLAIMANT

AND

ELVIRA BULL NEE MARTELLY
REPRESENTATIVE OF THE ESTATE OF ELIZABETH MARTELLY

DEFENDANT

APPEARANCES:

Cynthia Hinkson-Ouhla of Counsel for and of the Claimant

Elaine French of Counsel for the Defendant

2014: February 3rd 11th

DECISION ON AN INTERIM APPLICATION

- [1] **Taylor-Alexander M:** Mr. Winston Hinkson is an attorney at law who on the instructions of his client Elizabeth Martelly, undertook to fully and finally administer the estate of her late husband Michael Martelly, and of his father Savery Martelly. He pleads that having completed the work and on the 4th March 2002, a bill of \$80,000.00 was submitted for all of the work done including expenses for stamps and registration of documents and generally for the administration. He

required settlement of the invoices by the 31st March 2002. The invoice was addressed to Elvira Bull the daughter of Elizabeth Martelly who had taken over communications with the claimant on behalf of her ailing mother. It is pleaded that Elvira Bull responded agreeing to settle the invoice by means of the payment of \$16,000 each by herself and four other family members named in her letter.

- [2] It is pleaded that Elizabeth Martelly passed in 2006 without the bill being settled and following a period of one year after her death, no letters of administration were taken out for her estate. The children entitled as beneficiaries under her estate all resided in the United Kingdom. Consequent upon, it is further pleaded that her estate vested by law in the Administrator General by virtue of Article 608 of the Civil Code of Saint Lucia Cap 4.01 whereon, a claim filed to recover the amounts owed was instituted in the name of the Administrator General who was served with the claim form and statement of claim filed on the 3rd March 2008.
- [3] On the 19th November 2007 and unknown to the claimant, Elvira Bull had applied for and was granted letters of administration, as personal representative for the estate of Elizabeth Martelly.
- [4] Following service on the Administrator General the claimant's case remained in abeyance from 2008 until 2011 when it came on for status hearing. Counsel in the form of Ms. Elaine French eventually appeared in the proceedings representing Elvira Bull, who by amendment, was substituted as the defendant representing the estate of Elizabeth Martelly. Immediately following the appointment of new counsel for the defence, there was an application for the claim form and statement of claim to be struck out. The defendant's application is advanced on two grounds (1) the claim form had expired prior to its service pursuant to CPR 2000 Part 8.12 (1), there being no service on the defendant during the validity of the claim form; (2) that in any event the claimant was unable to amend a claim form that had amended; (3) any right or remedy available to the claimant had expired under Article 2121 of the Civil Code, six years having elapsed prior to service of the amended claim form and statement of claim.
- [5] The evidence in support of the application of Elvira Bull briefly addressed the preliminary issues of the validity of the claim, concentrating instead on recounting the already well documented history of the case. I agree with the claimant's submission that this evidence is irrelevant to the procedural challenges with which the court is now charged to consider.

Issues.

- [6] The issues for determination are (a) whether the claim form was properly served on the Administrator General (b) whether the cause of action had expired, and; (c) the impact of the amended claim.

Service of the Claim Form.

- [7] A cause of action to recover for professional services rendered is prescribed by six years. Unless time is extended, Part 8.12 of CPR 2000, provides for service of the claim form to be within 6 months from the date of its issue and CPR 5.1 provides as a general rule for service within the jurisdiction to be by personal service on each defendant. There are exceptions to that rule. Service on a company or on a partnership, a legal practitioner, minor, and patients and on a body corporate for instance, follow their own regime. Instead of personal service, a party may choose an alternate method of service and where that is used, the party serving must provide proof satisfactory to the court that the method used was sufficient to have brought notice of the suit and its content to the intended recipient.
- [8] The claim brought by Winston Hinkson was filed and served on the Administrator General as the defendant to the proceedings. This was done pursuant to Article 608 of the Civil Code and on the basis that the estate was without a representative or that the succession was without a representative for 12 months after the death of Elizabeth Martelly.
- [9] Article 608 of the Civil Code of St. Lucia provides a statutory exception in cases of actions brought on intestacy or where an estate is without a representative. It provides that *"....whenever any person dies intestate and the persons entitled as heirs have renounced their interest in the succession, or whenever the heirs or the executors of the will of any deceased person are absent from Saint Lucia and not represented therein, or whenever from any cause a succession is without a representative for 12 months after the death of a person, the succession of such deceased person shall, notwithstanding anything in any other law contained, vest in the Administrator General who shall administer the same and perform all the duties and have and enjoy all the rights, powers privileges attached by law to the office of an administrator appointed by the Court under this Chapter"*.

Was service on the Administrator General proper in the circumstances?

- [10] Article 608 requires a succession to be without a representative for 12 months before such estate can vest in the Administrator General. In fact, only a period of three months had passed since Elvira Bull's appointment as personal representative for the estate of Elizabeth Martelly, as such the estate of Elizabeth Martelly was incapable by law of vesting in the Administrator General.

Service of the amended claim

- [11] The defendant's submissions on this issue are somewhat misguided. She alleges that at the time of the amendment of the claim substituting Elvira Bull for the Administrator General the cause of action had expired and had required an application to the court to allow for service of the claim after the expiration of the limitation period pursuant to part 19.4 of the CPR 2000.
- [12] Part 19.4 of the CPR 2000 is a provision inapplicable to St. Lucia. Civil Law in St. Lucia is largely governed by a civil law regime contained in the Civil Code of St. Lucia. That law refers to prescription rather than limitation by which a cause of action is brought to an end with the effect being that with extinctive prescription, as would apply here, the judicial remedy is barred and the substantive right is extinguished on the expiry of a time period. Limitation on the hand may bar a judicial remedy but may not extinguish the cause of action.
- [13] Had there been service on the Administrator General of the claim form in keeping with the Civil Code, it would have interrupted the operation of prescription as of the 3rd of March 2008, the date of service of the claim form. The subsequent amendment of the claim form to replace the Administrator General with the personal representative of the estate of Elizabeth Martelly cannot be a substitution but it was merely a replacement of the representative for the party to the proceedings. as The Administrator General steps into the role of the Administrator, in effect to preserve the estate. The Code provides for him/her to relinquish that role at any time when the properly appointed administrator steps in. As such the act of substituting the Administrator General with the personal representative, contrary to the submissions of the defendant did not change the defendant to the proceedings.

[14] Despite these findings the claimant is still challenged in the continuity of his claim. The original claim had improperly enjoined the Attorney General as Administrator General when in fact the estate of Elizabeth Martelly had recently appointed a representative. The claim was therefore improperly commenced and served. I also find that both the claim form and the cause of action had long expired when in 2011 the amended claim form and statement of claim had enjoined the proper administrator and was properly served. The cause of action had expired on or about the 5th March 2008.

Conclusion

[15] The application to strike out the claim form and statement of claim is upheld, the claim is struck out and judgment entered for the defendant with damages to be agreed or otherwise to be calculated on the basis of prescribed costs.

V. GEORGIS TAYLOR-ALEXANDER

HIGH COURT MASTER