

**THE EASTERN CARIBBEAN SUPREME COURT
ANGUILLA CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. AXAHCV2012/0005

BETWEEN:

CLIVE HODGE

(as Administrator of the Estate of the late Rupert Hodge,
Deceased)

Claimant

And

ELFLIDA ALTHEA HUGHES

(in a personal capacity and as Administratrix of the Estate of
Leopold Beomont Hodge, deceased)

Defendant

Appearances:

Ms. Jenny Lindsay for the Claimant
Ms. Kristy Richardson for the Defendant

On written representations

2013: May 17th;
July 9th

RULING

[1] **MATHURIN, J:** On the 1st March 2013, the Defendant (Elflida) filed an application to strike out the claim herein, there being no reasonable grounds on which to bring such a claim. The parties agreed to the matter being considered on written representations in accordance with CPR 2000, Rule 26.1(2)(n) and all

submissions and evidence were filed by the 17th May 2013 for the court's consideration.

The court's power to strike out a statement of case

- [2] The power of the court to strike out a statement of case is provided for by Rule 26.3 (1) of the CPR 2000 which states as follows;

"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

(d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10".

- [3] The striking out of a statement of case or defence is a draconian step which a court should only take in exceptional circumstances. In **Baldwin Spencer v The Attorney General of Antigua and Barbuda et al** Civil Appeal No. 20A of 1997 Dennis Byron CJ (Ag.), as he then was stated the test that should be applied by the court on an application to strike out when he said that:

"This summary procedure should only be used in clear obvious cases, when it can be seen on the face of it, that a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court... Striking out has been described as 'the nuclear

power' in the court's arsenal and should not be the first and primary response of the court."

- [4] In his judgment in **Tawney Assets Limited v East Pine Management et al** (BVI High Court Civil Appeal No. 7 of 2012), Mitchell JA (Ag.) in underscoring the need why the court should proceed cautiously when dealing with an application to strike out stated that;

"The exercise of this jurisdiction deprives a party of his right to a trial and of his ability to strengthen his case through the process of disclosure, and other procedures such as requests for further information. The court must therefore be persuaded either that a party is unable to prove allegations made against the other party; or that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial".

- [5] On 17th January 2012, by way of Fixed Date Claim, the Claimant (Clive) sought the following relief:

- (a) A declaration that each of the following parcels of land, namely 196, 220 to 222 and B22 are held on trust for the Claimant (as personal representative of the Estate of Rupert Hodge), Franklyn Hodge, Christopher Hodge, John Hodge and the Defendant in equal shares;
- (b) An Order that the Land Register be amended in accordance with that declaration;
- (c) An Order that the Claimant (or some other fit person) be registered as proprietor of the said parcels of land;
- (d) An Order that an account be taken on the basis of wilful default of the Defendant's dealings with the said parcels of land and that the

Defendant pay the beneficiaries of the Estate of Leopold Hodge and Eunice Hodge all sums found to be due;

- (e) An Order that the Defendant be removed as Administratrix of the estate of Leopold Hodge and that the Claimant be appointed or some other fit person, as Administrator;
- (f) An Order if need be that the Claimant be appointed as the Administrator of the estates of Richard Richardson, Rebecca Richardson and/or Eunice Hodge;
- (g) Such further or other relief as the Court may think fit;
- (g) Costs.

HISTORY

[6] The Parcels of land referred to above were all previously part of Block 17709B Parcel 10 measuring 2.25 acres belonging to Richard Richardson (Richard) and Leopold Beaumont Hodge (Leopold) as owners in common of a half share each. Richard was married to Rebecca and although the couple had no children, they raised Eunice as their own.

[7] Leopold subsequently married Eunice and the union produced five children namely Rupert, Elflida, Franklin, Christopher and John. The claimant in this matter Clive Hodge is the son of Rupert whilst the Defendant is Elflida, Rupert's sister. Eunice died in 1957 after Richard and Rebecca. Leopold died intestate in 1981.

[8] Elflida became Administratrix of Leopold's estate in 1991 and the Land Register reflects that she was registered in the capacity of personal representative of the estate of Leopold – half share of Parcel 10, on the 22nd March 1995.

[9] The next entry on the Land Register is in April 2001 indicating that Elflida was registered as owner of the half share of Parcel 10 that originally belonged to Richard and as personal representative of the estate of Leopold for the other half.

This change to the Land Register was made pursuant to a claim by Elflida on the 28th June 2000 for Title acquisition of the half share of the land by Prescription (originally owned by Richard and Rebecca) and this apparently, is the source of contention between the Parties.

- [10] The Registrar of Lands ordered the rectification of the Land Register to reflect Elflida's ownership of Richard's half share and the reasons given on the 27th March 2001 for that decision were that *"An application for Registration was received from Elflida Hughes. Notice was placed on the property, advertised in the Gazette and on Radio Anguilla. No objections were received."*
- [11] Clive is contending in the statement of claim that Elflida held Richard's half share on trust for all five of Leopold's children, including her and his father Rupert. The statement of claim alleges at paragraph 4 that Richard was dead by 1975 that he was succeeded by Rebecca who in turn was succeeded by Eunice, who was succeeded by Leopold and their children. The claim further asserts in paragraph 5 that *"Accordingly by 1975, Leopold – as the only living person named as proprietor on the Land Register – held Parcel 10 on trust, in equal shares, for himself and Richard's successors (being Leopold himself and his children as statutory beneficiaries of Eunice's estate under s.3(1) of the Intestates Estates Act 130"*.
- [12] Clive further alleges that Elflida wrongfully claimed title to Richard's half share by prescription because she never cultivated that land and in fact, his father Rupert had built a house which was completed in 1991, at least 10 years before Elflida's application. He asserts that since Elflida held Parcel 10 on trust (as Administratrix of Leopold's estate), she could not obtain an interest adverse to beneficiaries and that any possession of Parcel 10 was as a result of her position of Administratrix of Leopold's estate. He states that notwithstanding the amendment to the Land Register, Elflida continued to hold the entirety of Parcel 10 on trust for herself and her siblings. These are essentially the material facts pleaded by Clive in support of the relief he seeks from the court.

LAND ADJUDICATION

- [13] Pursuant to the introduction of the **Land Adjudication Ordinance 1974 (the “LAA”)** now repealed of the Laws of Anguilla, and the associated **Registered Land Act (“the RLA”)** all unregistered lands were to be brought under the RLA and were done so in accordance with the procedure provided for in the LAA whereby all lands were claimed, demarcated and named.
- [14] Notices and schedules in relation to this process for each adjudication section were prepared and published and made known throughout the adjudication area for the purpose of bringing it to the attention of all persons affected.
- [15] Every person claiming any land or interest in land within an adjudication section such as for instance in this matter, West End Anguilla, was required to make a claim in the manner provided in the Act. Prior to the demarcation of land in an adjudication section, notice was given as to the time and place of the demarcation. All lands were eventually demarcated, named and determined after the claim form and evidence was considered. The adjudication record formed the basis for the Registrar of Lands to enter as registered proprietor under the R.L.A, all persons who had any interests in land.

OWNERSHIP OF PARCEL 10

- [16] It is undisputed that claim form No. 1/129 dated January 14th 1975 submitted by Mr. Beaumont Hodge (Leopold) and Heirs of Eunice Hodge was the only claim-form received for a lot of land some 2.25 acres in West End known as Parcel 17709B 10 (Parcel 10). Concerning the issue as to who owned Parcel 17709B 10, this appears to have been resolved and is evident from the Adjudication Record dated the 21st February 1975 which lists Richard (not the heirs of Eunice Hodge) and Leopold as owners in common of a half share each. It is this determination

that formed the basis for an entry in the Land Registry on that same day reflecting that ownership.

- [17] It is also undisputed that Eunice was not the child of Richard and Rebecca. Clive attests to this in his witness statement of the 15th March 2013 where he states that *"I understand that my grandmother move to West End as a child after her mother died and was brought up as a daughter by Richard and Rebecca Richardson."* There is no evidence that Eunice was legally or formally adopted by Richard and Rebecca Richardson. In the absence of a Will produced under which Eunice is entitled as beneficiary to their estates, neither Eunice nor her heirs could succeed to the estate and succession of the estates of Richard and Rebecca Richardson under section 3(1) of the Intestates Estates Act as claimed.
- [18] Paragraph 3 of the claim refers to the Application and evidence filed during the land adjudicating and demarcating process. Much is made of the fact that in the affidavit in support of the Land Adjudication claim form submitted in 1975, mention was made of a Will by Rebecca. The exact words in the affidavit which was sworn by Elflida are *"Richard R'dson died and he leave this land for his wife Rebecca R'dson died and will this land for Eunice Hodge and her heirs."* As stated before, no will has been produced and it is the opinion of this court that it would be proper to conclude therefore that in 1975, despite the fact that the claim for Parcel 10 was made by Leopold Hodge and the heirs of Eunice Hodge, the Adjudication Officer was clearly not satisfied that evidence submitted by the Heirs of Eunice Hodge was sufficient to establish Eunice's entitlement as lawful heir to the estate and succession Richard and Rebecca.
- [19] Accordingly and in the absence of any legal representatives of their estates, the Adjudication Officer in 1975 recorded the ownership of Parcel 10 in the names of Leopold and Richard (despite Richard's demise) as tenants in common of a half share each on the Adjudication Record for Parcel 10. This is how Richard and

Leopold came to be listed as the registered owners of Parcel 10 on the Land Register on the 21st February 1975.

- [20] The LAA provided for a person who was dissatisfied with the decision of the Adjudication Officer to give him written notice of his or her intention to appeal and also allowed parties, after the Adjudication Record was finalized by the signing of a certificate by the Adjudication Officer two months within which to appeal his decision to the Adjudication Tribunal. The LAA granted a further safeguard by allowing a party who was dissatisfied with the decision of the Adjudication Tribunal two months within which to appeal the Tribunal's decision to the court.
- [21] Thus the onus fell on the Heirs of Eunice Hodge in 1975 to avail themselves of all these statutory provisions within the statutory time periods pursuant to the LAA, to have their grievances resolved. Accordingly the claimant having failed to do so at the appropriate time cannot now come to the court to seek a remedy which is plainly out of time. This would be tantamount to an abuse of process. The short thrust of this therefore is that any claim to Richard's estate by the Heirs of Eunice Hodge on the basis of an entitlement as heirs of Eunice must fail. Furthermore the grant of prescriptive title by the Registrar of Lands is a grant to Elflida in her own right. In fact, there is no trust capable of being established as no title could legally pass to Eunice or her heirs, she not being a lawful heir and accordingly, no question of holding on trust and a breach of trust in relation to Richard's one half share in parcel 10 or in its entirety can arise.

RECTIFICATION BY COURT

- [22] Clive also challenges Elflida's award of prescriptive title to Richard's half share in the land on the 4th April 2001 stating that his father Rupert had a house on Richard's land which was completed in 1999, the construction thereof having started in 1988. Clive, in essence, is disputing the basis upon which the Registrar of Lands granted prescriptive title to the half share to Elflida and seeks an order for

amendment or rectification of the registers to reflect the Declaration of trust as to the entire parcel. Clive seems to suggest that certainly in 2000, when the order of prescriptive title was made, his father was in possession of at least part of the land, having constructed a dwelling house thereon.

[23] In the absence of any pleading to the contrary, the court can only conclude that no objection was raised by Rupert then, when the award of prescriptive title to the entire half share was made by the Registrar of Lands to Elflida. The Registrar must have been satisfied that Elflida had met the statutory requirements establishing prescriptive title to the half share of parcel 10, before registering her as proprietor. Accordingly, not having brought a claim directly challenging the Registrar's award of title to Elflida, a Declaration as claimed would have the indirect and undesirable effect of setting aside or varying the order of the Registrar granting prescriptive title to the other half share of parcel 10 (now 196) to Elflida, which Declaration, I am of the view, that this court has no jurisdiction to make.

[24] It seems to me that the fact of Rupert building a house on the property of Richard has little bearing to the relief that is being sought, that is, a Declaration that the entirety of Parcel 10 or what used to be Parcel 10, should be registered as being held by Elflida on trust for Clive (as personal representative of the Estate of Rupert), Franklyn, Christopher, John and herself and an amendment of the Land Register to reflect this. As I have already stated, the heirs have only conclusively established entitlement to Leopold's half share and it is not in dispute that this half share is held by Elflida as Administratrix for the Heirs of Leopold.

[25] Parcel 10 was subdivided in 2006 into two parcels, 196 (Richard) and 197 (Leopold). Elflida retained Parcel 196 in her own name pursuant to the award of title to her by prescription and 197 in her name as Administratrix of the estate of Leopold pursuant to the grant of Letters of Administration of the estate of Leopold Hodge made to her in 1991.

[26] The Registrar can only now rectify the register with the consent of all persons interested pursuant to section 145(1) of the RLA. Alternatively, the court can order an amendment or cancellation of the register under the RLA where it is satisfied that the registration is made by fraud or mistake.

[27] Section 146 of the RLA reads as follows;

“(1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.”

[28] This section provides that the court can rectify the register by amending or cancelling any registration of title on the Land Register where it is satisfied that the registration was obtained by fraud or mistake. In this claim therefore, as neither fraud nor mistake has been pleaded anywhere in the claim, the jurisdiction of the court under the Registered Land Act cannot be invoked.

[29] Clive's claim is based on an allegation of breach of trust by Elflida and seeks an amendment of the Register pursuant to that breach. This court having found that Elflida does not hold on trust, the provisions of the Limitation Act by which Clive could avail himself of an action or by which his action would survive the limitation period, does not apply.

CONCLUSION

[30] In conclusion, the court makes the following findings;

- a. There is no trust that can be established in favour of the claimant (as personal representative of the Estate of Rupert Hodge), Franklyn Hodge, Christopher Hodge, John Hodge and the defendant

- b. The registers in respect to parcels 196, 220 to 222 and B22 formerly parcel 10 cannot be amended or rectified on the basis that the entirety of Parcel 10 was held on trust in favour of the Claimant (as personal representative of the Estate of Rupert Hodge), Franklyn Hodge, Christopher Hodge, John Hodge and the Defendant as there is no basis in law.
- c. The grant of prescriptive title by the Registrar cannot be set aside, varied or amended.
- d. The basis of all the relief sought is on the premise that the defendant held Parcel 10 on trust. That basis, not capable of subsisting, would mean that the reliefs sought cannot be granted.

[31] Consequentially, the claim is hereby struck out as not disclosing any reasonable ground for bringing the claim with costs to the defendant in the sum of US\$3,000.00.

Cheryl Mathurin
High Court Judge