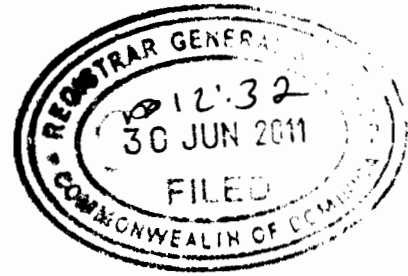


IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
DOMHCV2006/0098
[CIVIL]



BETWEEN:

MARCUS JAMES

Claimant

and

RICHARD ROYER

Defendant

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Singoalla Blomqvist Williams for Claimant
Mr. Stephen Isidore for Defendant

[2011: January 26th]
[2011: June 30th]

JUDGMENT

- [1] **COTTLE J:** Rufus James late of Vieille Case in the Commonwealth of Dominica died on 9th April 1983. On 24th April 1995 probate of a will dated the 13th October 1979 was granted to the defendant and another executor, Martina James. Martina James is now deceased. The claimant brings the present action seeking to have the grant of probate revoked. He claims that there is a later will executed on 14th January 1983. He wishes the court to pronounce for its validity in solemn form. By his defence, the defendant says that the 1979 will is the true last will and testament of Rufus James. He denies that the 1983 will was executed by the testator and that the testator knew of and approved of its contents.

- [2] The defendant also filed a counterclaim seeking full compensation for all moneys expended in the extensive renovation of the house which formed part of the estate of Rufus James. This court is called upon to determine the validity of the competing wills and to consider whether the defendant is entitled to be compensated for improvements to the estate property if it is found that the earlier will is invalid.
- [3] From the evidence certain facts emerged. By his 1983 will Rufus James bequeathed his dwelling house to his widow for life and after her death, to the claimant absolutely. Under the 1979 will the bequest of the dwelling house was to his widow Martina James absolutely. After the death of Rufus James the defendant applied for probate of the 1979 will. The claimant, through his solicitors, lodged multiple caveats from March 1987 to August 1992. Unfortunately the claimant failed to renew the caveat which has a life span of only six months unless renewed.
- [4] When the last caveat lapsed through effluxion of time the defendant and his co-executrix were able to secure a grant of probate. Upon obtaining the grant the Executrix proceeded to administer the estate. The defendant now says the estate is fully administered. He assented to the nesting in Martina James of the property bequeathed to her under the 1979 will.
- [5] Martina James died in 2005. Before her death she completely transformed the house which had been left to her into a substantial concrete structure. By her will she left the property to her sister Jane Josse for life and thereafter to her niece Marie Louise Royer absolutely.
- [6] It is convenient to dispose of the issue of compensation for renovation of the house which form the bulk of the estate of Rufus James at this point. If the 1979 will is valid, no question arises. If the 1983 will is admitted to probate then the widow would have had a life interest. The defendant is sued in his capacity as Executor. There are no additional parties to this action. Any renovation done to the house was done by Martina James the life tenant. It is not open to the defendant to seek reimbursement for expenses incurred by the life tenant on the bequeathed property. This aspect of the counterclaim has no merit and is dismissed.
- [7] In defending this claim the defendant puts forward several lines of argument. As noted earlier, the defendant denies that the 1983 will was executed by Rufus James. He avers a lack of knowledge and approval of the contents of the will by the testator. He adds that all the estate has now been fully administered and says this action is statute barred. Alternatively he pleads laches and acquiescence by the claimant.

The 1983 will

- [8] The 1983 will was professionally prepared. Mrs Zena Moore Dyer, a legal practitioner of several decades standing, testified that she was called to the Princess Margaret Hospital where she took instructions from Rufus James for the preparation of his will. Armed with those instructions she returned to her chambers and prepared the will. She returned with the will to the hospital. The will was read over to the testator who signed it in the presence of Mrs. Dyer and E.B Henry. Mrs. Dyer signed as witness. She was sure that the testator will represented his wishes for the disposition of his property. She was not challenged on cross examination. No evidence was led suggesting a want of knowledge or approval by the testator of the contents of the 1983 will. I find that this will was properly executed and valid. The effect of this finding is that the 1979 will was automatically revoked by the execution of the 1983 will.

Is this action statute –barred?

- [9] The defendant has not indicated which statute prohibits the proving of the 1983 will in these proceedings. No evidence has been put forward by counsel for the defence and no legal submissions on this issue have been filed by the defendant's counsel. I conclude that this aspect of the defence has been abandoned.

Has the estate been fully administered?

- [10] The only property which this matter is concerned is the dwelling house. In June 2001 the defendant and Martina James as co executors of the 1979 will signed a Deed of Assent vesting the house in Martina James. At the trial it emerged that the Deed of Assent does not appear to have been duly registered at the Registry of Deeds
- [11] Under Section 3 of the Registration and Records Act Chap 19:04 of the 1990 Revised Laws of the Commonwealth of Dominica, no deed can be received in evidence in any proceedings unless that deed has been duly registered. In the absence of registration there is no evidence that the estate of Rufus James has been duly administered.

Laches and acquiescence

- [12] It was not clear what the defendant meant by his plea of laches and acquiescence. Unfortunately, counsel for the defendant failed to provide the court with any legal

submissions on these issues. Counsel for the claimant argues that for the defence to succeed it must be shown that the claimant has done some positive act to lead the defendant to believe that the claimant has asserted to the wrong done to him. There is no such evidence in this case and this defence must fail.

- [13] It follows from what has been said that the defendant has failed. Judgment is entered for the claimant and the counterclaim is dismissed. The claimant is awarded prescribed costs.

The order of the court is :

1. The counterclaim is dismissed
 2. The Court pronounces for the validity of the 1983 will.
 3. The Grant of Probate of the 1979 will is revoked.
 4. The Court pronounces for the 1983 will pay for the 1983 will in solemn form
 5. The defendant will pay prescribed costs of \$14,000.00
- [14] As the defendant is sued as executor of Rufus James, it is the estate of Rufus James from which the costs award is to be met.



Brian J. Cottle
Justice Brian Cottle
High Court Judge