

SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1991.



SUIT NO: 536/1990

Verhice Haynes (suing as Attorney on behalf of the beneficiaries; Adina Luik, Edward Creese, and Fitzroy Creese lawful children of the deceased)

AND

Albert Creese, lawful beneficiary of the estate of the deceased and the Administrator of the estate of the deceased

AND

Kay R.A. Bacchus-Gill, Solicitor for the Administrator of the estate of the deceased.

DEFENDANTS

Mr. Grafton Isaacs for the Plaintiff
Mr. Andrew Cummings for the Defendants

(12th July, 1991)

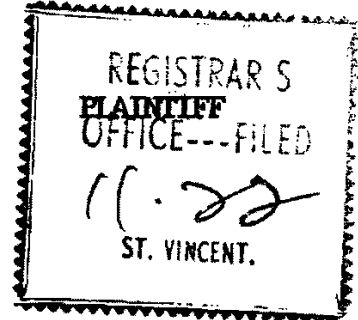
FINDING:

A summons supported by an affidavit of the second defendant was filed on 23rd April, 1991, applying for the statement of claim and the endorsement on the Writ of Summons filed on 12th October, 1990, be struck out and/or dismissed on the grounds that no reasonable cause of action against the defendant is disclosed: that the matter is scandalous, frivolous or vexatious and it is otherwise an abuse of the process of the Court.

Counter affidavits were filed on behalf of the plaintiff. The issues raised in the case are:

1. Whether the second defendant is the solicitor for the first defendant?
2. Whether the first defendant and beneficiaries should have been consulted by the second defendant before the estate of the deceased was sold for the payment of estate and succession duty and that, having collected money, no account was made to the administrator.

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- 3. That the surveyor was employed without the authority of the Administrator or the beneficiaries to survey the land.
- 4. That the second defendant was requested on behalf of the first defendant and the plaintiff to hand over the grant of letters of administration but did not do so.
- 5. That the second defendant is aware that the first defendant is an alcoholic who was admitted to the Mental Health Centre on occasions for treatment: that he is frequently in unstable condition not knowing what he is doing and would succumb to her wishes if she gives him money to purchase alcohol.
- 6. That the second defendant has exerted undue influence on the first defendant to sign deeds for the estate for herself and would be purchasers and was abusive to the first defendant when he refused to sign these documents.

With regard to the first issue, the allegation is that the second defendant is acting for the first defendant although the first defendant and all the other beneficiaries object to her dealing with the estate.

Counsel for the plaintiff withdrew the submission made observing that the notice of change of Solicitor was filed in the estate suit.

As regards the second issue, the second defendant is not obliged to consult with the beneficiaries as the personal representative is the person from whom she takes instructions and the first defendant has deposed that he authorised the second defendant to sell land comprising the estate of the deceased.

A person to whom a grant of Letters of Administration is made is the personal representative of the estate and swears to administer the estate. He enters into a bond for the due administration of the estate committed to his care. This grant stands until revoked.

The same comment relates to the third issue, that is, the appointment of a surveyor to survey the land. The first defendant, as Personal Representative, is accountable to the beneficiaries and, if called upon to account, must do so.

/Regarding....

61

Regarding the fourth issue the plaintiff has no authority to demand the letters of administration from the second defendant as the second defendant is acting for the first defendant.

What I have found very unusual is that in many portions of the affidavits filed by solicitor for the plaintiff, he seems to be acting for the first defendant.

I am precluded from considering any comment or claim made on behalf of the first defendant in the affidavits filed by solicitor for the plaintiff as he is on record for the plaintiff. He cannot act for both parties.

Regarding the fifth issue the first defendant is undoubtedly an alcoholic. That is clear from the Doctor's Certificate but there is no supportive comment from the doctor that he is unable to manage his affairs. In fact the doctor's comment is that the first defendant is "sound mentally".

Consequently, a number of claims made by the plaintiff against the second defendant are not maintainable. The undermentioned endorsements in the Writ of Summons that refer to the second defendant are struck out. Paragraphs (a) to (k) inclusive. The undermentioned portions of the Statement of Claim are struck out: paragraphs 3,4,5, 6,7,8,9,10,12.

I am of the view that the only issue which is of any merit is the sixth issue - that of undue influence, to which reference is made (not in the Writ of Summons) but in the Statement of Claim.

Exhibited to Lennox Greese's affidavit of 25th June, 1991 is a copy of a deed of conveyance, the parties being the first defendant as administrator of the estate and the second defendant. The deed was prepared by the second defendant.

It is imperative that a solicitor take all steps to avoid a conflict of interest. Where a Solicitor wishes to purchase land from

62

a client extreme caution should be exercised to ensure that no question of undue influence or coercion or unfairness could arise. The solicitor should not prepare and endorse the deed conveying the land purchased from the client to himself or herself. The Solicitor must insist that the client seek independent advice.

I cite from Halsbury's Laws of England 4th Edition vol. 18 Page 153 paragraph 337.

"The relation of solicitor and client is one which gives rise to the presumption of undue influence and a purchase by a solicitor from his client will be set aside unless shown to have been manifestly fair."

Whether the transaction is manifestly fair can be determined only by a trial. I cannot hold that this part of the statement of claim discloses no reasonable cause of action and I do not strike out this portion of the statement of claim.

I order the plaintiff to meet 65% of the costs of the second defendant to be taxed unless agreed.

I think Counsel appreciate that I gave priority to the Land Acquisition matter, hence the delay in delivering of this finding.

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Monica Joseph
Puisne Judge
3.12.91.