SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO.: SLUHCV 2003/0138

BETWEEN

(1) MICHELE STEPHENSON
(2) MAHALIA MARS (Qua Administratrices of the Estate of ANTHONY ALLAN JOHN deceased) By their lawful Attorney Allan John

Claimants

and

LAMBERT JAMES-SOOMER

Defendant

CONSOLIDATED WITH

CLAIM NO.: SLUHCV 2003/0453

BETWEEN

DAVID BLACK

Claimant

and

LAMBERT JAMES-SOOMER

Defendant

Appearances:

Mr. E. Edgar for the Administratrices
Mr. G. Charlemagne for Claimant David Black
Mr. D. Theodore for Defendant

2004: January 29
April 5, 19

JUDGEMENT

[1] EDWARDS J: Claim No. SLUHCV 2003/0138 is an action brought by the Claimants who are foreign administratrices, seeking to recover damages from the Defendant, for the death of Anthony Allan John, on the ground that he died because of the negligent driving of the Defendant.

[2] The action has been brought for the benefit of the deceased's 2 infant children and his parents under Article 988 of Civil Code of St. Lucia, Cap. 242.

[3] Article 988 (3) requires such actions to be brought within 3 years after the death of the deceased.

[4] The issues arising from the preliminary submissions of Counsel at the trial are:-

A. Can a grant of Letters of Administration to the Administratrices in England enable them to validly commence these proceedings in St. Lucia in their capacity as Administratrices.

B. What is the effect of resealing a grant and can a resealing relate back to the date when a claim was issued prior to resealing.

C. Is the Defendant precluded from raising the Claimant's lack of standing as a preliminary issue at the trial, where this was not pleaded as a defence.

D. Can Parts 19.4 and 20.2 of the CPR 2000, which allow the addition or substitution of a party, or an amendment to alter the capacity in which a party claims, after the expiration of the limitation period, be applied to mitigate the harshness of the law of Prescription in St. Lucia.

The Facts

[5] On the 4th of June 2000 Anthony Allan John, who was domiciled in England, died in St. Lucia while visiting his parents here.

[6] On the 6th of December 2000, the Administratrices, mothers of the deceased's 2 children, obtained a grant of Letters of Administration in England. They were never granted Letters of Administration in St. Lucia. Neither did they make an application for the resealing of the English grant.

[7] They appointed the father of the deceased, Mr. Allan John, to be their attorney for the purpose of bringing the action on the 28th January 2003.

[8] On the 7th February 2003 this action was commenced under Article 988 of the Civil Code Cap. 242.

[9] By Article 988 (4) it is provided:

> "Every such action shall be brought by and in the Name of the Executor or Administrator of the person deceased, but if in any case there is no executor or administrator of the person deceased, or if there being such executor or administrator, no such action is, within six calendar months after the death of such deceased person, brought by and in the name of such executor or administrator, the action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit the action is hereby given."

[10] Article 1152A of the Civil Code states:

> "Where a Court of Probate; in any part of Her Majesty's dominions; or a British Court in a foreign country, has, either before or after the passing of this article; granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, the Registrar of the Supreme Court, be sealed with the seal of that Court, and on being registered in the Registry of Deeds shall thereupon be of like force and effect, and have the same operation in the Colony as if granted by the Supreme Court."

[11] I shall now deal with the first 2 issues together.

A. The Effect of the English Grant and

B. The Requirement for Resealing

[12] It was submitted by learned Counsel Mr. Theodore that an administrator (unlike an executor who derives his title from the will) derives his title solely under the grant and cannot institute an action as administrator before he gets the grant. Mr. Theodore argued further that the requirement for resealing the English grant is a critical requirement; and the estate of the deceased cannot vest in the foreign administratrices until the legal requirements for resealing are fulfilled. That it is only upon registration of the sealed copy in the office of Deeds and Mortgages that a resealing of a grant of letters of administration made by a British Court assumes the force and effect of a grant made in our High Court.

[13] Mr. Theodore relied on the decision in Ingall v Moran to buttress his argument: ([1944] KB.160).

[14] In this case the Plaintiff issued a writ in an action under the Law Reform (Miscellaneous Provisions) Act 1934, claiming to sue in a representative capacity as administrator of his son's estate. He took out Letters of Administration nearly 2 months after issuing the writ. It was held that the action was incompetent at the date of its inception by the issue of the writ. That the doctrine of relation back of an administrator's title, on obtaining a grant of letters of administration to the date of the intestate's death could not be invoked so as to render the actions competent.

[15] It was recognised in this case that upon obtaining his title by the grant of letters of administration, the plaintiff became prima facie entitled to sue. He could then have issued a new writ, and that was all (Scott L.J. at page 164).

[16] Speaking of the incompetent action Scott L. J. opined "It was born dead and could not be revived … all subsequent proceedings in the supposed action, including the judgment of learned County Court Judge were likewise nugatory for if the action and the pleadings were bad there was no valid action before the learned judge to try …" (at page 165).

[17] On the other hand Claimant's Counsel, while agreeing in principle with the Ingall v Moran decision, sought to distinguish the facts from the present case. Mr. Edgar argued that that case was relevant to the question of when the Administrator obtains title and representative capacity, but it did not consider the effect of resealing a grant.

[18] Learned Counsel Mr. Edgar submitted that Article 1152A required the resealing of a foreign grant in order to authenticate the instrument and provide notice to the world of the administrator's title and his representative capacity.

[19] On the basis that the resealing and registration requirement is only a procedure for perfecting title, Mr. Edgar invited the Court to approve the following reasoning and approach:-

a) That the foreign grant being a valid grant gives the Claimants the requisite title and representative capacity in St. Lucia.

b) That the Claimants are therefore equipped to commence the proceedings without resealing to avoid the consequences of a limitation action.

c) That thereafter the Claimants may seek to perfect their title prior to the issue of decree or judgment on the claim.

d) That since the perfected title is required for Claimants to prove their title, the action should be stayed by the Court until title is perfected and should not be dismissed.

[20] My research unearthed a case with facts very similar to the present one. The decision in this case does not accommodate the reasoning and approach of Mr. Edgar: (Finwegan v Cementation Co. Ltd. [1953] I All ER. 1130).

[21] This was a case where Counsel for the Plaintiff had argued that a grant of Letters of Administration in Ireland was sufficient to enable the grantee to institute proceedings in England under the Fatal Accidents Acts 1846 and its 1864 Amendment.

[22] Section 2 of the 1846 Act stated that the action "shall be brought by and in the name of the Executor or Administrator of the person deceased."

[23] Responding to Counsel for the Plaintiff's submission, Singleton L. J. had this to say:

> "… counsel's submission … is that the plaintiff, having obtained letters of administration in Dublin, can be regarded as administrator for the purposes of S.2 of the Act 1846. I do not think that submission is right. The section when it refers to an administrator means the person empowered by law to administer the estate of deceased. The person to whom letters of administration are granted in Ireland is not a person empowered by law to administer the estate of the deceased in England. That point, therefore, fails.": (at page 1133 para A)

[24] Another helpful decision I unearthed dealt with the resealing of an Irish grant: (Burns v Campbell [1951] 2 All ER. 965).

[25] This was a case where the Plaintiff's husband who was domiciled in Ireland, died in England on the 23rd January 1950. The Plaintiff took out letters of administration on the 12th January 1951 in Northern Ireland. She issued a writ in the High Court in England under the Fatal Accidents Act 1846, claiming as administratrix damages for Negligence from the defendant. On the 20th March 1951, the grant in Northern Ireland was sealed in England under S 169 (1) of the Supreme Court Judicature (Consolidation) Act 1925 (Comparable to Article 1152A of the Civil Code of St. Lucia).

[26] Denning L. J. delivering the Judgment held, that the sealing of the grant under S.169 (1) did not result in the grant having effect in England from the date of the grant in Ireland. The result was that on the 19th January 1951 when the writ was issued, the plaintiff had not

obtained a grant of administration to the English assets. So far as the English Courts were concerned, she was not the administratrix. The action therefore was not properly constituted since it purported to be an action by her as administratrix when she was not administratrix.

[27] The authorities mentioned are weighted heavily in favour of the Defendant.

[28] It is clear from these authorities that the English grant did not give the Administratrices Ms. Michelle Stephenson and Ms. Mahalia Mars, any authority to pursue and collect the foreign assets of the deceased in St. Lucia. Their ability to do so must of necessity depend upon the laws of St. Lucia and their compliance with the relevant law.

[29] Having obtained the primary grant of letters of administration in England, they could have applied to the High Court in St. Lucia for an ancillary grant of letters of administration. Alternatively, they ought to have taken the mandatory steps required by Article 1152A for resealing and registration of the English grant prior to issuing this claim.

[30] Their failure to do so has resulted in the commencement of an action which is not properly constituted.

[31] It is also clear from these authorities that their existing dilemma cannot be cured by any future grant of letters of administration to them in St. Lucia or by the resealing of the English grant. All that an ancillary grant or a resealing of the English grant theoretically would allow is the issuing of a new claim where the prescription period has not expired.

[32] In the course of his submissions, Counsel Mr. Edgar referred to Article 610 (1) of the Code of Civil Procedure which provides for the Chief Justice to make rules for the registration of the Grant of Probate and Letters of Administration issued outside St. Lucia and dealing with the effect of such registration. He bemoaned the absence of such rules.

[33] It might be useful to note that the proposed Draft Non-Contentious Probate Rules for the OECS Member States dated 17th October 2003 deals with the Resealing of Grants.

[34] Rule 31 of this Draft sets out in detail directions as to how to apply for resealing of grants but it does not deal with the effect of such registration.

[35] I shall now move on to consider the last 2 issues.

C. Time to Raise Issue of Standing

D. Mitigating the Harshness of Prescription Law

[36] An examination of the Record discloses, that apart from paragraph 1 of the Statement of Claim; which asserted that the Joint Administratrices were granted letters of Administration on the 6th December 2000, the Claimant's pleadings gave no other details about the grant.

[37] The Statement of Claim was filed on the 7th February 2003 and served on the Defendant on the 27th March 2003.

[38] The Defence was filed on the 16th April 2003. By paragraph 1 of the Defence, it was stated that the Defendant does not admit or deny the matters alleged in paragraph 1 of Statement of Claim.

[39] Part 9.7 (1) of the Civil Procedure Rules 2000 requires a defendant who argues that the Court should not exercise its jurisdiction, or who disputes the court's jurisdiction, to make an application to the Court within the period for filing a defence.

[40] By Part 9.7 (5) the Rules provide that a defendant who does not make a timely application is treated as having accepted that the court has jurisdiction to file the claim.

[41] Mr. Theodore concluded the obvious – the Claimants have no locus standi, the claim is a nullity and incapable of being revived. The claim should be dismissed with costs.

[42] Mr. Edgar has urged the Court not to yield to the submissions of Mr. Theodore to dismiss the claim with costs.

[43] Mr. Edgar has invoked Article 23 of the St. Lucia Code of Civil Procedure Cap. 243 which states that "The Court cannot adjudicate beyond the conclusions of a suit." I do not accept that this provision is relevant to the present proceedings.

[44] Mr. Edgar has submitted that since the Defendant did not expressly plead that the Claimants lacked locus standi, or that the Claimants failed to perfect their claim through

resealing and registration, he cannot now invoke this defence. The record may disclose why the Defendant's Counsel raised this issue at the trial.

[45] The record discloses that the Claimants filed a List of Documents on the 4th October 2003. The Letters of Administration issued out of the Principal Registry of the Family Division of the High Court of Justice in England dated 6th December 2000, and the Power of Attorney authorizing Mr. Allan John to represent the Administratrices in St. Lucia, and which was registered on the 3rd February 2003 were not disclosed in this list. These were 2 of the most important documents for the Claimant's case.

[46] It was not until the 13th January 2004 that copies of these 2 documents were filed along with the Witness Statement of Mr. Allan John.

[47] For the first time it was made clear by paragraph 7 of his Witness Statement that the Claimants were relying on the English grant to prove their locus standi.

[48] Part 10.7 of the CPR 2000 states that a Defendant may not rely on any allegation or factual argument which is not set out in the defence but which could have been set out there, unless the Court gives permission at Case Management Conference.

[49] In the absence of any evidence as to when Counsel for the Defendant became aware that the Claimants had not resealed and registered the grant, it is reasonable to assume that

Mr. Theodore became aware on being served with the Witness Statement of Mr. Allan John and these 2 important documents on the 15th January 2004.

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[50] In such circumstances he could not have applied to the Court for a declaration under Part 9.7 within the period for filing the defence. Neither could he have set out in his defence that he was challenging the locus standi of the Claimants.

[51] By the time he may have become aware of the Claimant's reliance on an English grant, it was less than 2 weeks from the trial dates 27th & 29th January 2004.

[52] It was on the 29th January 2004 that Mr. Theodore raised the issue of the Claimant's standing.

[53] Although Mr. Theodore could have requested specific disclosure of the grant upon being served with the Claimant's list of documents on the 4th October 2003, he chose not to do so.

[54] By then the 3 years prescription period had already lapsed on the 5th June 2003.

[55] The Case Bowler v John [1954] 3 All ER. 556, illustrates that the issue of locus standi though not pleaded or dealt with in a preliminary application prior to the trial, may be raised even after the liability of the defendant has been determined at the trial.

[56] This was a case where the jury found the defendant guilty of negligence at the trial of an action under the Fatal Accidents Act 1864 section 1, brought by a widow of the deceased. The defendants then contended that as the plaintiff was not the administratrix of the deceased at the date the writ was issued, the writ and all the subsequent proceedings were a nullity. The trial judge accepted the argument and gave judgment for the Defendants. It was held on appeal that the writ was not a nullity from the date of its issue because the endorsement on the writ did not suggest that the plaintiff was suing in a representative capacity.

[57] The overriding objectives of the CPR 2000 seek to prevent cases from being won or lost on purely technical points, while promoting the determination of cases on the issues on the pleadings and the evidence, based on merit. Claimant's Counsel has therefore asked the Court to permit an amendment of the claim, so that the capacity in which the Claimants claim, can be altered, or for the right Claimants to be substituted after the limitation period.

[58] Part 19.4 (2) of CPR 2000 authorises the Court to add or substitute a party after the end of a limitation period if the addition or substitution is necessary and the relevant limitation period was current when the proceedings were substituted.

[59] Part 20.2 (4) provides that the Court may allow an amendment to alter the capacity in which a party claims after the end of a relevant limitation period.

[60] I do not believe that these Rules would be applicable where the claim is a nullity, but on the assumption that they could be applicable, I have given serious consideration to Mr. Edgar's submissions.

[61] Mr. Theodore has vehemently opposed this approach. He argued that this Court has no discretion to do this in light of the decision in Walcott v Serieux Civil Appeal No. 2 of 1975 (St. Lucia).

[62] In this case the Court of Appeal considered the differences in effect between the Limitation Acts under English Law and the Law on Prescription in St. Lucia particularly Articles 2122 and 2129 of the Civil Code St. Lucia.

[63] Article 2122 states that actions for damages resulting form delicts or quasi delicts are prescribed for 3 years. Article 1.15 states that "the terms "delict" and "quasi delict" indicates an injurious act or incident which, in the absence of any contract gives rise to an obligation towards the injured person (the creditor), on the part of another person (the debtor). The act or incident is termed "delict" when there is, and "quasi delict" when there is not, injurious intention or culpable negligence on the part of the debtor."

[64] Article 2129 provides –

> "In all cases mentioned in Articles 2111, 2121, 2122, 2123 and 2124, the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired except in the case of promissory notes and bills of

exchange, where prescription is precluded by a writing signed by the person liable upon them."

[65] The Court of Appeal considered the decision in Rodriguez v Parker [1966] 2 All ER. 349, 360. In this case Nield J examined the approach of the English Courts to the Rules of Limitation. He recognised that there was a Foreign Rule of Limitation which was different from the English Rules of Limitation. From Nield J's review and acceptance of the law, as stated in the textbook authorities relied on, emerges the following legal principles on the subject matter –

A. In so far as the English Statutes of Limitation prescribe periods within which actions may be brought, they are classified as methods of procedure in English Courts.

B. Under the English Rules of Limitation, the plaintiff's right is not extinguished where the statutory period expires before the action is brought. He is merely deprived of his remedies of action and set off. He is free to pursue other methods other than legal action to satisfy the debt.

C. Where a Foreign Rule of Limitation extinguishes both the right and the remedy, it is not regarded as a matter of procedure in the English Court. The creditor can take no further action, legal or otherwise to satisfy an extinguished debt.

[66] It is obvious that Article 2129 of The Civil Code exemplifies that "foreign rule of limitation" which extinguishes both the right and remedy.

[67] The Court of Appeal held that under Article 2129, there is no question of a party being called upon to choose whether he would plead the defence of limitation. As long as the evidence in a case discloses that the period of limitation has expired, the Judge has no discretion: (Walcott v Serieux Supra).

[68] I am therefore of the opinion that Parts 19.4 (2) and 20.2 (4) of the CPR 2000 are not applicable to this case.

[69] I must therefore dismiss this claim with costs under Part 65.5 (2) (b) (ii).

[70] Where the parties cannot agree on the costs, the Court will determine this.

Dated this 19th day of April, 2004.

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Ola Mae Edwards
High Court Judge