

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 18 OF 2004
BETWEEN:



GEORGE LEOPOLD CRICHTON
(Attorney on Record for **PATRICK CRICHTON**
Intended Administrator in the Estate of
LUCY CRICHTON, deceased)

Claimant

v

LENA HOLDER

Defendant

Appearances: Mrs. Kay Bacchus-Browne for the Claimant
Mr. P.R. Campbell Q.C. and Mr. McCauley Peters for the Defendant

2005: November 9
2006: November 28

JUDGMENT

- [1] **THOM, J:** This is a claim for possession of property.
- [2] By Deed of Assent No. 1540 of 1999 and dated May 12, 1999 Marguerite Munro nee Crichton administratrix of the Estate of Henry Crichton deceased conveyed a parcel of land situate at Caratal to one Lucy Crichton.
- [3] Between 1990 and 1992 a house was constructed on the land. This house was occupied by Lucy Crichton and the Defendant who had an intimate relationship with Francis Crichton the brother of Lucy Crichton and Marguerite Munro nee Crichton. The Defendant's daughter also resides at the house while the Defendant's son built a booth on the land from which he operates a shop.

- [4] The Defendant was the caretaker of Lucy Crichton until she died on the 22nd day of January 2003.
- [5] The Claimant the son of Lucy Crichton instituted these proceedings in the capacity of an intended administrator of the estate of Lucy Crichton in which he claims inter alia possession of the property and an order evicting the Defendant from the said land.
- [6] At the end of the trial, in his submissions learned Queen's Counsel for the Defendant submitted that the Court has no jurisdiction to entertain a claim for possession of property by an intended Administrator of the estate of a deceased person. The Claimant has no locus standi.
- [7] In support of his submission Learned Queen's Counsel referred the Court to the Administration of Estates Act, the cases of **Meyappa Chetty v Supramanian Chetty** (1916) A.C. p. 603; **Ingall v Moran** [1944] 1 KB p. 169; **Hilton v Sutton Steam Laundry** [1946] 1 KB p.15 and Williams and Mortimer on **Executors, Administrators and Probate** 1970.
- [8] Learned Counsel for the Claimant in response submitted that she agrees with the submission of Learned Queen's Counsel on the law as stated in the abovementioned cases. However, Learned Counsel submitted that the Court does have jurisdiction to entertain a claim by an intended administrator who is a beneficiary of the deceased estate. Learned Counsel referred the Court to sections 4, 29, 39, 51 and 54 of the Administration of Estates Act. Learned Counsel also submitted that the Defendant having participated in the trial is now estopped from submitting that the Court has no jurisdiction and further CPR Part 21:6(1) provides for a Trustee to bring an action and Part 19:4 (2) (a) and (3) (a) make provision for the Court to add or substitute a new party. Part 19:3 (1) permits the Court to do so on or without application.

[9] It is not disputed that the Claimant has not been granted Letters of Administration in the estate of Lucy Crichton, nor is it disputed that there is no evidence that the Claimant has applied for the grant of Letters of Administration in the estate of Lucy Crichton.

[10] The pleadings in this case are very clear. The Claimant sued in the sole capacity of intended Administrator of the estate of Lucy Crichton.

ESTOPPEL

[11] Is the Defendant estopped from making an objection that the Court has no jurisdiction to determine this claim? No authorities were cited by Learned Counsel in support of her submission. Learned Queen's Counsel in reply submitted that an objection to jurisdiction can be made at any stage of the trial and can be raised for the first time on appeal and where the Court lacks jurisdiction the parties cannot consent to confer jurisdiction on the Court. In support of this submission Learned Queen's Counsel referred the Court to the cases of **Norwich Corporation v Norwich Electric Tramways Co. Ltd** [1906] 2 KB p. 119; **Bank of Nova Scotia Trust Co Ltd v Maillard** [1985] 38 WIR p. 272; **Westminster Bank Ltd v Edwards** 1942 AC p. 524; **Re Aylmer** (1888) 20 QB 258 and **Hasting v Dupont** [1963] 1 WLR p. 1192.

[12] I agree with the submissions of Learned Queen's Counsel that an objection which goes to the jurisdiction of the Court can be taken at any stage of the trial. This is illustrated in the above mentioned cases.

THE ADMINISTRATION OF ESTATES ACT

[13] Sections 4, 29, 39, 51 and 54 of the Administration of Estates Act Cap. 277 referred to by Learned Counsel for the Claimant bear no relevance to the issue whether the Claimant an intended administrator can maintain an action for possession of property of the estate of a deceased person.

- [14] The Act makes no provision in relation to an “intended Administrator.” The Act outlines the powers and duties of an executor, administrator and personal representative. An “intended Administrator” is not included in any of those terms. Indeed such a creature is not recognized by the Act. Section 17 of the Act makes provision for the Court to grant administration of the estate of a deceased person to an administrator pending suit in specific circumstances.

CPR 2000

(a) Part 21: 6(1)

- [15] I agree with the submission of Learned Counsel for the Claimant that Part 21:6(1) makes provision for a Trustee to institute proceedings. However, as stated earlier the Claimant brought this action in the capacity of an “intended administrator.”

(b) Part 19:4 (2) (a) and 3 (a)

- [16] These provisions are not relevant to this case. Part 19:4 deals specifically with addition or substitution of parties after the end of the relevant limitation period.

(c) Part 19:3 (1)

- [17] Part 19:3(1) does enable the Court to add, substitute or remove a party on or without an application. However, Part 19:3 (4) provides that a person may not be added or substituted as a Claimant unless that person’s written consent is filed with the Court Office. Further I am of the opinion that where the Court has no jurisdiction to hear a matter the Court cannot add or substitute a Claimant to clothe itself with jurisdiction.

- [18] I agree with the submission of Learned Queen’s Counsel that the Court has no jurisdiction to determine a claim for possession of land by an intended administrator of the estate of a deceased person. Lord Justice Luxmoore in Ingall v Moran at pp. 167-168 stated the law as follows:

“It is I think well established that an executor can institute an action before probate of his testator’s will is granted, and that so long as probate is granted before the hearing of the action, the action is well constituted although it may in some cases be stayed until the plaintiff has obtained his grant. The reason is plain. The executor derives his legal title to sue from his testator’s will. The grant of probate

before the hearing is necessary only because it is the only method recognized by the rules of Court by which the executor can prove the fact that he is the executor.... An administrator is of course in a different position, for his title to sue depends solely on the grant of administration. It is true that when a grant of administration is made, the intestate's estate including all choses in action vests in the person to whom the grant is made and the title thereto then relates back to the date of the intestate's death, but there is no doubt that both at common law and in equity in order to maintain an action the plaintiff must have a cause of action vested in him at the date of the issue of the writ."

- [19] In view of the above, I find that the Claimant as intended administrator cannot maintain this action.
- [20] The Claim is hereby dismissed. It is ordered that the Claimant do pay the Defendant costs in the sum of \$14,000.00.


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Gertel Thom
HIGH COURT JUDGE