SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO SLUHCV2010/0666

BETWEEN

1. Rosemary Garraway
2. Cyprian Ferdinand

Claimants

and

Aloysius Ferdinand

Defendant

Appearances:

Mr Peter Foster and Mrs Diana Thomas for the Claimant /Applicant
Mr. Dexter Theodore for the Defendant/Respondent

.....
2012 July 10th
July 11th
.....

DECISION

[1] **Belle J**: The overriding objective of the CPR 2000 is to deal with cases justly. The CPR 2000 also provides for matters to be referred to mediation where parties can be assisted in arriving at a negotiated settlement on their own terms rather than terms imposed by a Judge of the High Court.

[2] On the 14th day of November 2011 this matter was referred to mediation hearing in 14 days and a mediator was selected to assist with the matter. The parties settled at mediation by way of a mediation agreement dated 26th November 2011. The terms of the mediation agreement included the requirement that the defendant as administrator of the estate of the late Mary Ferdinand do vest the half share of the property known as parcel 0849E 466 situate at San Souci, Castries in

the heirs of the deceased , namely Rosemary Garraway, Cyprian Ferdinand and Aloysius Ferdinand in equal shares.

[3] The Vesting Deed was to be prepared by the Chambers of the Claimants' legal practitioners and Defendant's legal practitioner with a view to completing the process by 28th February, 2012.

[4] The agreement also provided for the Defendant to submit to the Claimants' practitioners within (60) sixty days of the date of the agreement a full and frank and faithful account of his administration of the succession of Mary Helen Ferdinand, Deceased.

[5] This was to be in full and final settlement of the claim.

[6] The Mediation Agreement of 26th November 2011 was approved by the Court on 15th December 2011.

[7] Based on this agreement and after the passage of 60 days the Claimant/Applicant filed an application to enforce the mediation agreement on 15th March 2012.

[8] The Applicant's application was in the following terms:

> *The Applicants , (i) Rosemary Garraway of # 34 Hopkinson Crescent Ajax, Ontario Canada, LIT 4G$ and (ii) Cyprian Ferdinand of 518 N. Brookside, Freeport, New York,11520 USA apply to the Court for an order that:*
>
> *(i) The Defendant do make an account giving each sum of money received per month for rental of the property , registered as 0849E 466 for the period August 2008 until today's date, and all expenditure made for the upkeep and maintenance of the property;*
>
> *(ii) The Defendant do make the account by properly tabulating each credit and debit for each sum received as income of the property and debits for sums actually spent on the property and showing the balance due to the estate of Mary Helen Ferdinand;*
>
> *(iii) The account must be accompanied by and cross referenced to receipts properly exhibited and indexed.*

(iv) The account must be given by sworn Affidavit which Affidavit with the said exhibits must be filed and served on the legal practitioners for the Claimants within 7 days of the date of this order.

(v) The Defendant do pay to the Claimants 1/3 each of the sum due to the estate of Mary Helen Ferdinand on the taking of the account within the said 7 days of the date of this order;

(vi) That unless the Defendant do properly provide the account within 7 days of the date of this order, the Defendant is ordered to pay to each of the Claimants the sum of $86,000.00 representing 1/6 of the income earned from Parcel 0849E 466 for the Estate of Mary Helen Ferdinand for the period August 2008 to February 2012 (43 months) , within 14 days of the date of this order.

(vii) That the Defendant do execute a Vesting Deed of Parcel 0849E 466 transferring title of the property to the Claimants as to 1/6 each.

(viii) If the Defendant shall fail to execute the Vesting Deed the Registrar be authorised to do so on his behalf.

(ix) That the Defendant do bear the costs occasioned by this application.

(x) That a penal notice be attached to the order.

[9] The Applicant stated that the grounds of the application were:

1. By order of the High Court of Justice dated 14th November 2011 the parties were ordered to attend a mediation session.

2. The parties attended the mediation session on 26th November 2011 and arrived at an agreement.

3. The mediation agreement was made an order of the Court on 24th January 2012.

4. The Defendant has failed to comply with the mediation agreement in that the Defendant has failed to give the account of his dealings with the estate of Mary Helen Ferdinand and the Defendant has failed to vest the Claimant's share of the property in them.

5. The Court has power pursuant to the order dated 24th January 2012 to enforce the mediation agreement dated 26th November 2012.

[10] The Defendant/Respondent's counsel claimed that the Respondent sent an account to the Applicant/ Claimant before the application was served but after the 60 days had passed. Counsel for the Claimant said that this document was not received before the Claimant filed his application. But in any event the quality of the document filed does not meet the standard expected by the

Claimant. The Claimants' counsel argued that having perused the document they did not know what they were looking at and that the Respondent should have followed the prescribed rules in Part 41 of the CPR 2000.

[11] The Claimant's application called for the Defendant to make an account giving each sum of money received per month for rental of the property registered as 0849E 466 for the period August 2008 until today's date, and all expenditure made for the upkeep and maintenance of the property.

[12] The Applicants'/ Claimant's counsel argued that the Defendant should comply with the terms of Part 41.2 in providing the account which was agreed and that he had not done so. The Defendant was aware of the agreement from the time it was made and with the court's order from the date that the order was made.

[13] The Defendant was also aware of the application filed from 28th March 2012 when it was served. The Claimants therefore asked for compliance in 7 days.

[14] Counsel for the respondent intimated that the Vesting Deed had been done and the court accepted that counsel would be held to that undertaking based on his assertions that the Vesting Deed was filed.

[15] But the Claimants also asked that the Defendant do pay to the Claimants 1/3 each of the sum due to the estate of Mary Helen Ferdinand on the taking of the account within the said 7 days of the date of the order.

[16] The Applicants/Claimants also prayed for an unless order that the Defendant do properly provide the account within 7 days of the date of this order, and that the Defendant be ordered to pay to each of the Claimants the sum of $86,000.00 representing 1/6 of the income earned from the period August 2008 to February 2012 (43 months) within 14 days of the date of the order.

[17] The Applicants also prayed that the Defendant do bear the costs occasioned by the application.

It is accepted that the Defendant has had a period of time since being served with the application to get his house in order. However the demand for payment over of the respective shares is based on the presumption that the Defendant is unable to account for his administration of the deceased's estate.

[18] It should be noted, that following the procedure set out in Part 41 the party making the account would be entitled to be told what is wrong with his account and to respond appropriately. In my view it is not yet the time to assume that he would fail to explain the accounts already presented which the Claimants say they do not understand.

[19] It is also important that the Applicant Cyprian Ferdinand is himself not aware of the exact figures involved in the administration of the estate. He says at paragraph 6 of his affidavit that "we are presently unable to accurately ascertain how much is due to us save and except to say that we are aware that Monroe College has been paying rent from August 2008 to the present to the Defendant. Up to the year 2010 we were aware that the rent paid was $12,000.00 per month but we are unsure whether it has gone beyond that sum."

[20] It is also important to note that the order which was given to provide the account in this matter arose from a mediation agreement.

[21] The mediation order did not give directions as to how the account should be presented. It is only after the application that the Defendant would have been aware of the standard of accounting being expected.

[22] In the circumstances I believe that it would be draconian to order that any further failure to provide an account which does not meet all of the necessary requirements under CPR part 41 should be met by orders of payments of sums of money, which is based on the assumption that certain specific sums of money have been received and are available.

[23] The court therefore orders as follows:

1. The Defendant do make an account giving each sum of money received per month for rental of the property registered as 0849E for the period August 2008 until today's date, and all expenditure made for the upkeep and maintenance of the property;

2. The Defendant do make the account by properly tabulating each credit and debit for each sum received as income of the property and debits for sums actually spent on the property and showing the balance due to the estate of Mary Helen Ferdinand;

3. The account is to be accompanied by and cross-referenced to receipts properly exhibited and indexed.

4. The account must be given by sworn Affidavit which Affidavit with the said exhibits must be filed and served on the legal practitioners for the Claimants 28 days on or before 20ths August 2012.

5. The Court accepts Counsel's undertaking that the Defendant has executed Vesting Deed of Parcel 0849E 466 transferring title of the property to the Claimants as to 1/6 each.

6. That the Defendant do bear the costs occasioned by this application to be determined if not agreed by the Court.

7. That a penal notice is hereby attached to the order.

Francis H V Belle
High Court Judge