EASTERN CARIBBEAN SUPREME COURT
ST. CHRISTOPHER CIRCUIT

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2013/0009

BETWEEN:

DERRICK HAZEL-GARVEY

Respondent/Claimant

And

MICHELLA ADRIEN
(The Lawful Attorney of Rosa Dyhanna Garvey)

Applicant/Defendant

Appearances:

Mr Adrian Scantleberry for the Applicant/Defendant
Mr John Cato for the Respondent/Claimant

2013: May 17th

2013: June 25th

DECISION

[1] THOMAS J (AG) Before the court is an application seeking certain orders, namely that:

(1) The Fixed Date Claim with Statement of Claim filed by the claimant on the 9th January 2013 be dismissed/struck out.

(2) The claimant has no *locus standi* to seek from this court the relief sought in his Fixed Date Claim and Statement of Claim.

(3) The defendant is not the proper defendant to answer an allegation of fraudulent birth certificates of her principal and Lidia Garvey.

(4) Costs to be paid by the claimant to the defendant.

[2] The pleaded grounds of the application are that:

(1) Pursuant to Part 26.1(2)(i) of the Civil Procedure Rules 2000 as amended, this Honourable Court has jurisdiction to dismiss a claim after a decision on a preliminary issue.

(2) By paragraph 11 of the Statement of Claim prays for the revocation of the defendant's appointment as Administratrix of the estate of the late Charles Garvey and for his appointment in her stead as sole Administratrix, in the alternative, for permission to apply for Letters of Administration.

(3) In cases of intestacy Rule 22 of the Non-Contentious Probate Rules, 1954 as adopted in his jurisdiction by virtue of section 11 of the Eastern Caribbean Supreme Court Act. Cap. 3.11 set out the order of priority for the Grant of Letters of Administration, to wit:

(a) The surviving husband or wife;

(b) The children of the deceased and the issue of any deceased child who died before the deceased;

(c) The father and mother of the deceased;

(d) Brothers and sisters of the whole blood and the issue of any deceased brothers or sisters of the whole blood who died before the deceased;

(e) Brothers and sisters of half blood and the issue of any deceased brother or sister of the half blood who died before the deceased;

(f) Grandparents;

(g) Uncles and aunts of the whole blood and any issue of any deceased uncle or aunt of the whole blood who died before the deceased;

(h) Uncles and aunts of the half and the issue of any deceased uncle or aunt of the half blood who died before the deceased.

(4) There is nothing in the claimant's Fixed Date Claim with Statement of Claim which alleges that the claimant falls under one of the above mentioned categories. Instead, the most the claimant has alleged is that he is the second cousin of the deceased, but the order of priority does not

include cousins as persons entitled to apply for a grant. Moreover, the claimant has not even pleaded any facts as to any sibling relationship which could begin to form a basis for alleging that he is the second cousin of anyone, least of all the deceased.

(5) The claimant has no *locus standi* to seek the relief sought on the basis that he is not a person entitled to apply for a Grant of Letters of Administration as stated in paragraph 3. The issue of *locus standi* is preliminary in nature in accordance with paragraph 3.

Affidavit in Support

[3] In her Affidavit in Support the defendant deposes as to the *locus standi* of the claimant, the non-compliance of the claimant with an order of the court regarding standard disclosure and alleged fraud on the part of the defendant.

Affidavit in Opposition

[4] In his Affidavit in Opposition the respondent/claimant seeks to address a number of issues including his "near relative" of the deceased. In this connection the affiant seeks to outline the line of descent of the deceased.

[5] In the first analysis it is deposed: "It therefore stands to reason that the claimant and Charles Garvey descended from common stock, Cato Isaac Mason and Arabella his wife, and Ann May Mason and Cecilia Mason, sisters of the whole blood".

ISSUE

[6] The issue for determination is whether the respondent/claimant has *locus standi* in the matter.

[7] In accordance with the directions of the court submission were filed by counsel on both sides

Applicant's Submissions

[8] For the applicant the submissions focus on section 4(1) of the Intestates Act, Cap 12.06 which "sets out the order of priority of succession to real and personal estate of an intestate", and the failure of the respondent/claimant to demonstrate that he fell within one of the categories.

Respondent's Submissions

[9] In the face of the application with the central issue of *locus standi*, learned counsel on behalf of the respondent/claimant has submitted that the issue of standing has been raised in an attempt to stifle the legitimate claim of the respondent, as a person claiming the estate of Charles Garvey on the ground that the said estate would have devolved to the crown as '*Bona Vacantia'* (ownerless property) had there been blood relatives who serviced him.

[10] The submissions go on to discuss 'sufficient interest' and *locus standi* in the context of the case at bar.

Applicant/Defendant's Submissions in Reply

[11] In these submissions the import of Rule 7A is highlighted to say that facts not set out in the claim cannot be relied on unless the court gives permission so to do.

[12] Also highlighted in the submissions in reply is the introduction of test of standing in public law in a private law matter and the court's jurisdiction to deal with the matter of standing as a preliminary issue.

Final Submissions

[13] In final submissions on behalf of the respondent the relationship between the respondent and the deceased is again restated.

[14] The statement of case in support of the claim is also restated as well as the court's jurisdiction to revoke a grant and the relevance of Part 68 of CPR 2000 to the case.

Conclusion

[15] Given the fact that this decision is in relation to the narrow issue of locus standi, it follows that the relevant law equally narrow.

[16] Despite the extensive submissions on behalf of the respondent/claimant, it must be common ground that the Intestates Act[1] ("the Act') bears on the issue. And it is also common ground, given the nature of the proceedings that Charles Garvey died intestate. This brings section 4(1) of the Act into focus. And given lineage claimed by the respondent/claimant it is necessary to set out the provision in *extenso*: It provides thus:

> "4.(1) The residuary estate of an intestate shall be distributed in the manner or be held on the trust mentioned in this section, namely:
>
> (a) If the intestate leaves a husband or wife (with or without issue) the surviving husband or wife shall take the personal chattel absolutely and in addition the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of five thousand dollars or a sum equal to ten per centum of the net value of the estate whichever may be greater, free of death duties and costs, to the surviving husband or wife, with interest thereon from the date of the death at the rate of five per centum per annum until paid or appropriated, and subject to providing for such sum and the interest thereon the residuary estate (other than the personal chattels) shall be held.
>
> (i) If the intestate leaves no issue, upon trust for the surviving husband or wife during his or her life;
>
> (ii) If the intestate leaves issue, upon trust, as to one-half for the surviving husband or wife during his or her life, and, subject to such life interest, on the statutory trusts for the issue of the intestate; and, as to the other half, on the statutory trusts for the issue of the intestate, but if those trusts fail or determine in the life-time of a surviving husband or wife of this intestate, then upon trust for the surviving husband or wife during the residue of his or her life;
>
> (b) If the intestate leaves issue but no husband or wife, the residuary estate of the intestate shall be on the statutory trusts for the issue of the intestate;
>
> (c) If the intestate leaves no issue but both parents, then, subject to the interests of a surviving husband or wife, the residuary

[1] Cap. 12.06 (Revised Laws of Saint Christopher and Nevis), 2002

estate of the intestate shall be held in trust for the father and mother in equal shares absolutely;

(d) If the intestate leaves no issue but one parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely;

(e) If the intestate leaves no issue or parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely,

(i) First, on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trust; then

(ii) Secondly, on the statutory trusts for the brothers and sisters of the half-blood of the intestate; but if no person takes an absolutely vested interested under such trust; then

(iii) Thirdly, for the grand-parents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

(iv) Fourthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate); but if no person takes an absolutely vested interest under such trusts; then

(v) Fifthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the half-blood of a parent of the intestate); but if no person takes an absolutely vested interest under such trust; then

(vi) Sixthly, for the surviving husband or wife of the intestate absolutely;

(f) In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown as *bona vacantia*, and in lieu of any right to escheat.

(2) The Crown may, out of the whole or any part of the property devolving on the Crown under subsection (1)(f) provide, on such terms and conditions as it may think fit, for dependants, whether kindred or not of the intestate, and other persons for whom the intestate reasonably have been expected to make provision.

(3) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as two persons".

[17] The foregoing creates six broad head (with many subheads) to deal with the residuary estate of an intestate. And against these prescriptions the respondent/claimant in his statement of claim pleads in point as follows:

> "7. The contents of Deed No. 30,326 dated the 5th day of January, 1961 being a Deed Poll lodged in the Registry of the Supreme Court by Franklyn Cunningham Adams, Solicitor of the Town of Basseterre on behalf of Emile St. Clair Garvey of Hill Road in the Town of Sandy Point at Liber "F" Folio 6 at pages 33 to 36 to evidence a change of Surname from Mason to Garvey, he being the son of the deceased Charles Garvey and Isa Mason. The said Emile St. Clair Mason otherwise known and called by the name Emile St. Clair Garvey was my second cousin on both the Mason side of my family and the Garvey side.
>
> 8. I further exhibit as a Bundle marked 'DG-2' the Birth Certificates of Isa Mason, deceased, mother of Emile St. Clair Mason Garvey who during part of her life time carried the mane "Viola Rennix" or 'Isa Viola Rennix' and the Birth Certificate of his father Charles Garvey exhibited herewith.
>
> 9. The Birth Certificates exhibited hereinbefore show that my mother Maude Henry Garvey (born in February, 1901(was the daughter of Annie Garvey (nee Mason) who became lawfully married to each other in 1908 thereby legiti mating the name 'Garvey'.
>
> 10. In the premises the Claimant states that Charles Garvey was his second cousin twice over, by blood and by marriage through the marriage of Annie Mason to Edward Garvey aforesaid.
>
> 11. In the premises, the Claimant is invoking the jurisdiction of this Honourable Court to revoke the appointment of Michella Adrien, the Attorney for Rosa Dyhanna Garvey as Administratrix of the estate of the late Charles Garvey and to appoint the Claimant Sole Administratrix of the estate of the late Charles Garvey, and to appoint the Claimant Sole Administrator in her place and in her stead or alternatively to upon revocation of the appointment of the said Michella Adrien as Administratrix of the said estate of Charles Garvey, that permission be granted to the Claimant to apply for Letters of Administration".

[18] The submission plus the law create a realisation that section 4(1) of the Act has some bearing on claims or actions with respect to the residuary estate of Charles Garvey. A further point is that the long title to the Act says that it is "An Act to make provision relating to estates of persons who die intestate and to make provision for related or incidental matters".

[19] And it is a well established principle, embodied in the covering the field doctrine, that once Parliament has spoken on the issue no other rule applies unless Parliament so dictates.

[20] In submissions on behalf of the respondent/claimant it is contended that, "The claimant Derrick Hazel Garvey is a relative of the deceased who as an executor de son tort , physically took possession of the deceased's property and has remained in possession ever since save for the actions of the defendant in barring him from the property".

The matter of *Locus Standi*

[21] In Black's Law Dictionary[2] *locus standi* is defined as: "a place of standing in court a right of appearance in a court of justice, or before a legislative body, on a given question".

[22] But while the definition is couched in generalities the court interprets the final phrase 'on a given question' as making a distinction as to the different types of standing depending on the issue.

[23] In this context the court accept the following submission on behalf of the applicant/defendant in terms of standing in public law and private law and the prerequisite of *locus standi*:

> "6. Cases referred to by the Claimant in support of the definition of interest are all out of the public law domain and do not apply to private matters. If the test for interest in public law matter were intended to apply to private matters how then would one explain, for instance, the exercise of the principle that requires interest in land as a prerequisite for suing for trespass or the principle of privity in contract? It is patent that other areas of law have different tests for determining standi. Further, any watering down of the 'interest' test in public law matters is understandable considering that actions of the State can affect the public at large hence the need for greater protection of the public by granting wider access to justice".

[2] 7th ed.@ p.848

[24] Learned counsel for the respondent/claimant has made a valiant attempt to fuse standing in private law with that in public law. Hence, the discourse on sufficient interest. However the short point is that these are two different areas of law and more than that section 4(1) of the Act prescribes who is entitled to seek: to claim on an intestacy. It is the words of Parliament covering the particular field in private law as opposed to public law. Therefore, the following submission does not take the respondent/claimant's case any further as it amounts to a concession:

> "We have already referred to the fact that in our opinion, although the classic expression 'locus standi' formerly had no place in the ordinary law of contract and tort, the term as it has come to be recognized, has gained currency as one of general application to cases which do not fall squarely or even remotely into the category of judicial review of administrative action where the rules relating to 'locus' first originated. Nowadays it has come to be used as a general expression to bar or exclude from proceeding any person who seeks a remedy in any kind of proceedings once they cannot show a 'sufficient interest' in the subject matter. This rule is clearly not applicable to the claimant's case".

[25] As noted before, the claimant's contention is that he is the second cousin of the deceased. And in final submissions, after a full disclosure on sufficient interest the submissions end in this way:

> "In these proceedings [the] claimant has by way of his birth records, shown that he and the deceased are direct descendants of sisters Ann Mason and Cecelia Mason the daughters of Cato Isaac Mason. By this connection the claimant has demonstrated his lineage in the Garvey family. By contrast, the person known as Rosa Dyhanna Garvey is no relation at all to the deceased and has knowingly perceived the falsification of a document to facilitate her fraudulent scheme to portray herself as the biological daughter of the deceased, thereby depriving the claimant of his rightful inheritance. Moreover, she is not a resident in the island of Saint Christopher and is therefore not amenable to the jurisdiction of this Honourable Court, in the certain event that the claimant succeeds in the application to [revoke] the Grant".

[26] Learned counsel for the applicant/defendant has maintained that the respondent/claimant lacks standing. These are the salient aspects in various submissions:

"3. In cases of intestacy, section 4(1) of the Intestates Act Cap 12.06 sets out the order of priority of succession to real and personal estate of an intestate. In keeping with this order of priority the claimant failed to demonstrate that the fell under any of the categories. There is nothing pleaded in the claimants Fixed Date Claim which alleges that the claimant falls under one of the above mentioned categories. Instead, the most the claimant has alleged is that he is the second cousin of the deceased but the order of priority does not include cousins as persons entitled to apply for a grant. Moreover, the Claimant has not even pleaded any facts as to any sibling relationships which could begin to form a basis for alleging that he is a second cousin of anyone, least of all the deceased.

4. In his affidavit in opposition the Claimant could do no more than sat that he was 'near relative' and came from 'common stock' of the deceased. In giving viva voce evidence under oath at the hearing of the application the Claimant failed to satisfy the court that he fell within the categories listed. Indeed, the Claimant's counsel confirmed that his client did not fall under the categories listed in section 4(1). This, I respectfully submit, would be sufficient basis to dispose of the Claimant's claim but Claimant's counsel went further.

5. Counsel for the Claimant argued instead that his client's rights arose by section 4(2) *ibid* and sort to import a common law notion (to which no authority was provided) that the Crown would not take the estate *bona vacantia* if there is some living person with an interest. This argument is inconsistent with:
   a. The section 4(2) which clearly does not stand as an authority for the Claimant's proposition and it is at least doubtful that the alleged common law principle could override the statutory provision;
   b. For the purpose of standing, thee learning from Tristram and Cootes cited at the hearing of the application which clearly stated that a person in a case such as the one at bar must be one who has an 'immediate interest' in the estate. An interest in the estate cannot be said to be immediate if it has not yet crystallized and is at the sole discretion of the Crown. This Honourable Court should not entertain the Claimant in his sport of speculation.

6. The Claimant has no locus standi to seek for the relief sought on the basis that he is not a person entitled to apply for a grant of letters of administration as and as the issue of *locus standi* is preliminary in nature this Honourable court can and should dismiss the claim".

Conclusion

[27] It is trite law that no common law can override an act of a sovereign Parliament subject only to the Constitution; so that in laying down the various persons who can seek an interest in an intestacy that ends the matter. This Executor *de son tort* is of no moment. More particularly the said section 4(1) of the Act speaks, with qualifications, to distribution of the residuary estate of an intestate in terms of: husband or wife (with or without issue); parents, brothers and sisters of the intestate of full blood; brothers and sisters of the intestate of half blood, grandparents of the intestate, uncles and aunts of the intestate (being brothers and sisters of whole blood of a parent of the intestate); uncles and aunts of the intestate (being brothers and sisters of the half-blood of a parent of the intestate); and surviving husband or wife of the intestate absolutely.

[28] The foregoing was done purely to make the point (repeatedly made by learned counsel for the applicant/defendant) that there is no mention of 'cousins' 'near blood of the intestate' or executor de son tort. And a further point to be made is that fraud whether or not it is properly pleaded cannot supersede the requirement of *locus standi*.

[29] Learned counsel for the applicant in his generosity has pointed the respondent/claimant to section 4(2)(f) of the Act in the circumstances where the residing estate of the intestate belongs to the Crown as *bona vacantia*. In that circumstance the Crown has a discretion to provide for dependants, whether kindred or not of the intestate or other persons for whom the intestate might reasonably have been expected to make a provision.

[30] It is therefore the determination of the court that the respondent/claimant has no locus standi to bring proceedings under section 4(1) of the Intestates Act.

[31] It is the further determination of the court that the Fixed Date Claim filed on 13th January 2103 be dismissed pursuant to Rule 26.3 (1)(c) of CPR 2000 being an abuse of process.

Costs

[32] This is not a case in which there is a monetary sum claimed so that Part 65.5(2)(iii) sets the value at $50,000.00. And further these proceedings reached the stage after case management when the matter was dismissed.

[33] In such circumstances the prescribed costs are 70% of the total costs on $50,000.00, being $14,000.00 and 70% amounts to $9,800.00

[34] IT IS HEREBY ORDERED AND DECLARED as follows:

(1) The Fixed Date Claim with Statement of Claim filed on 9th January 2013 is dismissed since the respondent/claimant has no locus standi for the purposes of section 4(1) of the Intestates Act, Cap 12:00 amounts to an abuse of process within the meaning of Rule 26.3(1)(c) of CPR 2000;

(2) The respondent/claimant must pay the applicant/defendant costs in the amount of $9,800.00.

Errol L. Thomas
High Court Judge [Ag]