EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SUIT NO: NEVHCV2014/0048

BETWEEN:

Janice Hodge

and Claimant

Adrian Daniel

Defendant

Appearances:

Mr. Damian Kelsick for the Claimant

Ms. Jean Dyer for the Defendant.

2015: February 26
2015: May 1

DECISION

[1] **WILLIAMS, J.:** The Claimant and the Defendant are siblings and Executors of the Estate of Dr. Simeon Daniel who is their father.

Claimant's Submissions

[2] The Claimant Janice Hodge claims the following relief pursuant to CPR 67.1 as follows;

"That the Court provide directions as to whether the Claimant and the Defendant as Executors of the Estate of Simeon Daniel should or should not institute and prosecute an

action against Mark Brantley and/or the partners of the Law firm of Daniel, Brantley & Associates claiming a declaration that the said Deceased was at the date of his date entitled to a share in the said Law firm, and that all necessary and consequential directions may be given.

[3] That the Deceased Simeon Daniel was a Barrister-at-law and a founding partner of the Law firm now styled Daniel, Brantley & Associates

[4] The Claimant states that the deceased Simeon Daniel and Mr. Mark Brantley also an Attorney-at-law entered into a partnership under the name "Daniel, Brantley & Associates" which partnership subsisted until the death of Mr. Daniel on the 27th May 2012.

[5] The Claimant's Affidavit in support filed on the 16th May 2014 at paragraph 10 details the information that the Claimant relies on in support of a potential claim of the Estate to a share in Daniel, Brantley and Associates.

Defendant's Submissions

[6] The Defendant Adrian Daniel states that he was born out of the deceased Simeon Daniel's union with Sheila Daniel who is his widow. He is one of the executors of the deceased Estate having been so appointed by his Last Will and Testament dated 23rd December 2011. The parties are also some of the residuary beneficiaries under the Deceased's will.

[7] The Defendants contend that the question which arises for determination on the present claim is whether on a preliminary view of the evidence adduced by the parties, it is open to them to contend that the deceased Mr. Daniel had an interest in Daniel, Brantley & Associates at the date of his death.

The Evidence adduced by the Claimant

[8] At paragraph 10 of the Claimant's Affidavit filed on the 16th May 2014 the Claimant deposes as follows;

a) The Defendant and I met with Mr. Brantley in April 2013 to discuss the issue.

b) By e-mail dated 26th May 2013 Mr. Brantley set out his position as to the Deceased Interest in the Law firm; a copy of this e-mail is exhibited hereto and marked "J.H.2".

c) This e-mail was shared with some of the Beneficiaries and by letter dated October 2013, Solicitors for Susan Clarke, one of the beneficiaries wrote to Mr. Brantley setting out various issues with the contents of his e-mail. A copy of this letter is attached hereto and marked "J.H.3".

d) Mr. Brantley stated in his e-mail that the Deceased "handed him the keys" in 1996 and wished him good luck which suggested that the Deceased relinquished all interest in the Law practice at the time. However until his death, the Claimant contends that the Deceased was named on the letterhead of the Firm as a Senior Partner. Immediately after his death, the letterhead of the Firm was changed to show that the Deceased had died. (Exhibit J.H.4) and J.H.5)

e) The Claimant submits that if Mr. Brantley is correct, the letterhead used by the Firm since 1996 has misled the public as to the participation of the Deceased in the Law Firm.

f) The Claimant contends further that on the 26th March 2008, the Firm Daniel, Brantley & Associates wrote a letter on behalf of the Deceased wherein Mr. Brantley described the Deceased as "The Senior Partner" of the Firm.

g) The Claimant also contends that the Firm never paid any rent, up to the date of the Deceased's death. However he submits that Mr. Brantley had stated in his e-mail of the 26th May 2013 that all expenditures in upgrading the offices and furniture and fittings were spent by him; and all expenditures associated with the building occupied by the Law practice including the replacement of a roof was assumed by him. In exchange for the upgrades to and the maintenance of the Main Street building (now owned by Sheila Daniel, Sean Henville, the Defendant and myself) Dr. Daniel indicated to me that the Law practice would not have to pay any rents for the use of the premises.

h) The Claimant argues that Mr. Brantley's explanation is unsatisfactory and that if Mr. Brantley is to be believed, this would mean that Mr. Brantley occupied the Deceased premises for seventeen years with the Deceased receiving **NO** Income from that arrangement.

i) The Claimant Ms. Hodge also submitted that there was no written agreement to define the nature and extent of the upgrades which Mr. Brantley was required to perform; and therefore it was on an extremely tenuous basis that the Deceased could have been expected to allow Mr. Brantley to occupy the premises rent-free.

The Evidence adduced by the Defendants

[9] The Defendant submits that he has adduced affidavit evidence as to certain discussions that he and his mother Sheila Daniel had with the deceased prior to his passing, where the Deceased stated that he had no interest in Daniel, Brantley & Associates, and that any interest he may have had passed to Mr. Mark Brantley.

[10] The Defendant asserts at paragraph 11 to 16 of his Affidavit that;

a) The Deceased his father had encouraged him to study Law and he had formed the view that his deceased father had done this so that one of his children could inherit his Law practice.

b) That the deceased wanted him to work for Daniel, Brantley & Associates when he finished his studies, and although he asked the deceased about his role at Daniel Brantley & Associates, because he was under the impression that the deceased wanted him to inherit his interest in the Firm, the deceased always told him he had to speak to Mark Brantley because everything was in his hands.

c) That while he was aware that Daniel Brantley & Associates was still in existence and carried his deceased father's name, he was also aware that the deceased was not a prominent feature of the Law firm and had retired 16 years before.

d) That his mother Sheila Daniel was present during some of the discussions with his deceased father on his future at Daniel Brantley & Associates, and the deceased had denied that there was any Partnership Agreement between himself and Mark Brantley. The deceased had made it clear that he had to ask Mark Brantley for a job at DBA, and that any interest he had in Daniel Brantley & Associates, he had given to Mr. Brantley.

[11] Mrs. Sheila Daniel, the widow of the deceased Simeon Daniel in her affidavit dated 18th July 2014 gave similar evidence to that of the Defendant Adrian Daniel.

[12] Mrs. Daniel deposed that the deceased Simeon Daniel had encouraged Mark Brantley to join his Law firm, and after he did so, the deceased had told her that he intended to quit his office because he was not keeping well. The deceased also told her that he was handing over his office to Mr. Brantley who would be in charge of everything.

[13] Mrs. Daniel further deposed that the deceased retired, and Mr. Brantley took control of the deceased office and changed its name to Daniel Brantley & Associates. She states further the deceased assured her that the Defendant would always have a place at Daniel Brantley & Associates, although he had no interest in Daniel Brantley & Associates and had passed on any interest he had to Mark Brantley.

[14] Mrs. Daniel submitted that based on those statements, she did not expect the Defendant to inherit any share or to takeover Daniel Brantley & Associates, but to always have a place at Daniel Brantley & Associates.

The Court's preliminary view

[15] The Claimant submits that the present proceedings are not the appropriate forum to try these issues as this is not a trial of the matter.

Further the Court must be satisfied on a preliminary view that the Claimant is entitled to the relief that she seeks; and to decide on the weight of the circumstantial evidence adduced by the Claimant in light of all the evidence.

The Deceased Last Will and Testament

[16] The Defendant deposes that the Last Wills and Testament of the Deceased dated 23rd December 2011 stated as follows;

"I direct that the Law firm of Daniel, Brantley and Associates be allowed to occupy the entire top portion of the property situate at Main Street, Charlestown and that the Trustees, Sheila Daniel and Mark Brantley will negotiate a very reasonable rental of the office space." (Exhibit J.H.1)

[17] In the earlier Last Will and Testament of the Deceased date 11th July 2008 and 8th November 2009, similar provisions are mentioned in the said Wills in relation to Daniel, Brantley & Associates.

The Deceased had stated as follows:

"I direct that the Law firm of Daniel Brantley & Associates be allowed to occupy the entire top portion of the property situate at Main Street, Charlestown and that the Trustees, Sheila Daniel and Mark Brantley will negotiate a very reasonable rental of the office space."

The Scope of Part 67 of the CPR 2000

[18] Part 67 of the CPR deals with claims for the Administration of the Estate of a deceased person and the execution of a Trust under the direction of the Court.

[19] Part 67.4 defines the "determination of any question" to include any question arising in the Administration of the Estate of a deceased person and states that "any relief" includes an order directing a person to do or abstain from doing a particular act in the capacity of Executor.

[20] Part 67 provides for a very useful procedure, because it enables an Executor to know how to act by obtaining an authoritative answer to questions on which he is uncertain and on which opinions may be divided. The Executor Janice Hodge stated as much in her Fixed Date Claim Form supported by Affidavit and filed on the 16th May 2014.

[21] In the case emerging from the Court of Appeal of the Eastern Caribbean;

(1) John Paul DeJoria (2) The Island Company Limited vs. (1) Gigi OSCO- Bingeman (2) Vadum Fridma (3) Pendragon Intl Ltd. [1] Barrow JA stated as follows:

[1] Civil Appeal No. 4 of 2005 (Anguilla)

"An Executor need not wait until litigation, in the sense of a cause of Action arises, and by this procedure, he may avoid triggering such litigation. This procedure provides for answers to be obtained in proceedings that are non-adversarial, time saving and cost-effective because among other things, it is not intended to resolve factual disputes. It is a specialized procedure that is available only to Administrators, Executors and Trustees, because the rule mentions only them as the person who may issue a claim.

The limitation on the availability of the procedure naturally follows from the definition of "any question" that confines that reference to a question that arises in the Administration of the Estate."

[22] The Claimant submits that she is not asserting any cause of action in this claim, but is seeking directions from the Court as to whether to institute a claim against Daniel Brantley & Associates seeking a declaration that the Estate is entitled to a share in the said partnership.

[23] The Claimant also submits that the Court in deciding whether or not to give the relevant permission must determine whether it is reasonable for the Claimant to bring the claim and whether the case is reasonably arguable.

I agree with this submission.

Court's Analysis

[24] I have perused with some degree of detail the provisions of the Will dated the 23rd December 2011 of the deceased Simeon Daniel. I have also perused the previous Wills of the Deceased dated 11th July 2008 and 8th November 2009.

All of those Testamentary documents contain similar and consistent provisions relating to the Deceased's intentions regarding the Law firm of Daniel Brantley & Associates and are

in consonance with the Affidavit evidence of Adrian Daniel and Sheila Daniel on the intentions of the said Deceased.

[25] According to the legal dictionary a "will" is a document in which a person specifies the method to be applied in the management and distribution of his Estate after his death.

[26] **The Halsbury Laws of England Vol 50 at paragraph 252**, it states;

"A will is normally made for the purpose of making dispositions of property to take effect on or after the Testator's death.

Every Will has the essential characteristic that during the life of the Testator it is a mere declaration of his intention and may be freely revoked or altered in a prescribed manner; until his death the will is ambulatory or without fixed effect… On his death it crystallises and takes effect as an appointment disposition or otherwise according to its tenor.

See: **Forse and Hembling** [2]

Beddington vs Bauman [3]

[27] A Testator may also dispose of an interest which arises by way of Trust and is merely equitable, such as his interest in property, assets, in goodwill or a partnership.

See: **Bishop vs Curtis** [4]

[28] Adopting these meanings to the case at bar, it would mean therefore that Simeon Daniel specified the method to be applied in the management and distribution of his Estate after his death and his will is the most cogent and compelling piece of evidence of his Intentions.

Mr. Simeon Daniel has made no reference to his or any interest or goodwill in Daniel Brantley & Associates and it is therefore left for me to conclude that he had no interest in

[2] [1588] 4CORep
[3] [2903] AC 13
[4] [1852] 18QB 878

the Law firm Daniel Brantley & Associates and if he had an Interest at any time he had relinquished that interest to Mark Brantley in 1996.

[29] In Mark Brantley's e-mail message dated 28th May 2013 and addressed to the Executors of the Estate of Dr. Simeon Daniel, he states as follows;

"On or about 1996, I started working at what was then the Law office of Dr. Simeon Daniel. Dr. Daniel at the time indicated that he was retiring and wished me to continue the practice; there was no formal agreement and one was ever entered into subsequently; Dr. Daniel left all of the affairs of the Law practice to me and I renamed the practice "Daniel, Brantley & Associates". I personally invested my monies in the physical upgrade of the offices; Dr. Daniel indicated to me that the Law practice would not have to pay any rents for the use of the premises.

Whilst Dr. Daniel left all of the affairs of the practice to me, I from time to time made monies available to him either monthly, quarterly or at the end of the year, to assist with his medical expenses.

Dr. Daniel repeatedly expressed that he desired that I should ensure his wife Sheila Daniel was taken care of and never allowed to want for anything, and that his son Adrian Daniel should have a place of employment at the practice so he could develop as a Lawyer."

[30] This e-mail from Mark Brantley is illuminating and revealing and fortifies my view that Simeon Daniel intended Mark Brantley to take over the Law firm and his interest in it.

[31] Therefore on the totality of the evidence presented I am of the respectful opinion that the Claimant has not presented me with evidence that is persuasive, cogent and compelling on a preliminary view, that she has a reasonable basis upon which to bring this claim. Further I am not satisfied that this case is reasonably arguable in the circumstances.

[32] I therefore direct that the Claimant and the Defendant, Executors of the Estate of Simeon Daniel should **not** institute and prosecute an action against Mark Brantley and/or the partners of the Law firm of Daniel Brantley & Associates claiming a declaration that the said Deceased Simeon Daniel was at the date of his death entitled to a share in the said Law firm.

[33] Consequently the Claimant's fixed date claim is hereby dismissed.

[34] I make no order as to necessary and consequential directions.

[35] I would award costs of this matter to be paid by the Estate as this was an appropriate manner for the Executors to have proceeded to the Court especially in light of the special nature of the procedure for which Part 67 provides.

Lorraine Williams
High Court Judge.