IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2012/0198

BETWEEN:

JOSELLE THORNE
EMERY THORNE

Claimants

and

JACQUELINE CHARLES
(Personal Representative of the Estate of Joshua Thorne, deceased)

Defendant

Appearances:

Mr. Francis Paul for the 1st Named Claimant
Ms. Celia Edwards QC, with Mr. Deloni Edwards, for the 2nd Named Claimant
Ms. Claudette Joseph for the Defendant

2015: July 9;
July 10.

DECISION

[1] **AZIZ, J.**: This matter came up on the 9th July 2015, by way of application dated the 14th May 2015, and filed on the 18th May 2015. The notice of application was filed on behalf of the 2nd named claimant for an order that information be provided as to the amount of money in the joint account of the deceased with Jacqueline Charles (the defendant) at the RBTT Bank, Grenada, which account was opened in about December 2004.

The application also sought:

(1) Information of the said account as to the date of death of the deceased;

(2) The amount of money in the account at present;

(3) An account as to what has been done with the funds removed from that account;

(4) An order that the defendant deposit the sum of $100,000.00 into court pending resolution of this action;

(5) Costs.

[2] The grounds of the application are that the defendant's position remains that the 2nd named claimant is not entitled to any part of the estate, and has expressed that the estate is being administered on the basis of intestacy and furthermore, that the 2nd named claimant is entitled to no benefit in respect of the said estate.

[3] The position it seems is that the 2nd named claimant is also fearful that the funds in the (RBTT) joint account would be dissipated and utilized, by the time of the trial.

[4] The application was also supported by affidavit of Mr. Emery Thorne, filed on the 18th May 2015. The affidavit deposed to the fact that:

> "***By his Codicil bearing the date of the 17th day of June 2005 the deceased bequeathed to me the sum of $100,000.00 specifically from a joint account he had opened with Jacqueline Charles in or about December 2004 with the RBTT Bank Grenada Limited."***

[5] By way of a short summary, to understand the defendant's position, it seems that the defendant's father died on the 22nd June 2010. The defendant sought and obtained Letters of Administration because a Will was not found among her father's personal belongings. The defendant also states that a Codicil was not found among her father's belongings. Furthermore, she says that her father's lawyers did a search for such a document and made several enquiries and no Will was ever found.

[6] The defendant is of the opinion that based on her father's condition he would not have had the mental capacity to execute any such Codicil on the 17th June 2005, and neither did he have the mental capacity to give instructions to prepare such a document[1].

[7] As far as any request for information is concerned, the position is that the defendant has no difficulty in providing an up-to-date account of the estate to the 1st named claimant but will not provide the same to the 2nd named claimant as the defendant says that he (Emery Thorne) is not a beneficiary and therefore is not entitled to an account.[2]

[8] The application on behalf of the 2nd named claimant and made by Learned Queen's Counsel, Ms. Edwards Q.C. is for additional time to file and serve witness statements. Ms. Edwards Q.C. submitted that at the time of the filing of the application (18th May 2015), the time for filing of the witness statements had not yet expired. A perusal of the court record shows that the time for filing of the witness statements was on the last day in May 2015. This would have been Friday 29th May 2015. The application was made clearly eleven (11) days before the expiration of the time set down at the Case Management hearing.

[9] Counsel, Mr. Paul, for the 1st named claimant set out his position by indicating that he had not filed any documents in pursuance of the orders of Mr. Justice Wallbank (Ag), as the defendant had previously given an undertaking to provide the statement of account in relation to the Administration of the Estate up to 9th July 2015. Mr. Paul also indicated that in lieu of the information provided, the 1st named claimant would withdraw any claims filed against the defendant. The information sought would be forthcoming shortly, as the defendant's attorney, Ms. Joseph, was still awaiting some information.

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[1] Taken from the Witness Statement of Jacqueline Charles dated 1st June 2015 and filed on the same date. This information is also borne out in an affidavit of Kartisha Ledlow of Fontenoy, dated and filed on the 8th July 2015. At the time of hearing this affidavit had not been seen by the 2nd named claimant's attorneys. This affidavit is in direct opposition to the application filed by the 2nd named Claimant, [Paras 4, 5, 8, 9 & 10].

[2] See 1 Above

[10] Counsel, Ms. Joseph's position has been set out above and referred to in the witness statement of Jacqueline Charles. Counsel furthermore indicated that the information which needs to be provided to the 1st named claimant, is or ought to be received within the next two weeks. Ms. Joseph set out her difficulties with the application of Ms. Edwards Q.C. and more so in relation to the application for an extension of time for filing of witness statements. Ms. Joseph submits that pleadings have been filed, and there is little about information sought and extension to file statements. On this point, Learned Queen's Counsel, Ms. Edwards Q.C. referred the court back to the application filed on the 18th May 2015.

[11] Ms. Joseph also indicated that there was no prayer in relation to the deposit of any monies into court, which may be payable under a Codicil. It may be worthwhile at this point to simply set out the provision of the Codicil which is being contested:

> *"GRENADA*
> *WEST INDIES*
> *I Joshua Thorne, of Woodlands in the parish of St George in the State of Grenada declare this to be a first Codicil to my Will dated 29th day of October 2001. I give the following legacies in addition set out in Clause 2 of my said Will:*
>
> *1. To my nephew Emery Thorne of Perdmontemps in the Parish of St David, the sum of one hundred thousand dollars ($100,000.00)*
>
> *I direct that the above mentioned legacies, as well as the legacies mentioned in clause 2 of my said Will, be paid from the joint account established in the names of myself and Jacqueline Charles in or about the month of December 2004 with RBTT Bank Grenada Ltd. (Grand Anse Branch) with the sum of approximately Five Hundred Thousand Dollars ($500,000.00) and that any monies remaining in the said joint*

account after the payment of the above mentioned legacies fall into my residuary estate[3]."

[12] Counsel, Ms. Joseph, indicated that there was no previous application for information made at any time during the Case Management hearing, and that no further orders were complied with. Ms. Joseph submitted that there was a witness statement filed which is the 2nd named claimant's evidence-in-chief and that essentially was made without an application for further information. It was further submitted that an application under CPR Rule 34.1 was never made to the defendant. The court was helpfully taken through the rule albeit briefly by Ms. Joseph. In the same breath, Ms. Joseph submits that there is nothing on the face of the application to indicate this is such an application that falls under CPR Part 34, Rule 34.1.

[13] It was made clear that all that was stated in the affidavit of Emery Thorne as mentioned above is that he has a "fear". The court's record is "just a fear" was submitted.

[14] Let me simply say that when one looks at the nature of these proceedings, dealing with contested probate, and the defendant has taken a stance, in which they are adamant that the 2nd named claimant is not entitled to anything, not even information, and the estate is being actively administered, then the court is of the view that this is a legitimately held fear and not simply just a fear. If this were a fanciful fear then I would not be as concerned on this point. I also bear in mind that the estate is being administered according to the rules of intestacy. This to me would legitimately reinforce the genuine fear by the 2nd named claimant that when this matter was eventually determined there may possibly be nothing left for him to get, and as Ms. Edwards Q.C. rightly surmised, this would be an empty judgment if, and I stress if, the 2nd named claimant were successful in this claim.

[3] Signed by Joshua Thorne and witnessed by Melissa L. Thomas, Legal Secretary and also by Ovid C. Gill, Attorney at Law on the 17th June 2005.

[15] A further objection raised by Ms. Joseph is that the application does not relate to any relief sought in the statement of claim. Therefore, I have reviewed the statement of claim. The application is for information concerning the estate of Joshua Thorne.

[16] The statement of claim set out that the 2nd named claimant is the nephew of Joshua Thorne, and that he died on the 22nd June 2010, after which the defendant obtained letters of administration on the basis of intestacy. It was pleaded that some twenty (20) months had passed and nothing was done to administer the estate. Letters were written by the 1st and 2nd named claimants to which there was no reply by the defendant's attorneys.

[17] It was also specifically pleaded (on behalf of both claimants,[4] it would seem on the face of the statement of claim), that the issue of a Codicil to the last Will had been found. Furthermore, it was pleaded that although the Codicil had been brought to the attention of the defendant, nothing had been done to administer the estate. The existence of a Codicil indicated that there was a Will in existence.

[18] The prayer in the statement of claim requests:

a. An order that the defendant provides information forthwith as to all that the Estate comprises;
b. An order that the defendant forthwith provides accounts in respect of the Estate of Joshua Thorne, deceased, she having been appointed administratrix on the 14th July 2010;
c. That the administratix be compelled to administer the Estate of Joshua Thorne forthwith;
d. Alternatively, an Order that the Letters of Administration granted to the defendant on the 14th July 2010 be recalled and/or revoked;

[4] Clear from the original applications and affidavits May 25th 2012, and Statement of Claim 25th May 2012, and noting the Certificate of Truth signed by both claimants, believing the facts in the Statement of Claim to be true.

e. Alternatively an Order that the defendant and/or such other person do apply for the grant of probate in the Estate of Joshua Thorne, deceased;
f. Such further or other relief consequential;
g. Costs.

[19] Counsel, Ms. Joseph, submits that the application ought to be dismissed outright and additionally, it ought to be dismissed as the application for further time to file witness statements is not in writing.

[20] The court was referred to CPR Part 11, Rule 11.6(2).

[21] Ms. Edwards Q.C., reminded the court that paragraph 6 of the Order[5] of Wallbank, J. directed the parties to give serious reflection to the mediation process, and that as a result of the mediation process no documents were filed. Learned Queen's Counsel helpfully took the court back to the prayer in the statement of claim to which I have already referred.

[22] The court was asked to consider the defence and the fact that the defendant maintains that the 2nd named claimant is not a child of the deceased and is therefore not entitled to a share in the estate. The court has also revisited the reply to the defence of the 2nd named claimant, specifically paragraphs 2 (a) and (b), which deals with the existence of the Codicil and 3, dealing with the competency of the deceased and the defendant to open a bank account in 2004.

[23] Mr. Paul, for the 1st named claimant, Joselle Thorne (who was present in court), indicated that his position was:

1. That the 1st named claimant is still currently a joint claimant against the defendant,

[5] January 20, 2015

2. That all that he had requested was up to date information on the status/account of the estate, and

3. That he, Mr. Paul, could see no harm being done if the 2nd named claimant were to be provided with the same information being provided to the 1st named claimant.

Conclusion

[24] I have considered fully all the arguments raised before me yesterday as far as the application filed on the 18th May 2015. I have also considered the pleadings and supporting documents.

[25] There have been issues raised in relation to the Civil Procedure Rules 2000 hereinafter referred to as the "CPR 2000" and I remind myself that the provisions are in relation to Rule 34.1 and also Rule 11.6.

[26] I find in the argument that once a witness statement has been filed by a party, it necessarily precludes them from seeking further information prior to the trial unattractive. The trial process must be fair, and justice must be done, it is the court's duty to ensure that this process is seen through from start to end. The CPR 2000 is an essential tool which allows the court to manage the trial process and to ensure that no party is taken advantage of, ambushed, or indeed tries to use the court as a vehicle to further its own case at the unfair expense of another. In other words, to try to ensure a fair and just playing ground for all parties seeking justice and fairness.

[27] Firstly, the application for information was filed within time as ordered by Wallbank, J. The order was for witness statements to be filed before the end of May 2015. The application was filed on the 18th May 2015. It is also clear that there may be cases in which further information is required to ensure that all parties know what the case is that they have to meet, they know all of the allegations or claims, and this clearly focuses minds on what evidence or

information is required to ensure a just and fair trial where all the issues are ventilated.

[28] The nature of this case is contested probate proceedings where the existence of a Codicil or the validity of such is called into question.

[29] Secondly, the claim is brought jointly. Both claimants are asking for the same or similar information. This is borne out by the joint applications, and also a joint statement of claim against the defendant. The importance here and the court stresses, is that both 1st and 2nd named claimants set out in the pleadings, the existence of a Codicil.

[30] A real and proper inference, an inevitable or irresistible inference to be drawn about such Codicil, is that there may be or might have been a valid Will in existence at one time or another. If this is the case, then there must be a proper issue or proper issues to be tried between the parties.

[31] Thirdly, despite knowing of the existence of a Codicil, irrespective of when the defendant came to have such knowledge, it may mean subject to the validity of the Codicil, that the distribution according to the rules of intestacy are called into question, and the court will have to determine those issues at a later date.

[32] The defendant's position is that the 2nd named claimant is entitled to nothing, not being a beneficiary. It may well be the case, but what if it turns out to be more likely than not, that he is such a beneficiary, where would that leave him if the estate were continued to be distributed, and by the time any trial was concluded, if the 2nd named claimant were indeed successful, he would end up with nothing, an empty judgment. This clearly would and could not be in the interests of justice.

[33] The CPR 2000, Rule 34.1, deals with the right of parties to have or obtain information. To obtain such information sought, a party must serve on the other party a request identifying the information sought. The claimants all sought an account of the estate, and this information would be readily

available subject to a few matters pertinent to the 1st named claimant. In my view this is not new or extraneous information being sought. This information was requested since May 25, 2012 at least which is the date of the filing of the fixed date claim form.

[34] In or about the 1st July 2010, the defendant deposed to knowing or believing or having information which she believed to be true that the whole of the deceased's estate consists of personalty in the sum of $50,000.00 and realty with a gross value which does not exceed $850,000.00 with an annual rental of $3,000.00.

[35] As far as CPR Rule 11.6 is concerned applications must be made in writing unless this has been dispensed with by the court or unless it is permitted by any other rule.

[36] I have reminded myself of the CPR 2000, Part 1. I have a duty to deal with cases justly, and this is the overriding objective of the rules. In considering the nature of the case, the complexity of the case, and in an effort to deal with the case effectively and efficiently I would waive the need to have the application for monies to be deposited into court put in writing. The parties have been on an equal footing for the reasons as set out above.[6] I do so strenuously for the many reasons but also because the 1st named claimant as a daughter of the deceased and a lawful beneficiary under the estate has pleaded about the existence of a Codicil, but yet the evidence before the court was that currently the estate is being actively administered under the rules of intestacy.

Conclusion

[37] Therefore in the circumstances, I make the following order:

1. An up-to-date account of the estate of the deceased, Joshua Thorne, which includes monies in bank accounts, in particular the RBTT joint account of the deceased, Joshua Thorne, and realty currently being

[6] See paragraphs 28-34 above

prepared and which will be supplied to the 1st named claimant also be served on the 2nd named claimant.

2. The sum of $100,000.00 to be deposited into court to be held in an interest bearing account, until final determination of the substantive claim.

3. Costs to the 2nd named claimant in the sum of $750.00.

Shiraz Aziz
High Court Judge