



[2012]JMSC Civ. 96

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. HCV894/2011**

BETWEEN	CDF SCAFFOLDING & BUILDING EQUIPMENT LIMITED	1ST CLAIMANT
A N D	OWEN CHAMBERS	2ND CLAIMANT
A N D	IVAN SMITH	DEFENDANT

**Carol Davis for the Claimants.
Sandra Johnson & Chandra Soares, instructed by Sandra C. Johnson & Co.
for the Defendant/Applicant.**

HEARD: 13th April & 31st May 2012

CORAM: ANDERSON, K., J.

[1] This matter came before me by means of an Application for Court Orders filed by the Defendant on 8th April, 2011. In that Application, the Defendant has sought an Order that this Action be struck out, dismissed or stayed, arising from the failure to disclose a reasonable ground for bringing the Claim; failing to disclose that the Claimant has any locus standi to bring the Claim by virtue of the Civil Procedure Rules 2002 (amended); failing to comply with Rule 68.55(3); failing to comply with Rule 68.56; being groundless, vexatious and an abuse of the Court's process and is an attempt to delay the Trial of the Claim – HCV03090 of 2008. That Application is supported by the Affidavit of Ian Smith, which was filed on 8th April, 2011, also in reply to the Affidavit of Owen Chambers in support of Fixed Date Claim Form.

[2] It is necessary, in the circumstances, to briefly set out the nature of the Claim and the Particulars thereof – as are set out in the Second Claimant's Affidavit in support of Fixed Date Claim Form, in order to determine whether the Claim as brought by the Claimants discloses any reasonable grounds for bringing the Claim, or whether it is an abuse of process, or whether the Claimants have

locus standi, or whether the Claim was brought in non-compliance with Rules 68.55(3) and/or 68.56.

[3] By means of Fixed Date Claim Form filed on 23rd February, 2011, the Claimants are seeking to have the grant of administration to Ivan Smith be revoked and/or set aside for fraud and that the grant of administration of the estate of Kathleen Elfrida Smith, otherwise called Kathlene Elfreda Chambers, be made to the Administrator General of Jamaica.

[4] The evidence led in support of that Claim is briefly recounted, as follows: Kathleen Elfreda Chambers is the sister of Owen Chambers, the Second Claimant. The Second Claimant is a director of the First Claimant. Kathleen Chambers died on 8th December 2007. The Defendant was her husband at the time of her death. On 10th March, 2008, a Grant of Administration in the estate of Kathleen Chambers, was granted to the Defendant. As at the date of her death, it is alleged in support of the Claim, that the deceased owned a fairly considerable amount of real estate, stocks and bonds a motor car, furniture, bank accounts and was also a majority shareholder of the First Claimant. The Claimants further contend that the Defendant acted fraudulently in obtaining the grant of administration, insofar as he signed the Oath of Administrator and in that document, deposed as follows – “To the best of my knowledge, information and belief: (a) The gross personal estate of the deceased passing under the grants amounts to \$120,000 and the net personal estate amounts \$120,000; (b) The gross real estate of the deceased passing under the grant amounts to \$5,000,000 and the net real estate amounts to \$4,650,000 and the gross annual value of the estate amounts to \$500,000’. It is alleged that the aforesaid values are untrue and that the Defendant knew that the same were untrue. In that context, it is being alleged that the Defendant acted fraudulently in having obtained the grant of administration.

[5] The following issues have arisen for consideration arising from the Defendant's Application and oral arguments made to this Court in respect thereof: 1) Can fraud vitiate a grant of administration? 2) Do the Claimants have a proper legal basis for bringing the Claim? 3) Do the Claimants have standing that can properly be recognized by this Court, as distinct from someone who is interested in the matters surrounding the administration of the deceased's estate, but who would, in that respect, be legally characterized as an ardent busybody? 4) Is the Claim as brought, frivolous, vexatious and an abuse of the Court's process?: 5) Was the Claim brought in non-compliance with Civil Procedure Rules 68.55(3) and/or 68.56 and if so, what is the effect of such non-compliance? I will address the last of these issues, this being issue number 5 first, as this Court believes that the answer to that question will be determinative of the Defendant's Application.

[6] This Court will commence its determination of this latter issue by firstly considering the applicable Rules of Court and addressing whether or not there has been a failure on the Claimant's part, to comply with Rules 68.55(3) and/or 68.56. Part 68 of the Civil Procedure Rules addresses matters pertaining to both non-contentious probate proceedings and in that regard, is divided into two sections. Section 1 addresses matters pertaining to non-contentious probate proceedings, whereas Section 2 addresses matters pertaining to contentious probate proceedings. The Claim in this case, which has been begun by Fixed Date Claim Form, concerns contentious probate proceedings, by virtue of which the Claimant seeks to have this Court Order the revocation of a grant of probate to the Defendant. That it is Section 2 of Part 68 of the Civil Procedure Rules that is applicable in this regard, is made clear by Rule 68.54(1) (a) read along with Rule 68.54(3)(ii). In the circumstances, this Court must now, as required by the Defendant's Application, consider whether Rule 68.55(3) of the Civil Procedure Rules has been complied with and if not, what should be the effect thereof.

[7] **Rule 68.55(3) of the Civil Procedure Rules provides that - 'The Claim form (referring here, as required by the provisions of Rule 68.55(1), to a Fixed Date Claim Form must state the nature of the interest of the Claimant and of the Defendant in the estate of the deceased person to which the claim relates.'** Rule 68.55(3) is buttressed somewhat, by the provision of Rule 68.56, which is as follows – **'In proceedings for revocation of a grant every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant must be made a party.'** Have these Rules of Court been complied with? To this Court's mind, the simple answer to this question is no. One can readily discern this from the details as provided in the Fixed Date Claim Form as filed by the Claimants. Firstly, the only parties referred to in that document as Claimants, are: CDF Scaffolding and Building Equipment Limited – First Claimant and Owen Chambers – Second Claimant and Ivan Smith – Defendant. In that Fixed Date Claim Form the Claimants have specified that they are seeking the following reliefs: (1) That grant of Administration dated 10th March, 2008 to Ivan Smith be revoked and/or set aside for fraud. 2). That the grant of Administration of the Estate Kathleen Elfreda Smith otherwise called Kathleen Elfreda Chambers be made to the Administrator General of Jamaica. 3) Further or other relief. 4) Costs to be agreed or taxed.'

[8] Two things are immediately apparent from the Fixed Date Claim Form as filed by the Claimants. The less contentious of these two things is one which this Court is empowered, by means of **Rule 68.56(4)(a) to rectify, insofar as that rule empowers this Court to direct that any person be joined as a party.** In that regard, since it is being sought by the Claimants to have the Administrator General administer the deceased's estate if this Court were to revoke the grant of administration as made to the Defendant, the Administrator General should have been named as a party to the Claimant's Claim. This was however, not done. The second thing which is clear to this Court though, is that neither of the Claimants are claiming to be 'interested' in the estate of the deceased to which

the Claim relates. Thus, it comes as no surprise that the Claimants are actually seeking to have the grant of administration of the deceased's estate as earlier made in the Defendant's favour, revoked and for the Crown, through the Administrator General, to instead, administer the deceased's estate. By use of the words, 'interest in the estate,' in Rule 68.55(3) of the Civil Procedure Rules, what is meant is not just the nature of the Claimant's concern about matters regarding the deceased's estate, but instead, what entitlement a Claimant would have to a grant of administration in the event that a previous grant of administration is revoked by this Court. In that regard, the Claimant's counsel has conceded that the Claimants have no, 'interest' in the estate of the deceased. It is her submission though that a party claiming for revocation of a grant of probate on the ground of fraud, need not have any interest in the deceased's estate and thus, in such circumstances, the Fixed Date Claim Form need not state, the nature of the Claimant's interest in the deceased's estate.

[9] This Court is not able to accept the Claimants' counsel's contention in this regard. Rule 68.55(3) is clear as to its terms and its terms are expressed in mandatory form. As such, this Rule must be complied with and this Court cannot even waive non-compliance, pursuant to general powers of waiver of non-compliance with Rules of Court. On this point, see: **Vendryes v Richard Keane and Karene Keane and - Supreme Court Civil Appeal No. 101 of 2009**. If Rule 68.55(3) was intended such as not to be applicable in circumstances where it is sought to have a grant of administration be revoked on the ground of fraud, then to this Court's mind, such would have had to have been expressly stated somewhere in Part 68 of the Rules of Court. This has not been done, leading to the inescapable conclusion that this proposition cannot be taken as being a correct one in law. In this Court's view therefore, the failure to comply with Rule 68.55(3) renders the Claim a nullity, just as indeed it was similarly held, albeit not in relation to either the same type of case or the same facts, in Dorothy Vendryes and Dr. Richard Keane and Karene Keane (op.cit.) that the failure by a Claimant to comply with Rule 8.16 of the Civil Procedure Rules rendered the Claim as filed

in that case, a nullity. There also exists case law from England which makes it clear that only an interested party can properly apply for the revocation of a grant of probate or administration made in common form. See **O'Brien v Seagrave – (2007) 3 ALL E.R. 633 & Marzies v Pulbrook – [1841] 2 Curt. 845, esp. at page 851.**

[10] Counsel for the Claimants, in her oral submissions, made the point that fraud is an exceptional circumstance entitling the Court or Registrar to revoke a grant of administration in the absence of either on application by the person to whom the grant was made, for there to be revocation of such, or in the absence of there being consent to revocation, given by the person to whom the grant was made. It should be noted however, that Rule 68.37 has no applicability whatsoever to the matter at hand, because this Rule falls within Section 1 of the Rules of Court which are applicable to all matters of probate. What this means, is that Rule 68.37 pertains to non-contentious probate proceedings, as distinct from contentious probate proceedings. This Court has already set out above why this matter is to be considered as a contentious probate proceeding and therefore is, insofar as procedure is concerned, governed by Section 2 of Part 68. Insofar as Rule 68.37 falls within Section 1 of Part 68, it is therefore completely inapplicable to the matter at hand.

[11] This Court will not, in the circumstances, address its mind to the other legal issues raised for this Court's consideration in oral arguments made before it upon the Defendant's Application, as whatever finding that this Court may make in relation to those other issues, cannot alter the decision made by this Court, that the Claim herein is a nullity, arising from non-compliance by the Claimants with Rule 68.55(3), such non-compliance arising because the Claimants in fact have no recognizable interest in the deceased's estate, this therefore meaning that the Claimants have no proper legal standing which would enable either of them to pursue their claim as filed. Nonetheless, I thank counsel for their effort and clarity in placing respective matters of law before me for consideration and I

mean no disrespect to them for having failed to address those other issues either in any detailed way, or at all in this Judgment. Suffice it though, to state as follows:- Where a grant of letters of administration is made, it will state who is entitled to administer the deceased's estate. If it subsequently transpires that that statement is wrong, the grant should be revoked if that statement is inconsistent with the true entitlement. See: **Re Ivory, Hankin & Turner – (1878)10 Ch. D. 372**. If however, the statement is not inconsistent with the beneficial entitlement, then the grant need not be revoked – **Re Ward, National Westminster Bank Ltd. v Ward – [1971] 2 ALL E.R. 1249**. There can be no doubt that fraud, if proven, will suffice to revoke a grant of either probate or administration. The Court will not however, revoke a grant if there is any other way of achieving a proper result. **See paragraph 216 of the text – Mellows: The Law of Succession, 5th ed. Thus, in – Re Cope [1954] 1 ALL E.R. 698**, it was held that revocation will not be granted where the applicant's only complaint is such as to constitute a prima facie case for an Order for an inventory and account. That is precisely the case here, insofar as the Claimant's Claim is concerned. Nonetheless, the reason for the Orders now to be made, is that the Claim is a nullity, for the reasons earlier set out. The latter – mentioned legal point as briefly addressed in this paragraph of this Judgment, is only set out as a matter of guidance for referral to legal practitioners and others in the future.

[12] This Court Orders as follows:-

- (i) Claim No. 2011HCV00894 is struck out.
- (ii)
- (iii) The Defendant shall be entitled to the costs of the Defendant's Claim, with such costs to taxed, if not agreed.
- (iv) Leave to appeal is refused.