

BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

**HIGH COURT
CIVIL DIVISION**

No. 1850 of 2012

**IN THE MATTER OF THE ESTATE
OF CECIL KORTRIGHT EUGENE
LUCAS also known as CECIL
EUGENE LUCAS, deceased**

**IN THE MATTER OF THE
ADMINISTRATION OF ESTATES
(Jurisdiction and Procedure) ACT,
Cap 242**

**AND IN THE MATTER OF THE
SUCCESSION ACT Cap 249**

BETWEEN

CARLITOS EUGINE BECKLES

CLAIMANT

**(Administrator & Personal Representative of
the Estate of Cecil Eugene Lucas, deceased)**

AND

DOROTHY EUGENE BOWEN

FIRST DEFENDANT

NEIL ANTHONY BRATHWAITE

SECOND DEFENDANT

VIRENE MAYERS

THIRD DEFENDANT

SHIRLEY SCANTLEBURY

FOURTH DEFENDANT

Before the Honourable Mr. Justice William Chandler, Judge of the High

Court

Date of Decision: 2016 July 13th

Appearances:

Ms. Alicia A. Archer, Attorney-at-Law for the Claimant

Mr. Errol E. Niles, Attorney-at-Law for the Second Defendant

Mr. Arthur Holder, Attorney-at-Law for the Third and Fourth Defendants

DECISION

THE PARTIES

[1] The Claimant is the sole Administrator and as such the personal representative of the Estate of Cecil Eugene Lucas (the deceased).

Letters testamentary dated 2 May 2012 were issued to him on 7 May 2012.

[2] The First Defendant is the sister of the deceased, and the aunt of the Claimant. She occupied a house located at Parish Land in the parish of St. Philip, which was owned by the deceased. The First Defendant died

on 23 May 2014 leaving her last will and testament dated 17 October 2013 in which she appointed the Fourth Defendant the sole executor and beneficiary thereof. On 13 November 2014, the Court appointed the Fourth Defendant, as such executor, to represent the estate of the First Defendant solely for the purposes of these proceedings exercising the power conferred on the Court under **The Supreme Court Civil Procedure Rules 2008** (CPR) Part 21.7 and pursuant to the **Succession Act Chapter 249 of the Laws of Barbados**. Notwithstanding that appointment, Ms. James continued to hold a watching brief.

[3] The Second Defendant is a pharmacist by profession and was the duly appointed attorney on record of the First Defendant by virtue of a Power of Attorney dated 17 February 2008 and recorded on 20 October 2008. His appointment was revoked by Deed dated 19 April 2012 and recorded on 7 December 2012. A new power of attorney dated the 19 April 2012 and recorded 10 December 2012 appointed the Fourth Defendant the attorney on record of the First Defendant.

[4] The Second Defendant deposed that he is the son of Isalene Brathwaite, now deceased, a childhood friend of the First Defendant. He looked after the First Defendant and did chores for her for about 15 years. He also procured her medication for her medical problems, paid her household

bills and took care of other ancillary matters for around 20 years. His affidavit evidence was not challenged on these points.

[5] The Third Defendant is in occupation of a house located at Parish Land in the parish of St. Philip in which the First Defendant lived. She also occupies and operates a shop formerly operated by the First Defendant.

[6] The Fourth Defendant is the duly appointed attorney on record of the First Defendant as previously outlined in this decision. The Fourth Defendant also occupies the house at Parish Land in the parish of St. Philip with the Third Defendant.

The Applications

[7] On 31 October 2012 the Claimant filed a Fixed Date Claim Form and Statement of Claim against the Defendants. By Notice of Application dated 31 October 2012 the Claimant sought the following relief:

- 1) That the Defendants their servants and/or agents be restrained from entering upon any of the properties listed in the Schedule at (1), (2) and (3).
- 2) That the First and Third Defendant and/or their servants or agents do vacate and deliver up possession of the property situate at Parish Land in the parish of Saint Philip forthwith to the Claimant. Further that the First and Third Defendants be restrained from removing any items, documents and property except her [sic] personal effects from said property.
- 3) That the Second Defendant and/or his servants or agents be restrained from exercising any power under the Power of Attorney

granted to him on the 17th day of February 2008 and recorded on the 20th day of October 2008 (hereinafter called “the said Power of Attorney”). Further, that the Second and Fourth Defendants be restrained from exercising any powers granted by the First Defendant to them by virtue of the said Power of Attorney.

- 4) That the First and Second Defendants and/or their servants or agents do provide a Statement of Account to the Court within seven days of this order for any monies, items or properties held on behalf of the estate of Cecil Eugene Lucas, deceased.
- 5) That the Defendants their servants and/or agents be restrained from entering upon; occupying advertising for sale; attempting to sell; altering the registration in the Land Tax Department; applying to the Land Tax Department and/or the Land Registry to alter the names of the person to whom the land and property taxes or any other impositions that should be delivered; or from doing any other matter or thing with respect to the properties described in the Schedule hereto.
- 6) That the Defendants, their servants and/or agents be restrained from removing any items, except for personal effects only, from the property listed in the Schedule at iii.
- 7) That the Third Defendant, a trespasser, do vacate the property located at Parish Land in the parish of Saint Philip forthwith or at such other time as the Court determines.
- 8) That the Second Defendant be restrained from exercising any powers given to him by Dorothy Eugene Bowen concerning the estates of **Cecil Eugene Lucas, deceased; Eugene Lucas, deceased and Theresa Lucas, deceased** and more specifically as spelt out in paragraphs 1-3 of the Power of Attorney dated the 17th day of February 2008.
- 9) A Declaration that the general Power of Attorney dated the 17th day of February 2008 and recorded on the 20th day of October 2008 is null and void.
- 10) Such further or other order as the Court may deem just.

11) That the Defendants do jointly and/or severally pay the Claimant's costs of this application.

[8] The Notice of Application filed by the Claimant contained the following

Schedule of properties:

- i. ALL THAT certain piece of land situate in the parish of Saint Michael and Island containing by admeasurement one (1) acre, two roods and twenty perches or thereabouts but by a recent survey 1.37 acres or thereabouts abutting and bounding on the South of Highway 4 on the West and North on the public road and on the East on lands now or late of Myra Fletcher deceased of however else the same may abut and bound.
- ii. ALL THAT land part of Salter's Plantation situate in the parish of Saint Michael and Island containing by admeasurement three acres two roods and thirteen perches or thereabouts but by survey found to contain 3.47 acres or thereabouts inclusive of one half portion of the private roadway fourteen feet wide hereinafter mentioned which forms one of the boundaries of the said parcel of land bounding on lands of one Ms. Gill on the Belle Plantation and on the private roadway 14 feet wide or however else the same may abut and bound.
- iii. ALL THAT property containing a house dwelling and shop situate at Parish Land in the parish of Saint Philip being part of the lands of Oughterson Plantation and containing approximately 30,000 square feet.

Background

[9] On 15 September 1998 Cecil Lucas, died intestate. The Claimant applied for Letters of Administration to his estate, which were granted on 2 May 2012 and issued on 7 May 2012.

[10] The Claimant, in his capacity as Administrator and Personal Representative of the deceased's estate sent letters dated 16 May 2012 to

the First and Second Defendants and requested that they, within 8 days, account for all property which they held that constituted part of the deceased's estate. The letter to the First Defendant was returned to the Claimant unopened. There was no response from the Second Defendant.

[11] The Claimant made a second request to the First and Second Defendants by letters, which were served on them personally. The First and Second Defendants failed to reply.

[12] On 29 May 2012 the Claimant served 'Notices to Quit' on the First, Third and Fourth Defendants to vacate the premises located at Parish Land in the parish of St. Philip on or before 30th June 2012 but they remained in possession after that date.

[13] The Claimant then commenced proceedings against the Defendants by the Fixed Date Claim Form previously mentioned.

Preliminary Point

[14] The First Defendant submitted that the application failed to provide the necessary and/or any information as to the grounds upon which the Applicant was relying. The Claimant's failure to set out the grounds raised the suspicion that the application was completely groundless in substance rendering the application critically defective. In consequence, the application ought to be dismissed with costs. She relied upon **Otho**

Blackett et al v Curtis Alexander et al [unreported] High Court suit No 578 of 2008 and Beach Properties Barbuda Ltd et al v Laurus Master Fund Ltd et al Civil Appeal No. 2 of 2007 Eastern Caribbean Court of appeal.

[15] No similar submission was made by the other Defendants. The Claimant did not deal with this issue in his written submissions.

[16] No formal application to strike out the application was made by the First Defendant under **the Supreme Court (Civil Procedure Rules) 2008 (the CPR)**.

Issues:

[17] The issues that arise for determination are:

- a) Whether the Claimant's application should be dismissed for failure to set out grounds for bringing the Application under *Part 11.6 (1) (b)* of the *Civil Procedure Rules (CPR)*;
- b) If the first issue is answered in the negative then whether the Claimant is entitled to the relief sought, under the CPR or under the inherent jurisdiction of the Court.

Issue No. 1

The Law

[18] The **CPR Part 11.6 (1)** provides that an application must state:

(a) what order the applicant is seeking; and

(b) briefly, the grounds on which the applicant is seeking the order.

The **CPR Part 1.1 (1)** provides that the overriding objective of these Rules is to enable the court to deal with cases justly.

(2) Dealing justly with a case includes, so far as is practicable,

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate to

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

CPR 26.4 is intitled:

General power of the court to rectify matters where there has been a procedural error and provides as follows:

26.4 (1) This rule applies in relation to a matter in respect of which an order has not been sought, or if sought, has not been made under rule 26.3 striking out a statement of case or part of a statement of case.

(2) An error of procedure or failure to comply with a rule, practice direction or court direction or order does not invalidate any step taken in the proceedings, unless the court so orders.

(3) Where there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to rectify the error or failure.

(4) The court may make such an order on or without an application by a party.

Discussion

[19] The Court must determine whether the Claimant's application should fail because of a breach of **Part 11.6 (1) (b)** of the **CPR**. The First Defendant relied on **Otho Blackett et al v. Curtis Alexander et al** [Unreported] H.C. Barbados Civil Suit No. 578 of 2008 (**Otho Blackett**) in which **Alleyne J** opined that failure to set out the grounds of an application is "not to be taken lightly" and "may have catastrophic consequences". **Alleyne J** referred to *Beach Properties Barbuda Ltd et al v. Laurus Master Fund Ltd. et al* (Civ App. No. 2 of 2007, Eastern Caribbean Court of Appeal) (**Beach Properties**), where, at paragraph [19], **Barrow JA** (as he then was), described the failure to disclose

grounds, as “completely unacceptable” and “an abuse of the process of the court that should attract condign consequences.”

[20] Although, in **Blackett, Alleyne J** condemned the failure of the applicant to state the grounds upon which the application was brought, he dismissed the application for reasons other than such failure. In **Beach Properties, Barrow JA** (as he then was) stated:

“One objective of requiring that the application must state its grounds is to focus the thinking of lawyers. By being required to identify the grounds for making an application, before making it, lawyers are required to consider the merits of the application. A lawyer who has difficulty in formulating grounds for making an application has reason for thinking that perhaps it is because there are no grounds. The requirement of stating grounds also serves to clarify for the judge and the opposing party the basis on which the applicant claims to be entitled to the order sought. When an application states no grounds, it raises a suspicion that the application may be groundless, not just in form, but also in substance. That suspicion is heightened in a case such as this in which the failure to state grounds was deliberate: the section of the form requiring grounds to be stated was not simply overlooked. By telling the court to find the grounds in the affidavits the drafter revealed a clear advertence to the requirement of stating the grounds of the application and a conscious decision not to comply with the requirement. But even if it had been a case of laziness and not obfuscation that would have been a difference only of degrees. Failure to state the grounds of an application because it is too much trouble for the lawyer to do so is still very much an abuse of process.”

[21] **Beach Properties** was a case in which the attorney for the applicant had deliberately excluded the grounds from the notice of application. This is a circumstance that distinguishes that case from the instant one and may perhaps be the reason why the learned judge thought that certain failures may amount to an abuse of process of Court. In the present matter we

are not told the reasons why the grounds were not stated in the Claimant's notice of application for an injunction. In **Beach Properties, Barrow JA** examined the affidavit supporting the Application to determine whether there were any grounds in support of the Application.

[22] If one applies the overriding objective in **Part 1.1 of CPR**, the Court must look not to the form but the substance of the application and the documents filed in support to see whether there are grounds to support the application. To do otherwise would be to allow the old reliance upon form and procedure to continue to rule from the grave. I will now examine the documents filed in support of the application.

[23] In his Affidavit in Support of Injunctive Relief filed on 31 October 2012, the Claimant stated that he is "the Administrator & Personal Representative of the estate of Cecil Eugene Lucas, deceased" (paragraph 1) and "I am now in the process of administering the estate" (paragraph 3). He said at paragraph 8 (d) of the Affidavit that:

"The Letters of Administration granted to my father included a number of properties including those itemized 1-3 in a Power of Attorney granted unto the Second Defendant."

[24] The Claimant deposed that the first Defendant resides in the property of the deceased's estate (the estate). He deposed also to the occupation of

the property at Parish Land by the Third and Fourth Defendants and the Third Defendant's operation of the shop on the said premises.

[25] The Claimant further deposed to the attempts by the First and Second Defendants to sell various portions of the estate such as, *inter alia*, advertising the parcels of land for sale. He also alleged that the First Defendant sold a coach (hearse), the property of the estate. In paragraph 10 of the affidavit in support, the Claimant deposed that on two occasions he wrote the First and Second Defendants requesting an account of monies received and sold belonging to the estate of the deceased and there was no reply.

[26] Certified copies of the fixed date claim form, notice of Applicant for interlocutory relief and affidavit in support were all served on the Defendants by a Marshal of the Supreme Court as witnessed by an affidavit of service filed 7th November 2012 by the said Marshal. I am of the opinion and I hold that these documents especially the affidavit in support of the application for injunctive relief, which was detailed in reciting the history of the matters which led to the current issues before me, would leave no doubt in the minds of the reasonable man and indeed of the first named Defendant as to the grounds upon which the relief was being sought namely:

“That the properties referred to in the Schedule of the Notice of Application are allegedly part of the estate of Cecil Eugene Lucas, deceased and as the Administrator and Personal Representative of the said deceased, the Claimant is requesting the court to prevent the Defendants from dealing with those properties in any manner prejudicial to the estate”.

[27] In paragraph 7 of his affidavit filed 20 November 2012, the Second Defendant deposed that the First Defendant granted him a power of attorney “specifically to sort out some properties she assumed had belonged to her inasmuch as she had paid all the land taxes for many years.” At paragraph 8, he deposed that “Someone was interested in purchasing the land at Salters...and when a search was done on the title it was determined that the title needed to be sorted out and nothing further was done.”

Conclusion

[28] Despite the Claimant’s failure to state the grounds of his Application pursuant to **Part 11.6** of the **CPR**, I am of the opinion and I hold, that the Application before the Court is not groundless. Notwithstanding the opinions of the judges in the Eastern Caribbean concerning the strict application of the equivalent of **Part 11.6** in their rules and the statements of **Alleyne J.** in **Otho Blackett**, every case must be decided upon its own peculiar facts.

[29] This Court has the power to make a determination as to whether the Claimant is entitled to the remedy he seeks notwithstanding the absence of grounds upon which the relief is being sought applying the overriding objective. This matter involves serious issues regarding entitlements under an estate. The averments in the Second Defendant's affidavit shows that efforts were being made to sell the properties. I am of the opinion that no procedural error ought to prevent the Court from doing justice to these parties applying the provisions of the CPR above quoted.

Disposal

[30] I therefore find no merit in the submission, which is dismissed.

Issue No. 2

Whether the Claimant is entitled to the substantive relief sought?

[31] In the circumstances, which have occurred, counsel for all parties agreed that the Court should decide upon the application for injunctive relief and the application for substantive relief since the threat of sale of the properties was dissipated by the filing of the applications and the subsequent death of the First defendant. All parties agreed that no further affidavit evidence or submissions would be filed and there would be no cross-examination of the deponents of the filed affidavits.

The Evidence

The Claimant's affidavit filed 31 October 2012

[32] The Claimant deposed, *inter alia*, that:

- a) Eugene Lucas **died** intestate in 1947 being survived by his wife, Theresa Lucas nee Inniss and four children, namely Cecil Eugene Lucas, the eldest child, first born son and at that time, the heir at law, Dorothy Eugene Lucas (now Dorothy Bowen); Harold Gordon Lucas and Ulric Leaton Lucas.
- b) Theresa Lucas applied for and was granted Letters of Administration to the said estate. A copy of the letters testamentary was attached to the Claimant's affidavit.
- c) Theresa Lucas died on the 21st day of October 1951 intestate, without completing the administration of the estate of the said Eugene Lucas, deceased.
- d) In 1959, Cecil Eugene Lucas applied, as the heir at law, for Letters of Administration *de bonis non administratis* to the estate of Eugene Lucas, deceased. Letters testamentary were issued to him on the 2nd day of September 1960. These were also exhibited.
- e) That the real property situate at Parish Land, St. Philip is 'owned' by carpenter's trust. Substantial improvements to the property were made by Mr. Cecil Lucas out of the proceeds of the bus company. Despite the Second Defendant's attempts, the Estate of Cecil Lucas remains the qualified party.

The First Defendant's Affidavit

[33] The First Defendant denied that the Claimant had title to the property.

She deposed that she was born in the property and lived there with her brothers in harmony. She had made improvements to the house utilizing

moneys made from the shop. Her brother Cecil did odd jobs and mechanic work and ran a kind of funeral home. She could not recall how it was run.

[34] The house was situated on lands owned by other people whose names she could not recall. She gave Cecil money to pay the rent. She had no recollection of any car belonging to the funeral home. She deposed that the house was hers; her brother never tried to put her out and she had lived there all her life with her brothers with whom she got on well. She deposed that, after her marriage, she continued to live there, whilst her husband continued to live on Vineyard Estate where he was an overseer. She further deposed that “Everything to do with the land sales and all the things relating to property other than the house that the Claimant is talking about in his affidavit, I know nothing about.”

[35] The First Defendant also deposed that she gave a power of Attorney to the Second defendant to assist her with “things” as she got older. Curiously she deposed that “I think I recently gave a power of Attorney to the Fourth Defendant, but I’m not sure if I did or when. I don’t remember exactly.”

The Claimant's Affidavit in Opposition to the First Defendant's Affidavit

[36] The Claimant, in his affidavit in opposition to the First Defendant's affidavit, deposed that the property was converted from chattel to masonry construction between the 1960's to the early 1970's by his father using the proceeds from the Elite Bus Company, which he ran. He deposed that the Frist defendant's husband moved to the property where he lived with the Frist Defendant with the Claimant's father's permission.

The Claimant's Submissions

[37] The Claimant filed written submissions in support of his application on 21 Oct 2013. Ms. Archer submitted that, having regard to the chronology of events, Cecil Lucas, as the eldest son of Eugene Lucas, was the heir-at-law applying the rules of primogeniture. Counsel referred to the affidavit of Theresa Lucas, the wife of Eugene Lucas, dated 7 July 1948 in support of her submission.

[38] Counsel for the Claimant further stated that Theresa Lucas applied for a Grant of Letters of Administration and that she was entitled under section 19 (a) of the 1891 Administration of Estates Act Cap 242 (Tab 3) to one-third of the surplusage of the estate. Theresa Lucas died in 1950 before the administration could be completed and in 1960, Cecil

Lucas, the eldest child and the heir-at-law applied for Letters of Administration *cum testament annexo de bonis non administratis* which were granted on 2nd September 1960. Therefore, she submitted that Cecil Lucas was the heir-at-law and Administrator and Personal Representative of Eugene Lucas, deceased.

[39] Counsel also submitted that the estate of a deceased person was divided into two sections; real estate and personal estate and was subject to the law of real property. She relied on the following cases: **Countess of Bridgewater v Duke of Bolton (1704) 6 Mod. Rep. 107; Re Fraser, Lowther v Fraser [1904] 1 Ch. 111 at p 116; affirmed [1904] 1 Ch. 726 CA; Prescott v Barker (1874) 9 Ch. App. 174.**

[40] Counsel relied upon the **Real Property (Devolution) Act Cap 249 of the Laws of Barbados** to support the contention that after 1932 real estate in similar manner to chattels real would devolve on the personal representative.

[41] Counsel for the Claimant stated that the time that Cecil Lucas died in 1998, the laws of succession in Barbados had changed by virtue of the **Succession Act Cap 249**, his interest in the land devolved to his estate and thereupon to his personal representative (the Claimant).

The First Defendant's Submissions

[42] Ms. James filed written submissions on 16 October 2013. She submitted that the First Defendant had no interest in nor did she occupy the properties listed at (1) and (11) in the Claimant's application. She also submitted that there was no evidence in the application to demonstrate that the First Defendant had any interest in or interfered with the said properties whatsoever. Accordingly the application relative to these properties was unnecessary and vexatious and ought to be dismissed with costs.

[43] This is a convenient point at which to determine the entitlement of the Claimant to any interest in the subject properties. In the certificate of payment of estate and succession duties in the estate of Eugene Lucas deceased, dated the 23rd day of January 1948, the following are listed as the real property of the estate:

1. 4,828 square feet of land at Tichbourne, St. Michael.
2. 1,666 square feet of land at Padmore Village, St. Philip.
3. 840 square feet of land at Bedford Alley, Roebuck Street, St. Michael.
4. 1 rood 15 Perches of land at Rouen, St. Michael.
5. 3 Acres 2 Roods 13 Perches near the Belle, St. Michael.

6. 1 Acre 2 Roods 21 Perches near Roberts Village, St. Michael.

The items of property listed at 1 to 6 above are hereinafter collectively called the real property). Also listed are:

7. Chattel house, shop and out offices at Parish Land, St. Philip and

8. 3 motor omnibuses.

The Law

[44] Prior to the passage of the Succession Act the rules of primogeniture applied where a person died intestate. The real property of an intestate devolved upon and vested in his heir at law subject to a right of dower in his surviving wife. Dower was a right of the deceased's widow to a life interest in one-third of the realty of her deceased's husband. Personality or personal property devolved through the personal representative to the heir at law.

[45] Sections 3, 4 and 5 of the **Real Property (Devolution) Act Chapter 249 of the laws of Barbados** (the **RPDA**) are also relevant and are reproduced here:

“3. (I) Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as chattels real devolve on the personal representative from time to time of a deceased person.

4. (1) Subject to the powers, rights, duties and liabilities hereinafter mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to the personal estate have of requiring a transfer of such personal estate.

(2) Subject to this Act, all enactments and rules of law relating to the effect of probate or letters of administration as respect chattels real, and as respects the dealing with chattels real before probate or administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties and liabilities of personal representatives in respect of personal estate, shall apply to real estate so far as the same are applicable, as if that real estate were a chattel real vesting in them or him.

5. (I) At any time after the death of the owner of any land, his personal representatives may assent to any devise contained in his will or may convey the land to any person entitled thereto as heir, devisee or otherwise, and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent or conveyance, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or conveyance.”

[46] The **RPDA** came into effect on 31 May 1935.

[47] The **Succession Act Cap 249** of the laws of Barbados came into effect on 13 November 1975. It made revolutionary changes to the rules of intestate succession with respect to persons dying after its commencement. **Section 3. (1)** provides that:

“The real and personal estate of a deceased person shall on his death, notwithstanding any testamentary disposition, devolve and become vested in his personal representatives.

(2) The personal representatives for the time being of a deceased person shall be the representatives of the deceased in regard to his real and personal estate, and shall hold the estate as trustees for the persons by law entitled thereto.

(3) The references in this section to the real and personal estate of a deceased person are to property to which he was entitled for an estate not ceasing on his death, and include property over which he exercised by will a general power of appointment.”

[48] With regard to the real and personal property there shall be abolished,

Section 4 of the said Act provides:

- “(a) all existing modes, rules and canons devolution by special occupancy or estate of a person of descent, and of otherwise, of real estate, whether operating by the general law or by custom of any locality or otherwise howsoever;
- (b) tenancy by courtesy and every other estate and interest of a husband in real estate as to which his wife dies intestate, whether arising under the general law or by custom or otherwise;
- (c) dower and every other estate and interest of a wife in real estate as to which her husband dies intestate, whether arising under the general law or by custom or otherwise”.

Discussion

[49] There has been no challenge to the Claimant’s assertion that, in 1947 when **Eugene Lucas** died intestate, Cecil Eugene Lucas was his first-born son. Consequently he was the heir at law and entitled to the real property of the said estate subject to a right of dower in his wife Theresa Delphine Lucas. On her death on 21 October 1951 that right of dower came to an end. The real property devolved upon Cecil Eugene Lucas as the personal representative of the estate of Eugene Lucas, deceased by virtue of Sections of the **RPDA** and he held the same as trustee for

himself as heir at law and the person by law beneficially entitled thereto. The affidavits evidence does not reveal if a deed or deeds of assent were executed vesting the properties in the heir at law by virtue of Sections 4 of the **RPDA**.

[50] The Court made due enquiry of all counsel and, as a result, the Claimant filed an affidavit attaching a copy of a deed of assent dated 14 February 1960 made between Cecil Kortright Lucas, the qualified administrator of the estate of Eugene Lucas, deceased and Cecil Kortright Lucas in his individual capacity vesting the lands aforementioned in himself. In the premises, Cecil Kortright Lucas became the legal and beneficial owner of the properties.

[51] On the death of Cecil Kortright Lucas, his estate devolved upon the Claimant as the sole Administrator and as such the personal representative of the Estate of Cecil Kortright Lucas, the deceased for the benefit of the four children of the deceased by virtue of **Section 3 (1) and (2) of the Succession Act**.

Conclusion

[52] The Claimant therefore has *locus standi* to bring the present proceedings. Further, having regard to the submissions of Ms. James that the First Defendant was not making any claim to the properties

referred to in her submissions, the Court finds that these properties are held by the Claimant as personal representative of the estate of Cecil Kortright Lucas, deceased in the manner previously referred to.

The Property at Parish Land, St. Philip

The Claimant's affidavit filed 20 November 2012

[53] In this affidavit, the Claimant deposed, inter alia, that Eugene Lucas and Theresa Inniss, his grandparents, were married on the 4th day of December 1918. Shortly after the marriage, they moved to what is now called Parish Land in the parish of Saint Philip but what was then called Oughterson Plantation. His grandfather rented 3/4 of an acre of land from Oughterson Plantation and constructed a chattel house dwelling, shop and offices on the land. On the 21 st day of February 1923, his grandfather used the property as collateral for a mortgage from James H. Inniss Son & Co Ltd. On the 17th day of October 1924, the collateral mortgage was brought to an end and the property was re-assigned to Eugene Lucas. A copy of this deed was exhibited and marked CEB 1A. He further deposed that, prior to his death, his grandfather established himself as a shopkeeper and a motor omnibus proprietor.

[54] No other affidavit was filed on behalf of the Frist Defendant besides the one hereinbefore referred to.

The Claimant's Submissions

[55] Counsel submitted that Oughterson Plantation was a part of the estate of Richard Carpenter deceased, and the lands could not be sold because of the provisions of Carpenter's will which provided for the estate passing from "seed to seed".

[56] Ms. Archer further submitted that, in 1923, Eugene Lucas had possession of the land by virtue of a term of years between himself and the principals of Oughterson Plantation. The term of years would not have conferred any freehold on Eugene Lucas but it conferred an estate in the land, namely a chattel real which devolved on the personal representative (Cecil Lucas) to hold in trust for the heir (Cecil Lucas) in accordance with sections 4 and 5 of the **Real Property (Devolution) Act**.

[57] Counsel submitted that if the interest in the land devolved to Cecil Lucas as owner in possession, then the offices, shop and dwelling house which were all part of the immovable property attached to the estate therefore devolved to him as hereditaments in his capacity as heir. Furthermore, she submitted that in accordance with **section 19** of the **Administration of Estates Act**, any other qualifying party including the First Defendant, would have been entitled to the surplusage of the estate and for the

purposes of this determination, the surplusage constituted chattels personal.

[58] Counsel pointed out that in January of 2003, the Parliament of Barbados issued a section 5 Notice pursuant to the provisions of the **Land Acquisition Act Cap 228** declaring its intention to acquire the Estate of Richard Carpenter situate at Parish Land in the parish of Saint Philip. She stated that on 6 February 2003 the Crown acquired the lands in question and on 1st October 2009 Cabinet agreed to vest the parcels of land in the National Housing Corporation (NHC) for housing development. Counsel further stated that the NHC by virtue of the acquisition became the owner of the plantation and indicated its willingness to transfer title to qualified parties given that a number of families lived on the land for a number of years. She submitted that the estate of Cecil Lucas is the qualified party to whom the NHC must transfer title.

The First Defendant's Submissions

[59] Counsel's submissions are twofold:

- (1) That the Claimant was not a qualified tenant within the definition of the **Tenant's Freehold Purchase Act Chapter 239B of the laws of Barbados (the TFPA)**, and
- (2) That the First Defendant was entitled to relief under the doctrine of proprietary estoppel.

The First Submission

[60] Ms. James submitted that the Claimant was not a qualified tenant within the definition of the **Tenancies Freehold Purchase Act Chapter 239B of the laws of Barbados (the TFPA)** since he had not resided on the land for five consecutive years preceding or after 1st November 1980. She referred to s 4(4) of the TFRA. Counsel submitted that the Act made it clear that:

- (a) Only a qualified tenant may purchase a tenantry lot, and.
- (b) A person qualified as a tenant by virtue of their physical occupation and/or residing on the lot for at least 5 consecutive years.

[61] Counsel relied upon her client's affidavit evidence at paragraph 10 where she deposed that she paid the land rent under the name of the deceased and her statement that she gave the deceased cash which he would pay over as rent. She opined that the First Defendant was the only person residing on the property since 1998 (the date of death of Cecil Kortright Lucas, deceased).

[62] Counsel referred to the Claimant's affidavit evidence that he personally never resided on the land and that he only visited during his childhood days or during his primary school days.

[63] In relation to the Claimant's affidavit evidence in reply to the Second Defendant's affidavit that he paid rent for 4 years, she submitted that

paying rent without occupation did not make the Claimant a qualified tenant. In any event the statutory period of 5 years had not elapsed.

[64] Counsel submitted further that the Claimant could not rely on the laws of succession and/or any other legislation to determine entitlement to the parish Land property. She submitted that, even if the deceased was a qualified tenant, he failed to exercise his right of purchase before his death. Only living qualified tenants may purchase land under the TFPA. She relied upon **Leacock v Hinds et al HC of Barbados 1992**.

Discussion

[65] The evidence reveals that the First Defendant paid the rent for a period of time. The Claimant now pays that rent on behalf of the estate. As will later appear, the First Defendant's claim is based upon proprietary estoppel. She did not submit a notice of intention to purchase (Form1) under the TFPA in exercise of any statutory right to purchase.

[66] The estate, which the Claimant represents, was the tenant of the lands and not the Claimant in his personal capacity. Having paid the rent for the past four years to the exclusion of the First Defendant, the estate is now the tenant of the lands on the state of the evidence. Accordingly, the First Defendant's claim that the Claimant cannot exercise any right to

purchase since he did not live on the land is without merit and is dismissed.

The Second Submission- Proprietary Estoppel

[67] Counsel submitted on the authority of **Matharu v Matharu 1994 26 HLR 648**, that the Claimant was estopped from making a claim to the Parish Land property on the basis that the First Defendant had been encouraged to incur expense and investments on the property with the expectation that she was the owner or would be able to remain there for the rest of her life. She also relied upon **Inwards and others v Baker [1965] EWCA 465**.

[68] Counsel prayed in the affidavit evidence of the First Defendant that she converted the house from mostly wood to brick (masonry) without financial help from her brother who did not make a lot of money and did mostly odd jobs. She also relied upon the affidavit of Rupert Bishop filed 16 October 2013 wherein he deposed that the shop was run exclusively by the First Defendant.

[69] She submitted that, if the deceased was entitled to the shop or business his claim was relinquished when he acquiesced in the First defendant running it exclusively for her benefit. The same principles of proprietary estoppel applied to the shop.

[70] There was no evidence that the deceased demanded rent for the shop and it was clear that the First Defendant, in reliance and with the encouragement of the deceased, invested in the shop with the expectation that it was her own to run and she would have been entitled to any profits therefrom in the same way that she would have incurred debts.

The Claimant's Submissions

[71] Ms. Archer averred that the First Defendant must also show that she acted in the belief that she either owned a sufficient interest in the property to justify any expenditure. Also, she submitted that the First Defendant was a licensee and if there were any improvements or expenditure, which is denied, the First Defendant still could not have any equity in respect of it given her status as a licensee. She relied on the following cases: **Inwards v Baker [1956] 2 QB 29** and **Ramsden v Dyson (1866) LR 1 HL 129**.

[72] Counsel for the Claimant submitted that the First Defendant must show that she was encouraged in her belief by the deceased, Cecil Lucas. She stated that the deceased would not have encouraged any party to believe that they could establish any interest in his properties to the detriment of

his children. She relied on the case of **Hopgood v Brown [1955] 1 WLR 213**.

The Law

[73] It is clear from the unchallenged documentary evidence that the original chattel premises and shop were owned by Eugene Lucas who executed as chattel security over them to secure loan facilities.

[74] Counsel for the First Defendant submitted that the Claimant cannot rely upon the law of succession in support of his claim. This argument is fallacious. The laws of Succession apply not only to real property but to personal property and to chattels real such as leasehold interests. The property therefore devolved in the manner I have outlined above.

[75] The more challenging issue relates to certain contradictions in the First defendant's submissions. Her affidavit evidence is that she viewed this property as her home or as her own. She also deposed that she lived there with the approval of her brother, the deceased with whom she got on well.

[76] The question therefore is whether the First Defendant has acquired any rights over the property?

[77] It seems to me that it may reasonably be inferred from the evidence that the First Defendant ran the shop and lived at the house with the approval

of Cecil Kortright Lucas who also lived there until his death under an informal family arrangement. She never claimed to have barred her brother's interest to the property. In this regard, it must be made clear that the First Defendant has not set out a claim to this property based upon the **Limitation of Actions Act Chapter 231 of the laws of Barbados.**

[78] The First Defendant's claim is for an interest based upon her improvement of the property as outlined in her affidavit. This was denied by the Claimant who deposed that his father improved the property. In the absence of cross-examination of the deponents and an assessment of their demeanour when giving evidence, it is difficult to make a finding of fact on the issue of the improvement of the property.

[79] Having regard to the inherent uncertainties in the First Defendant's affidavit evidence, I am more inclined to the view, and I hold, that the both contributed to the improvements.

[80] There is attached to the affidavit of the Claimant filed 05 December 2012 a receipt dated 03/10/98 for \$8,000.00 for a coach sold to a Mr. Shirley Banfield signed by Dorothy Bowen. The First Defendant averred that the funeral home ran by her brother was not a proper one and that

she knew nothing about a car of which the Claimant spoke in his affidavit.

[81] This uncontroverted evidence in relation to the sale of the coach, inclines me to the view that there was a substantial business in relation to the funeral home and that it had built up some assets of which the coach was one. Having found that they both contributed to the improvements, I also am of the view, and find, that the First Defendant utilized assets of the estate to make such improvements.

The Law on Proprietary Estoppel

[82] The law is found in **Inwards v Baker [1965] EWCA Civ 465** and may be succinctly stated as follows:

“... if the owner of land requests another, or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with an equity. Counsel for the plaintiffs urged before us that the licensee could not stay indefinitely. The principle only applied, he said, when there was an expectation of some precise legal term; but it seems to me, from Plimmer's case n (5) in particular, that the equity arising from the expenditure on land does not fail ... merely on the ground that the interest to be secured has not been expressly indicated... the court must look at the circumstances in each case to decide in what way the equity can be satisfied." So in this case, even though there is no binding contract to grant any particular interest to the licensee, nevertheless the court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the court will not allow that expectation to be defeated where it would be inequitable so to do. In this case, it is quite plain that the father allowed an expectation to be created in the defendant's mind that this

bungalow was to be his home. It was to be his home for his life or, at all events, his home as long as he wished it to remain his home. It seems to me that, in the light of that equity, the father could not in 1932 have turned to the defendant and said: "You are to go. It is my land and my house". Nor could he at any time thereafter so long as the defendant wanted it as his home.

Counsel for the plaintiffs put the case of a purchaser. He suggested that the father could sell the land to a purchaser who would get the defendant out; but I think that any purchaser who took with notice would clearly be bound by the equity. So here, too, the plaintiffs, the successors in title of the father, are clearly themselves bound by this equity. It is an equity well recognised in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as the result of that expenditure, he will be allowed to remain there. It is for the court to say in what way the equity can be satisfied. I am quite clear in this case that it can be satisfied by holding that the defendant can remain there as long as he desires to use it as his home."

[83] I am of the opinion, and hold that, any interest, which the First Defendant may have acquired by virtue of any improvements made, in my opinion, would be compensable by allowing the first Defendant to occupy the property for the duration of her life. Such an equity is now ended by her death.

Disposal

[84] In the circumstances, the property remains vested in the estate of Cecil Kortright Eugene Lucas, deceased also known as Cecil Eugene Lucas.

Intermeddling – The Evidence

The Claimant's Affidavit

[85] The Claimant deposed that, after the death of Cecil Lucas, the First Defendant took possession and control of the property of the estate, namely the chattel dwelling house and shop attached thereto, as though they were her own and sold a coach (hearse) to one Mr. Banfield for \$8,000.00. In so doing, she intermeddled in the estate and became trustee de son tort. She was, therefore, accountable for the assets which she wrongfully took possession of. She relied upon **Roswell v Morris (1873) L.R. 17 Eq. 20** and **Coote v Whittington (1873) L.R. 16 Eq.534** and **Mara v Browne [1896] 1 Ch. 199**, per A.L. Smith LJ. and **Selangor United Rubber Estates v Cradock (No 3) [1968] 1 WLR 1555**.

The First Defendant's Affidavit

[86] This affidavit has already been referred to and need not be repeated.

[87] Ms. Archer submitted that, in the event that the court held that the First Defendant had an equitable interest in the property, any such interest was revoked by her misconduct. Counsel stated that the First Defendant informed the beneficiaries that the deceased left no estate to administer

and then proceeded to put herself in the position of trustee/Administrator converting assets to cash for her use and disposal. She submitted that the First Defendant must come to the court with clean hands if she wished to claim the protection of a Court of Equity and that the instant matter was an appropriate one for the revocation of any equitable license/interest which might have accrued to the First Defendant. She relied on the following cases: **Willis & Son v Willis & Another [1986] 1 EGLR 62; 277 Estates Gazette 789 CA** and **Williams v Staite [1979] Ch. 291; [1978] 2 All ER 928.**

[88] Ms. Archer submitted that the Second Defendant intermeddled in the estate and is liable to account. She stated that the First Defendant appointed the Second Defendant as her lawful attorney by virtue of a Power of Attorney in February 2008. The Second Defendant was empowered to obtain title to lands in his name on the First Defendant's behalf and he proceeded to change the name of the possessor on the land tax bills to his own and caused estate properties to be advertised for sale in breach of his authority. Counsel cited the case of **Williams-Ashman v Price [1942] Ch. 219 (Ashman).**

[89] Counsel contended that the Second Defendant acted outside of the scope of his duties and intermeddled with the estate. She referred to the

Second Defendant's affidavit in reply in which he averred to having access to the First Defendant's funds. She further stated that proceeds from the estate of the deceased were intermixed with the First Defendant's resources and in the circumstances, both the First and Second Defendants must account for their use of all financial resources held by the First Defendant. Counsel therefore submitted that the Second Defendant was the agent of the First Defendant, that he was aware that the First Defendant's resources were subject to a trust and that he acted outside of his purview in seeking to dispose of estate resources.

The Law

[90] The principles of law were set out **SIR R. MALINS, V.C.** in **Coote v Whittington (1873) L.R. 16 Eq. 534** as follows:

“...where a person possesses himself of the assets of a testator **or intestate** (emphasis added) without having administered he may be treated as executor *de son tort*, and that an executor *de son tort* has all the burthens, but not the privileges, of a regular executor; and it would be the height of injustice if a person could possess himself of the assets of the testator, and because he did not choose to clothe himself with the character of administrator, could not, therefore, be sued.”

[91] That case also established that the executor or administrator *de son tort*, can be made to account for assets which he or she has wrongfully taken possession of.

Discussion on Intermeddling

[92] It is clear that the First Defendant continued to live at Parish Land with the consent of her brother. No complaint was made concerning her running of the shop. Her conduct in that regard cannot be regarded as intermeddling if it was consensual.

[93] With respect to the alleged sale of the coach, Ms. James submitted that the receipt, purportedly evidencing the alleged funeral coach sale, which is attached to the Claimant's Affidavit in Reply to the First Defendant's affidavit, cannot be relied upon as it is impossible to decipher the payer from the payee. Moreover, she referred to **s.139** of the **Evidence Act, Cap. 121** of the Laws of Barbados which requires documentary evidence of fact presented in an affidavit to be submitted by persons who had the responsibility of "either making or keeping the document".

[94] **Section 139** of the **Evidence Act, Cap. 121** of the Laws of Barbados provides:

"139. (1) Evidence of a fact that, by virtue of section 50, 51, 52, 55, 60 or 61 or of a provision of Division 2 or 3 of Part V, is to be proved in relation to a document or thing may be given by a person who, at the relevant time or at some time later, had a position of responsibility in relation to the making or keeping of the document or thing.

(2) Notwithstanding Part IV, the evidence may include evidence based on the knowledge and belief of the person who gives it or on information that that person has.

(3) The evidence may be given by affidavit or, in the case of evidence that relates to a public document, by a statement in writing.

(4) An affidavit or statement that includes evidence based on knowledge, information or belief shall set out the source of the knowledge or information or the basis of the belief.

(5) A copy of the affidavit referred to in subsection (4) or statement shall be served on each party a reasonable time before the hearing of the proceeding.

(6) The party who tenders the affidavit or statement shall, if some other party so requests, call the deponent or person who made the statement to give evidence but need not otherwise do so.”

[95] The fallacy in that argument is that counsel made no objection to the affidavit when it was filed or to the admissibility of the attached exhibits. Such an objection is a substantive point of evidence to be made at the stage the affidavit is being relied upon as evidence in the case. The Claimant swore at paragraph 14 of the affidavit “Where matters deposed to consist of facts, those facts are within my knowledge; where matters are not facts, they are to the best of my knowledge information and belief.” The Claimant was present throughout the hearings. Counsel failed to cross examine him on his affidavit and therefore impliedly accepted the affidavit and the exhibits attached thereto. It is not enough to make submissions on admissibility after the fact.

[96] With respect to the submission that it is impossible to decipher the payer from the payee, the attached receipt is clearly signed by Dorothy Bowen as payment of \$8,000.00 for a coach. Above the sum is written the name

Shirley Banfield and the date 3-10-98. The Court must apply a common sense approach to this matter and ask itself what is the natural and probable inference to be drawn from this document. In my opinion, the only proper inference is that The First Defendant received that sum for a coach. She has not deposed that she owned any such vehicle nor has she denied that the estate ran a funeral business.

Conclusion

[97] In the circumstances, I hold that the First Defendant intermeddled in the estate and thereby became an executor de son tort. Accordingly, she is liable to account to the estate for the proceeds of sale of the coach.

The Second Defendant and the Power of Attorney

[98] I do not propose to spend much time on this issue. The revocation of the power of attorney in favour of the First Defendant does not absolve him of responsibility for acts done by him on behalf of the First Defendant during the subsistence of the power.

[99] The Second Defendant deposed at paragraph 7 of his affidavit that the First Defendant granted him a power of attorney in 2008 specifically to sort out some properties she assumed had belonged to her inasmuch as she had paid all the land taxes for many years. He further deposed at paragraph 8 of his said affidavit that someone was interested in

purchasing the land at Salters and when a search was done on the title it was determined that the title needed to be sorted out and nothing further was done.

[100] He also deposed to the fact that there was a ratification and indemnity clause in the power of attorney by virtue of which the First Defendant agreed to ratify allow and confirm and indemnify his against everything done by him by virtue of the power of attorney. It is also important to note that there is no claim or counter-claim made by the Second Defendant against the First Defendant in these proceedings for an indemnity with respect to acts purportedly done under the power.

The First Defendant's submissions.

[101] Counsel submitted that the Second Defendant also intermeddled in the estate and was also liable to account. He had been granted a power of attorney which empowered him to obtain title to land in his own name on the First Defendant's behalf and proceeded to change the name on the land tax bill to his own and caused the properties to be advertised in breach of his authority. She relied upon **Williams-Ashman v Price [1942] Ch. 219.**

[102] It was also submitted that monies belonging to the estate were intermixed with the First Defendant's funds to which the Second

Defendant had access and therefore both the First and Second Defendants were liable to account for their use of all financial resources held by the First Defendant.

The Second Defendant's Submissions

[103] Mr. Niles submitted that the Power of Attorney dated 17 February 2008 given to the second defendant by the first defendant was revoked by the first defendant by deed dated the 19 April 2012 before the matter was filed. Further, he submitted that even if the Power of Attorney had not been revoked, the Claimant had no *locus standi* to ask the Court to declare the power null and void, without more.

[104] He also submitted that no evidence and no particulars were provided by the Claimant in his Statement of Claim that the Second Defendant acted as a trustee or had done acts that could give rise to an inference that he was a trustee of the Estate of Cecil Kortright Eugene Lucas. Counsel also contended that the Claimant did not provide any evidence or particulars that the second defendant interfered or intermingled in the affairs and/or collected any moneys belonging to the said estate during the duration of the Power of Attorney granted by the First Defendant between the 17th day of February 2008 until the 19th day of April 2012, or at all.

[105] Mr. Niles further submitted that the only allegations against the second defendant in the Claimant's Statement of Claim were with respect to letters written on two occasions requesting an account of all property and all monies held by himself and the First Defendant, which rightfully belonged to the estate. He said that this in and of itself, without more, did not give rise to a cause of action.

[106] Mr. Niles submitted that the Second Defendant owed no duty of care towards the Claimant by virtue of the power of attorney granted to him and none was alleged in the Statement of claim. In consequence, the statement of claim disclosed no reasonable cause of action [against the Second Defendant] and ought to be dismissed.

The Law

[107] The law relative to intermeddling has already been outlined in this decision and will not be repeated. The only authority cited was the decision in **Ashman** where the court opined:

“that an agent in possession of money which he knows to be trust money, so long as he acts honestly, is not accountable to the beneficiaries interested in the trust money unless he intermeddles in the trust by doing acts characteristic of a trustee and outside the duties of an agent.”

Discussion

[108] In relation to the power of attorney, the agent is just as liable as the principal for wrongful acts done under the power. In this case, the First Defendant intermeddled in the estate and the Second Defendant as well when he purported to advertise the properties for sale.

[109] I consider it important to state that, if the Second Defendant, was advised that the title to the Salters property had to be sorted, it is highly probable that it would have come to his attention and by extension that of the First Defendant that the property belonged to the estate. The First Defendant would have known that the deceased left issue and ought not to have concealed that fact from the Claimant whose affidavit evidence that he was told by the First Defendant that his father left no estate remains uncontroverted.

[110] In these circumstances, I am of the view and hold that the subsequent actions of the First and Second Defendants in relation to the estate cannot be characterized as honest.

[111] With respect to the submission that the Second Defendant owed the Claimant no duty of care, no authority was cited for this proposition. The submission fails to take into account the law in relation to intermeddling which creates a relationship of trust between the

beneficiaries of the estate or the estate itself and the executors de son tort or trustees de son tort as in **Mara v Browne**.

Conclusion

[112] The First and Second Defendants have both intermeddled in the estate and have become executors de son tort and are liable to account to the estate for any assets of the estate coming into their hands.

[113] With respect to the submission that the Claimant cannot ask for the revocation of the power granted by the First Defendant in favour of the second Defendant, no authority was cited for this proposition. A power of attorney creates a contractual relationship between the parties thereto and defines their obligations to each other. Unless that power in some manner offends a public law, which confers a right to apply for revocation on third parties (which has not been alleged), third parties have no *locus standi* to apply for its revocation. As it impacts on third party rights such as the estate in this case, the Claimant may legitimately ask the court to rule upon the validity of acts purportedly done under such a power.

The Third and Fourth Defendants

[114] The claim in relation to the Third and Fourth Defendants is that they occupied the Parish Land property from 21st July 2010 to present.

[115] In relation to the Third Defendant, it was alleged that from 01 August 2010, with the permission or licence of the First and/or Second Defendants, he operated a shop on the said property up until trial of the action. It is also alleged that it was an implied term of the said licence that the Third Defendant would pay a reasonable amount calculated at \$1200.00 per month from 01 August 2010 to the date of trial of the action, making an aggregate sum claimed of 26,400.00.

[116] The Claimant asked the Court to grant an order that:

- a. The First and Third Defendant and/or their servants or agents do vacate and deliver up possession of the property situate at Parish Land in the parish of Saint Philip forthwith to the Claimant.
- b. Further that the First and Third Defendants be restrained from removing any items, documents and property except her [sic] personal effects from said property.
- c. Further, that the Second and Fourth Defendants be restrained from exercising any powers granted by the First Defendant to them by virtue of the said Power of Attorney.
- d. That the Defendants, their servants and/or agents be restrained from removing any items, except for personal effects only, from the property listed in the Schedule at iii.
- e. That the Third Defendant, a trespasser, do vacate the property located at Parish Land in the parish of Saint Philip forthwith or at such other time as the Court determines.

Discussion

[117] No affidavits or submissions were filed on behalf of the Third and Fourth Defendants.

[118] It seems to me that there is an incongruity in the Claimant's submissions with respect to the Third Defendant since the Third Defendant cannot be a licensee and a trespasser at the same time.

[119] The Third Defendant is the partner of the Fourth Defendant and accompanied him to the Parish Land property. She was never given permission to enter into possession by the Claimant or his predecessors in title and is, accordingly, a trespasser *vis-a-vis* the estate of the deceased. There could therefore be no implied term that she should pay a reasonable sum for her occupation of the property by way of mesne profits. Any claim with respect to her occupancy would be for use and occupation.

[120] With respect to the Fourth Defendant, his occupation of the Parish Land property is by virtue of the power of attorney granted to him by the First Defendant in her lifetime and previously by permission of the Second Defendant who was caretaker to the First Defendant.

[121] Those permissions have been revoked by the revocation of the power of attorney in favour of the Second Defendant and, in the case of the power of attorney in favour of the Fourth Defendant by the First Defendant, by the death of the First Defendant.

[122] On the death of the First Defendant, the Third and Fourth Defendants became trespassers in respect of the property of the estate of Cecil Lucas, deceased for which damages for use and occupation is the appropriate remedy. There is no objective evidence before me to show that \$1,200.00 a month is a reasonable sum to be awarded and I therefore hold that any such sum ought to be assessed.

Disposal of the Application

[123] In the circumstances the court makes the following orders:

1. That the estate of the First Defendant acting herein by Shirley Scantlebury do vacate and deliver up possession of the property situate at Parish Land in the parish of Saint Philip to the Claimant on or before the 31st day of July, 2016.
2. Further that the First and Third Defendants, on vacating the property, shall not remove any items, documents and property from the said property save and except their personal effects.
3. That the estate of the First Defendant acting herein by the said Shirley Scantlebury provide a statement of account to the Court within seven days of this order of any monies, items or properties held on behalf of the estate of Cecil Eugene Lucas, deceased during

the period 19th April 2012 to the date of the First Defendant's death (23 May 2014).

4. That the Fourth Defendant provide a statement of account to the Court within seven days of this order for any monies, items or properties held on behalf of the estate of Cecil Eugene Lucas, deceased from the date of the First Defendant's death until delivery up of possession to the Claimant.
5. That the Second Defendant provide a statement of account to the Court within seven days of this order for any monies, items or properties held on behalf of the estate of Cecil Eugene Lucas, deceased from the date of the First Defendant's appointment as agent for the First Defendant until the revocation of the power of attorney in his favour on the 19th day of April 2012.
6. That the Third Defendant do pay to the Claimant damages to be assessed for her use and occupation of the said property from the 19th day of April 2012 until delivery up of possession to the Claimant.
7. **And it is further ordered that:**

8. The application for a declaration that the general Power of Attorney dated the 17th day of February 2008 and recorded on the 20th day of October 2008 is null and void is refused.
9. The Claimant shall have his costs of the application against the First, Second, Third and Fourth Defendants to be assessed if not agreed.

William J. Chandler

High Court Judge