

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

CV No. 0977 of 2014

BETWEEN:

VICTORINE PATRICIA GARVEY

CLAIMANT

AND

JULIA ANNE CLARKE

DEFENDANT

(Executrix of the Estate of Peter Athelston Wilkinson deceased)

Before the Honourable Madam Justice Michelle Weekes, Judge of the High Court

Date of Oral Decision: 2019: 14 February

Mr. C.E. Lashley Q.C. in association with Ms. Honor Chase for the Claimant

Mr. Ralph Thorne Q.C. for the Defendant

ORAL DECISION

INTRODUCTION

[1] On 18 June 2014 by Fixed Date Claim Form, Victorine Garvey claimed as a creditor against the Defendant Executrix of the estate of Peter Athelston Wilkinson:

- (1) **An order for the administration of the real and personal estate of Peter Wilkinson, deceased with all necessary and proper accounts, directions and enquiries to be carried out under the direction of the Court.**

- (2) **An order that the Defendant as Executrix of the above named deceased do pay the Claimant the sums of \$75,000.00 and \$27,618.75 respectively pursuant to the Order of the Court dated the 1st July 2011 with interest on the said sums at the rate of 6% per annum from the 30th September 2011 until payment.**

[2] The Fixed Date Claim Form was supported by the Affidavit of Victorine Garvey filed on 18 June, 2014.

[3] In summary, she deposed that at the time of making his will on 6th January 2012 the deceased knew of an outstanding judgment of the High Court dated the 1st July 2011.

[4] In that decision Chandler J. ordered:

- (1) That the respondent do pay to the Applicant a lump sum of \$75,000.00 requesting her one half share or interest in the property situated at Bush Hall, St. Michael on or before the 30th day of September 2011.
- (2) That the respondent do pay the Applicant the sum of \$27,618.75 representing her share of the rents on before the 30th day of September 2011.

[5] After hearing oral submissions from both counsel this Court ordered:

- (1) That the Defendant as Executrix be restrained from distributing the estate of the deceased Peter Wilkinson until further order.
- (2) That the Defendant do investigate the status of the appeal to the Court of Appeal in High Court Suit, No. 458 of 2008 entitled **Victorine Garvey v. Peter Wilkinson** on or before 31 October 2014.

- [6] The matter was adjourned until 25 November 2014 when the Court heard further submissions from both Counsel.

Claimant's Oral Submissions

- [7] Mr. Lashley stated that the appeal was filed on 13 July 2011 and had not been prosecuted. He submitted that an appeal does not stay the proceedings and that this was a principle of general application. He also stated that Chandler J's decision had been delivered in 2011 and that the Court had made a determination in respect of the matrimonial property.
- [8] He further submitted that the will Peter Wilkinson made in 2012 flew in the face of the Court's decision.
- [9] He added that the Executrix applied for Letters Testamentary and these were granted in 2013. A letter was written to the Executrix informing her of the decision made by the Court but a response was never received. Mr. Lashley submitted that this amounted to contempt of Court. In his opinion the Appeal had been abandoned and he was applying for an order in terms of the application filed by the Claimant.

Defendant's Oral Submissions

- [10] Mr. Thorne submitted that the present application was misconceived for a number of reasons. In his view, the appeal was filed, never came on for hearing and was awaiting further expedition and that counsel for the Claimant should take the initiative and have the appeal struck out.

[11] He considered that with Peter Wilkinson's death the action died. He also submitted the present suit should be against the estate of Peter Wilkinson and that the Defendant had been exposed to a debt that is not hers.

[12] In his view, to ask for summary judgment was unjust and he requested time to file a Defence.

Claimant's Response to Defendant's Oral Submissions

[13] Mr. Lashley stated that in accordance with **Part 62.19 of the Supreme Court (Civil Procedure) Rules 2008 (the CPR)** an appeal does not operate as a stay of proceedings. He submitted that the Executrix stands in the shoes of the testator and that the application recites that it was filed in the estate of Peter Wilkinson, that the Executrix was not sued in her individual capacity and that Letters Testamentary had been granted to Julia Anne Clarke.

[14] He stated that Chandler J's decision was given in 2011 and he again requested judgment in terms of the order submitted.

[15] After hearing the submissions this Court adjourned for decision.

DISCUSSION

[16] Subsequent to that adjournment, it has come to this Court's attention that the Court of Appeal delivered a decision relating to the aforementioned appeal against the decision of Chandler J.

[17] The Court of Appeal struck out the appeal for excessive delay in the prosecution thereof.

[18] Mason JA stated at paragraph 20 of the decision:

“In our judgment and contrary to Mr. Thorne QC’s submission to allow the action to continue would involve a substantial risk that justice would not be done”.

[19] The Court of Appeal delivered its decision fully apprised of the fact that Peter Wilkinson had died and that an Executor had been appointed to administer his estate.

[20] So Chandler J’s decision still stands and the Claimant is a creditor of the deceased’s estate.

[21] In addition, the Court notes **Rule 67.2 (2)** of the **CPR** which provides that:

“Any Executor or administrator of the relevant estate or trustee of the relevant trust who is not a Claimant must be a defendant to the claim”.

[22] This Court therefore considers that the application has been properly intituled “Julia Anne Clarke Executrix of the Estate of Peter Athelston Wilkinson deceased”.

[23] In addition written the final paragraph of the Fixed Date Claim Form it is clearly stated that:

“The Defendant Julia Ann Clarke is sued as the Executrix of the estate of Peter Athelston Wilkinson”.

DISPOSAL

[24] In the circumstances the Court grants the following orders:

- (1) An order for the Administration of the real and personal estate of Peter Athelston Wilkinson, deceased with all necessary and proper accounts, directions and enquiries to be carried out under the direction of the Court.
- (2) An order that the Defendant as Executrix of the above named deceased do pay the Claimant the sums of \$75,000.00 and \$27,618.75 respectively pursuant to the Order of the Court dated the 1st July 2011 with interest on the said sums at the rate of 6% per annum from 30 September 2011 until payment.
- (3) Costs to the Claimant to be agreed or assessed and to be paid from the deceased's Peter Wilkinson's estate.



Michelle Weekes
Judge of the High Court