

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA
REGULAR JURISDICTION

2019-HC-DEM-CIV-SOC-110

BETWEEN:

DAYANAND PRASAD trading under the name and style of LT Enterprise Guyana with registered office situate at Lot 3F Public Road, Success, East Coast Demerara, Guyana.

Claimant

-and-

1. JOY GILGEOURS
2. ESTER CHUNG in their capacities as the Administrators with Will annexed De Bonis Non of the Estate of *ALBERT ABEL BASIL CHARLES* also known as *ALBERT BASIL CHARLES*, deceased, Letters of Administration with Will annexed De Bonis Non having been granted to them by the High Court of the Supreme Court of Judicature on the 24th day of January, 2011 and numbered 24 of 2011.
3. AVRIL BLACKETT, in her capacity as the Administratrix of the Estate of *CLIFFORD ROMEO ALEXANDER BLACKETT*, deceased, Letters of Administration numbered 2018-HC-DEM-CIV-EST-590 having been granted to her by the High Court of the Supreme Court of Judicature on the 3rd day of September, 2018.

Defendants
Jointly and Severally
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The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Parmanand Mohanlal for the Claimant/ **Respondent**

Mr. Lyndon Amsterdam for the First Named Defendant/ **Applicant**

Ms. Beulah Williams for the Second Named Defendant

Mr. Hewley Griffith for the Third Named Defendant

Delivered February 1st 2021

DECISION

BACKGROUND

Albert Abel Basil Charles also known as Albert Basil Charles died on November 9th 1990, testate and Curtis Chung and Henry White Cameron were appointed the Executors of his Estate, that is, the Estate of Albert Abel Basil Charles also known as Albert Basil Charles, deceased [hereinafter referred to as the **Estate**], however, Curtis Chung and Henry White Cameron died without applying for Probate for the Estate.

Letters of Administration with Will annexed of the Estate was granted to Rebecca Charles Shaw and Clifford Charles Blackett, in his capacity as the duly constituted attorney of Beldora Veronica James and Hannah Louise D’Anjou McDavid on May 8th 2002.

The Deeds of Power of Attorney of Beldora Veronica James and Hannah Louise D’Anjou McDavid appointing Clifford Charles Blackett their duly constituted attorney were revoked on May 22nd 2003 and Rebecca Charles Shaw died on November 20th 2007 leaving part of the Estate unadministered.

Letters of Administration with Will annexed De Bonis Non of the Estate were then granted to Clifford Charles Blackett, Joy Gilgeours, (the First Named Defendant herein; hereinafter referred to as the **FND**), and Esther Chung, (the Second Named Defendant herein; hereinafter referred to as **SND**) on January 24th 2011.

Clifford Charles Blackett entered into an agreement of sale and purchase, individually and in his capacity as one of the Administrators of the Estate, with Dayanand Prasad, the Claimant herein, on February 27th 2017, purporting to sell to Dayanad Prasad certain lands that forms part of the Estate (hereinafter referred to as the **Contract**).

Clifford Charles Blackett died on January 15th 2018 intestate and Letters of Administration of the Estate of Clifford Charles Blackett, deceased was granted to Avril Blackett, (the Third Named Defendant herein; hereinafter referred to as the **TND**).

The Contract was not performed and as a result the Claimant instituted this Claim essentially seeking an order from the Court compelling performance of the Contract.

The pleadings are closed and pursuant to Case Management Conference orders discovery has been completed and all parties have filed their witness statements.

On October 19th 2020, the FND filed an application seeking summary judgment dismissing the Claim against her on the ground that it has no real prospect of success against her or at all, since the Contract as entered cannot bind the Estate.

The FND has also raised the issue that the Claim, on the face of the rubric, was instituted against her personally and there can be no remedy in the circumstances of this Claim against her personally and therefore on this basis there is no prospect of success against her.

ISSUE I

Whether the Claim is instituted against the FND personally.

FACTS & ANALYSIS

The name of the FND appears alone without any further words describing any special capacity of the FND.

The words describing the SND states “*in their capacities as the Administrators* ...” and further goes on to describe the document bestowing such capacities.

Though the rubric could have been laid out in clearer terms, it undoubtedly was intended that the Claim be instituted against the FND in her capacity as an Administratrix of the Estate.

CONCLUSION

The Claim was not instituted against the FND personally.

ISSUE II

Where multiple persons are appointed Administrators of an Estate, can one Administrator, acting without the consent of the others contractually bind the Estate.

LAW

Fountain Forestry Ltd v Edwards and another [1974] 2 All ER 280.

Sneesby v Thorne [1855] 7 De GM & G 399.

Section 18 (3) of the Deceased Persons Estates' Administration Act; CAP

12:01 of the Laws of Guyana.

Section 42 of the Deceased Persons Estates' Administration Act; CAP 12:01.

FACTS

In addition to the facts stated in the “Background”, Albert Abel Basil Charles also known as Albert Basil Charles, deceased, by his last Will and Testament dated April 5th 1990 [hereinafter referred to as the **Will**] specifically made provisions for all of his real property situate at Plantation Coverden, which includes the property that is the subject of the Contract.

He specifically directed in the Will that the area rented to Alliance Pig and Poultry Company must not be sold but rather the lease should be determined and the property returned to his holdings and all of the real property in Plantation

Coverden is to remain undivided and developed and maintained, with specific shares devised to specific beneficiaries.

The Contract specifically provides;

“AND WHEREAS the Vendor warrants that he will obtain the relevant consent from the other heirs/ beneficiaries of the said Estate or a Court Order to facilitate the completion of the sale to the Purchaser.”

ANALYSIS

There is no statutory provision contained in the Laws of Guyana concerning this issue.

Counsel for the Claimant has sought to persuade the Court that **Section 42 of the Deceased Persons Estates’ Administration Act** by its terms permits any executor to sell all of the property of an Estate.

Section 42 of the Deceased Persons Estates’ Administration Act, in relevant part, provides;

“ ... every executor and administrator shall have full power to sell all the property ... of the deceased and to transport any immovable property for the purpose of the realisation and distribution of the estate.”

The Court rejects this submission, the word “*every*” cannot be equated or replaced with the word “*any*” in the circumstances and context in which it is used in the section.

The section, in the context used, simply sets out the power of sale of executors and administrators without pronouncing on the as to whether a single executor or administrator, where there are multiple executors and administrators, has to power to act without the concurrence of the other executors and administrators.

The section, however, does bear relevance to this matter, though not in the context of this issue.

The section clearly gives executors and administrators the power to sell “*If no provision be made in the will of the deceased to the contrary*” and it is patently clear in the Will that the deceased did not desire the property at Plantation Coverden to be sold, therefore any purported sale of the Estate’s property situate at Plantation Coverden by the Administrators could not be done in the manner undertaken by Clifford Charles Blackett.

Further, **Section 18 (3) of the Deceased Persons Estates’ Administration Act** provides;

“Where there is a last will the administrator or administrators shall, subject to the terms and conditions of his or their appointment, administer the estate in accordance with the terms and provisions of the will.”

This not only enforces the principle that the Estate must be administered in accordance with terms and provisions of the Will, it also clearly demonstrates, by the use of the words “*administrator or administrators*”, that where there are multiple administrators they must act in concurrence.

Counsel for the Claimant cited the case of **Fountain Forestry Ltd v Edwards and another** in support of his submission that the sale of Estate property by one of several Administrators is binding on the Estate, however, the Court in that case specifically chose not to pronounce on that issue. At page 285 (f), Brightman J states;

“It appears to me that there is no decisive authority which answers the question whether one administrator, acting without his co-administrator, has the same power of disposition as an executor acting without the concurrence of his co-executor.”

Brightman J then proceeded to decide that case on “*the assumption*” that an administrator had the same power of disposal as an executor by virtue of **section 2 of the Administration of Estates Act 1925**.

It must also be noted that the power of an executor referred to in that case was governed by statute in that jurisdiction (England), specifically, **section 2 of the Administration of Estates Act 1925**, law which was neither received or enacted in Guyana.

In that case one executor purported to enter into a contract for sale of freehold property of a deceased’s Estate, on behalf of himself and the co-executor, whereby he expressly signed on behalf of himself and the co-executor when he had no authority to sign as agent for the co-executor.

The case was decided based on the fact that he had no authority to act as agent for the co-executor.

The case of **Sneesby v Thorne** is relevant to the facts in the case at bar. In that case, one executor entered into a contract believing that he had the concurrence of the co-executor who was overseas at the time.

The Court held that to enforce the contract against the co-executor and the Estate would be to enforce a contract against the Estate which the executor did not intend.

Similarly, in this case, it is obvious from the fact that Clifford Charles Blackett in signing the Contract stated in clear terms that he was going to obtain the consent of the heirs/ beneficiaries of the Estate, two of whom are the FND and SND, that his intention was to not bind the Estate unless this was obtained.

CONCLUSION

Implicit in the words of **Section 18 (3) of the Deceased Persons Estates' Administration Act**, the law in Guyana is that where there are multiple administrators they must act in concurrence.

Of course there will be instances where this may not be possible, such as an Administrator refusing to act, and in those cases an Administrator/s can apply to the Court and a Court can make such orders as it deems fit.

Further, the Administrators are statutorily bound to carry out the terms and provisions of the Will and the terms of the Will clearly preclude sale of the

property at Plantation Coverden, so to effect such a sale, at the very minimum the consent of all of the beneficiaries would have to be obtained.

In addition to this it is clear that Clifford Charles Blackett only intended to bind the Estate if the consent of the heirs/ beneficiaries of the Estate was obtained.

OTHER ISSUES CONSIDERED

Counsel for the Claimant has submitted that the Claimant is asserting that the FND and SND verbally communicated to him that they would perform the contract as the remaining Administrators of the Estate and as such the Contract has been ratified and is enforceable.

The FND and SND have both denied this assertion and in fact a letter dated September 14th 2018 penned by Mr. Rabindra Rooplall, Attorney-at-Law, acting on behalf of the Claimant does not seem to support this assertion.

Nevertheless, whether this occurred or not is irrelevant for two reasons; **firstly**, such a ratification would have to be evidenced in writing and **secondly** as stated earlier the sale as evidenced by the Contract is repugnant to the terms and provisions of the Will.

Despite the fact that this application was brought by the FND only, the findings of the Court clearly demonstrates that there would similarly be no cause of action and therefore prospect of success against the SND or the TND and therefore the Claim will necessarily have to be dismissed against all of the Defendants.

It must be stated, however, that it seems that the Claimant may have a Claim against the TND for the warranty of authority held out and ergo for the sum he claims was deposited on the signing of the Contract.

In the circumstances the Claim is dismissed against the all of the Defendants together with costs against the Claimant to the First Named Defendant in the sum of \$200,000.00 and to the Second Named Defendant in the sum of \$50,000.00 and no order as costs with respect to the Third Named Defendant.

Justice N. A. Singh