[2014] JMCA Civ 53

JAMAICA

IN THE COURT OF APPEAL

SITTING IN LUCEA IN THE PARISH OF HANOVER

RESIDENT MAGISTRATES' CIVIL APPEAL NOS 24-29/2013

BEFORE: THE HON MR JUSTICE PANTON P
THE HON MISS JUSTICE PHILLIPS JA
THE HON MR JUSTICE BROOKS JA

BETWEEN	**LORNA TAYLOR (Administratrix of estate Wilbert Taylor dec'd)**	**APPELLANT**
AND	**ERIC WILLIAMS**	**1ST RESPONDENT**
AND	**MARVALYN STEPHENS**	**2ND RESPONDENT**
AND	**ESMIN LEWIS**	**3RD RESPONDENT**
AND	**OWEN ROBINSON**	**4TH RESPONDENT**
AND	**MILLICENT CLAYTON**	**5TH RESPONDENT**
AND	**CALVIN JOHNSON**	**6TH RESPONDENT**

Ronald Paris instructed by Paris & Co for the appellant

Ms Delores Thompson for the respondents

25 November and 19 December 2014

PANTON P

[1] I have read, in draft, the reasons for judgment written by my learned brother Brooks JA. I agree with his reasoning and conclusion and have nothing useful to add.

PHILLIPS JA

[2] I too have read, in draft, the reasons for judgment written by Brooks JA. I agree wholeheartedly with his reasons and conclusion.

BROOKS JA

[3] On 26 March 2013, Her Honour Miss Carolyn Tie, Resident Magistrate for the parish of Hanover, did an unusual thing. She non-suited the claimant, Miss Lorna Taylor, who sought to recover possession of various parcels of land from Mr Eric Williams and each of several other persons (the respondents). The learned Resident Magistrate also non-suited the respective counter-claims of the respondents. The respondents each sought orders of specific performance of agreements to purchase the respective parcels of land, the subject of Miss Taylor's claims.

[4] Miss Taylor has appealed against the learned Resident Magistrate's orders in respect of her claims. The respondents have, however, not appealed the decisions in respect of the counter-claims. Mr Eric Williams was mentioned in the heading of this case, but in fact, there was no appeal filed challenging the order made in respect of the claim against him.

[5] The issue in this appeal is whether there was sufficient evidence for the learned Resident Magistrate to have given judgment in the case. Mr Paris, on behalf of Miss Taylor, submitted that there was, and that not only did the learned Resident Magistrate err in deciding that there was not, she also erred in failing to give judgment for Miss Taylor.

[6] The issue in dispute turned on whether Mr Horace Taylor, Miss Taylor's brother and predecessor as personal representative of their deceased father's estate, had bound the estate when Horace entered into sale agreements with each of the respondents. Although a question of law, it depended on a specific issue of fact, namely, whether Horace was the qualified administrator of the estate when he entered into the agreements.

The background facts

[7] Their father, Mr Wilbert Taylor was the proprietor of approximately 4½ acres of land situated at Haughton Court in the parish of Hanover. The land is comprised in a title registered under the Registration of Titles Act. It is this land, which is the subject of this case. Wilbert died intestate on 13 March 1976.

[8] It is apparent that at some point after Wilbert's death, Horace secured a grant of letters of administration for the estate. The respondents produced written agreements showing that between 2003 and 2005, Horace purported to sell various parts of the land to them. Some parcels were fully paid for, whilst others only had partial payment. Horace, however, was, after a while, nowhere to be found and some of the respondents asserted that payments were stymied because of his disappearance.

[9] It is regrettable that neither party sought to provide evidence concerning the grant to Horace. All that was provided, in this regard, was a copy of a notice, dated 24 January 2006, which indicated that Miss Taylor was seeking to have the Supreme Court

revoke the grant made to Horace. Miss Taylor apparently succeeded in her quest because on 18 August 2008 she was granted letters of administration in Wilbert's estate.

[10] While pursuing the grant of administration, Miss Taylor had her attorney-at-law write to each of the respondents, by letter dated 9 October 2007, advising them that the grant to Horace had been revoked and that she intended to "take legal action to recover the lands purportedly sold by Mr Horace Taylor". The plaints in these cases were filed on 12 April 2011.

The findings in the court below

[11] In her reasons for judgment, the learned Resident Magistrate identified the main issue for resolution as being, "whether on a totality of the evidence the defendants have trespassed on the land and therefore the plaintiff [Miss Taylor] is entitled to recover possession of the property" (page 84 of the record). That issue depended on whether or not Horace, in entering into the various sales agreements, bound Wilbert's estate.

[12] She relied on an established principle of law to rule that Miss Taylor could not succeed. The principle is that grants of administration are not rendered void from the outset when they are revoked and that any action taken by the administrator while he acts as such is valid. The learned Resident Magistrate concluded the issue thus:

> "…if it is that Horace Taylor entered into the various sales agreements whilst he were the administrator, he would be clothed with the character of legal personal representative

> and would enjoy all the powers of a legal personal representative until the grant of administration is revoked." (Page 87 of the transcript)

[13] In the absence of any evidence as to the period for which Horace was the administrator, the learned Resident Magistrate felt that she could not "accede to the plaintiff's application for recovery of possession on the grounds of trespass, given the…strong likelihood that [Horace] entered into the sale agreements whilst he was administrator" (page 86 of the record). The learned Resident Magistrate rejected Miss Taylor's contention that as the agreements did not indicate that Horace was acting in the capacity of administrator, he could not bind the estate. She found that "equity would be swayed by the substance and not the form" (page 86 of the record).

[14] The absence of evidence of the period for which Horace was administrator proved to be a two-edged sword. The learned Resident Magistrate, for the very reason that she did not know whether Horace was the administrator when he entered into the agreements, found that the court was left "stifled in making a determination as regards the claim and counter-claim" (page 88 of the record).

The appeal

[15] Mr Paris argued three bases on which the learned Resident Magistrate's decision ought to be set aside. They are set out in his written skeleton submissions:

> "a. The Learned Resident Magistrate is obliged by law and duty bound to make a determination of the issues brought before the Court by the parties for a decision to be made by the Court and the Court cannot abdicate that function on the basis that neither party has

produced conclusive evidence on crucial facts in issue and therefore non-suit both parties.

b. The Learned Resident Magistrate ought ***not*** to have non-suited...Lorna Taylor because the evidential burden was always on the Respondents to establish the fact of and the date of the Grant of Administration of the Court in favour of Horace Taylor by tendering into evidence a certified copy of the Grant of Administration. Their sole Defence to the claim was that they had purchased land from the Administrator of the estate and in the absence of documentary proof viz. the actual Order of the Court making that appointment the Learned Resident Magistrate fell into error when she took that unsubstantiated evidence into account in non-suiting Lorna Taylor on whom that evidential burden never rested. The weight of the evidence presented to the Court was that Lorna Taylor was the duly appointed Administrator of her father's estate to whom the Respondents were strangers who did not have any justiciable right to be in possession of the land.

c. The Learned Resident Magistrate fell into error when although acknowledging the fact that Horace Taylor did not enter into the Agreements for Sale with the Respondents as the Administrator of his father's estate she nevertheless held against the weight of evidence presented to the Court by Lorna Taylor that such an omission was not fatal to the Respondents' Defence and Counter Claim to that effect as indeed it was."

These issues will be considered in turn.

The obligation to make a decision

[16] Mr Paris stressed the point that there was sufficient evidence on which the learned Resident Magistrate could have made a decision and that she should have done so.

[17] It is always desirable that tribunals make a decision one way or the other in respect of the evidence adduced before them. This point was pithily made in the judgment of Lewis JA in **Madgelin Griffiths v Diamond Mineral Water Co Ltd and Others** (1964) 8 JLR 567 when he said:

> "A judge must give a decision on the issues in the case."

That point was made in an appeal from the decision of a Resident Magistrate to non-suit a plaintiff, who was a passenger in a two-vehicle collision, because the magistrate "was unable to make up his mind which vehicle was to blame".

[18] It is noted, however, that section 181 of the Judicature (Resident Magistrates) Act does allow a Resident Magistrate to enter a non-suit if he or she is not satisfied that the evidence is sufficient to support one side or the other. The learned Resident Magistrate relied on the section in making her decision in this case. The section states:

> "181. The Magistrate shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the Court."

[19] Whether or not section 181 should be applied, must therefore, depend on the circumstances of each case. Whereas it is unlikely to be applicable in a negligence claim, such as a motor vehicle collision, the possibility exists for it to be applied in other cases. Whether it was properly applied in this case will be assessed below.

The evidential burden

[20] Mr Paris then argued that based on the evidence that Miss Taylor was the administratrix of the estate of which the land formed a part and the fact that the respondents were occupying that land, the evidential burden shifted to them to show the basis for that occupation. He submitted that they had failed to do so and therefore Miss Taylor was entitled to judgment. Learned counsel did not supply any authority for this aspect of his submissions.

[21] It is to be noted, however, that it was during the presentation of Miss Taylor's case that Horace's prior appointment as the administrator of the estate and the fact of his agreements with the respondents, were revealed. Miss Taylor's witness and attorney-in-fact, her brother Mr Locksley Taylor, testified that he was aware that Horace had secured letters of administration and had been offering parcels of the estate land for sale. He said that he was also aware that Miss Taylor was seeking to have the grant of administration to Horace revoked. In addition to that evidence, the letter of 9 October 2007, mentioned above, was tendered through Locksley.

[22] In light of that evidence and the principle of law, which will be more fully explored below, concerning the status and authority of an administrator while he acts in that capacity, it would be incorrect to say that the evidential burden shifted to the respondents. It would be for Miss Taylor to show that the estate was not bound by Horace's actions. That will be assessed in the next issue raised by Mr Paris.

The effect of Horace's actions

[23] The point that Mr Paris repeated constantly in his submissions was that in the absence of any evidence that Horace had acted in his capacity as administrator of the estate, he cannot be found to have bound the estate. In supporting his submission, learned counsel pointed to the various agreements for sale and the various receipts for payments that Horace had signed. These documents, Mr Paris pointed out, did not state that Horace acted as administrator for the estate. Learned counsel argued that it could not be inferred that Horace was acting as administrator of the estate merely because it was estate property with which he was dealing.

[24] If the estate has not been bound, Mr Paris argued, the respondents have no answer to Miss Taylor's claim as the administratrix of the estate. He submitted that they would have no claim to the land and should be required to vacate it, as she has claimed. He relied on **Fountain Forestry Ltd v Edwards and Another** [1974] 2 All ER 280 in support of his submissions.

[25] Mr Paris candidly accepted that if it were proved that Horace had entered into the various sale agreements in the capacity of administrator of the estate, the estate would have been bound by those agreements. This would have been so, learned counsel accepted, despite the subsequent revocation of Horace's appointment. Learned counsel's concession was in recognition of the principle established in **Hewson v Shelley** [1914] 2 Ch 13, that the estate would be bound in such circumstances, despite

the subsequent revocation of the grant or even if there was no jurisdiction to make the grant.

[26] The question, therefore, was, in what capacity did Horace act when he purported to sell the various parcels to the respondents. The learned Resident Magistrate found that the estate would have been bound if Horace were the administrator at the time that he entered into the sale agreements. She held that the absence of the mention of his capacity in the documents would not have prevented that result. She held that equity would have looked at the substance of the agreement and not the form.

[27] The difficulty, the learned Resident Magistrate found with both Miss Taylor's case and those of the respective respondents, is that there was no evidence as to the period for which Horace was the administrator. As mentioned above, that omission caused her to non-suit them all.

[28] The main support of Mr Paris' submissions is not well founded. The relevant principle on the point is that the administrator who deals with estate property is presumed, in the absence of evidence to the contrary, to be acting in his capacity as administrator. The principle may be found in the decision of **In re Venn and Furze's Contract** [1894] 2 Ch 101 where Stirling J said at page 114:

> "It appears to me that I have the high authority of Lord *Cairns* and Lord *Cranworth* for saying that **where a person who fills the position of an executor is found selling or mortgaging part of his testator's estate, he is to be presumed to be acting in the discharge of the duties imposed on him as executor**, unless there is something in the transaction which shews the contrary; **and further,**

> **that the contrary is not made out merely from the circumstance that the conveyance or mortgage does not purport to be executed by him in that capacity**." (Emphasis supplied)

[29] The case of **Venn and Furze's Contract** was elegantly summarised by Romer LJ in **Parker v Judkin and Others** [1931] All ER Rep 222 at page 228 A-C:

> "**Re Venn and Furze's Contract**, one of the cases to which MAUGHAM, J, referred in his judgment, the facts were that the vendor of leaseholds derived his title through a conveyance made by one T. T was in fact an executor, but had not purported to assign the leaseholds as executor; he had, indeed, assigned them as beneficial owner. STIRLING, J, held that the abstract showed a good title, and the purchaser could not insist upon a requisition asking the vendor to show that the executor was discharging his duties when he was selling - in other words, that he was selling as executor. **He was entitled to assume that he was selling as executor although he had sold as beneficial owner**. That case was followed by **Re Henson, Chester v Henson** [[1908] 2 Ch 356, 364] a decision of SWINFEN EADY, J." (Emphasis supplied)

[30] In applying that principle to this case, it may be presumed, if the grant to Horace existed at the time that he purported to sell these parcels of land, that he did so in his capacity as administrator. He, in fact, purported to act as executor in the sale to Ms Esmin Lewis and sought to produce documents to that effect. The contents of the documents were, however, not placed before the learned Resident Magistrate, who did not place any weight on the clear hearsay. She stated at page 85 of the record that "the court does not know what documentation [Ms Lewis] saw to have arrived at [the conclusion that Horace was purporting to sell as the administrator]".

[31] Although she would have been correct in saying that it would be the substance and not the form that would hold sway in these circumstances, the learned Resident Magistrate in this case would have been speculating if she had found that Horace was in possession of a valid grant when he purported to sell the lots. It seems that an application for the grant was first filed in the year 2000. It would also seem that it would have been revoked anytime between late 2006 (the date of the hearing of the application to revoke the grant) and the middle of 2008 when Miss Taylor was appointed. There is no evidence, however, concerning the actual date that the grant was made or the date that it was revoked. The period of its existence could have been any time within the continuum just mentioned.

[32] The documents evidencing Horace's actions are all dated between 2003 and 2005. The learned Resident Magistrate, in light of the fact that the required evidence could have been so easily acquired and produced, cannot be faulted for refusing to leap into speculation in order to find that the respondents were in fact purchasers from the estate of Wilbert Taylor.

[33] This is not a situation such as existed in **Griffiths v Diamond Mineral Water Co**, where a decision had to be made on the evidence presented. This was a case where, as the learned Resident Magistrate lamented:

> "The evidence in this regard however is insufficient for the court to make a conclusive determination that Horace Taylor was acting as Administrator when he entered into the sales agreements with the defendants. This was most unfortunate as this was a document which the defence could have easily

> obtained and presented in evidence." (Page 86 of the record)

[34] **Fountain Forestry**, on which Mr Paris relied, is also a case with very different circumstances from the present case. Mr Paris argued that **Fountain Forestry** is authority for the principle that the capacity in which the administrator acts must be stated in order to bind the estate. The case, with respect to learned counsel, does not go so far. In that case, one of two personal representatives of a deceased man's estate purported to enter into an agreement on behalf of both personal representatives to sell land, forming part of the estate. When the second personal representative refused to approve the deal, the purchaser sought specific performance. It was held that even if one of several personal representatives was able, acting alone, to bind the estate, that was not the intention in that transaction, and therefore the estate could not have been bound. It was evident in that case that the sale was to have been conducted by the personal representatives of the estate, acting together. **Fountain Forestry** cannot assist Miss Taylor.

Conclusion

[35] The learned Resident Magistrate, although taking an unusual course, cannot be faulted for non-suiting both Miss Taylor and the respondents. The evidence of the time of Horace's grant could have been easily acquired and produced if the parties were so inclined. The learned Resident Magistrate should not have been required to guess the answer. Based on the reasoning that the estate could have been bound, she was right to leave the situation open for the litigation to be properly pursued.

PANTON P

ORDER

1) The appeal is dismissed.
2) The judgment of the Resident Magistrates' Court delivered herein on 21 January 2014 is affirmed.
3) Costs to the respondents in the sum of $15,000.00.