



[2016] JMSC Civ. 74

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2013HCV02518

BETWEEN	ESTATE RUPERT SAMMOTT	1ST CLAIMANT
AND	NARVILLE SAMMOTT	2ND CLAIMANT
AND	ROHAN SAMMOTT	DEFENDANT

TRIAL IN OPEN COURT

Mr. Andrew Irving for the Claimants

Mr. Ricardo Sandcroft for the Defendant

Heard: 2nd and 3rd November 2015, 17th February 2016 and 3rd May 2016

Will - Grant of Letters of Administration - Declaration sought for revocation of Grant - Effect of misrepresentation in application for Grant of Administration – Lost title application – Effect of misrepresentation in application

BERTRAMLINTON J (AG.)

Background

[1] Rupert Sammott was a businessman and an aspiring politician, he took ill on the evening of the 19th August, 2000, was taken to Hospital, where he died in the early morning of the next day 20th August, 2000. In August 2012, Rohan Sammott, his only child was given a Grant of Administration in his Estate having

applied to the Supreme Court of Jamaica on the basis that the deceased died Intestate. Rohan Sammott in furtherance of the Grant made a “lost title application” to the Registrar of Titles for a property, the main asset in the estate and was successful in having the original Title Registered at Volume 1091 Folio 647 cancelled and a new one issued to him registered at Volume 1446 Folio 603.

The Claimants’ Case

[2] The claimants say that the defendant knowingly made false and misleading statements to the Supreme Court in the application for the Letters of Administration and to the office of titles in respect of the cancellation of the original Title and the issuing of a new one to himself.

The claim against the defendant is for;

1. *“A declaration that the legal and beneficial ownership of the property situate at Villa Road, in the Parish of Manchester formerly registered at Volume 1091 Folio 647 is held by the First Claimant and shall be administered under the Last Will and Testament of the First Claimant filed in Suit No.2003/P00100.*
2. *A declaration that the Letters of Administration granted in Suit No. 2002P692 on the 29th August,2012 by the Supreme Court to the defendant in respect of the Estate of Rupert Sammott deceased is invalid and an order that the said Letters of Administration be revoked or set aside.*
3. *A declaration that the Registered Title for the property situate at Villa Road in the Parish of Manchester now registered at Volume 1446 Folio603 be cancelled and a new Title issued in the name of Rupert Sammott*
4. *An (sic) order that Narville Sammott be authorized to continue the application for Grant of Probate in respect of the Estate of Rupert Sammott in respect of suit No. 2003/P00100.*
5. *An Injunction restraining ROHAN SAMMOTT or his agents for (sic) interfering with the assets of the estate, taking steps to dispose of the assets of the estate or entering up (sic) any premises held legally or beneficially by the estate of Rupert Sammott.*
6. *An injunction restraining any dealing or change of ownership in respect of certificate of title registered at Volume 1446 Folio 603 of the register book of title until final determination of this claim.*
7. *Such other relief that this Honourable Court shall deem fit and appropriate.*

[3] The claimants assert that the defendant knew there was a will, because he had been told of it by both his aunt Nerrissa Hamilton and his Uncle Narville Sammott. Despite this knowledge he proceeded to make false declarations to have a grant of Administration issued to him. Three witnesses gave sworn testimony for the claimants, Narville Sammott, the brother of the deceased, Sharan Salmon, one of the persons named as a witness on the document proffered as the Last Will and testament of Rupert Sammott, and Nerissa Hamilton the deceased's sister.

Evidence was also tendered via Notices of intention to tender in evidence Hearsay statements made in documents filed

May 2, 2014 -

July 2, 2014,

July 8, 2014 and

April 28, 2015.

[4] The main witness, Mr. Narville Sammott's witness statement and the exhibits were admitted into evidence. Among other things he spoke about seeing the will his brother had made, and the fact that there was an application pending for Probate. When asked why his name was not on the original title for the premises even though he was claiming to be a joint owner and had put money towards its acquisition, his response was that he had trusted his brother would take care of it since he was always able to rely on him.

[5] He said, the executor that had been appointed in the will; Mr. Hanif Persaud had died sometime in 2009, and the process of probate was being dealt with by a lawyer, Ms Smith. Mr. Sammott was able to recognize cheques that his brother had signed and spoke of the handwriting report that had been done to authenticate the signature on the will by Corporal Williams, the Forensic

Document Examiner employed to the Criminal Investigation Branch of the Jamaica Constabulary force.

- [6] In cross examination, quite notably, he was challenged as to the monetary contribution he said he made to acquire the premises, he insisted that he had the copy of the withdrawal slip and maintained that the property was his, based on both his contribution and his brother's will. He was also adamant that the will was genuine.
- [7] The next witness was Ms. Sharan Salmon, of New Green district who worked in the business operated by the deceased. She said in her witness statement, which was accepted as her evidence, that the testator called both her sister and herself who were at work and requested that they be present when he signed his will. She says she saw when he signed and that both she and her sister signed the document in witness of this.
- [8] In cross examination she was consistent in her account that the will was executed in her presence by the testator and on how she came to sign the document. She said that her sister was available and it was the claimant's lawyer who had asked her to give a statement about the events of that day.
- [9] Mrs. Nerissa Hamilton, the sister of the deceased, was sworn and said that she had told the defendant that there was a will. She had found it among her brother's things in at his business place after his death. .
- [10] At paragraph 4 of her Witness Statement she pointed out that her deceased brother, Rupert Sammott had told her that his relationship with his son was not good and that he was disappointed that his son had not pursued tertiary education and had gone to New York and had associated himself with the wrong group of persons and found himself in trouble with the law. In paragraph 7 she repeated similar sentiments and indicated that the defendant was smoking ganja at his father's funeral.

- [11] When cross examined, Ms. Hamilton insisted that the defendant was informed about the Will despite suggestions made by the defendant's Attorney-at-Law. To suggestions that the Will was manufactured, she indicated that it was manufactured by the deceased, Rupert Sammott. She indicated that she was familiar with Rupert Sammott signature and handwriting, in response to the suggestion that the signature is not her brother's (Rupert Sammott's) signature.
- [12] She also indicated that the deceased, Rupert Sammott had transferred significant sums of money to the USA to set up an import/export business. She deponed that the deceased business at Villa Road was in financial problems and he had transferred everything to the U.S.A. to earn US dollars. The deceased passed in the middle of the transactions and he had numerous debts which were unpaid, some of which have not been settled. She indicates that the family was unable to have the funds returned to pay of the many debts left behind.

The Defendant's Case

- [13] The defendant gave sworn evidence and testified that he did not know that his father had made a will and he denies ever being given that information by his aunt or anyone else. In answer to questions he says that he retained an Attorney to assist him in getting the Grant of Administration, and that he thinks that the Attorney wrote letters to the family warning them. He said he could not provide copies of the letters he could not say what the contents of the letters were, or if they were in fact written.
- [14] He left Jamaica about three weeks after his father's funeral in September of 2000. The defendant admitted that he was convicted in the U.S.A. of the offence of conspiracy to import cocaine/narcotics and was incarcerated until sometime in 2004 when he was deported to Jamaica.
- [15] In order to have the property transferred to him after the grant of administration, he says he made an application for a new title on the basis that the previous one was lost. When shown the document he signed, and in which the application is made, he admitted that he was not in Jamaica in 2002 and so paragraphs 8 and

11 which says that the title had been kept in his father's home and that in 2002, he made exhaustive searches in drawers and cupboards and the entire home, was incorrect, he would not go so far as to say that the document contained a false declaration. It was his lawyer that took care of the document on his behalf and he just signed it when requested to do so.

[16] He says when he went to the Villa Road Property it was to tell the tenants that he was the new owner and also to make preparation for repairs to be done on the property. He also denied the allegation that he needed a letter to come to his father's funeral and that one was requested by him or on his behalf.

Issues

[17] The major issues which arise in this claim are as follows:

- a) Whether Rupert Sammott died leaving a will
- b) Whether the Grant of Administration should be revoked as a result of false statements made by the defendant that his father, Rupert Sammott died intestate and/or as a result of the existence of a valid Will of Rupert Sammott.
- c) Whether the property of Rupert Sammott, deceased should be administered under his Will if it is found to be valid or under the Grant of Administration.
- d) Whether Narville Sammott should be allowed to continue with the Probate application in light of the death of the executor dying intestate.
- e) Whether the Duplicate Certificate of Title registered at Volume 1466 Folio 603 was obtained as a result of false statements made by the defendant in the Lost Title Application and therefore said title should be cancelled.

Discussion and Findings

I had an opportunity to not only listen to the witnesses and their accounts but to observe their demeanor.

- [18] The Expert Report of Corporal Laputa Williams was tendered in evidence as an Exhibit which confirms that the signature of Rupert Sammott on the will was in accordance with his signature on cheques he signed in 2000. The Expert Report was not challenged by the defendant. On cross examination of the claimant's witnesses the Attorney-at-Law for the defendant suggested there was no Will but did not provide a credible basis for his suggestion.
- [19] It is accepted by the court that the Claimants' witnesses – Narville Sammott, Sharan Salmon and Nerissa Hamilton are witnesses of truth and that on a balance of probability that the deceased, Rupert Sammott made a valid Will dated 13th July, 2000. The evidence of the defendant is rejected on that issue and I do not find him to be a witness of truth especially with regard to the fact that he had no knowledge of the will.
- [20] It was never suggested to Narville Sammott or Nerissa Hamilton when they gave evidence in this trial that letters were sent to them by any lawyer representing the defendant. This evidence of the defendant is rejected and the court finds as a fact that the defendant was aware of his father's will having been told of it by both his aunt and his uncle.
- [21] There is a presumption of due execution of the will where there is a proper attestation clause. The Will is an exhibit in this case and has a proper attestation clause. Further the evidence of Sharan Salmon, who was one of the attesting witnesses shows that there was proper attestation of the Will of Rupert Sammott.
- [22] A Will can be proved by calling one of the attesting witnesses. If there are several such witnesses, one only need be called. See **Reginald Ramsaran v. Linton Ramshai and others (1989) 26 J.L.R. 92 (pp. 94I)** Ms. Sharan Salmon gave evidence of the deceased, Rupert Sammott signing the Will in her presence and

of her signing said document attesting the execution. In addition an Affidavit of Attesting witness was filed in support of the grant of Probate of the Estate of Rupert Sammott from Hilary Salmon who was the other attesting witness.

- [23] A Grant of Administration may be revoked if the Grant is wrongly made or where a Will is discovered after a Grant. See **Parry & Kerridge-The Law of Succession Twelfth Edition** at pp. 466-467. A Grant is wrongly made if it was obtained as a result of false statements by the Grantee, whether made fraudulently or in ignorance of the truth.
- [24] The court finds that the defendant knowingly made a false statement in the Oath of Administration to the effect that the deceased did not die leaving a will as well as in the application where Duplicate Certificate of Title is lost and destroyed as he was told of the will by his relatives.
- [25] The defendant admitted that he made a Lost Title Application alleging that the title for the land in issue (Volume 1091 Folio 647- which is an exhibit in this case) was lost or destroyed. The application was tendered in evidence as an exhibit. By virtue of **Section 82 of the Registration of Titles Act** where an applicant alleges that a duplicate certificate of title is lost or destroyed he must furnish proof to the Registrar of Titles of when, where and how the title was lost or destroyed and what searches and enquiries were made. The defendant in his lost title application alleges that the title was kept at the home of Rupert Sammott, deceased and in 2002 he found it to be missing when he made searches at that time.
- [26] However in 2002 the defendant was in prison in the United States of America. In his examination in chief the defendant averred that he left Jamaica about three weeks after the funeral in August 2000 and did not return to Jamaica until 2004 when he was deported from the U.S.A. It is clear that the defendant made false statements or declarations in order to be registered as proprietor of the land in issue and that he unlawfully obtained a new title (Volume 1446 Folio 603) for said land.

- [27] It is accepted that there is a preponderance of evidence for this court to grant the declaration or order cancelling the new title (Volume 1446 Folio 603) obtained by the defendant and issuing a new title in the name of Rupert Sammott.
- [28] By virtue of **Rule 68.51 (1) and 68.51(3) of the Civil Procedure Rules** the Second Claimant is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant and/or he is entitled to bring this action by virtue of being a beneficiary under a Will.
- [29] The Second Claimant has also applied for an Order to continue the application for Probate. In other words the Second Claimant is applying for a Grant De Bonis Non. A De Bonis non grant is appropriate where the personal representative is alive when the primary grant issues but subsequently dies. This application is made inter alia where the person to whom a grant of representation has died leaving the estate of the deceased unadministered and there is no representative by the chain of representation. It is not in dispute that Mr. Hanif Persaud died in 2009 and Ms. Nerissa Hamilton gave evidence that he died intestate. This evidence was not challenged by the defendant. The chain of representation has therefore been broken in the case of Mr. Persaud.
- [30] In the circumstances the following Declarations and orders are made by this Honourable Court:
- a) The Court declares that the legal and beneficial ownership of the property situated at Villa Road in the parish of Manchester formerly registered at Volume 1091 Folio 647 (now registered at Volume 1446 Folio 603) is held by the First Claimant and shall be administered under the Last Will and Testament of the First Claimant filed in Claim No. 2003/P-00100.
 - b) A Declaration is made that the Letters of Administration granted to the defendant in respect of the Estate of Rupert Sammott, deceased is invalid and Letters of Administration is revoked and/or set aside.

- c) The Court accepts and declares that the Last will and Testament of Rupert Sammott dated the 13th day of July, 2000 is Valid.
- d) The court orders that the registered title for property situated at Villa Road in the parish of Manchester now registered at Volume 1446 Folio 603 of the Register Book of Titles in the Name of Rohan Sammott be cancelled by the Registrar of titles and a new title is to be issued in the name of Rupert Sammott.
- e) The Second Claimant, Narville Sammott is authorized to continue the application for Grant of Probate in respect of the Estate of Rupert Sammott in respect of Claim No. 2003/P -00100.
- f) Costs are awarded to the Claimants to be agreed or taxed.