

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO: 372 OF 2009

(SHAWN SPARKS CLAIMANT
(Personal Representative for the
(Estate of TERRY M. SPARKS
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BETWEEN (AND
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(MELISSA JUDE LUCA DEFENDANT

Before: Hon Justice Sir John Muria

15 June 2009

Mrs. Magali Marin Young for Claimant
Mr. Nicolas Dujon for Defendant

R U L I N G

Muria J

1. At this *inter partes* hearing the defendant raised a number of issues and sought a number of orders as well which are set out in the application filed on 1 June 2009. I deal with them in the order in which they are set out.

2. First, the defendant challenged the *locus standi* of the claimant to bring the claim. The basis for that challenge stems from the suggestion that the claimant did apply not to be appointed the Representative of the estate of the deceased before filing the claim in this case. Mr. Dujon urged the court to find that no application was made pursuant Rule 11.6(1) CPR and no supporting affidavit was filed as well as required by Rule 11.9. In the absence of an order first appointing the claimant to be Representative, of the deceased's estate, the claimant could not lawfully bring the claim in this case.
3. In response Ms. Marin Young argued that in the present case, the claimant had applied for an order to be appointed Representative of the estate of the deceased. Counsel further argued that the application can be made at "any time" which can be before, during or after the commencement of the proceedings Counsel relied on Rule 21.2(1) for her contention.
4. As I understand it Mr. Dujon's contention is that before the claimant can initiate the claim, he should first bring proceedings

seeking an order to be appointed a Representative of the deceased's estate. Armed with such order he could then file this claim. I accept the rule to be applied here is Rule 21.4. However, I am not convinced that Rule 21.4 envisages the position contented for by Counsel for the applicant/defendant, particularly when one reads Rule 21.4(3). That rule states:

“(3) An application for an order to appoint a representative party under this Rule may be made by –

- (a) any party; or
- (b) any person who wishes to be appointed as a representative party.”

5. The import of Rule 21.4(3) is obvious. It permits an application to be made by any party or any person who wishes to be appointed a Representative party. The rule does not make the order appointing a representative as a pre-requisite for initiating a claim over the state of a deed. The basic rule is that the estate of the deceased, where that estate is the subject of a dispute, must be represented by someone, namely a person appointed to be the representative.

6. The rule makes it abundantly clear, that even a party to a claim can apply to be appointed a representative party. See R 21.4(3)(a) above. That puts an end to the argument in this case that the claimant should be armed with appointment order before he could initiate these proceedings.

7. In this case, the claimant filed the claim form on 27 April 2009 and at the same time filed the Notice of Application seeking two orders, namely to be appointed the Representative of the Estate of Terry Myerl Sparks, deceased, and an Interim Injunction against the defendant, her agents or servants or assigns restraining her from dealing in any way, including leasing, charging or encumbrances or disposing of the properties comprising the estate of the deceased. The application was supported by the affidavit sworn to by the claimant on 26 April 2009 and filed with the application on 27 April 2009.

8. In the circumstances, the argument by Counsel for the defendant, and for alleging non-compliance with Rule 11.5(3), 11.6(1) and (3) of the CPR , cannot stand and must fail.

9. I deal with the question of security for costs and security for damages. As regards security for costs, the usual occasion to apply for an order security for costs is at the case management conference or pre-trial, although there is room for the application to be made at any stage of the proceedings. Rule 24.2(2) simply provides that for practical purposes, the application for security for costs should be made at case management conference or pre-trial. The condition which the applicant/defendant must fulfill for the court to exercise its discretion in making the order is that the court must be satisfied having regard to all the circumstances that it is just to make such order. That can be better achieved at case management conference or pre-trial. I am therefore inclined to agree with Mrs. Marin Young of Counsel for the claimant that in the circumstances of this case, the issue for security for costs can be better dealt with at case management conference or pre-trial.

10. With regard to security for damages, I feel that the time to address that issue is not now. For the purpose of an interim injunction an undertaking as to damages is one of the conditions for granting it. The claimant has given that undertaking thereby satisfying that requirement.

11. Finally, as to the absence of a certificate of Truth in the Claim Form I agree with Mr. Dujon that Rule 3.12 requires every statement of case to be verified by a Certificate of Truth. A statement of case includes a claim form and so it must contain a Certificate of Truth. However, I do not think that is fatal in this case in view of the fact that the Certificate of Truth is made on the s Statement of Claim accompanying the Claim Form. More particularly, one must not lose sight of the overriding objective of the new rules which is to enable the court to deal with cases justly, and this means the achieving justice as between the parties whose dispute it is the court's duty to resolve. See *Pauline Hannigan v Andrew Cooke Hannigan & others* (18th May 2000) decided by the English Court of Appeal.

12. One of the complaints in *Hannigan -v- Hannigan* is the omission of Statement of Truth (Certificate of Truth under our rules). Other issues raised in that case concerns also the commencing claim by wrong form. Having found that the errors were really as to the form rather than substance, the court pointed out to the parties, that the overriding objective of the rules was not furthered by arid squabbles about technicalities since the defendants knew what the case was against them. That respectfully, is also the position in our case here. The defendant knows what the case is against her and the absence of the Certificate of Truth is not fatal to the claimant's case.
13. For all the reasons given, the defendant's application is refused.
14. Since the *ex parte* injunction is still in place and it is intended that it should continue unless it is shown otherwise. The claimant has satisfied the court by successfully defeating the defendant's application that the interim *ex parte* injunction should continue until trial. I order that the *ex parte* order granted on 28 April, 2009 continues until trial of this claim.

15. I am mindful that the defendant's application is refused and costs should follow. However, the defeat of the defendant's application resulted in the claimant's *ex parte* injunction order being allowed to continue until trial. In the circumstances I feel it is only fair and just that each party to bear its own costs of this hearing.

16. Order:
1. Defendant's application refused.
 2. Ex parte injunction issued on 28 April 2009 to continue until trial.
 3. Each party to bear its own costs of this application

(Sir John Muria)
15 June 2009