

BARBADOS

NO. 1291 of 2003

IN THE HIGH COURT OF JUSTICE

CIVIL DIVISION

BETWEEN:

MARJORIE ILMA KNOX

PLAINTIFF

VS

ERIC IAN STEWART DEANE

DEFENDANT

***Before the Honourable Madam Justice Kaye Goodridge, Judge  
of the High Court***

2006: December 8

2007: February 13

July 17

***Mr. Alair Shepherd, Q.C. for the Plaintiff.***

***Mr. Vernon Smith, Q.C. in association with Ms. Lisa Greaves  
for the Defendant.***

## **DECISION**

### **INTRODUCTION**

[1] By Originating Summons filed on 14 July 2003 the Plaintiff seeks the following relief pursuant to the provisions of O.43 of the Rules of the Supreme Court (RSC).

1. That the following accounts be taken, namely -

- 1.1 an account of what is due to the plaintiff in respect of the estate of Colin Ian Deane, deceased together with interest thereon;
  - 1.2 an account of the said deceased's funeral expenses;
  - 1.3 an account of the property (including but not limiting the shares in Kingsland Estates Limited) of the said deceased coming to the hands of the Defendant, the executor of his Estate or to the hands of any person or persons by the Order or for the use of the defendants.
2. That the following inquiry be made namely an inquiry what parts if any of the said intestate's property are outstanding, and as to any part of such property as is outstanding, whether it is subject to any and if so what incumbrance.
  3. All other necessary accounts, inquiries and directions.  
The Defendant is sued as the executor of the estate of Colin Estwick Deane and personally.
  4. That provision be made for costs of this application.

**THE PLAINTIFF'S CASE**

[2] The Plaintiff's application is supported by a number of affidavits. Essentially, the Plaintiff says that she is a beneficiary in the estate of her brother, Colin Ian Estwick Deane who died on 26 July 1982. By his will made on 20 February 1982 the deceased appointed his nephew, the Defendant and Joseph Coleridge Armstrong as his executors. Letters testamentary were issued on 24 September 1982 and the Defendant became the duly qualified Executor of the Estate.

[3] The Plaintiff complains that the Defendant has failed and/or neglected to administer the estate and no accounts of the Defendant's administration of the estate were ever filed.

**THE DEFENDANT'S SUBMISSIONS**

[4] The Defendant has submitted that the Plaintiff's claim should be dismissed for the following reasons:

1(a) the Plaintiff brought the action under O.43 of the RSC.

This is the inappropriate order as O.43 applies to claims begun by a Writ of Summons where there is an interlocutory application for accounts and inquiries.

- (b) the action is an application by the Plaintiff as a beneficiary under the estate of the deceased for an account of the estate by the Defendant in his capacity as executor and personal representative. The action should have been brought under O.80 r 2(3)(a) of the RSC.
2. The action is statute barred by virtue of S.43 of the **Limitation of Actions Act** Cap. 231.
  3. That at paragraph 1(a) of the Originating Summons the Plaintiff is seeking an account together with interest thereon and that no action to recover interest can be brought after six years.

#### **THE PLAINTIFF'S RESPONSE**

- [5] In response the Plaintiff submitted that the Defendant could not take the limitation point without having raised it in a pleading or affidavit – O.18 r.8 of RSC. Further, that a trustee or fiduciary is forever subject to the duty to provide accounts and that there is no limitation period that runs in regard to the provision of accounts.

- [6] Counsel also sought leave to amend the application to delete the reference to O.43 and insert O.80 therefor, pursuant to O.7 r.1 of RSC and to insert the following paragraph.

*“Alternatively a declaration that the Plaintiff is legally entitled to a share in certain lands belonging to the deceased and situate at Enterprise in the parish of Christ Church and orders to give effect to any such declaration.”*

#### **THE LAW**

- [7] Order 43 of the RSC provides for the making of summary orders for the taking of accounts and the making of inquiries in actions begun by writ which is endorsed with a claim for an account.
- [8] However Order 80 of the RSC deals with actions for the administration of the estate of a deceased person, for the execution of a trust, for the determination of any question arising in the course of administration or in connection with a trust.

In particular Rule 2(3) of O.80 provides:

3. Without limiting paragraph (1), an action may be brought for any of the following reliefs -

- (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
- (b) an order requiring the payment into Court of money held by a person in his capacity as executor, administrator, or trustee;
- (c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;
- (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;
- (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court.

[9] The Plaintiff's action is for an account in respect of the estate of the deceased from the Defendant, who is the executor. Such action should properly be brought under O.80

r.2(3)(a) of the RSC and not O.43 which is inapplicable to the present case.

- [10] The Court would have no difficulty in allowing an amendment to the Originating Summons but the more fundamental issue relates to the limitation point which has been raised.

**THE LIMITATION POINT**

- [11] According to Order 18 r.8 of the RSC, a party must specifically plead any matter, for example performance, release, any relevant statute of limitation, fraud or any fact showing illegality which he alleges makes any claim or defence of the opposite party not maintainable.

- [12] The Plaintiff says that the Defendant should have pleaded the limitation point. But O.18 deals with cases where there is writ and statement of claim and the Defendant would be required in his defence to plead limitation. The present proceedings are by way of Originating Summons and it is considered that a pleading is not required in this case. In any event, the Defendant is not precluded from raising the limitation point since it is considered that Order 18 does not prevent a Court

from giving effect in proper cases to defences which are not pleaded.

[13] The **Limitation of Actions Act**, Cap 231.

S.44 of this Act provides that –

an action for an account may not be brought after the expiration of any time limit under this Act which is applicable to the claim that is the basis of the duty to account.

[14] S.43 imposes a limit of ten years for the bringing of an action in respect of any claim to the personal estate of a deceased person or to any share or interest in any such estate.

[15] S.43 is subject to S.42 which provides that an action by a beneficiary to receive trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provisions of this Act, may not be brought after the expiration of six years from the date on which the right of action accrued.

Subsection (3) further provides that the limitation period does not apply where the action is in respect of any fraud or fraudulent breach of trust.

[16] No fraud has been alleged in the application nor have any particulars of any alleged fraud been set out in the affidavits. Reference was made to the fact that foreclosure proceedings were instituted by the Defendant in his name but this, without more, is insufficient to support any imputation of fraud. Further, there is no evidence of the Defendant receiving and converting trust property for his own use.

**DISPOSAL**

[17] The deceased died on 26 July, 1982. The Plaintiff filed her Originating Summons on 14 July, 2003, some 20 years after the death. Having regard to the provisions of the **Limitation Act**, and in the absence of any evidence to support an allegation of fraud or fraudulent breach on trust on the part of the Defendant, it is considered that this action for accounts cannot be maintained.

[18] The Plaintiff's Summons is dismissed with costs to the Defendant to be taxed, if not agreed.



**KAYE GOODRIDGE**  
Judge of the High Court