IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN MISCELLANEOUS

SUIT No. M 87 OF 2002

BETWEEN	DIANNA HARRIOT	APPLICANT
AND	JOY BLAKE	1ST DEFENDANT
AND	THE ADMINISTRATOR GENERAL OF JAMAICA	2ND DEFENDANT

Miss Kayann Balli instructed by Taylor-Wright & Company for the claimant

Miss Alicia Hussey instructed by the Administrator General for the second defendant

May 6, June 4 and June 11, 2004

SYKES J (Ag)

SECTION 2(1) AND (3) AND THE LAW REFORM (MISCELLANEOUS PROVISIONS) ACT AND AN APPLICATION TO APPOINT THE ADMINISTRATOR GENERAL AS ADMINISTRATOR AD LITEM UNDER RULE 21 OF THE CPR

The primary issue is whether the cause of action is statute barred. If not, the subsidiary issue is whether the court can appoint the Administrator General as administrator ad litem under rule 21 of the Civil Procedure Rules (CPR). If Miss Hussey is correct that the action is statute barred, then Miss Balli cannot succeed in her

application to have the Administrator General appointed as administrator ad litem.

The issue arose in these circumstances: On January 8, 1998, Miss Harriot alleges that at the material time she was a passenger in a motor car registered 9397 AZ that was owned and driven by Allan Afflick. Everic Blake was the driver of a Nissan Sunny motor car registered 1436 BQ that was owned by Joy Blake. It is alleged that Everic Blake was the servant and/or agent of Joy Blake. Both cars collided in the Bog Walk Gorge in the parish of St. Catherine. Mr. Afflick is now deceased. Miss Harriot was injured and she wants compensation for her injuries. She wants to sue the estate of Mr. Afflick.

Such enquiries as could be made by Miss Harriot show that no probate or letters of administration have been granted in any court in respect of the estate of Mr. Afflick. She wishes to have the Administrator General appointed administrator ad litem so that she can file her claim for compensation.

The Administrator General accepts that she can be appointed under rule 21 of the CPR but says that even if she were appointed, the cause of action is now statute barred and so the court should deny the application. She relies on the 1623 Limitation Act that bars actions in tort after the expiration of six years from the date the cause of action arose. According to the Administrator General the cause of action having arisen more than six years ago the claimant cannot now sue. She says that section 2(1) and (3) of the Law Reform (Miscellaneous Provisions) Act when read in conjunction with the 1623 Limitation Act means that the action must be brought within six years. I do not agree.

Is the claim statute barred?

Section 2(1) of The Law Reform (Miscellaneous Provisions) Act, 1955 of Jamaica states:

> *Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:*
>
> *Provided that this subsection shall not apply to causes of action for defamation.*

Section 2(3) states

> *No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either-*
>
> *(a) proceedings against him in respect of that cause of action were pending at the date of his death; or*
>
> *(b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation.*

The Jamaican legislation is an exact replica of the Law Reform (Miscellaneous Provisions) Act, 1934 (UK) (see section 1(1) and (3) of UK Act which are identical to section 2(1) and (3) of the Jamaican legislation). This led Miss Balli to submit that the interpretation given to the equivalent provision in the United Kingdom in ***Airey v Airey*** [1958] 2 QB 300 should be adopted by this court. To this I will add, unless there are decisions of the Court of Appeal

or the Judicial Committee of the Privy Council indicating otherwise and the reasoning is acceptable.

The major premise for Miss Balli is this: where an Act of Parliament establishes its own limitation regime the Limitation Act of 1623 does not apply. The minor premise is that the Law Reform (Miscellaneous Provisions) Act (JA) is an Act that establishes its own regime. Therefore the 1623 Limitation Act does not apply. In so far as this logic is concerned, it is unassailable. The real question is whether the premises are true. If they are, then the conclusion is necessarily true.

In ***Airey v Airey*** (supra) the accident occurred on February 24, 1951. No administrator of the estate of the deceased was appointed until March 18, 1957. The plaintiff there filed her writ on September 9, 1957. This was more than six years after the accident.

The defendant in that case contended that the action was statute barred because it was commenced outside of the six years. The court rejected this contention. It closely examined the provisions of the Law Reform (Miscellaneous Provisions) Act, 1934 (UK). The court made two conclusions: that (I) the effect of the Act was to preserve the cause of action against the estate of the deceased from extinction and (ii) time did not begin to run unless and until a personal representative was appointed provided the cause of action arose within six months before the death of the deceased.

In Jamaica the Law Reform (Miscellaneous Provisions) Act (JA) was the latest in a series of legislative reforms, beginning in the nineteenth century which it was sought to alter a number of common law rules relating to who could

sue or be sued in the event that the possible plaintiff or defendant died.

Section 2(1) of the Jamaican legislation clearly preserves all causes of action against the estate provided that they are within the categories so preserved. The cause of action in this case is preserved.

Section 2(3) states that no action is maintainable against the estate of the deceased unless subsections (a) and (b) are met. In this matter, it is subsection (b) that is relevant to this decision.

This statutory regime is a special regime created by Parliament. This has the effect of ousting the 1623 Limitation Act. The 1623 Act has no application here. Consequently the action against the estate of Mr. Afflick is not statute barred. Thus even if a personal representative was not appointed for many years, time would not begin to run against the claimant unless and until such an appointment was made provided of course that the cause of action arose six months before the death of the deceased. Once such a person is appointed then the claimant has six months within which to file her claim. If she does not do this within the six months her claim is statute barred. This is the effect of the special regime created by Parliament.

The appointment under rule 21 of the Civil Procedure Rules

The secondary issue is whether this court can appoint the Administrator General using the powers under rule 21 of the CPR.

Rule 21.7(1) permits the court to appoint someone to represent the estate of the deceased. Rule 21.7(2) sets out

the criteria that must be met before the person can be appointed. Rule 21.7(3) empowers the court to make such an appointment without any application being made by anyone. Rule 21.7(4) states that until someone is appointed under this rule the claimant cannot to anything other than apply to have someone appointed as a representative under the rule. And finally rule 21.7(5) states that any decision in proceedings in which a person was appointed by the court binds the estate to the same extent and in the same way as if the person were appointed executor under a will or by letters of administration.

Rule 21 is supplementing section 2(3) of the Jamaican legislation. The wording in section 2(3) assumes that someone is proactive and has either been appointed or is taking steps to have themselves or some other person appointed as administrator. This is in contrast to rule 21 which permits a third party to apply to the court to have someone appointed as a representative of the estate of the deceased. Rule 21 answers the question, "What if no one has taken steps to be appointed the personal representative of the deceased?"

The affidavit evidence in this case is silent on whether the Administrator General meets the criteria of rule 21.7(2). This is not fatal to the application because in my view, this rule applies differently to the Administrator General than to private citizens. The Administrator General is a public officer who is charged with the statutory responsibility of administering estates in the circumstances specified by the statute. She can be appointed executor of wills. The statute sets out in some detail the obligations imposed on her and there are very effective mechanisms to keep check on what she does. I am

of the view that because of the role of the Administrator General, in the administration of estates, the court can and should assume, unless the contrary is shown, that she meets the criteria of rule 21.7(2). In relation to private citizens, there should be positive evidence that such a person meets the criteria of the rules.

The claimant's application to appoint the Administrator General as administrator ad litem is granted. Costs to be costs in the claim.