



[2017] JMSC Civ.191

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2016HCV04149

BETWEEN	PAULINE LAMBERT	APPLICANTS
	YVETTE LAMBERT	
AND	PAUL LAMBERT	RESPONDENT

Mr. Kent Gammon instructed by Kent Gammon, Attorneys-at-Law for the Applicants

Ms. Ayanna Thomas instructed by Nunes, Schofield and DeLeon for the Respondent

HEARD IN CHAMBERS: March 9, 2017 and March 22, 2017

WINT-BLAIR, J (Ag.)

[1] The application for injunction filed by Ms. Thomas on December 6, 2016 was based on the same facts and argued concurrently with the application made by Mr. Gammon filed on October 4, 2016. A decision on the application made by Mr. Gammon was handed down on Friday, March 17, 2017. This decision which should have been its companion was regrettably omitted from the written decision handed down by my sister. I do apologise for the inconvenience to counsel.

[2] This matter concerns an application for an injunction made by the claimants who are the sisters of the defendant. The defendant has been appointed administrator of their deceased father's estate. They along with their seven other siblings are the beneficiaries thereof.

- [3] The application for injunction made on behalf of Paul Lambert was essentially based on his affidavit evidence that the claimants were intermeddling in the estate of their father for which he is administrator. Ms Thomas relied on **Howard Jacas v Bryan Jacas and another** [2014] JMSC Civ. 190, a decision of Simmons, J in which the learned judge considered the effect of intermeddling parties on the executor of an estate.
- [4] In this case, the evidence discloses that the estate has acquired debt due to unpaid water bills which have led to an arrangement being made between Paul Lambert and the National Water Commission (NWC). The Claimants explanation in their affidavits is that the tenants did not know what to do as Paul Lambert had announced to them that he was now their landlord. This explanation holds no water. There is no evidence that the claimants have entered into the arrangement with the NWC or that they have agreed to assist with the payments.
- [5] As the appointed administrator of the estate, the defendant is entitled to gather funds from the rental of properties held by the estate; recover possession from delinquent tenants and manage the assets of the estate. If he continues to be impeded, the estate will fall into debt and he will incur liability as against the other beneficiaries who may decide to file suit when it becomes apparent that they will not derive the full proceeds when the assets are sold.
- [6] Any accounting is to the estate by the defendant as its lawful representative. Any debt being incurred by the estate is to the detriment of all the beneficiaries and not in the public interest. The actions of the claimants have exposed the defendant to legal action and interfered with the execution of his duties as administrator. The collection of rent by the claimants while allowing the water bills on the properties to fall into arrears means that there is a substantial likelihood that the defendant may not be able to wind up the estate. These actions will lead to an inability to account to the other beneficiaries for those sums. This would render the defendant open and exposed to personal liability in breach of his fiduciary duties. The other beneficiaries would most certainly be in

a position to commence an action against the defendant and force him to complete his administration. Mr. Gammon conceded this when he submitted that the majority of the properties held by the estate are not within the defendant's control. The issues raised on this application are not solely pecuniary in nature and the award of damages would therefore not be an adequate remedy.

[7] It is quite clear that the claimants have no legal right to hold on to any of the property, continue to collect rental income or to occupy to the exclusion of the other beneficiaries any of the estate property.

[8] These issues arising were answered by Mr. Gammon by citing the provisions of the Inheritance Provision for Dependants Act, sections 6 and 7. Those provisions were not of great assistance as there was no application for financial provision before this court. He also cited **Mary Wallace v Paulette Brown and Juliette Morrison** [2012] JMSC Civ. 78. This case did not offer any assistance as it dealt inter alia with the issue of notice to the beneficiaries of a deceased's estate. The issue of notice to the claimants as beneficiaries has already been decided in favour of the defendant .

[9] For the reasons indicated, the application for injunction is granted in terms set out below:

1. An injunction is hereby granted restraining the claimants until the trial of this action or until further order whether by themselves, their servants and /or agents or otherwise howsoever from intermeddling in the affairs of the administration of the estate of Belden Christopher Lambert, deceased.
2. This injunction restrains the claimants whether by themselves, their servants, and or agents from renting and collecting rent from any further apartments at 55 Abberville Avenue until the trial of this action or until further order.

3. The claimants are ordered to disclose to the defendant all sums collected as rent from the estate properties and the quantum collected within seven days of the order herein.
4. The claimants are also restrained from utilizing and or disposing of all sums collected as rent from the estate properties until the trial of the claim or further order.

Additionally, the costs of this application are to be costs in the claim.