



[2018] JMSC CIV 200

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018HCV01395

**IN THE ESTATE of CURTIS WILLIAM SIMON
(also known as CURTIS SIMON) late of
Apartment #6, Devon Court, 4 Devon Road,
Kingston 10 in the parish of St. Andrew,
Businessman, deceased.**

BETWEEN	ELIZA RAE	1ST CLAIMANT/ APPLICANT
AND	ENID DAVIS	2ND CLAIMANT/ APPLICANT
AND	LERONE SIMON	1ST DEFENDANT/ RESPONDENT
AND	PETA-GAYE SIMON	2ND DEFENDANT/ RESPONDENT

IN CHAMBERS

Mrs. Verleta Green for and on behalf of the Claimants/Applicants

Mrs. Casie Jean Graham Davis for and on behalf of the Defendants/Respondents

Dates Heard: May 3 & 28, 2018 and July 10 & 31, 2018

CIVIL PRACTICE & PROCEDURE – Sections 139 and 140 of the Registration of Titles Act – Caveat against dealings – Service of Notice to Caveator – Where a caveat has lapsed what are the implications

PALMER HAMILTON, J.

[1] On the 31st of July, 2018 when the Orders were made I had promised to put my reasons in writing. That promise is now being fulfilled and I sincerely apologize for the lengthy delay in providing same.

BACKGROUND

[2] By way of a Fixed Date Claim Form filed on the 5th day of April, 2018 the Claimants/Applicants are seeking the following Orders:

- (1) *That the copy Will bearing date the 26th day of October Two Thousand and Nine of Curtis Simon late of Apartment # 6 Devon Court, 4 Devon Road, Kingston 10, St. Andrew as contained in the duplicate copy retained by Messrs. Nigel Jones & Company be admitted to probate.*
- (2) *That the Grant of Administration granted to Lerone Simon and Peta-Gaye Simon, children of the deceased, on the 11th day of November 2014 in the estate of Curtis William Simon also known as Curtis Simon be revoked.*
- (3) *An Order forbidding the Registration of the Transfer No. 2106437 to Bencle Hibbert of ALL THAT parcel of land part of **DEVON PENN** in the parish of **SAINT ANDREW** being the Strata Lot Number **SIX** in Strata Plan Number EIGHTEEN and One Hundred and Twenty-four undivided One Two Thousand shares in the common property therein and being the land comprised in Certificate of Title registered at Volume 1090 Folio 462 of the Register Book of Titles.*
- (4) *An Order forbidding the Registrar of Titles from registering any dealings by the Respondents in respect of the said land, or in the alternative directing that the proceeds of sale be retained in escrow by the Attorney-at-Law having carriage of sale until the further direction of the Court.*
- (5) *Further or in the alternative that Enid Davis be declared the surviving spouse of Curtis Simon, late of Apartment # 6 Devon Court, 4 Devon Road, Kingston 10 in the parish of Saint Andrew who died on the 2nd day of July 2012.*
- (6) *An Order that the second named Claimant is entitled to the statutory interest as surviving spouse in the estate of the deceased.*
- (7) *An Order that the second named Claimant is entitled to reimbursement of all the expenses incurred by her on behalf of the deceased and/or the estate of the deceased.*

(8) That the Respondents reimburse the second named Claimant for the said expenses.

(9) Such further and other relief as to this Court may seem just and equitable.

[3] The Claim was being made pursuant to Part 68.17, 18.18, 69.55 and 57 of the Civil Procedure Rules, The Intestate's Estates and Property Charges Act and section 140 of the Registration of Titles Act. The nature of the Claim was outlined as follows:

(1) A copy Will dated the 26th day of October, 2009 of the deceased has been found and the original is not available, and that to the knowledge information and belief of the Claimants the said Will has not been revoked.

(2) The Respondents obtained a Grant of Administration in the estate of Curtis Simon without Notice to the second-named Claimant.

(3) The second-named Claimant Enid Davis, a divorcee, shared a common law relationship with the deceased, a single man and lived and cohabited with him as if she were in law his wife for a period of not less than five years immediately preceding his death.

(4) The deceased became ill and was unable to care for himself or manage his affairs.

(5) By Order dated the 25th day of April, 2013 the Court appointed the Claimant and the deceased's daughter (The Second Respondent) guardians to exercise care and control of the deceased during his illness.

(6) The second-named Claimant lodged a Caveat against the land contained in Certificate of Title registered at Volume 1090 Folio 462 of the Register Book of Titles.

(7) The Registrar of Titles has issued a Notice to Caveator to the second-named Claimant.

[4] The Fixed Date Claim Form was accompanied by a Particulars of Claim and certified to be true by the Claimants/Applicants. Several Affidavits by all the parties in this matter were later filed.

THE APPLICATION

[5] On the same 5th day of April, 2018 the Claimants/Applicants also filed a Notice of Application for Court Orders¹ which seems to have been accompanied by an Affidavit of Enid Davis and an Affidavit of Eliza Rae both filed on the 9th day of April, 2018. On the 10th day of April, 2018 an Ex Parte Notice of Application for Court Orders was filed and this Application is the subject of this judgment.

[6] The Claimants/Applicants in the Ex Parte Notice of Application for Court Orders filed on the 10th day of April, 2018 (hereinafter referred to as 'the Application') sought the following Orders for a period of fourteen (14) days:

- (1) *An Order forbidding the Registration of the Transfer No. 2106437 to Bencie Hibbert of ALL THAT parcel of land part of **DEVON PENN** in the parish of **SAINT ANDREW** being the Strata Lot Number **SIX** in Strata Plan Number EIGHTEEN and One Hundred and Twenty-four undivided One Two Thousand shares in the common property therein and being the land comprised in Certificate of Title registered at Volume 1090 Folio 462 of the Register Book of Titles.*
- (2) *An Order forbidding the Registrar of Titles from registering any dealings by the Respondents in respect of the said land.*
- (3) *In the alternative it is hereby directed that the proceeds of sale be retained in escrow by the Attorney-at-Law having carriage of sale until the further direction of the Court.*
- (4) *The Claimants by their Attorney-at-Law give the usual undertaking as to damages.*

[7] The Application was made pursuant to Rule 17.2 (3) of the Civil Procedure Rules and section 140 of the **Registration of Titles Act** and the grounds on which the Claimants/Applicants are seeking the Orders are as follows:

- (1) *The First-named Claimant claims to be the spouse of the deceased Curtis Simon who died on the 2nd day of July, 2012.*

¹ The Orders being sought in this Application mirror the Orders in the Ex Parte Notice of Application for Court Orders filed on the 10th day of April, 2018.

- (2) *The First-named Claimant has lodged a caveat against the Certificate of Title in support of her Claim for an interest in the land based on spouseship and her expenditure on the land.*
- (3) *The Registrar of Titles has issued a Notice to Caveator advising of her intention to register a Transfer No. 2106437 in respect of the land.*
- (4) *The Transferors are Lerone Simon and Peta-Gaye Simon (Administrators of the estate of Curtis Simon the Respondent in the Claim).*
- (5) *The Caveator is seeking to set aside the Grant of Administration obtained by the Transferors.*
- (6) *The Claimants reside abroad and having regard to the time given to respond to the Notice the Claimants are seeking the Order sought.*

[8] The Application went before Nembhard J (Ag.), as she then was, on the 10th day of April, 2018 and she granted the Interim Injunction being sought for a period of 14 days to the 23rd day of April, 2018. The Application then went before Morrison J who extended the said Injunction to the 3rd day of May, 2018. The Application then came before me where the Interim Injunction was further extended to the 28th day of May, 2018. The Interim Injunction was further extended to the 10th day of July, 2018 and a further extension was given to the 31st day of July, 2018, where the Orders at paragraph 24 of this judgment were made.

SUBMISSIONS

[9] I wish to thank Counsel for their submissions and supporting authorities which provided valuable assistance in deciding the issues. However, I do not find it necessary to address all the submissions and authorities relied on but I will refer to them to the extent that they affect my findings. I wish to reassure Counsel that their submissions were thoroughly considered even if not directly referenced.

ISSUE

[10] In light of the Application filed on the 10th day of April, 2018 and the submissions of Counsel, the main issue for my determination is whether the Court has the jurisdiction to grant the Orders sought regarding Caveat No. 1989828 lodged pursuant to section 140 of the **Registration of Titles Act**.

LAW & ANALYSIS

Whether the Court has the jurisdiction to grant the Orders sought regarding Caveat No. 1989828 lodged pursuant to section 140 of the Registration of Titles Act

[11] Section 139 of the **Registration of Titles Act** (hereafter referred to as “the **RTA**”) provides the authority for any beneficiary or other person claiming any estate in land under the operation of the Act to lodge a caveat to forbid the registration of any dealings with the land claimed to be the subject of the caveat. Section 140 of the **RTA** speaks to the effects of lodging a caveat with the Registrar and proceedings thereon. Section 140 states that:

“Upon the receipt of any caveat under this Act, the Registrar shall notify the same to the person against whose application to be registered as proprietor, or as the case maybe to the proprietor, or as the case may be, to the proprietor against whose title to deal with the estate or interest such caveat has been lodged, and such applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, if he thinks fit, summon the caveator to attend before the Supreme Court, or a Judge in Chambers, to show cause why such caveat should not be removed, and such Court or Judge may, upon proof that such caveator has been summoned, make such Order in the premises, either ex parte or otherwise, and as to costs as to such Court or Judge may seem fit.

*Except in the case of a caveat lodged by or on behalf of a beneficiary under disability claiming under any will or settlement or by the Registrar, **every caveat lodged against a proprietor shall be deemed to have lapsed as to the land affected by the transfer or other dealing, upon the expiration of fourteen days notice given to the caveator that such proprietor has applied for the registration of a transfer or other dealing, unless in the meantime such application has been withdrawn.***

***A caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest, but if before the expiration of the said period of fourteen days or such further period as is specified in any order made under this section** the caveator or his agent appears before a Judge, and gives such undertaking or security, or lodges such sum in court, as such Judge may consider sufficient to indemnify every person against any damage that may be sustained by reason of any disposition of the property being delayed, then and in such case such judge may direct the Registrar to delay registering any dealing with the land, lease, mortgage, or charge, for a further period to be specified in such order or may make such order as may be just, and such order as to costs as may be just.”* **[emphasis mine]**

[12] The relevant facts are as follows:

- (a) The Defendants/Respondents obtained a Grant of Administration in the Estate of Curtis William Simon on the 11th day of November, 2014.
- (b) In February of 2016, the 2nd Claimant/Applicant filed an application to be declared the surviving spouse of Curtis Simon, the deceased, and to have the abovementioned Grant of Administration revoked. This matter was dismissed based on procedural grounds.²
- (c) Thereafter, Caveat No. 1989828 was lodged by the 2nd Claimant/Applicant on the 29th day of February, 2016 as evidenced in the Notice to the Caveator that was signed by the Registrar of Titles and Exhibit VG 1³ in the Affidavit of Urgency filed on the 5th day of April, 2018.
- (d) On the 29th day of February, 2016 the 2nd Claimant filed a Fixed Date Claim Form against the 2 Defendants/Respondents in this matter with Claim No. 2016HCV00816 which was never served.
- (e) On the 9th day of March, 2018 a Notice to Caveator was signed by the Registrar of Titles notifying the 2nd Claimant/Applicant that:

- i. CURTIS SIMON is the registered proprietor of the property....*
- ii. And whereas Peta-Gaye Simon and Lerone Simon (Administrators of Curtis Simon's Estate) have lodged for registration Transfer No. 2106437 to BENCLE HIBBERT.*

² The 2nd Claimant/Applicant stated in paragraph 59 of her Affidavit that was filed on the 5th day of April, 2018 that the said application was “dismissed on the procedural ground that the Application should have begun by way of Fixed Date Claim Form.”

³ Copy of the Caveat that was lodged by the 2nd Claimant at the National Titles Office.

iii. Upon the expiration of fourteen (14) days from the service of this Notice on you, Caveat numbered 1989828 (lodged by you on the 29th day February, 2016) will be deemed to have lapsed.

iv. The Registrar of titles shall thereafter proceed to register the said Transfer in accordance with the provisions of the Registration of Titles Act unless you sooner obtain and serve on me an Order from a judge forbidding me to do so.

(f) On the 16th day of March, 2016 the Notice to Caveator was served on the office of Ronald G. Koathes, Attorney-at-Law, 47 Duke Street, Kingston.⁴

(g) On the 26th day of March, 2018 Learned Counsel for the Claimants/Applicants received the Notice to Caveator dated the 9th day of March, 2018 at her offices at 3 ½ Latham Avenue, Kingston 6, in the parish of St. Andrew.

(h) Thereafter, on the 5th day of April, 2018 the Fixed Date Claim Form and its accompanying documents were filed in the case at bar.

[13] Learned Counsel for the Claimants/Applicants submitted that the two (2) issues to be determined in this Application are: (1) Was Caveat No. 1989828 in existence at the date of the Application to the Court? and (2) Was the Application out of time? Learned Counsel for the Claimants/Applicants relied on the case of **George Anthony Hylton v Georgia Pinnock (as Executrix of the Estate of DOROTHY MCINTOSH, deceased), Lloyd's Property Development Limited and Lloyd E. Gibson** [2011] JMCA Civ 9 where the Court of Appeal accepted that the relevant date of service for the Notice to the Caveator was the date on which it was served at the address for service, that is the offices of the Caveator's Attorneys-at-Law. Learned Counsel contended that the date of the 26th day of March, 2018 not having

⁴ This was noted in the letter from the Legal Officer at the National Land Agency.

been challenged as the date of receipt of the Notice to Caveator, then the time must run from that date. It was further contended that at the date of the Application to the Court the Caveat had not lapsed and was in existence.

- [14] It is the position of Learned Counsel for the Defendants/Respondents that Caveat No. 1989828 had lapsed at the date of the Claimants'/Applicants' Application to the Court and therefore the Court has no jurisdiction to hear the matter pursuant to Section 140 of the **RTA** as the Application was out of time and their actions unconscionable and deliberate. Learned Counsel for the Defendants/Respondents directed this Court's attention to paragraph 3 of the Notice to Caveator which was sent to the 2nd Claimant which in short states that the caveat will be deemed to have lapsed upon the expiration of fourteen (14) days from the service of the said Notice. Learned Counsel further submitted that the letter from the Legal Officer at the National Land Agency confirmed that Caveat No. 1989828 had lapsed on the 3rd day of April, 2018.
- [15] Learned Counsel for the Defendants/Respondents relied on the case of **Half Moon Bay Ltd v Crown Eagle Hotels Ltd (Jamaica)** [2002] UKPC 24 (20 May 2002) where Lord Millet in dealing with section 140 of the **RTA** stated that, "*...Except in the case of a caveat lodged by the Registrar, every caveat is deemed to lapse upon the expiration of 14 days after notice to the Caveator of an application for registration of all dealings.*" Learned Counsel for the Defendants/Respondents contended that there has been no application for extension of time under section 10 of the **RTA** (see **George Anthony Hylton** (*supra*)). It was further contended that it follows from the above that the Caveator must approach this Court for relief within the existence or life of the caveat, that is, within the 14-day period of the notice given.
- [16] Learned Counsel for the Defendants/Respondents argued that the Notice to Caveator that was received on the 26th day of March, 2018 had been served by the Registrar of Titles by registered mail on the 19th day of March, 2018. This would mean that the caveat would have lapsed on the 6th day of April, 2018. Learned

Counsel for the Defendants/Respondents again relied on **George Anthony Hylton** (*supra*) where it was stated that, “...however, as I have endeavoured to show..., the application for a further period has to be made before the expiration of the 14 day period.” However, Learned Counsel maintained that the Notice to Caveator lapsed on the 3rd day of April, 2016 having been served on the 16th day of March, 2018.

[17] In order to make a determination as to whether the Court has jurisdiction to grant the Orders being sought, I must first make a determination as to which date of service of the Notice to Caveator is to be accepted. The parties both have a different position regarding this point. Respectfully, I do not agree with the submissions of Learned Counsel for the Claimants/Respondents that the date of service is the 26th day of March, 2018. I am guided by section 139 of the RTA which states that:

No caveat shall be received-

(a) **unless some address or place within the city of Kingston shall be appointed therein as the place at which notice and proceedings relating to such caveat may be served;**

(b) *unless some definite estate or interest be specified and claimed by the Caveator, and if such claim be under any document or writing, unless such caveat is accompanied by a copy of such document or writing, or in cases in which there is a mortgage or lease on the title sought to be affected, unless it is stated whether the claim is against the registered proprietor of the land or of the mortgage or of the lease. **A caveator may, however, give an additional address out of the said city at the foot of such caveat, in which case a registered letter shall be sent through the post office to such address on the same day as that on which any notice relating to such caveat is served in Kingston. Every notice relating to such caveat, and any proceedings in respect thereof if served at the address or place appointed as aforesaid shall be deemed to be duly served.** [emphasis mine]*

[18] Even though the Claimants/Applicants have maintained that they received the Notice to Caveator on the 26th day of March, 2018, it must be made clear that it was at the offices of their Attorney-at-Law which is at 3 ½ Latham Avenue,

Kingston 6, in the parish of St. Andrew. That said address of the Claimants'/Applicants' Attorney-at-Law was an additional address for service. I agree with the submissions of Learned Counsel for the Defendants/Respondents, that what is of importance is when the Notice to Caveator was served at the primary address which is the office of Ronald G. Koathes, Attorney-at-Law, 47 Duke Street in the parish of Kingston. This said address is what was given on the caveat that was lodged at the National Land Agency under the section which states that an, "*address must be provided for the service of notices within the city limits of Kingston only.*"

[19] It can be reasonably presumed that the first address given by the Claimant would have been given as the primary address for service and the ones that follow would be secondary. Learned Counsel for the Claimants/Applicants relied on the case of **George Anthony Hylton** (*supra*) to convince this Court to accept that the relevant date of service when dealing with caveats was the date on which it was served at the address for service, that is, at the offices of the caveator's Attorney-at-Law. However, in that case, the Court of Appeal was dealing with a Notice to Caveator that was sent to an address within the parish of Kingston. The issue before the Court of Appeal in **George Anthony Hylton** concerned the method of service to the address that was provided as the place at which notices or proceedings relating hereto may be sent, which was an address within the city limits and parish of Kingston. That case, while important, does not provide much guidance as the date of service at the address that the Claimants/Applicants are relying on does not fall within the city limits and parish of Kingston and was in fact an additional address for service. What is instructive from the case of **George Hylton** is that sending notice to the additional address out of Kingston does not obviate the need to send the notice to the address in Kingston.

[20] The Claimants/Applicants have stated that the Notice was received at the additional address for service provided, however, that is all they have stated. I find it interesting that there is no Affidavit from the law office of Ronald G. Koathes nor is there any mention in the Affidavits filed by the Claimants/Applicants to say

whether or not the law office of Ronald G. Koathes received the Notice to Caveator. In the absence of such evidence before me, I am constrained to accept that the letter sent by the Legal Officer at the National Land Agency, which stated that the Notice to Caveator was served at 47 Duke Street on the 16th day of March, 2008, is true.

[21] In **George Anthony Hylton** (*supra*,) the Court of Appeal concluded that what is required by the RTA is actual delivery to and receipt at the address not provided, not necessarily that the Notice reached the attention of the Caveator. In the case of **David West et al v James Wyllie et al** [2012] JMSC Civ 136, the caveat lodged provided two addresses, 64 Duke Street, Kingston and 3 Hotel Street, Mandeville, to which notices relating to the caveat may be sent. The Notice sent to Duke Street was returned undelivered, addressee unknown and Lawrence-Beswick J found that service at the Kingston address did not in fact occur. In the instant case, there is no indication that the Registrar of Titles received a return of the notice that was sent to 47 Duke Street, in the parish of Kingston.

[22] Having accepted that the Notice to Caveator was served on the 16th day of March, 2018, I must now determine if the Application filed on the 10th day of April, 2018 was made out of time. The Claimants/Applicants have a duty to ensure that the caveat they lodged in February of 2016 was still in existence at the time they made the Application. Phillips J.A. made the following observations in **George Anthony Hylton** (*supra*):

- (i) *Once notice is given to a caveator (that is, the caveat is warned), the caveat will lapse within 14 days, unless it is withdrawn.*
- (ii) *Whether or not the caveator appears before the court for relief within the 14 day period, the caveat will lapse.*
- (iii) *Where a caveat has lapsed, it cannot be renewed.*
- (iv) *A caveat is not an interest in land. It does, however, protect the caveator's undetermined interest in the property (see Half Moon Bay Hotel v Crown Eagle Hotels Ltd PCA No. 31/2000 delivered 20 May 2002). It gives the caveator the right to relief given by the court under that section so that he may have his interest determined. If*

the caveat has lapsed, there is no caveat in place and therefore no basis upon which the court can grant any relief or order sought under the section.

(v) It follows from (iv) above that the caveator must approach the court for relief within the existence or life of the caveat, that is, within the 14 day period after the notice given.

(vi) Where the caveator appears before the court, the relief to be granted is not an extension of the caveat or an extension of the period in which to apply for relief, but rather an order restraining the Registrar from registering any dealings with the property in question for a particular period or any other appropriate relief within this period, the caveator would be expected to take steps to prove his interest in the property.

(vii) Where the caveator first applies to the court, the court may grant the order restraining the Registrar "for a further period to be specified in such order" or may grant any other order that may be just. The use of the word "further" suggests that there was an initial period during which the Registrar was restrained from registering any dealing with the property. Since this would be the first appearance after the warning of the caveat, it must follow that the initial period of restraint was the 14 day period.

(viii) It must also follow that where the section provides that the caveator may approach the court before the expiration of "such further period as is specified in any order made under this section", this "further period" must be referable to the period which was granted in the order made when the caveator first appeared before the court within the 14 day period. This conclusion inexorably flows from the strict interpretation of the words in the section that after 14 days, the caveat lapses and no application can be made where there is no caveat existing.

[23] Applying these principles to the case, the Claimants/Applicants did not approach the Court for relief within the existence of the life of the caveat. Therefore, once Caveat No. 1989828 lapsed on the 3rd day of April, 2018, having expired fourteen (14) days from the service of the Notice, the Court no longer had the power to renew it. The Application filed by the Claimants/Applicants would therefore have been filed out of time as it was filed in the absence of an existing caveat that would form the basis of the Orders being sought. Based on the provisions of Sections 139 and 140 of the **RTA** and the principles emanating from the cases, I have no jurisdiction to grant the Orders being sought regarding Caveat No. 1989828 which

was lodged pursuant to section 140 of the **RTA**. Therefore, it is my judgment that the Claimants/Applicants are not entitled to the Orders sought in the Ex Parte Notice of Application for Court Orders filed on the 10th day of April, 2018.

ORDERS & DISPOSITION

[24] In light of the forgoing these are my Orders:

- (1) Notice of Application for Court Orders dated and filed April 10, 2018 is not granted and therefore, dismissed.
- (2) Judgment for the Defendants/Respondents on the Application.
- (3) Costs to the Defendants/Respondents on the Application to be taxed if not agreed.
- (4) Defendant's/Respondent's Attorney-at-Law to prepare, file and serve Orders made herein.