



ACTION NO. CL- 158/2019

**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS**

DONNA LYNN CASTELLANO

PLAINTIFF

AND



MAVIS LOUISE ALLISON CLARK

DEFENDANT

WRITTEN RULING

Before: The Hon. Mr. Justice Carlos W. Simons OBE QC

Appearances:

**Mr. Ariel Misick QC of Misick and Stanbrook for the
Plaintiff.**

**Mr Conrad Griffiths QC of Griffiths and Partners for the
Defendant.**

Hearing Date: 24 January 2022

Venue: Court 5, Graceway Plaza, Providenciales.

To be Handed Down: Via Email on Monday, 7 March 2022 at 4:00pm.

The Parties and the Principal Proceedings

1. Andrew James Clark (the deceased) was a citizen of Canada. He died in Providenciales on 9 July 2018. His death has given rise to a number of court proceedings and estate related applications in the TCI and Manitoba, where he had been resident before moving to the TCI in or about 2013.
2. The statement of claim in these proceedings was filed on 8 November 2019. In it the Plaintiff claimed various asset protection orders and declarations in respect of the assets of the deceased's estate and she challenged the grant of letters of administration that had been obtained in the estate by the defendant.
3. At the same time, an ex-parte summons was filed seeking essentially the same relief on an interlocutory basis. The defendant filed an acknowledgement of service on 19 November 2019 and contested the plaintiff's summons. A hearing was had on the same date though it appears the order that was made is unavailable. In any event the defendant filed her defence and counterclaim on 18 November 2020 and it is judgment on this counterclaim that the defendant now pursues by way of the Order 14 summary judgment procedure.
4. At Paragraphs 1 and 3 of her statement of claim the plaintiff alleges that she is the "named Executor" of the deceased's last Will and Testament and that she had been his common law wife for eleven years when they lived together as man and wife in Manitoba, Canada between 2005 and 2016.
5. The defendant is the deceased's mother, and at Paragraphs 1 and 4 of her defence and counterclaim she joins issue with the plaintiff on both these allegations and asserts that she (the defendant) is the sole personal representative of the estate of the deceased as confirmed by letters of administration granted in this Court on 27 June 2019.

The Order 14 Summons

6. In her prayer for relief on her counterclaim, the defendant seeks:
 - i. A declaration that she is the lawfully appointed sole personal representative of the deceased's estate and that the plaintiff has no right or entitlement to the administration thereof.
 - ii. A declaration that the caution registered under instrument number 3059/19 on parcel 60804/157/K44, The Bight and Thomas Stubbs, Providenciales was wrongfully made and consequential directions for its removal.
 - iii. Injunctions restraining the plaintiff from interfering in or preventing her (the defendant's) lawful administration of the deceased's estate.

- iv. Damages to be assessed.
 - v. Interest.
 - vi. Other order.
7. These six heads of relief are repeated in the defendant's summons for summary judgment on her counterclaim under Order 14 of the Civil Rules 2000. It is that summons, filed on 3 August 2021 that is now before the Court for determination. From a cursory review of the pleadings it appears that if the Court grants summary judgment on the counterclaim, the plaintiff's claim is effectively gutted and the plaintiff's action is for all intents and purposes, determined. In other words, the counterclaim is a complete answer to the plaintiff's claim and the relief sought by her.

The Order 14 Procedure

8. At Paragraphs 5 to 9 of his skeleton argument Mr. Griffiths QC gives a useful precis of the Order 14 summary judgment procedure as it applies in the instant case. Essentially, under Order 14 rule 1 (1) a plaintiff may apply to the Court for judgment against a defendant on the ground that the defendant has no defence to the plaintiff's claim, or a particular part thereof. Rule 3 (1) of Order 14 provides that, on such an application it is for the defendant to satisfy the Court that that there is an issue or question in dispute which ought to be tried or that for some other reason there ought to be a trial of the claim, or part. And finally, for the purposes of this case, Order 14 rule 5 (1) allows the procedure to be applied to counterclaims.

The Respective Cases

9. The defendant's case relies on the decisions and orders of the Manitoba courts to the effect that TCI is the appropriate forum for resolution of the issues joined between the parties; that TCI law does not recognize common law relationships and that in any event the deceased's Will, by which the plaintiff claims executorship of his estate was revoked by the Separation Agreement signed between the plaintiff and the deceased on 31 August 2016. The effect of revocation of the Will would be that the deceased died intestate under TCI law and that therefore the defendant is lawfully entitled to the Letters of Administration granted to her by the TCI Court on 27 June 2019. A finding in favor of the defendant on the revocation point would give rise to the consequential relief sought in Paragraphs (ii) to (vi) of the summons.
10. Mr. Misick QC for the plaintiff resists the application on the grounds that it would require the Court to decide at this stage (a) the validity of the will, and whether it was revoked by the Separation Agreement; (b) whether the plaintiff invested in the deceased's estate; and (c) whether she should be liable in damages for wrongful registration of the caution.

Application of Order 14

11. The question that arises for decision is whether the Plaintiff has done enough under Order 14, rules 3 and 4 to satisfy the Court that there is an issue or question in dispute with respect to the counterclaim that ought to be tried, or that for some other reason there ought to be a trial of the counterclaim.
12. Whilst it is true that the Separation Agreement on a plain reading terminates the rights and entitlements of the parties in respect of the property and estate of each other, clause 25 of the Separation Agreement expressly makes it subject to the laws of the Province of Manitoba. That being the case, the question whether the Separation Agreement operated to revoke the Will must be a matter of Manitoba law in respect of which this Court will receive expert evidence.
13. What Justice Turner decided at Paragraphs 6, 75 and 84 of her judgment of February 2, 2021, in the Court of Queens of Manitoba was that “the *forum conveniens* for matters relating to Andrew’s estate is TCI, and not Manitoba.” She did not decide whether the law applicable to the Will and the Separation Agreement and the effect of the latter upon the former were to be the laws of the TCI or the laws of Manitoba.
14. In my judgment the Affidavit of Yasheen Stubbs dated 21 January (and her corrective 2nd Affidavit) are sufficient to constitute an issue or question in dispute that ought to be tried. The Memo and the case law report exhibited there raise a clear issue as to whether under Manitoba law the Will was revoked by the Separation Agreement which I consider to be an issue that ought to be tried. I therefore refuse the relief applied for on the Order 14 summons and order that costs shall be in the cause.

7th March 2022

**The Hon. Justice Carlos W. Simons OBE QC
Judge**

