SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2008/0637

BETWEEN:

BARRIE WILKINSON

Applicant

and

PATRICIA ANN HELEN DEVAUX

Respondent

Appearances:
Mr. Leevie Herelle for applicant
Mrs. Kimberly Roheman for respondent

2011: February 17.

JUDGMENT

[1] **GEORGES, J. [AG.]:** By notice of application filed 2nd July 2008 the applicant herein applied to the Court seeking an order for the removal of a caveat entered by the respondent on 25th February 2008 preventing the reseal in Saint Lucia of a grant of Letters of Administration made to him on 4th January 2008 by the High Court of Justice District Probate Registry at Leeds United Kingdom in succession of his widow Marie Magdalena Wilkinson ("the deceased") who died intestate domiciled in England and Wales on 13th May 2007. Leave is also sought to proceed with the resealing of the said grant in Saint Lucia.

[2] In the grounds of his application the applicant asserts that he is entitled to administer the estate of the deceased under Article 1152A Ch. 242 of the **Civil Code of Saint Lucia** which states inter alia that:

> "Where a Court of Probate, in any part of Her Majesty's dominions, or a British Court in a foreign country, has, either before or after the passing of

> this article, granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters granted may, on being produced to, and a copy thereof deposited with, the Registrar of the Supreme Court, be sealed with the seal of that Court, and on being registered in the Registry of Deeds shall thereupon be of like force and effect, and have the same operation in the Colony as if granted by the Supreme Court."

He further asserts that there are no reasonable grounds in fact or in law prohibiting him from administering the estate of the deceased.

[3] In his affidavit in support filed 2nd July 2008 the applicant whose address is stated as Seascape Marisule in the Quarter of Gros Islet in the State of Saint Lucia avers that he was the lawful husband of the deceased and they were married in London on 20th June 1963 at the Registry Office of the Royal Borough of Kensington and remained married until her unfortunate and untimely death on 13th May 2007, that is, for approximately 44 years.

[4] At paragraph 2 of the said affidavit the applicant deposed that from the outset "it was always our intention to make Saint Lucia our permanent and indefinite home – which we did". The court however notes in passing that the deceased's usual address as appears on her death certificate is stated as 85 Broadway Shifnal Shropshire and the applicant's address in the grant of Letters of Administration is the same. The deceased it will be recalled is stated in the Letters of Administration to have died **domiciled in England and Wales** [my emphasis]. That was from information furnished by the applicant to his solicitor in his application for Letters of Administration in the estate of the deceased.

[5] The applicant further deposed at paragraph 2 that:

> "At the time of our marriage the deceased who was previously married with five young children – the Respondent, being the youngest daughter aged nine at the time, our resettlement to St. Lucia was delayed until a more opportune time in order to maintain some level of contact with the children's biological father."

[6] On 5th January 1983 he became a Saint Lucian citizen he declared and it was during one of their visits to Saint Lucia in 1981 that the opportunity presented itself

for his wife and himself to purchase "Seascape" at Marisule comprising and registered as Block 1053B Parcels 420-424 ("the Property").

[7] The evidence shows that the total purchase price was US$90,000.00 and the applicant averred (at paragraph 4) that the finances for the purchase came from their joint finances. At the time of the intended purchase the applicant disclosed (at paragraph 4) that his citizenship application was pending so that in order to expedite matters and upon the advice of their attorney the first of two purchases was completed in the deceased's name in July 1981 and again in December 1982. To this day she is still the registered proprietor of the Property comprising 5 parcels of land and known as Seascape.

[8] Following the acquisition of Seascape the applicant states (at paragraph 7 of his supporting affidavit) Saint Lucia became their permanent and uninterrupted home where they lived continuously until April 2006 when the deceased took ill and was forced to seek medical attention and treatment in the United Kingdom.

[9] She in fact died intestate at New Cross Hospital Wolverhampton in May of the following year whereupon the applicant applied for and was granted Letters of Administration by the District Probate Registry in Leeds on 4th January 2008 on account of his beneficial interest and order of priority under the **Intestacy Rules of England**. I should mention that the application was initially caveated by the respondent but the caveat was voluntarily lifted soon after.

[10] In October 2007 he instructed his attorney in Saint Lucia to assist him in "settling the probate" only to discover that the respondent's attorney in Saint Lucia – Messrs McNamara & Co had filed a caveat on behalf of the respondent on 25th February 2008 prohibiting reseal of the English grant on the ground that the respondent ("the deceased's youngest daughter by her former marriage) claimed an interest as heir of her deceased mother's estate.

[11] In addition she declared that:

(1) The applicant has advised that he claims a community share in the estate and as such he is not an heir and has no interest in the estate of the deceased.

(2) Alternatively if the applicant is entitled to a reseal and is relinquishing his community share one of the children of the deceased wishes to be jointly appointed with the applicant as administrator of the deceased's estate.

(3) As regards the grant obtained in the United Kingdom the children of the deceased were not included as heirs and were unable to assert a right to be included as personal representatives of the deceased's estate as her property passed to the applicant by survivorship.

[12] In reply to the applicant's application for reseal of the English (UK) grant Beverley Devaux the eldest child and son of the deceased by her former marriage deposed in his affidavit that the respondent (his sister) had instructed attorneys in Saint Lucia to apply for Letters of Administration in the deceased's estate there. It was his understanding he said (and this is confirmed at paragraph 13(a) of the applicant's supporting affidavit to remove the caveat and for leave to reseal the UK grant in Saint Lucia) that the applicant was claiming a community share in the Property "Seascape" situate in Marisule which he claims had been purchased by the deceased and himself in July 1981 and December 1982.

[13] At paragraph 8(b) of his affidavit Beverly Devaux deposed that:

> "The travel expenses of the Applicant were met by Patricia Devaux to facilitate a trip to St. Lucia on the undertaking that the Applicant would sign all necessary documents to permit the Letters of Administration to proceed including the relinquishing of any claim to a community share, which he subsequently refused to do."

This is categorically denied by the applicant who at paragraph 4 of his affidavit in reply declared that:

> "Clause 8(b) is denied. On absolutely no occasion have I agreed or undertaken to travel to St. Lucia to 'sign all necessary documents to permit the Letters of Administration to proceed including the relinquishing of any claim to a community share'."

And at paragraph 13(a) of the supporting affidavit to his application to reseal the grant the applicant declared that he believed that he was 'entitled to the reseal of the Letters of Administration in accordance with Article 1152 of the **Civil Code** and the decision of Sir Vincent Floissac CJ in **Remy v Prospere**[1].

[14] The relevant provision of Article 1152A of the **Civil Code** is set out in paragraph 2 and in **Remy v Prospere** at page 176 paragraphs f, g and h Sir Vincent Floissac CJ in delivering the judgment of the Court of Appeal lucidly explained that:

> "The codal definition of 'community' indicates that community of property is a question of status or matrimonial status. The definition signifies that community is a product, incident or consequence of the matrimonial status. Since article 5 provides in effect that the St. Lucian laws relating to matrimonial status (which is the source of community) apply only to persons domiciled in St. Lucia, it follows that the St. Lucian laws of community do not apply to a husband who was not domiciled in St. Lucia at the time of his marriage. Any doubt as to the restricted application of the St. Lucian laws of community is removed by the proviso to article II80 which accentuates the otherwise obscure precondition of St. Lucian community that the husband should be domiciled in St. Lucia at the time of his marriage."

And according to Article 48 of the **Civil Code**:

> "The domicile of a person, for all civil purposes, is at the place where he has his principal residence".

The applicant admitted that he had not filed any claim asserting a right to community but said that he was entitled to an equitable share in the Property in which he claimed a community interest as the finances for the purchase came from their joint finances. At paragraph 8 of his affidavit in reply the applicant states that of the purchase price of US$90,000.00 US$75,000.00 by way of a bank draft was paid to the vendor's attorney Mr. Kenneth Monplaisir which was drawn against his bank account with National Westminister Bank in Wall Street New York

[1] (1992) 44 WIR 173

but the draft copy is inscribed "debit our account" which suggests that this came from a joint account. So that there is no evidence of the ratio or proof of the contribution of the respective parties towards the purchase of Seascape. It was supposed to have been their abode at one time and later a joint investment/enterprise and as such a source of income until apparently it was put up for sale with realtors Helen Estates Realtors at a price of US$1.3 million in early April 2006. A letter was sent to by the realtors to Mrs. Wilkinson ("the deceased") in England (whither she had just travelled for medical attention) requesting her agreement and confirming her instructions to sell Seascape on terms authorized in their letter which was already signed by Mr. Wilkinson but this evolved no response.

[15] Beverley Devaux went on to point out that at the time of purchase of the land the applicant was an alien and did not possess a licence to hold land in Saint Lucia.

[16] Mr. Leevie Herelle counsel for the applicant posited in his skeletal arguments that the issues which fell to be determined were:

(1) Whether the applicant is entitled to a reseal of the Letters of Administration granted to him by the High Court of Justice District Probate Registry at Leeds on 4th January 2008?

(2) Whether the applicant's entitlement to a community share of the immovable property in Saint Lucia precludes him from or conflicts with his duties as Administrator of the deceased's estate?

[17] In that regard learned counsel submitted that the applicant was entitled to reseal the grant of Letters of Administration as is under the provisions of Article 1152A of the **Civil Code** since it had been issued and was properly obtained without controversy appeal or originating application challenging it or seeking to amend or vary it in the UK. Letters of Administration granted in the UK he contended were entitled to be simply resealed in Saint Lucia upon "being produced to and a copy thereof deposited with the Registrar of the Supreme Court..." and "upon being

registered in the Registry of Deeds shall...be of like force and have the same operation...as if granted by the Supreme Court". Therefore under the provisions of the said Article any application to amend or vary the Letters of Administration as granted should be made in the jurisdiction in which they were obtained.

[18] Counsel further submitted that the amended appearance filed 18th April 2008 on behalf of the caveator (to respondent therein) provides no reasonable grounds in fact or in law which when properly construed would cause the court to prevent or restrict or amend the Letters of Administration as it is.

Reference was made to subsection 3 of Article 592 of the **Civil Code** which provides that:

> "The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts."

That provision applied where a party is seeking or applying for Letters of Administration counsel pointed out but not resealing an existing grant. The respondent he added had no grounds or entitlement to be jointly appointed and had proffered none or disclosed no just cause for prohibition against the reseal save and except an allegation that the application was not to be trusted qua administrator which was not properly substantiated.

[19] In considering a reseal of letters of administration counsel further submitted the jurisdiction of the court was one of authentication of the grant – to ensure that the relevant duties etc. had been paid and the adequacy of any security on an application of a creditor on a payment of debt.

[20] The second issue raised on behalf of the caveator speaks to the applicant's entitlement to a community share of the immovable property in Saint Lucia. Mr. Herelle submitted that the applicant and the deceased had been married for 44 years and throughout the marriage Saint Lucia had remained their domicile and that fact he said was underscored by paragraph 1 of their attorney Vernon Cooper's letter dated 15th July 1981 to the then Prime Minister of Saint Lucia which states that:

> "I act for Mr. Barry Thomas Wilkinson the husband of Marie Wilkinson formerly Marie Devaux a citizen of Saint Lucia born in Saint Lucia and domiciled here."

Paragraph 4 of the said letter reads that:

> "Under the Nationality Laws, Mr. Wilkinson automatically acquires Saint Lucian citizenship and the right to reside permanently in Saint Lucia but out of an abundance of caution and for the purposes of Immigration Authorities when he should arrive in Saint Lucia, he would like some document evidencing his right to permanent residence in Saint Lucia."

Mr. Wilkinson in fact became a citizen of Saint Lucia in January 1983.

[21] The question is whether any one of those incidents per se or cumulatively confers Saint Lucian domicile on the applicant thus entitling him to a community share in the Property Seascape. The Property which is the subject of the deceased's estate in Saint Lucia was purchased approximately twenty years after their marriage counsel pointed out. As elucidated by Sir Vincent Floissac CJ in **Remy v Prospere** at paragraph 12 "the St. Lucian laws of community do not apply to a husband who was not domiciled in St. Lucia **at the time of his marriage**" [my emphasis]. The applicant and the deceased had lived in Saint Lucia for over 25 years he added which cohabitation was only interrupted by the deceased's illness and subsequent death. From the evidence on file that assertion is not free from doubt as the parties always seem to have had an abode in England throughout their marriage and she in fact died domiciled there according to the grant of Letters of Administration of her estate out of the Leeds District Probate Registry. The onus of establishing that the applicant's domicile of origin was displaced by one of choice would of course rest on him having regard to all the circumstances.

[22] Although at paragraph 2 of his supporting affidavit the applicant avers that from the outset (of their marriage in the UK) it always was the intention of the parties to make Saint Lucia their permanent and indefinite home the fact of the matter is that as at the date of their marriage in the UK he was himself domiciled there and not legally or de facto domiciled in Saint Lucia.

Article 543 of the **Civil Code** provides that the place where a succession devolves is determined by the domicile. Article 545 of the **Civil Code** stipulates that succession in the case of movable property is governed by the law of the domicile; in the case of immovable property by the law of the Colony. It is evidently on that basis that the solicitor acting for the applicant with regard to his application for a grant of Letters of Administration in the deceased's estate in the UK proceeded on the premise that there was no minority or life interest arising in the deceased's estate superior to his and that he was lawfully entitled to apply in priority to any other potential party – according to the **English Rules of Intestacy**.

[23] Mr. Herelle went on to submit that the applicant's affidavits and supporting documents show that Saint Lucia always had been and continued to be the parties' principal place of residence and the subject of this estate is his matrimonial home. He holds a citizenship passport counsel pointed out and the Property ("Seascape") was his only place of residence here and partly a source of income. He had made a substantial contribution towards its purchase counsel added. And yet curiously enough to this day the deceased remains the sole registered proprietor and ostensibly up to a year before her demise she did not consent to its sale with the applicant at a substantial profit.

[24] That said it is manifestly clear from perusal of the affidavits of Beverley Devaux that there is no love lost between the deceased's five children and their stepfather the applicant in whom there is no confidence and against whom serious allegations have been made of his probity, integrity and general trustworthiness. As Mr. Herelle pointed out each of the siblings have joined by way of a supporting affidavit (through Beverley Devaux) to discredit and disparage the applicant without anyone of them being present in court at this hearing for cross examination. That clearly diminishes the credibility and value of what is stated especially in light of the categorical denials made by the applicant himself in reply.

[25] In her comprehensive skeleton arguments Ms. Kimberley Roheman counsel for the respondent posed seven issues which she felt needed to be resolved in order

to determine whether the Letters of Administration granted to the applicant in the estate of the deceased by the Probate District Registry at Leeds in the UK should be resealed here in Saint Lucia. Firstly is the question whether the applicant is entitled to a community share in the estate of the deceased and if so by what method must such right be asserted.

As stated in paragraph 25 pursuant to Article 545 of the **Civil Code** succession of immovable property is governed by the appropriate law of the Colony. Hence any authority to pursue and collect assets of the deceased in Saint Lucia must of necessity depend on the relevant laws of Saint Lucia: **Michele Mars v Lambert James-Soomer** SLUHCV 2003/0318 judgement of Edwards J (as she then was) at paragraph 28.

[26] Secondly in determining the right to a grant counsel submitted regard must be had to the persons both interested in the succession and those deemed to be heirs in law and pursuant to Article 592(3) of the **Civil Code** the personal representatives of a deceased person are his/her heirs. Further Article 1016 of the **Civil Code** stipulates the order of priority. Children of the deceased have a legitimate right to apply for Letters of Administration as being the persons within the heritable degree with a right to succeed to the deceased since the applicant claims a community share. Notwithstanding the applicant's claim to have a right to the Property by community share his name it was pointed out does not appear on the Land Register and since he was not legally able to purchase the Property at the date of its acquisition as he was an alien without the requisite Land Holding Licence to do so he is estopped from claiming a share therein except by deed or other conveyance counsel submitted. The Property was acquired in July 1981 and December 1982 as we have seen and the applicant became a citizen of Saint Lucia in January 1983.

[27] Learned counsel, quite correctly in my view, further submitted that if it had been the intention of the deceased that the applicant should acquire a one half share of the Property steps would of necessity have to be taken to achieve this. As a

spouse the applicant is capable pursuant to Article 567B of inheriting from the deceased a one third share and the child or children the other two thirds equally. If however, the applicant asserts a right to community share (as he has) he cannot succeed to the deceased. If he so desires he must in accordance with the provisions of Article 567(C) pay into the mass his share in any community of property which may have existed between himself and his wife when such community has been accepted by the succession of his wife. Furthermore in order for the applicant to claim by community he must assert his claim as against the estate by filing a Claim Form.

[28] In light of the foregoing learned counsel contended that on account of the applicant's claim for a community share of the estate of the deceased he is not entitled to succeed to the estate of the deceased as an heir and is consequently not entitled to a reseal of the English grant of Letters of Administration in the estate of the deceased.

[29] At paragraph 13 of the applicant's affidavit in reply filed 24th September 2008 he asserts that the deceased always considered Saint Lucia to be her home and place of domicile and that together and throughout their marriage Saint Lucia had been their home and place of domicile. Yet the deceased was declared by him to have died domiciled in England and Wales on the strength of which he was lawfully entitled to apply in priority to anyone else and obtained the grant of Letters of Administration of the deceased under the **England Intestacy Rules**. Here he is evidently blowing hot and cold colloquially speaking on the issue of the deceased's domicile and goes on to claim a common interest **in equity** in the Property (my emphasis). The applicant was able to inherit solely by the right of survivorship under intestacy laws of England and Wales having regard to the gross value of the estate not exceeding £300,000.00 or £53,000.00 net.

[30] Referring to page 489 of **Tristram & Coote's Probate Practice**[2] Mrs. Roheman advanced that in assessing resealing in the UK a reseal will only be made upon

[2] 24th Edition at page 489

evidence of domicile and the applicant had offered no such evidence. Therefore if the deceased died domiciled in Saint Lucia as alleged the applicant would not be entitled to administer the estate in Saint Lucia except on proof that he was legally entitled according to the laws of Saint Lucia to do so. The example set out in the abovementioned treatise illustrates the position thus:

> "If the deceased died domiciled in country 'A' (St. Lucia) but a colonial grant has been made in country 'B', then unless the leave of the Registrar is obtained... the Grant may be resealed only upon evidence that the person to whom it has been made would be entitled to administer the estate in accordance with the law of country 'A'."

That submission is accepted without cavil.

[31] Referring to the English Grant learned counsel contended that to approve a reseal of it would effectively disentitle the lawful heirs to a share of the deceased's estate under the law of Saint Lucia since the Grant provides that the estate of the deceased devolves to and vests in the personal representative of the deceased Barrie Thomas Wilkinson. That evidently in my view would be the practical result.

[32] In conclusion there is nothing which on the face of it in any way vitiates the validity or authenticity of the grant of Letters of Administration made on 4th January 2008 to the applicant Barrie Thomas Wilkinson in the estate of the deceased Marie Magdalena Wilkinson by the High Court of Justice in the District Probate Registry at Leeds in the United Kingdom which justifies refusal of its reseal in Saint Lucia.

[33] An order is now sought by the applicant for removal of a caveat entered by the respondent preventing the reseal of that grant and a further order that neither the respondent nor any of her siblings be permitted to enter caveats restricting him from applying for the reseal of the said grant in succession to the deceased or hindering him in any way from performing his duties as Administrator of the estate of the deceased and that leave be granted to him to proceed with the resealing of the grant.

[34] From the affidavits and supporting documents of the respective parties and more importantly the written and oral submissions of counsel it would without doubt be

true to say that one of the key issues which falls to be determined in this matter is whether the applicant is entitled to a community share (that is a 50% share) in the estate of the deceased as he asserts.

[35] On the facts as I see them and analysis of the relevant laws and the legal authorities referred to I am fully satisfied that the applicant is not entitled to a community share in the estate of the deceased. The Saint Lucian laws of community do not apply to a husband who was not domiciled in Saint Lucia at the time of his marriage as is the case here.

[36] The grant of Letters of Administration of the estate of the deceased dated 4th January 2008 issued out of the District Probate Registry in Leeds was made to the applicant as sole heir. By section 567B(1) of the **Civil Code** the heirs of the deceased in Saint Lucia who are entitled to the succession of the deceased are a spouse capable of inheriting and issue the spouse namely the applicant Barrie Thomas Wilkinson taking one third (that is 5/15 share) and the children of the deceased would take the other two thirds to be divided between them in equal shares (that is 2/15 share each) that is to say:

(1) Beverley Callistus Fernando Devaux (Son)
(2) Sebastian aka Sebastian John Devaux (Son)
(3) Benedict Andrea Achenbach (nee Devaux) aka Bernadette (Daughter)
(4) Michael John Gregory Devaux (Son)
(5) Patricia Ann Helen Devaux (Daughter)
(6) Barrie Thomas Wilkinson (Spouse)

[37] From the inception of the purchase of the Property in July 1981 and December 1982 to this day the deceased was and remains the sole registered proprietor in the Land Registry which does not reflect any community interest.

[38] In light of the foregoing it is hereby ordered and directed that:

(1) The Caveat entered by the respondent on 20th February 2008 preventing the reseal of the Grant of Probate in the succession of the deceased Marie Magdalene Wilkinson be removed forthwith by the Registrar of the High Court.

(2) The applicant be and is hereby refused leave to proceed with the resealing of the Letters of Administration granted to him in the estate of Marie Magdalene Wilkinson deceased on 4th January 2008 by the High Court of Justice District Probate Registry at Leeds in the United Kingdom.

(3) The applicant do relinquish his claim to community share and be permitted to apply for Letters of Administration jointly with Beverley Callistus Fernando Devaux as personal representatives of the estate of the deceased.

(4) The heirs of the deceased pursuant to the laws of Saint Lucia and their respective shares in the estate of the deceased are:

(a) Beverley Callistus Fernando Devaux (Son) 2/15
(b) Sebastian aka Sebastian John Devaux (Son) 2/15
(c) Benedict Andrea Achenbach (née Devaux) aka Bernadette (Daughter) 2/15
(d) Michael John Gregory Devaux (Son) 2/15
(e) Patricia Ann Helen Devaux (Daughter) 2/15
(f) Barrie Thomas Wilkinson (Husband) 5/15

Costs of the application to be borne by the estate.

Ephraim Georges
High Court Judge [Ag.]