

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HPP 01 of 2021

Sheriya Aradhya Singh

Cynthia Raksha Singh

Plaintiffs

appearing by their next friend and mother Melaia Vasuca

v

Jit Singh

Defendant

Counsel: Mr N. Mishra for the plaintiff

Ms K. Dujan for the defendant

Date of hearing: 2nd May, 2022

Date of Judgment: 17th May, 2023

Judgment

1. The plaintiffs, appearing by their next friend and mother Melaia Vasuca, (MV) in their originating summons seeks the following reliefs:
 - a. A declaration that the conduct of the defendant is a breach of trust.
 - b. The defendant provide an accurate and proper list of inventories and accounts of the Estate of Sharneel Jeet Singh (deceased).
 - c. The defendant be removed and/or discharged as the Administrator in the Estate of the deceased.
 - d. The defendant surrender letters of administration No. 61678 in the Estate of the deceased.
 - e. The plaintiff be issued Letters of Administration and appointed as the Administratrix in the Estate of the deceased.
 - f. Leave be granted to plaintiff as Administratrix deceased to carry on business of Sunil Carriers until the beneficiaries gain the age of majority.

2. MV, in her affidavit in support states that the deceased and she were in a de-facto relationship and lived together until he passed away on 1 November, 2017. They have two daughters: the first plaintiff, (born on 28 October, 2012) and the second plaintiff (born on 12 February, 2014). The defendant took control of the deceased's carrier business after he obtained grant. He sold 4 vehicles. In October 2018, he suffered a stroke and his wife manages the business. The defendant only assisted by providing his daughters with school uniforms and stationery, but has refused to provide them an allowance. His daughters will lose their beneficial interest in the Estate before they turn 18 years. An accurate and proper list of inventories and accounts of the finances of the Estate has not been kept by the defendant. The defendant is not the best person to be administer the Estate.

3. The defendant, in his response states that he the plaintiff has no knowledge or expertise in running the business. The plaintiff physically abuses her daughters frequently. He is trying to preserve the business in the best interest of the two children.

The determination

4. The plaintiffs seek to remove the defendant as the Administrator in the Estate of the deceased and MV be appointed as Administratrix.
5. The underlying facts are not in dispute. MV was in a de facto relationship with the deceased until he deceased passed on. He died on 1 November,2017. The plaintiffs were their daughters. The value of the estate was \$600,00.00 after allowance for debts and funeral expenses.
6. The defendant, (the father of the deceased) was granted letters of administration on 21st February,2018.
7. The plaintiff state that the deceased had the following properties:
 - a. The business of “*Sunil Carriers*” a carrier business which had a total of 8 (eight) carriers with Registration Nos. DY609, EW755, EY162, FC417, FC943, FN100, JA027 and JE970. He sold 4 vehicles bearing registration nos. DY609, EY162, FC417 and FC943 from the business to be sold.
 - b. Accounts at Bank of Baroda and Bank of the South Pacific.
 - c. A Native Lease property, vacant land at Naduru Road, Nausori used for farming; and
 - d. A Native Land Lease property with a 3 bedroom concrete house at Naduru Road, Nausori. After the deceased’s death, the defendant moved in to this property with the plaintiffs.
8. The defendant has not provided an Inventory of properties of the deceased nor the income derived from the business. He only accepts that the deceased was a Director of Sunil Carriers and the deceased lived with MV in the house referred to in d) of the preceding paragraph.

9. The plaintiffs complain that the defendant has not kept nor provided an accurate and proper inventory and accounts of the Estate.

10. In *Arvind Patel & Ors v. Nodhana Ltd & Ors*, (1994) 40 FLR 118 Fatiaki J stated :

'That a trustee has a duty to provide beneficiaries with accounts there can be no doubting. In Re Watson (1904) 49 Sol. Jo. 54 Kekewich J. speaking of the duty said:

The duty of a trustee is three-fold: there is a duty to keep accounts, the duty to deliver accounts and the duty to vouch accounts ... The duty to keep accounts is an essential duty, he must keep such accounts so as to be able to deliver a proper account within a reasonable time showing what he has received and paid."

In similar vein and a good deal earlier Stuart V.C. said in Kemp v. Burn (1863) 141 R.R. 225, 226:

*"... where an account is demanded of trustees ... **by a residuary legatee**, there seems no doubt what the duty of the (trustee) is. Their duty is to keep proper accounts, and to have them always ready when called upon to render them."(emphasis added)*

11. Despite the passage of five years since he was granted administration in the Estate, the defendant has not taken steps to provide an Inventory of the Estate nor transfer the properties to the beneficiaries. He has not provided accounts of the income derived from the business of Sunil Carriers nor accounts of the estate.

12. In my judgment, that constitutes misconduct on the part of the defendant as Administrator and detrimental to the welfare of the beneficiaries, the plaintiffs, who are both minors.

13. I would also note that the defendant admittedly suffered a stroke in October,2018, and his daughter is running the business of the deceased.

14. In my view, it is evident that the defendant cannot run the business nor administer the Estate.

15. In *Carvel Foundation v Carvel*, [2007] 4 All E R 81 at pgs 93 -94 Lewison J said:

It is common ground that, in the case of removal of a trustee, the court should act on the principles laid down by Lord Blackburn in Letterstedt v Broers (1884) 9 App Cas 371, [1881-5] All ER Rep 882, and that in the case of removing a personal representative similar principles should apply.... Lord Blackburn referred ...with evident approval to a passage in Story's Equity Jurisprudence (s 1287):

'But in cases of positive misconduct, Courts of Equity have no difficulty in interposing to remove trustees who have abused their trust; it is not indeed every mistake or neglect of duty, or inaccuracy of conduct of trustees, which will induce Courts of Equity to adopt such a course. But the acts or omissions must be such as to endanger the trust property or to shew a want of honesty, or a want of proper capacity to execute the duties, or a want of reasonable fidelity'.

...
The overriding consideration is therefore whether the trusts are being properly executed; or, as he put in a later passage, the main guide must be 'the welfare of the beneficiaries' ((1884) 9 App Cas 371 at 387, [1881-5] All ER Rep 882 at 887).

16. The plaintiff was entitled to obtain letters of administration in the first instance, in terms of Section 7 of the Succession Probate and Administration Act.
17. The defendant is forthwith removed as the administrator of the Estate of the deceased and MV is appointed as the Administratrix of the Estate.

18. ***FINAL ORDERS***

- a. I grant the plaintiffs a declaration that the conduct of the defendant is a breach of trust.
- b. The defendant shall provide the plaintiffs an accurate and full and proper list of inventories and accounts of the Estate of Sharneel Jeet Singh on or before 16th June,2023.
- c. The defendant is removed as Administrator in the Estate of Sharneel Jeet Singh.
- d. The defendant shall forthwith surrender letters of administration No. 61678 in the Estate of Sharneel Jeet Singh.
- e. The plaintiff is issued Letters of Administration and appointed as the Administratrix in the Estate of Sharneel Jeet Singh.
- f. The plaintiff as Administratrix in the Estate of the deceased shall carry on business of Sunil Carriers until such time as the beneficiaries gain the age of majority.
- g. The defendant shall pay the plaintiffs costs summarily assessed in a sum of \$2500.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
JUDGE
17th May,2023