

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

CP NO. 230/92

IN THE MATTER of an application made
pursuant to the Property
Law Act 1952 (NZ)

BETWEEN: SAMOA SNACK FOODS LIMITED
a duly incorporated company
having its registered
office at Apia

PLAINTIFF

A N D: THE PUBLIC TRUSTEE as
Administrator of the Estate
of PHOEBE THERESA VOIGHT
deceased and MARIE FONG of
Tiapapata, Married Woman

DEFENDANTS

Counsel: R. Drake for Plaintiff
L.S. Kamu for Defendants *2/13*
The Public Trustee in person
R.S. Toailoa for Applicant

Hearing: 2nd November 1992

Judgment: *10 November 1992*

RULING OF SAPOLU, CJ

(On application to be joined as a Party)

An action for partition of land has been brought by the plaintiff who claims to have an interest to the extent of one moiety or upwards in a piece of land situated at Tamaligi, Apia, against the Public Trustee as administrator of the estate of Phoebe Theresa Voight deceased and one Marie Fong who also holds an interest in the said land. The Court is only concerned here with that part of the action relating to the Public Trustee.

The present applicant is a beneficiary of the estate of the said deceased and he is applying to the Court to be joined in as a party to the action by the plaintiff for partition of the land at Tamaligi. The applicant says the late Phoebe Theresa Voight holds an undivided 25/84 share in the said land and as a beneficiary of the estate of the deceased he has an interest in the deceased's undivided 25/84 share in the said land. The Public Trustee does not oppose the application but the plaintiff does. Counsel for the plaintiff contends that only the Public Trustee as administrator of the deceased's estate can be made defendant to the plaintiff's action and the present applicant, although a beneficiary to that estate, has no locus standi to be joined in as a party. Counsel then cited authorities in support of the plaintiff's contention.

I have considered the authorities cited by counsel for the plaintiff and they do not relate to the question I have to decide, that is, whether the applicant can be properly joined as a party to the action by the plaintiff for partition of land. The authorities cited relate to the question of partition of land but not to the question of who can be joined as a party in an action like this action.

In Halsburgs Laws of England, 4th Edition, Volume 14 at para 1458, it is provided : "The general rule in actions for administration is that all the executors who have proved, or all the administrators, must be parties either as plaintiffs or defendants....It is not necessary for all persons having a beneficial interest in or ^{an} claim against the estate to be parties to the action, but the plaintiff may make ^{such} of those persons parties as he thinks fit having regard to the nature of the relief claimed. Where a claim is made against the estate by a person not a party to the action only the personal representatives are entitled to appear without leave of the Court; and the Court may direct or allow any other party to appear in addition to or in substitution for the personal representatives on such terms as to costs or otherwise as it thinks fit". Thus it appears that in actions for administration the general rule is that only the personal representative may be joined as a plaintiff or defendant.

However that is only a general rule and there may be circumstances where a person who is not a personal representative may be joined as a party to an action for administration. In the case of In re Watts, Smith v Watts [1882] 22 Ch D 5, at page 12 Jessel MR said : "I have only one further observation to make and it is this, that in all cases where a claim is brought against an estate in an administration action, only one party should attend to oppose it....As a general rule, the executor or administrator is the proper person to attend, unless the Court otherwise orders". So there is no absolute rule that only the personal representative of an estate, but no other person, may be joined a party to an action for administration. The Court still has a discretion in certain circumstances to accept as a party a person who is not an executor or administrator if the interests of justice so require. No doubt those circumstances will be exceptions to the general rule that personal representative is normally the proper person to be joined as plaintiff or defendant in an action for administration.

The next question which arises is whether the action in this case by the plaintiff against the Public Trustee for partition of a certain land, part of which the applicant claims to be a beneficiary thereof under the estate of Phoebe Voight, is an action for administration. If it is, then the general rule I have referred to that the personal representative is normally the proper person to be joined as plaintiff or defendant applies and it will require exceptional circumstances before a person who is not a personal representative may be joined as a party. To determine whether the action by the plaintiff is an administration action I refer first to a passage in the New Zealand Law Dictionary, 2nd Edition by Professor Hinde where it says in reference to the word "administration" as follows : The word is specially used in reference to the following cases : The administration of a deceased's estate; that is, getting in the debts due to the deceased, and paying his creditors to the extent of his assets, and otherwise distributing his estate to the persons who by law

entitled thereto". As I understand this action by the plaintiff, it is not an action relating to the collection of any debt due to the deceased or his estate. It is also not an action by a creditor against the estate of the deceased. Neither is this an action relating to the distribution of the estate to its beneficiaries.

Again I refer on this point whether the present action is an administration action to Halsburg's Laws of England, 4th Edition Vol. 17 at para 1151 where it says : "All claims founded upon any obligations under a contract, bond or covenant, or upon any debt or duty which might have been enforced by suing the deceased in his lifetime, are in like manner enforceable, to the extent of assets against the personal representative"....Now this is an action for partition against the Public Trustee as administrator of the estate of the deceased. It is not an action based upon a contract, bond, covenant, debt or duty.

I have also referred to the provisions of the Law Reform Act 1964 and, in particular, section 3(1) where it provides that on the death of any person, all causes of action subsisting against him, shall survive against his estate. It is not specifically mentioned in any part of the action by the plaintiff whether the present action was subsisting against the deceased at the time of her death.

I have tried to determine whether the action by the plaintiff is an administration action because of the plaintiff's contention that in this case the only proper person to represent the estate of the deceased is the Public Trustee as administrator of that estate, and the applicant being only a beneficiary of the estate has no locus standi to be joined as a party to the proceedings. Having said that, I realise that if the Court is now to rule that the action by the plaintiff is not an administration action and therefore its objection against the applicant that the Public Trustee is the only proper defendant to act on behalf of the deceased's estate in this case fails, that may be tantamount to the Court ruling that the present action against the Public

Trustee, not being an administration action, is therefore not maintainable in law. However the Court has not heard submissions from counsel, especially counsel for the plaintiff, on that point.

I have also referred to section 3(1) of the Law Reform Act 1964 in case in the end of the Court holds that the plaintiff's action is not an administration action. Should that conclusion arise in the course of these proceedings, it is still arguable that the present action is maintainable in law against the deceased's estate provided the cause of action was subsisting against the deceased at the time of his death. I think there is no real point at this stage in making a final determination on the application by the applicant to be joined as party to the present proceedings, without first deciding whether the proceedings are truly maintainable in law.

I will therefore adjourn this matter to 30 November 1992 at 8.30am to hear legal submissions from the Public Trustee, counsel for the plaintiff and the applicant as to whether the present action is maintainable in law or not. I am including counsel for the applicant as the success or otherwise of his application may depend on the question whether the present action is maintainable in law.

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CHIEF JUSTICE