

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 105 OF 1995



BETWEEN: WINSTON ENGLISH  
ROSLYN GLASGOW  
DIANETTE PATRICK

V

ALBAN DEANE  
LOMAX DEANE

1ST DEFENDANT  
2ND DEFENDANT

A Williams Esq for the Plaintiffs  
JB Frederick Esq for the Defendants

Mitchell J

JUDGMENT

This is a dispute arising out of two Deeds of Gift, the validity of which are challenged due to the alleged senility of the grantor at the time of the making of the Deeds.

The claim of the Plaintiffs is set out in a specially endorsed writ issued out of the Registry of the Supreme Court of St Vincent and the Grenadines on 28 March 1995. The 1st Plaintiff Mr Winston English (hereinafter Mr English) claims that he is the Executor of the last Will (hereinafter the Will) of the late Charles Clarke (hereinafter Mr Clarke) dated 19 April 1988. Mr Clarke died on 21 April 1990. The 2nd and 3rd Plaintiffs are beneficiaries under the Will. The 1st Defendant Alban Deane (hereinafter Mr Deane) is the nephew of and another beneficiary under the Will of Mr Clarke. The 2nd Defendant (hereinafter Lomax) is the son of Mr Deane. In the Will Mr Clarke devised his estate as follows. He left to Dianette Patrick the 3rd Plaintiff (hereinafter Ms Patrick) his dwelling house and bakery on a property consisting of 4,000 square feet. He also in his will left 2 acres of land at Mount Pleasant to the 2nd Plaintiff Roslyn Glasgow (hereinafter Ms Glasgow). He left Mr Deane a parcel of land at Mount Pleasant. Finally, he left Zeno Connell the son of Ms Glasgow (hereinafter Zeno) 10 acres at Overland. Prior to the death of Mr Clarke, Mr Deane got solicitor Dr Kenneth John to prepare 2 Deeds of Gift in favour of Cheryl Deane and Mr Deane in trust for Sandra Deane. Cheryl and Sandra are the children of Mr Deane. On executing the 2 Deeds Mr Clarke asked about the Deeds for the other devises in his Will. He was told by Mr Deane that they were not ready. Subsequently, Mr Deane engaged the services of another solicitor RTLV Browne Esq (hereinafter Mr Browne) to prepare two Deeds of Gift for the properties devised to Ms Glasgow and Ms Patrick. The 2 Deeds gave these 2 properties to Mr Deane and to Lomax. The claim is that these 2 Deeds of Gift were fraudulent. Ms Glasgow and Ms Patrick as a result of these 2 Deeds lost their two devises in the Will. The said Deeds were executed 9 days prior to the death of Mr Clarke when

Mr Clarke was already senile and incapable of knowing what he was doing. Mr Clarke was at the time of the execution of the Deeds on his death bed suffering from severe diabetic gangrene to his leg. It was known to Mr Deane that Mr Clarke for many months had been affected with senile dementia and was not of sound mind, memory and understanding so as to be able to execute the Deeds. After Mr Clarke died on 21 April 1990 Mr English obtained a Grant of Probate on 24 July 1990. The Plaintiffs claim a declaration that the Deeds of Gift are null and void and of no legal effect, an order that they be canceled, a declaration that the properties form part of the estate of Mr Clarke, and damages for deceit.

By a Defence served and filed on 11 April 1995 the Defendants protest that they are not medical experts, do not know what "senile dementia" is, and were and are unaware of any disability in Mr Clarke disabling him to execute a Deed. The Deeds were executed in the presence of a Mr Owen Sutherland a commissioned Justice of the Peace (hereinafter Mr Sutherland). They deny every allegation of impropriety on their part.

The case has been ready for trial since a Request for Hearing was filed on 29 May 1995. The matter came up for hearing on 12 May 1997 and was part heard. It was continued and concluded on 15 July 1997.

The facts as I find them are as follows. Mr Clarke used to live and work in Curacao. He retired in the year 1961 and he came back from where he had worked in Curacao to St Vincent. He lived in Georgetown where he eventually built a bakery and owned properties. Mr Clarke particularly needed looking after because he was a diabetic and had an open sore on his leg that had to be cleaned and dressed every day.

Ms Glasgow as a child went to live with Mr Clarke. She took care of Mr Clarke and his house from the time she was a child. She lived in his house until she got her 3rd child. She then moved to her own house in the nearby village of Caratal on land bought by Mr Clarke and given to her. Even after she moved to Caratal Ms Glasgow visited Mr Clarke regularly to prepare his meals and take care of him. One of her children, Zeno, lived with Mr Clarke up to the date of Mr Clarke's death. Zeno still occupies the house.

Mr Clarke made his last Will in 1988. Mr Clarke asked Mr English to be his Executor and Mr English agreed. Mr English had Mr Clarke's wishes typed up in the form of a will and it was duly signed by Mr Clarke and witnesses. Mr Deane and his family were accustomed to visit the elderly uncle, Mr Clarke, in Georgetown. Mr Deane had received inter vivos dispositions previously from Mr Clarke. Mr Deane was also a named beneficiary as to 2 1/2 acres and 14 poles of land at Mount Pleasant. The other 5 devises in the will were all to Ms Glasgow and various of her children. When Mr Clarke died Mr English applied to probate his Will and a Grant of Probate in his favour was made in 1990.

Shortly after Mr Clarke had made the Will Mr Deane suggested to him that it might be better to share out the properties while he was still alive. Mr Clarke agreed to execute Deeds of Gift, and he authorised Mr Deane to retain Dr John a solicitor in Kingstown to prepare the various Deeds. Mr Deane went and instructed Dr John to prepare the Deeds. He instructed Dr John to prepare the Deeds so that his devise was not to him personally but to two of his daughters. One Deed was from Mr Clarke to Mr Deane's daughter Cheryl for 1 acre, 2 rods, 13 poles. The balance of his devise of 1 acre was dealt with in a Deed from Mr Clarke to Mr Deane in trust for his daughter Sandra. The Plaintiffs have no quarrel with these Deeds. Dr John duly prepared these two Deeds. He also at the same time prepared the other Deeds for the other devises in the Will. In due course Dr John visited Mr Clarke in Georgetown to have the Deeds executed. Dr John and Mr Sutherland a shopkeeper and JP in Georgetown attended on Mr Clarke in October 1989 to execute the Deeds. Mr Sutherland is regularly used by lawyers to witness Deeds executed in the Georgetown area. It is admitted in the pleadings that when Mr Clarke was executing these two Deeds he inquired about the other Deeds to Ms Glasgow and her children. It is admitted that Mr Clarke was told by Mr Deane that the other Deeds were not ready. In his evidence Mr Deane also admitted this. He went further and said, "If they wanted their deeds signed they should have gone and got them signed." Neither Ms Glasgow nor any of her children were at Mr Clarke's house when this signing took place.

Mr Deane had by this time settled upon a scheme to deprive Ms Glasgow and her children of the devises in the Will. He was aware that Mr Clarke had his savings of over \$100,000 in the bank in the joint names of himself and Ms Glasgow. He was aware that that money would go to her when Mr Clarke died. He appears to have considered that that was something he could not prevent. But, he had his eyes set on the other lands of Mr Clarke. He wanted to keep them, particularly the house and buildings in Georgetown, in the family, and was determined they should not go to Ms Glasgow and her children, who were not family. A year after the Deeds had been executed, Mr Deane had a solicitor prepare new Deeds for the balance of the lands. He did not get the same solicitor who had met and spoken to Mr Clarke to prepare these new Deeds. He went to another solicitor, Mr Browne, and had him prepare Deeds. Mr Browne did not visit Mr Clarke to check the instructions. He prepared a Deed of Gift by which Mr Clarke would transfer title to the Georgetown land and buildings in which Mr Clarke lived to Mr Deane. He prepared another Deed of Gift by which Mr Clarke would transfer title to one and a half acres of land at Mount Pleasant to Mr Deane in trust for his son Lomax Deane. Mr Sutherland was brought to Mr Clarke's bedside on 12 April 1990 to witness his execution of the Deeds. Mr Clarke executed the Deeds of Gift, and Mr Sutherland witnessed them. Neither Ms Glasgow nor any of their children were at home when this was done. I am satisfied that she was unaware that Mr Deane had arranged any of the executions of any of these Deeds. It was only after Mr Clarke died that the Deeds were discovered by the Executor when he tried to administer the provisions of the Will.

On 26 April Mr Sutherland attended at the Registrar's office in Kingstown and signed a statutory declaration as to the due execution of the Deeds by Mr Clarke. Among other things Mr Sutherland demonstrated in cross-examination how he witnessed the execution. He read the first lines of the Deed slowly and hesitantly as an example of how he explained the Deed to Mr Clarke. I do not believe a word he said about his performance of his duties on that day. I find that the Deeds were not duly executed by Mr Clarke contrary to what Mr Sutherland swore.

On 3 May 1990 prior to submitting the Deeds for registration Mr Browne made a declaration pursuant to the provisions of the Stamp Act. This was to the effect that the Deeds were bona fide transfers of property without consideration "made between parties who to the best of my professional opinion fall within the categories of [exempted] persons as set out in the proviso to item 22 of the Stamp Act Chapter 195." The persons exempted from paying stamp duty are parents and children and their issue, brothers and sisters, and spouses. Nephews and uncles are not exempt from having to pay the stamp duty of 10% of the value of the real estate in voluntary conveyances between them. Mr Deane and Lomax were nephew and great nephew respectively of Mr Clarke. Stamp duty of 10% of the value of the properties transferred by the questioned Deeds should have been paid by them prior to registration. Mr Browne should not have issued this declaration.

The questioned Deeds were then submitted for registration at the Registry, and were registered on 4 May 1990. The problem with these dates is that Mr Clarke had died on 21 April, just 9 days after executing the two questioned Deeds. It is alleged by the Plaintiffs that these Deeds were not his acts. The Plaintiffs' evidence and that of their witnesses is that he was bedridden and senile for several weeks before his death. The Defendants deny this allegation and say that the Deeds were properly executed by him. Their story is that he cut Ms Glasgow and her children's devises because sometime before the 2 Deeds were executed Ms Glasgow had left him and was not looking after him any more. They claim that it was Mr Deane and his wife who looked after Mr Clarke in his final years. I do not believe that Ms Glasgow had stopped looking after Mr Clarke before Mr Clarke's death. I believe that she was his caretaker up to the day of his death, and that she was assisted in her chores by her children. Other than small kindnesses, I do not believe that Mr Deane and his family helped with Mr Clarke in any significant way.

Mr Clarke's death certificate gives his age as 81 years. Oddly, the two lawyers each extracted a copy of the death certificate from the Registry. One of the certified copies is stated to be of death certificate D22, and the other to be D23. One states the age as 81 years, and the other has a line through the age column suggesting the age is not known. One states the cause of death to be "diabetic gangrene", and the other states "diabetic gangrene. Old age". There is nothing to suggest that the death was registered twice with two varying sets of particulars. I find these differences in the certified true copies of the death certificates are only explainable by the

carelessness of the persons preparing them. The doctor who was visiting Mr Clarke in his final months from the Georgetown Health Center was a Phillipino, temporarily residing in St Vincent at the time. She has now long left the State. She issued a Certificate which forms a part of Mr Clarke's medical record admitted in evidence. That Certificate indicates that it was made on 29 August 1990 by a Dr Jullerai, the DMO for Georgetown. She certifies in it that Mr Clarke had been under her care from February 2nd up to when he died on 21 April 1990. She visited him every 2 weeks at the request of his caretaker Roslyn Glasgow. He had a severe diabetic gangrene in his leg. Two months before his death he was already senile.

Mr Sutherland swears Mr Clarke was up and on his verandah when he visited him to witness the execution of the Deeds. I find that Mr Clarke was in bed unable to get up when Mr Sutherland visited him. Mr Sutherland and Mr Deane say that Mr Clarke was aware of what he was doing when he executed the Deeds. I do not believe them. I find that Mr Clarke at the time he executed the Deeds was senile. I find that at no time did he intend to give to Mr Deane or Lomax the properties that he had left in his will for Ms Glasgow and her daughter Ms Patrick. I find that the Deeds in question were the result of a trick and a deliberate fraud on a sick, helpless, old man.

I give judgment for the Plaintiffs and grant the following reliefs:

1. A declaration that Deeds of Gift No 1339 of 1990 and 1340 of 1990 are null and void and of no legal effect.
2. An order that the above Deeds be canceled.
3. A declaration that the properties contained in the above Deeds are and form part of the estate of the deceased Charles Clarke and pass according to the terms of his Will.
4. The Plaintiffs are to have their costs of this suit to be taxed if not agreed.



ID Mitchell, QC  
High Court Judge (Ag)  
July 28<sup>th</sup> 1997