

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.: 21 OF 2002

BETWEEN

**ADRIANA HERBERT
TRUDY BOYD**

Claimants

and

GEORGE DANIEL

Defendant

Appearances:

Ms. Kay Bacchus-Browne for Claimants

Mr. Arthur Williams for Defendant

2002: May 28

2003: January 30

JUDGMENT

[1] **BRUCE-LYLE, J** - On the 16th January 2002, the Claimants filed a claim form to initiate action in this Suit in which they claimed –

- (1) An injunction that the Defendant by himself, his servants and/or agents be restrained from trespassing on the Claimants' property and further that he returns the Claimants' keys forthwith;
- (2) Damages for trespass and detinue;
- (3) Costs.

[2] The basis for this Claim was that the Claimants averred that they are the owners of all that certain piece or parcel of land situate at Barrouallie in the Parish of St. Patrick in the State of St. Vincent and the Grenadines being one (1) lot more or less butted and bounded on the North by the Leeward main road on the South by lands of one Barbour on the East by

lands of Shurla Gould and on the West by lands of Walter Sandy (hereinafter referred to as "the said land") as is registered as Deed No. 1310/2001.

- [3] They further averred in the claim form that there is a two-storey property on the said land and the first Claimant's father has lived there for over forty (40) years. The second Claimant who is the step-daughter of the first Claimant's father, has lived there for over twenty (20) years from birth.
- [4] They further averred that the Claimants acquired the property from Enos Francois, the father of the first Claimant and the second Claimant aforesaid and that they rent the downstairs as a shop; and also that on the 29th December 2001 the defendant trespassed on the Claimant's land seized the keys for the upstairs saying the property is his. He locked up the house and went away with the keys.
- [5] The Claimants also averred that the Defendant also ordered the tenant re the shop to pay all future rent to him. The tenant refused and he was informed by the Defendant that he was going to block up the door of the building with plywood, and that the Defendant still has the Claimants' keys and threatens to keep trespassing on their property.
- [6] On the 17th April 2002 the Defendant filed a defence and counterclaim in which he sought from the Court –
- (a) A declaration that he is the fee simple owner of the subject property and is entitled to possession thereof
 - (b) Cancellation of Deed Number 1310 of 2001
 - (c) An injunction to restrain the Claimants whether by themselves their servants and/or agents or howsoever otherwise from trespassing on the said property and from doing any acts inconsistent with the ownership of the said property.
 - (d) Such further or other relief
 - (e) Costs.

- [7] The matter thereafter proceeded in accordance with the Civil Procedure Rules 2000 and finally came up for trial on the 28th May 2002.
- [8] The facts as I found them, simply put, are as follows: The property in dispute is a piece or parcel of land situate at Barrouallie in the parish of St. Patrick in the State of Saint Vincent and the Grenadines, with a two-storey property or house on the said land. This property had belonged to one Enos Francois, the father of the first-named Claimant Adriana Herbert, and the step-father of the second-named Claimant Trudy Boyd. Enos Francois had owned and lived on the said property for a considerable length of time until his death. In fact he had acquired and built that property. That is not in dispute.
- [9] Through certain events which are yet to be determined in this judgment, the property came to be owned by one Melvin Hamlet the brother-in-law of Enos Francois, by Deed of Gift dated the 8th day of March 1980 and registered as Deed Number 418 of 1980. In this Deed, Enos Francois purported to give the property to Melvin Hamlet, subject to the life interest of himself, and his wife Elister Francois.
- [10] Subsequently, by Deed of Gift dated the 15th day of October 1997, and registered as Deed Number 3276 of 1997, Melvin Hamlet gave his remainder interest to his wife Amelia Hamlet.
- [11] By Deed Number 1310 of 2001, Enos Francois purported to transfer the said property to the Claimants herein.
- [12] Amelia Hamlet died intestate on the 24th September 2000 leaving the Defendant George Daniel as the only person entitled to her estate. On 15th March 2002 Letters of Administration of all the estate of Amelia Hamlet including the subject property were granted to the Defendant out of the Eastern Caribbean Supreme Court in its probate jurisdiction; the said grant bearing the number 53 of 2002. By Deed of Assent dated the 5th day of April 2002, and registered as Deed Number 1142 of 2002, the Defendant as Administrator of the Estate of his deceased mother transferred the property to himself.

[13] It can be gleaned from the above that both Enos and Elister Francois and Melvin Hamlet predeceased Amelia Hamlet.

[14] The questions for this Court to determine are:

- (a) Who owns the property? Was Deed No. 1310 of 2001 valid, in that it transferred property that “rightly belonged” to Enos Francois to the Claimants before his death?
- (b) At the time of Amelia Hamlet’s death was she the rightful owner of the said property by virtue of Deed 3276 of 1997 and Deed 418 of 1980?
- (c) Did the Defendant by virtue of Grant No. 53 of 2002 and by Deed No. 1142 of 2002 legally vest himself with the said property in view of the aforementioned; and if he did can he be said to be trespassing on his own property and liable to pay damages?

[15] The Defendant’s case is straightforward on the facts and on the law. The Defendant’s learned Counsel submitted that the only thing in issue was the existence of Deed 418 of 1980 that transferred the property in issue to Melvin Hamlet. The preponderance of evidence led by the Defendant sought to establish the circumstances under which Deed No. 418 of 1980 came into being. All the witnesses for the Defendant explained that Enos Francois had paid off a loan of \$3,000 owed by Melvin Hamlet to Laynes business, which was preventing his departure to England. They testified to the effect that Enos Francois sold Melvin Hamlet’s house in Barrouallie to recover the sum of \$3,000 he had paid on his behalf.

[16] On Melvin Hamlet’s return from England, which he did periodically, Enos Francois could not account for the balance of the proceeds of the sale of his house, after Enos had recovered his \$3,000. Enos transferred his property to Melvin by virtue of Deed 418 of 1980 leaving for himself and his wife Elister Francois a life interest in the said property, in return for Melvin looking after them as they were in poor health.

- [17] It is interesting to note that all the witnesses for the Defence corroborated each other in every material particular, and were very detailed in their narration of how Melvin Herbert came into possession of the disputed property, and his efforts to secure a loan of \$10,000 to renovate the said house and leaving both Enos Francois and his wife Elister in the renovated house with arrangements in place for their upkeep.
- [18] Counsel for the Claimants on the other hand challenges the validity of Deed No. 418 of 1980 with a view; to cast doubt on its validity. She also queries the capacity of Enos Francois to execute deed 418 of 1980. There is no evidence led by the Claimants to show that at the time of execution of Deed 418 of 1980, Enos Francois was so incapacitated as rendering him incapable of executing the said deed. There is evidence that he was dark-sighted for a number of years before he went completely blind.
- [19] Moreover there is evidence, which has not been challenged in any way that Enos Francois asked for a lawyer to prepare a Deed to transfer his property to his children (the Claimants) because he could not get “his papers”. I am inclined to believe and do hold on that belief, that the “papers” referred to in the evidence related to the Deed 418 of 1980 which transferred the property to Melvin Hamlet. I am also inclined to believe and do hold on that belief, on a balance of probabilities that Enos Francois operated under a mistaken belief that since Melvin Hamlet had predeceased him, he was entitled to his property and therefore had a legal right to transfer such to his daughters.
- [20] I cannot in all seriousness consider this line of argument emanating from learned Counsel for the Claimants without any scintilla of evidence to show the invalidity of Deed 418 of 1980, the incapacity to execute that same deed on the part of Enos Francois, or undue influence being exerted by anyone on him to execute Deed No. 418 of 1980.
- [21] Having thus held that Deed No. 418 of 1980 was a valid and properly executed document, by extension, I hold that Deed No. 1310 of 2001 cannot be valid, and does not transfer the property in issue to the Claimants, as the person who purported to have transferred that property did not have that property to transfer.

[22] On the other hand, looking at the Defendant's case, it is clear that by virtue of Deed 418 of 1980, which I have already held to be a valid, well-executed deed, Melvin Hamlet would become the owner of the property in issue, on the death of both Enos and Elister Francois who only had a life interest in the said property by virtue of the aforementioned deed. This property was then transferred to Amelia Hamlet by Deed of Gift dated 15th October 1997 and registered as Deed No. 3276 of 1997, when Melvin Hamlet transferred his remainder interest in the said property to his wife Amelia. I see no invalidity in these series of transactions pertaining to the property. There is no evidence that what was done as described immediately above was contrary to law. In fact, it is in direct conformity with the law. There is a preponderance of evidence to show that Melvin Hamlet renovated the property and left Enos Francois and his wife Elister who predeceased him, to live in the said property until their deaths.

[23] Learned Counsel for the Defendant, then proceeds to show by law how the Defendant George Daniel came into possession and ownership of the property. It is clear that Amelia Hamlet had a vested interest in the remainder, which devolved to her son, the Defendant, George Daniel, upon her death. There is no mystery about this position in law as clearly posited in the 3rd Edition of Megarry and Wade, "The Law of Real Property", Chapter 5, under the heading "Future Interests". I fully concur with this learning, as being on all fours with this case at hand.

[24] "In equity, the application of the doctrine of undue influence was intended to ensure that no person should be allowed to retain the benefit of his own fraud or wrongful act. The equity view was well expressed in *Alliard v Skinner* (1887) 35 Ch. D. 145, 190: 'This is not a limitation placed on the action of the donor; it is a fetter placed upon the conscience of the recipient of the gift, and one which arises out of public policy and fair play' per Chitty on Contracts, Chapter 7 under the rubric 'Undue Influence' ".

[25] Two classes of undue influence was established

- (1) Actual undue influence; where it is necessary for the Claimant to prove affirmatively that the wrongdoer exerted undue influence on the Complainant to enter into the particular transaction, which is impugned.
- (2) Presumed Undue Influence; In these cases the Complainant only has to show, in the first instance, that there was a relationship of trust and confidence between the Complainant and the wrongdoer of such a nature that it is fair to presume that the wrongdoer abused the relationship in procuring the Complainant to enter into the impugned transaction.

In these cases therefore, there is no need to produce evidence that actual undue influence was exerted in relation to the particular transaction impugned; once a confidential relationship has been proved, the burden then shifts to the wrongdoer to prove that the Complainant entered into the impugned transaction freely, for example by showing that the complainant had independent advice. A confidential relationship in this case at hand could be said to be a “defacto existence” of a relationship under which the Complainant generally reposed trust and confidence in the wrongdoer, with the existence of such relationship raising the presumption of undue influence.

[26] Looking at the facts of this case, it is clear that the Defendant had no relationship at all with the Complainants. The Defendant from these facts at hand cannot be considered a wrongdoer. He came into possession of this disputed property properly according to law. The Claimants have not been able to show either, that Enos Francois (deceased) had a confidential relationship of the sort posited by the Learning in “Chitty on Contracts” with the Defendant or Melvin Hamlet. Rather, there is a preponderance of evidence from the Defendant’s witnesses as to how Melvin Hamlet came into possession of this property. I am satisfied with the weight of that evidence, coupled with the forthright manner in which that evidence unfolded, as juxtaposed with the evidence from the Complainants. I am more than satisfied on a balance of probabilities, and hold that there was no undue influence on Enos Francois deceased when he transferred his property to Melvin Hamlet, retaining only a life interest for himself and his wife Elister.

[27] I therefore hold as a consequence, that the Defendant's counterclaim succeeds and declare

- (a) that he is the fee simple owner of the subject property and is entitled to possession thereof
- (b) that Deed No. 1310 of 2001 that purported to transfer the said property from Enos Francois to the Claimants be cancelled
- (c) an injunction to restrain the Claimants whether by themselves their servants and/or agents or howsoever otherwise from trespassing on the said property and from doing any acts inconsistent with the ownership of the said property.

[28] The Claimants' case stands dismissed with costs to be paid to the Defendant in the sum of \$1,500.00.

Frederick Bruce-Lyle
HIGH COURT JUDGE