

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 474 OF 2004

BETWEEN:

LYNDA RILEY

Claimant

V

DOMINIQUE CARLA KELLY
(Administratrix of the Estate of Ian Errol Kelly, dec'd)

Defendant

Appearances:

Mr. P.R. Campbell Q.C. and Mr. McCauley Peters for the Claimant
Mr. Richard C.F. Williams for the Defendant

2006: July 5, 20
2007: January 12

JUDGMENT

- [1] **THOM, J:** This is a claim for revocation of a Grant of Letters of Administration.
- [2] In 2003 the Claimant, a British citizen and one Ian Errol Kelly deceased who was a citizen of Saint Vincent and the Grenadines lived in a common law union in the United Kingdom. Towards the end of 2003 they decided to emigrate to Saint Vincent and the Grenadines.
- [3] A quantity of household items and vehicles were purchased and shipped to Saint Vincent and the Grenadines. All of these items were imported into Saint Vincent and the Grenadines in the name of Ian Kelly. The vehicles were registered in Saint Vincent and the Grenadines in the name of Ian Kelly. As a returning citizen Ian Kelly was not required to pay import duties on the items.

- [4] In November 2003 a parcel of land at Biabou in Saint Vincent and the Grenadines was purchased. The land was registered in the name of Ian Kelly. The purchase price of the land was seventy-five thousand dollars (\$75,000). A promissory note was executed by Ian Kelly in favour of the Claimant in the sum of thirty-seven thousand and five hundred dollars (\$37,500).
- [5] On April 9, 2004 Ian Kelly died. In October 2004 the Defendant, the daughter of Ian Kelly obtained a grant of Letters of Administration grant No. 213 of 2004. This grant included the said property as part of the estate of Ian Kelly deceased.
- [6] The Claimant instituted these proceedings seeking inter alia an order revoking so much of the grant of Letters of Administration No. 213 of 2004 as embody or refer to the said property and a declaration that the Claimant is the sole owner of the said property and is entitled to possession of the said property.
- [7] The Defendant in her defence alleged that the Claimant having signed the promissory note is estopped from alleging that she is the owner of the property and in her counterclaim seeks inter alia a declaration that Ian Kelly deceased was the owner of the property, that the Claimant gives an account of the personal estate of Ian Errol Kelly and loss of use of \$66,150; and possession of the motorcycle and Vauxhall motor vehicle.
- [8] The Claimant testified on her own behalf and called three witnesses being Attorneys-at-Law Mr. Ronald Jack, Mr. Grant Connell and Mr. Carlyle Dougan Q.C.
- [9] Mrs. Carmen Kelly the mother of Ian Kelly deceased testified on behalf of the Defendant.
- [10] The evidence on behalf of the Claimant is that the Claimant is a British citizen. She was married to one Jack Morris, that marriage ended in divorce. As part of the divorce settlement the Claimant's husband Jack Morris paid her One Hundred Thousand pounds (£100,000) for herself and the children of the marriage. The Claimant subsequently had

an intimate relationship with Ian Errol Kelly deceased a citizen of Saint Vincent and the Grenadines and who was resident in the United Kingdom and was employed as a concierge at the White Friars Council. Towards the end of 2003 they decided to emigrate to Saint Vincent and the Grenadines. In November 2003 they decided to purchase two contiguous parcels of land at Biabou and met with Attorney-at-Law Mr. Ronald Jack who was the legal representative of the vendor. Mr. Ronald Jack advised that since the Claimant was not a citizen of Saint Vincent and the Grenadines title to the property could be registered in the name of Ian Kelly deceased until they were married and the Claimant was registered as a citizen of Saint Vincent and the Grenadines. Mr. Jack also recommended that a promissory note in the sum of \$37,500 being one half of the purchase price should be executed by Ian Kelly in favour of the Claimant. The Claimant and Ian Kelly acted on this advice and the title deed for the said property was registered in the name of Ian Kelly and a promissory note in the sum of \$37,500 was executed by Ian Kelly in favour of the Claimant. The Claimant paid the purchase price of \$75,000, the legal fees and the stamp duty from the £100,000 settlement she had received from her husband Jack Morris. A sum of \$265,974.00 was transferred from the United Kingdom to the National Commercial Bank in Saint Vincent and the Grenadines on October 9, 2003. They purchased several personal items, and motor vehicles in the United Kingdom using money from the settlement and shipped same to Saint Vincent and the Grenadines in the name of Ian Kelly. The vehicles were registered in the name of Ian Kelly in St. Vincent and the Grenadines.

- [11] The relationship between the Claimant and Mrs. Carmen Kelly deteriorated. On the 6th day of February 2004 the Claimant instituted Claim No. 73 of 2004 against Ian Kelly in which she sought inter alia an order for sale of the said property or in the alternative an order that the said property be transferred to her subject to her obtaining an Alien's Landholding Licence for same. This claim was discontinued on February 23, 2004 after Ian Kelly deceased in the presence of Mr. Carlyle Dougan Q.C. and Mr. Grant Connell agreed to vest the property in the name of the Claimant after the marriage.

- [12] In 2004 the Claimant and Ian Kelly deceased commenced construction of a concrete dwelling house on the said property using funds from the said account at the National Commercial Bank.
- [13] Ian Kelly died on April 9, 2004 before the Claimant and Ian Kelly got married. The Claimant then shipped the personal items and two of the vehicles being a motor cycle and a jeep back to the United Kingdom.
- [14] The evidence on behalf of the Defendant is that Ian Kelly deceased had brought a quantity of items from the United Kingdom including dining room set, vacuum cleaner, electric organ, valued at \$5,635.33. The items along with a motor cycle and a jeep which belonged to the deceased were shipped to the United Kingdom by the Claimant. The said property at Biabou was owned solely by the deceased who borrowed the sum of \$37,500 from the Claimant to purchase the said property. The deceased while he resided in the United Kingdom was employed at White Friars Council and received a salary of £18,000 per annum. His bank account into which his salary was deposited was tendered into evidence. Mrs. Carmen Kelly also testified that Ian Kelly deceased, received a substantial gratuity/severance package from his employer before he emigrated to Saint Vincent and the Grenadines.
- [15] Having seen and heard the witnesses and having examined the documentary evidence including the deceased's bank account I believe the testimony of the Claimant. The Claimant's testimony that she received £100,000 as part of her divorce settlement and that from that sum, the sum of \$265,974 was transferred to an account at the National Commercial Bank in Saint Vincent and the Grenadines was not contradicted. Her testimony that the purchase price for the property of \$75,000 was paid from the \$265,974 and that all of the personal items that were purchased in the United Kingdom were purchased with her money was also not contradicted. Indeed all three of the Lawyers, Mr. Ronald Jack, Mr. Grant Connell and Mr. Carlyle Dougan Q.C. all testified that the deceased Ian Kelly had agreed that the land was purchased with the Claimant's money. On the other hand the sole witness for the Defendant Mrs. Carmen Kelly stated under

cross-examination that she did not live with the Claimant and the deceased, in fact she testified that they lived approximately 80 to 90 miles away from her and she was not aware of their personal affairs. She was not present when the items were purchased and so she does not know whose money was used to purchase the items. She also testified that she was not present when the arrangement was made for the purchase of the land and she does not know whose money was used for the purchase of the land. She was also unable to State what amount of money Ian Kelly received as gratuity/severance from White Friars Council. The Claimant testified that Ian Kelly received £2000.00 as his gratuity and the money was used to pay his debts in the United Kingdom.

- [16] The issues that arise for determination are:
- (1) Whether the Claimant is the sole owner of the said property or the property forms part of the estate of Ian Kelly.
 - (2) Whether the personal property and motor vehicles referred to in the counterclaim were the property of Ian Kelly at the date of his death.

REAL PROPERTY

- [17] The Claimant's case is that she is the sole owner of the land and Ian Kelly deceased held the land as a trustee for her, while the Defendant's case is that the deceased was the sole owner of the land and he had borrowed \$37,500 from the Claimant to purchase the property.
- [18] Learned Queen's Counsel for the Claimant submitted that the Alien (Landholding Regulation) Act makes no absolute prohibition against the holding of land by an unlicensed alien but it merely provides that the alien's title to the land would be voidable at the instance of the Crown. In support of this proposition Learned Queen's Counsel referred the Court to the decision of the Privy Council in the case of Young v Bess [1995] 46 W.I.R. p. 165.
- [19] Learned Queen's Counsel also submitted that there was a resulting trust in favor of the Claimant and referred the Court to the case of Murphy v Quigg [1996] 54 W.I.R. p. 162.

Learned Queen's Counsel for the Claimant further submitted that even if the Court found that the Claimant attempted to avoid the need for an alien landholding licence which was illegal, if the Claimant can establish her equitable title to the property without invoking the underlying illegality then her claim to the beneficial interest in the property is enforceable notwithstanding the underlying illegality.

[20] The Court did not receive any submissions on behalf of the Defendant.

[21] In determining whether the Claimant is the owner of the said parcel of land, the Court must consider the effect of the provisions of the Alien (Landholding Regulation) Act and the promissory note.

[22] The relevant provisions of the Alien (Landholding Regulation) Act are sections 4, 5(1), 7(1) and (2), 16, and 19. These sections read as follows:

“4. Subject to the provisions of this Act, neither land in Saint Vincent and the Grenadines nor a mortgage on land in Saint Vincent and the Grenadines shall on or after the 19th day of April 1922, be held by an unlicensed alien, and any land or mortgage so held shall be forfeited to the Crown.”

Provided that

The provisions of this proviso are not relevant to this case.

“5. (1) The Governor-General may if he thinks fit, grant to any alien a licence to hold land as owner, tenant, or mortgagee for any estate or interest, either subject to any condition or not .

Provided that a licence shall be operative only as to the land described and as to the estate or interest specified therein and shall be of no force or effect until registered in the office of the Registrar of Deeds.

7. (1) Land or a mortgage forfeited under this Act shall not vest in the Crown unless and until a judgment is obtained declaring the forfeiture but on such judgment being obtained the title of the Crown shall relate back to and commence at the time when forfeiture took place.

(2) A judgment declaring a forfeiture of land shall operate to vest in the Crown all the estate and interest of the alien in the forfeited land.

16. (1) This section applies to the following property only namely land situate in Saint Vincent and the Grenadines, mortgages of such land and shares and debentures of any company incorporated in Saint Vincent and the Grenadines.
 - (2) With a view to preventing evasion of the foregoing provisions of this Act, no person shall, without the licence of the Governor-General, hold any property to which this section applies in trust for an alien, and any property so held shall be forfeited to the Crown.
 - (3) Any person who contravenes the provisions of this section is guilty of an offence.
 - (4) Nothing in this Act shall apply to a trust in favour of an alien subsisting on the 19th April 1922.
 - (5) In this section, the expression "trust" includes any arrangement, whether written or oral, express or implied and whether legally enforceable or not, whereby any property to which this section applies or any interest therein or any rights attached thereto is or are held for the benefit of or to the order or at the disposal of an alien; but does not include –
 - (a) the duties incident to a mortgage;
 - (b) the duties of a satisfied mortgagee to the mortgagor, if within three months after satisfaction of the mortgage the mortgaged property is revested in the mortgagor or his interest therein is extinguished;
 - (c) the duties of a vendor to the purchaser pending payment at the purchase money, if within three months after such payment, the property sold is vested in the purchaser or his interest therein is extinguished;
 - (d) the duties of a trustee in bankruptcy to the bankrupt or his creditors; or
 - (e) the duties of a trustee for the purposes of any composition or scheme of arrangement for the payment of debts to the debtor or his creditors.
19. For the purpose of establishing a forfeiture under this Act, the Attorney-General may, in accordance with the provisions of the Civil Procedure Code, apply to the High Court for a declaration that any right, title, or interest sought to be affected is forfeited to the Crown."

[23] Is there a resulting trust in favour of the Claimant? In Halsbury's Laws of England volume 48 4th Edition at paragraph 604 the nature of a resulting trust is outlined as follows:

- "Nature of Resulting Trust.** A resulting trust is a trust arising by operation of law:
- (1) where an intention to put property into trust is sufficiently expressed or indicated, but the actual trust either is not declared in whole or in part or fails in whole or in part; or

- (2) where property is purchased in the name or placed in the possession of a person ostensibly for his own use, but really in order to effect a particular purpose which fails; or
- (3) where property is purchased in the name or placed in the possession of a person without any intimation that he is to hold in trust, but the retention of the beneficial interest by the purchaser or disposer is presumed to have been intended.

In all these cases the beneficial interest in the property so far as not applicable to any sufficiently expressed or indicated beneficiary or object, results or reverts to the disposer or purchaser of the property or in the case of his previous death to his representatives.

612. **Effect of purchase in or transfer into another's name.**

Where a person purchases property in the name of himself and another jointly, or gratuitously transfers property to another or himself and another jointly, then as a rule unless there is some further indication of an intention at the time to benefit the other person or some presumption of such intention, the property is deemed in equity to be held on a resulting trust for the purchaser or transferor.....”

[24] In this case the Defendant has not pleaded a presumption of advancement. The Defendant pleaded that the Claimant made a loan to Ian Kelly the deceased. In any event on the evidence there is no presumption of advancement. As stated earlier I believe the testimony of the Claimant that she paid the full purchase price, the legal fees and the stamp duty for the property. The title to the property was registered in the name of the deceased with the common intention that the claimant would have the beneficial interest in the property. Mr. Ronald Jack, Mr. Grant Connell and Mr. Carlyle Dougan Q.C. all testified that the deceased acknowledged that the Claimant was the beneficial owner of the property. Both Mr. Grant Connell and Mr. Carlyle Dougan Q.C. testified that Ian Kelly the deceased agreed that the property belonged to the Claimant and agreed to transfer the property to the Claimant and Claim No. 73 of 2004 was discontinued. This evidence was not contradicted. In view of the above I find that Ian Kelly deceased held the property in trust for the claimant.

[25] What is the effect of the provisions of the Alien (Landholding Regulation) Act? The above provisions were considered by the Privy Council in **Young v Bess** and similar provisions in the Antigua Alien's Landholding Act were considered by the Court of Appeal in **Murphy v Quigg**.

[26] In Young v Bess Lord Chauncey at p. 170 explained the effect of the provisions as follows:

“Construing section 3 in the context of Sections 5 and 16, it is apparent that the legislature did not intend forfeiture to be automatic but rather that prohibition on land holding by an unlicensed alien could be enforced by a discretionary power of forfeiture vested in the Crown. The position in relation to Section 4 is similar. It follows that the words shall be forfeited in sections 3 and 4(b) must be construed as shall be liable to be forfeited and the time when the forfeiture took place in Section 5(1) is the time when the liability for forfeiture arose. Their Lordships accordingly consider that Lehrer v Gordon (1964) 7 WIR p. 247 and McMillan v Peters (1988) (unreported) were correctly decided and that Chase Manhattan Bank NA v Kaffka (1984) 33 WIR p. 132 and Ramsaran v Attorney General of St. Christopher and Nevis (1986) 38 WIR p. 160 should be overruled.

This construction means that the title remains in the alien until the Crown has obtained judgment under Section 5 (1) and 16 when it vests in Her Majesty as from the time above referred to. There is no vacuum. The result is that the alien’s title is voidable until the Crown obtains judgment and a bona fide purchaser from him would be protected.”

[27] In Murphy v Quigg the Court of Appeal in considering section 14 of the Non-Citizens Land Holding Regulation Act of Antigua and Barbuda which is in the same terms as section 16 of the Aliens (Land holding Regulations) Act of Saint Vincent and the Grenadines, Sir Vincent Floissac Chief Justice stated at p. 169:

“In any case, the fact that a contract, trust or other transaction is illegal in the sense that it is prohibited by statute or at common law does not necessarily invalidate every claim or title which is contaminated by the illegal transaction. A plaintiff’s claim is enforceable if it is based on a legal or equitable title or on facts which generate such a title and if the plaintiff can sustain the claim solely by reference to that title or to those facts and without the need to disclose, invoke or rely on illegality.

In Tinsley v Milligan [1994] 1 A.C. 340 at p. 371 Lord Browne-Wilkinson said:

“Where the presumption of resulting trust applies, the plaintiff does not have to rely on the illegality. If he proves that the property is vested in the defendant alone but that the plaintiff provided part of the purchase money, or voluntarily transferred the property to the defendant, the plaintiff establishes his claim under a resulting trust unless either the contrary presumption of advancement displaces the presumption of resulting trust or the defendant leads evidence to rebut the presumption of resulting trust. Therefore in cases where the presumption of advancement does not apply, a plaintiff can establish his equitable interest in the property without relying in any way on the underlying illegal transaction.”

[28] The effect of sections 4,5,7, 16 and 19 when read conjointly is that an unlicensed alien's title to land is not invalidated but rather the Act makes such title voidable. The Crown has a discretion whether to seek a declaration that any right title or interest is forfeited to the Crown.

[29] What is the effect of the promissory note? The Defendant's case is that the promissory note shows that the Claimant loaned Ian Kelly deceased \$37,500.00 to purchase the property and that he is the sole owner of the property. While the claimant's case is that she provided all of the money and the promissory note was executed to secure her interest since the land was registered in the name of Ian Kelly solely. As indicated earlier I believe the testimony of the claimant that she provided the entire sum for the purchase price. The documentary evidence supports her testimony. The witnesses Mr. Carlyle Dougan Q.C., Mr. Grant Connell, Mr. Ronald Jack all support her testimony. Indeed Mr. Ronald Jack testified that he recommended that the note should be executed to provide some protection to the claimant since she was providing all of the money to purchase the property.

[30] In view of the above I find that Ian Kelly deceased held the property in trust for the claimant. Based on the decisions in **Young v Bess** and **Murphy v Quigg** I find that the claimant's claim to the beneficial interest in the property is enforceable.

PERSONAL PROPERTY AND VEHICLES

[31] Was Ian Kelly deceased at the time of his death the owner of the vehicles and the other personal property which were shipped by the Claimant to the United Kingdom as outlined in the counterclaim?

[32] It is not disputed that the personal items and the vehicles were imported into Saint Vincent and the Grenadines by Ian Kelly and that the vehicles were registered in Saint Vincent and

the Grenadines in the name of Ian Kelly. Ms. Carmen Kelly agreed that she did not know who purchased the vehicles or the personal items. I believe the evidence of the Claimant that she purchased all of the items with her money which she received as part of her divorce settlement.

[33] In relation to the vehicle that was destroyed by fire, Mrs. Carmen Kelly testified in her evidence in chief that the jeep was in the possession of the Claimant when it was burnt. The jeep was removed from Sandy Bay and she saw the burnt out shell at Biabou where the Claimant and the deceased were building a house. However, under cross-examination Mrs. Carmen Kelly admitted that she did not know who removed the jeep from Sandy Bay and she did not know who burnt the jeep.

[34] In view of the above I find that the Defendant has failed to prove on a balance of probabilities that the vehicles and the personal items were the property of Ian Kelly deceased.

[35] Judgment is entered for the Claimant. It is ordered that:

(1) A declaration is hereby granted that the Claimant is the sole owner in law and in equity of the property described hereunder and is entitled to possession of the said property:

ALL THOSE CONTIGUOUS LOTS situated at Biabou in the State of Saint Vincent and the Grenadines being Lots Numbers 14 and 15 amounting to 11,221 sq ft and is abutted and bounded on the North by Lot Number 13 on the South by a 24-ft road on the East by a Reserve and on the West by a 24-ft road as the same is shown on Plan Number C 1278 prepared by Osborne Browne Licensed Land Surveyor approved and lodged at the Lands and Surveys Department on 26th day of July 2002 or howsoever otherwise the same may be butted bounded known or described TOGETHER with all ways waters watercourses rights lights liberties privileges and all other easements and appurtenances thereto belonging

or usually held occupied or enjoyed therewith or reputed to belong or be appurtenant thereto.”

- (2) A declaration is hereby granted that Ian Errol Kelly deceased held the said property during his lifetime wholly as trustee for the Claimant, and that the said property did not form part of the corpus of the Estate of Ian Errol Kelly deceased.
- (3) Letter of Administration Number 213 of 2004 in the Estate of Ian Errol Kelly deceased as embody or refer to the said property is hereby revoked.
- (4) The counterclaim is hereby dismissed.
- (5) The Defendant shall pay the Claimant costs in the sum of \$14,350.

Gertel Thom
HIGH COURT JUDGE