

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 30 OF 2006

BETWEEN:

EUCHARIST GILCHRIST (Administratrix of the
Estate of Hubert Gilchrist, Dec'd)
AVIS GILCHRIST
HERBERT GILCHRIST

Claimants

v

FLORENCE GILCHRIST

Defendant

Appearances: Mr. Olin Dennie for the Claimants
Mr. Arthur Williams and Mr. Stephen Williams for the Defendant

2007: April 24, 25
November 8

JUDGMENT

[1] **THOM, J:** This is a claim for cancellation of a Deed of Partition.

BACKGROUND:

[2] The First Claimant is the mother of the Second and Third Claimants and the Defendant.

[3] The First Claimant was married to Hubert Gilchrist who died on the 22nd day of October 1977. The Claimants, the Defendant and Mary Gilchrist are the beneficiaries of his estate.

- [4] By Deed of Assent dated the 18th day of June 1993 and registered as Deed No. 1681 of 1993 the Administrators of the estate vested the legal property of the estate in the Claimants, the Defendant and Mary Gilchrist.
- [5] On the 28th day of November 2000 the Defendant instituted proceedings in the High Court Suit No. 523 of 2000 to compel the First Claimant and Anna Thomas the Administrator of the Estate of Hubert Gilchrist to transfer to her, her portion of the real property of the estate.
- [6] On the 30th day of July 2001, the First Claimant being absent the Court ordered the First Claimant to complete the administration of the estate and to distribute to the Defendant her net share of the estate.
- [7] On the 9th November 2002 the Defendant instituted contempt proceedings against the First Claimant for her failure to comply with the Order of 30th July 2001. On the 25th day of March 2003, Bruce-Lyle J committed the First Claimant to Her Majesty's Prison for fourteen (14) days for failing to obey the order of the Court.
- [8] While the Claimant was in prison she executed the Deed of Partition No. 2598 dated June 2, 2003 in the presence of her attorney Mr. Olin Dennie who signed as a witness. The Deed was also executed by the Second and Third Claimants, Mary Gilchrist and the Defendant.
- [9] On January 27, 2006 the Claimants instituted these proceedings alleging that the Deed was not voluntarily executed by the Claimants and they sought inter alia a declaration that the execution of the Deed was not a free and voluntary act of the Claimants and an injunction to restrain the Defendant her servants and/or agents from mortgaging, selling, leasing, or exercising any acts of ownership over the said land.

[10] The Defendant in her defence alleges that the Claimants voluntarily executed the Deed and in her counterclaim seeks inter alia a declaration that she is the fee simple owner of the parcel of land described in Deed No. 2598 of 2003.

[11] The Claimants testified on their own behalf and the Defendant testified on her own behalf.

EVIDENCE:

[12] The evidence on behalf of the Claimants is that the First Claimant was married to Hubert Gilchrist who died intestate on the 22nd day of October 1977. The Estate of Hubert Gilchrist comprises 2 2/3 acres of land at Biabou and six (6) acres 31 poles at Adelphi. On June 18, 1993 by virtue of Deed No. 1681 of 1993 the entire estate of Hubert Gilchrist was vested in the Claimants, the Defendant and Mary Gilchrist. The First Claimant was making arrangements to have the lands surveyed and to transfer the Defendant's share to her. The Defendant without the First Claimant's permission had a portion of the land at Biabou surveyed. The First Claimant was not served with the Order of July 30, 2001 nor with the application for the committal order. On May 28, 2003 the First Claimant was arrested and imprisoned for being in contempt of Court. Subsequent to the arrest of the First Claimant the Second and Third Claimants visited the Law Offices of Williams and Williams. While there Mr. Arthur Williams told them they had to sign the Deed of Partition if they wanted the First Claimant released and the First Claimant had to sign also. The Second and Third Claimants did not sign the Deed they went and discussed the matter with the First Claimant. The First Claimant requested to see her solicitor Mr. Olin Dennie. The Claimant suffers from hypertension and while in Prison she felt disoriented and confused. Mr. Dennie held discussions with the First Claimant. The First Claimant signed the Deed after she was advised by her Solicitor that she could take the matter to Court if she signed the Deed. Mr. Dennie signed as a witness. The Second and Third Claimants signed the Deed at the Law Offices of Williams and Williams. The First Claimant only signed the Deed to get out of prison. The Second and Third Claimant signed the Deed to secure the release of the First Claimant. They were concerned about her health.

- [13] The evidence of the Defendant is that in 2000 by Suit No. 523 of 2000 she instituted a civil claim against the First Claimant and one Anna Thomas in their capacity as Administrators of the Estate of Hubert Gilchrist. On July 30, 2001 Justice Paul Webster ordered the First Claimant to complete the administration of the estate of Hubert Gilchrist and distribute to her her share of the estate. The First Claimant failed to comply with the said order and on March 25, 2003 Justice Bruce-Lyle ordered that the Defendant be committed to prison for 14 days for breach of the Court Order. The First Claimant's Attorney Mr. Dennie witnessed the First Claimant's signature on the Deed. The Second and Third Claimants also voluntarily executed the Deed.
- [14] Under cross-examination the Defendant agreed that when she arrived at the Law Offices of Williams and Williams the Second and Third Claimants were already at the said Offices. She was not aware of any discussion between her Attorney and Mr. A. Williams and the Second and Third Claimants.

SUBMISSIONS:

- [15] Learned Counsel for the Claimants submitted that the First Claimant was wrongfully imprisoned. She was not present when the order of July 30, 2001 was made. She was not served with the order nor was she made aware of the existence of the Order. She was not served with the application for the committal order, she was committed for contempt in her absence and she was not served with the committal order. Learned Counsel referred the Court to Contempt of Court by C.J. Miller Third Ed. Pps. 649 and 654. Learned Counsel further submitted that the wrongful imprisonment of the First Claimant provided the Defendant through her solicitor with the opportunity to coerce, induce and pressure the Claimants into signing the Deed of Partition. Learned Counsel Mr. Arthur Williams in his capacity as solicitor for the Defendant coerced, pressured and intimidated the Claimants into signing the Deed of Partition when he told the Second and Third Claimants that if their mother did not sign the Deed of Partition which he had prepared she will be in and out of prison until she does so and if they also did not signed the Deed their mother will not be released from prison. Learned Counsel referred the Court to the cases of **Robert Murray**

Reuben Deuberry and Denfield Matthew No. 16 of 1993 a decision of the **Eastern Caribbean Court of Appeal** and **CIBC Mortgage PLC v Pitt** [1994] 1 A.C. p. 202. Learned Counsel submitted that in the circumstances it would be inequitable to allow the Deed to stand.

[16] Learned Counsel for the Defendant submitted that there was no appeal against the Order of July 30, 2001 or the Order of March 25, 2003. The principles of laches apply since relief is sought approximately 3 years after the Deed was executed. Further there was no evidence of undue influence exerted by the Defendant. The First Claimant signed the Deed in the presence of her solicitor Mr. O. Dennie. The Defendant was not present when the Deed was executed. The First Claimant signed to purge her contempt of Court.

ISSUES:

[17] The issues to be determined are:

- (i) Whether the Deed should be cancelled on the ground that it is the product of undue influence.
- (ii) If there was undue influence whether the right of rescission is lost or it still subsists.

[18] In determining these issues I find that it is not necessary for me to determine whether the First Claimant was served with the Orders of July 30, 2001 and March 25, 2003. I also find that it is not necessary for me to determine whether there were procedural irregularities in the making of the committal order on which the First Claimant was arrested and imprisoned.

[19] The doctrine of undue influence was outlined by Sir Vincent Floissac CJ in **Robert Murray v Reuben Deuberry and Denfield Matthew** Civil Appeal No. 10 of 1993 as follows:

“The doctrine of undue influence comes into play whenever a party (the dominant party) to a transaction actually exerted or is legally presumed to have exerted influence over another person (the complainant) to enter into the transaction. According to the doctrine, if the transaction is the product of the undue influence and was not the voluntary and spontaneous act of the complainant exercising his

own independent will and judgment with full appreciation of the nature and effect of the transaction, the transaction is voidable at the option of the complainant. This means that the complainant may elect, to have the transaction rescinded if he has not in the meantime lost his right of rescission. The modern tendency is to classify undue influence under two heads namely, Class 1 (actual undue influence) and Class 2 (presumed undue influence). Class 2 is further classified under two sub-heads. The first sub-head is Class 2 A which is descriptive of the legal presumption which arises from legally accredited relationships such as those existing between solicitors and client, medical adviser and patient, parent and child and clergyman or religious adviser and parishioner on discipline. The second sub-head is Class 2B which is descriptive of the legal presumptive which arises from a relationship whereunder the complainant generally reposed trust and confidence in the dominant party.”

[20] This case falls into the Class 1 category. The Claimants are all alleging actual undue influence. In a case of actual undue influence the Claimant is only required to prove actual undue influence, he or she is not required to prove that the transaction induced by undue influence was manifestly disadvantageous. See **CIBC Mortgage PLC v Pitt** at p. 209.

[21] The Claimants’ case is that the actual undue influence were the acts of Mr. A. Williams the solicitor for the Defendant.

[22] It was submitted by Learned Counsel for the Defence that there was no evidence of undue influence on the part of the Defendant, further the Defendant was not present when the Deed was signed. I agree with the submission of Learned Counsel for the Defendant that there was no evidence of undue influence on the part of the Defendant herself. However, the doctrine of undue influence is applicable even where the person who benefited from the transaction is a different person from the one who exhorted the undue influence – see **Bullocks v Lloyds Bank Ltd** [1954] 3 AER p. 726 at (729) and **Robert Murray** case referred to earlier where Sir Vincent Floissac CJ stated at p. 10:

“In the absence of the assistance of a presumption of undue influence, the burden remained on the appellant to prove that actual or Class 1 undue influence was exerted by the respondents (or their agents) on the appellant to induce the appellant to enter into the Agreement.”

I find that it was not necessary for the Claimant to show that the undue influence was exhorted by the Defendant herself.

- [23] I shall now deal with the first issue whether the Deed was a product of undue influence.
- [24] I find that the evidence of the Second and Third Claimants that they visited the Law Offices of Mr. Arthur Williams after the First Claimant was arrested and Mr. Arthur Williams told them that if they did not sign the Deed the First Claimant would not be released from Prison was not contradicted. The Defendant agreed that she met the Second and Third Claimants at the Law Offices of Williams and Williams.
- [25] I do not believe the testimony of the First Claimant that Mr. Arthur Williams told her if she did not sign “you go in jail today, you come out tomorrow. You go in, you come out.” This evidence was significant to the Claimant’s case but was not mentioned in her witness statement which gave a chronology of the events in paragraphs 9 – 12. Further I find her testimony to be contradictory on this issue. The witness stated that Mr. Arthur Williams told her so in his office. She later retracted this and stated that Mr. Arthur Williams told her so at the Prison. It was quite clear from the sequence of events that the First Claimant was not at the Law Offices of Williams and Williams. The First Claimant was arrested by the Police and taken to the Prison.
- [26] This case can be distinguished from **Mutual Finance Ltd v Wetten and Sons Ltd** [1937] 2 AER p. 657. In **Mutual Finance** a guarantee was held to be unenforceable by reason of undue influence where the guarantee was given to prevent a prosecution of the guarantor’s brother, the guarantor being fearful that such prosecution would have a negative effect on the health of his father who was ailing at the time and the Claimant knew that the Defendant signed the guarantee to prevent the prosecution. In the present case the First Claimant was unwell and concerned about her health but she was not prepared to sign the Deed because of what was said by Mr. Arthur Williams. When she learnt of the discussion between the Second and Third Claimants and Mr. Arthur Williams she requested to consult with her Attorney. It was only after she had consulted with her Attorney and was advised that she could institute legal proceedings afterwards that she

signed the Deed. The First Claimant was not influenced by anything said by Mr. Williams. She was acting on the advice of her Attorney.

[27] The Second and Third Claimants were also not influenced by what was said by Mr. Arthur Williams. They refused to sign the Deed after the discussion with Mr. Arthur Williams. It was only after the First Claimant had consulted with her Attorney and signed the Deed and they had the benefit of the advice of Mr. Dennie that they signed the Deed. I do not accept the testimony of the Third Claimant that the First Claimant signed last. I believe the testimony of the Second Claimant that the First Claimant signed then they signed. The Claimants signed the Deed believing that the Deed would be set aside when the matter was taken to Court.

[28] I find that the Claimants have failed to prove that the Deed was a product of undue influence. In view of this finding there is no need for me to consider the second issue.

[29] The Claim is hereby dismissed. Judgment is entered for the Defendant.

[30] It is ordered that:

1. The injunction granted on the 18th day of August 2006 is hereby discharged.
2. A declaration is hereby made that the Defendant is the fee simple owner of the parcel of land the subject matter of Deed Number 2598 of 2003 and is entitled to peaceful possession of the said property.
3. Costs to the Defendant in the sum of \$14,000.00.
4. Damages to the Defendant to be determined on application by the Defendant.

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Gertel Thom
HIGH COURT JUDGE