

ANTIGUA AND BARBUDA

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CIVIL)

A.D. 2010

CLAIM NO. ANUHCV2009/0271

BETWEEN:

JAMES N. GEORGE

WENTWORTH CLIFTON GEORGE

(Personal Representatives of the

Estate of JAMES ISAIAH GEORGE, deceased)

Claimants

And

ELDICA BENJAMIN

Defendant

Appearances:

Mr George Lake and Ms Kathleen Bennett for the Claimants

Mr John Fuller and Ms Nelissa Spencer for the Defendant

2010: February 16
November 29

JUDGMENT

[1] **THOMAS J:** On May 20, 2009 the Claimants filed a Fixed Date Claim Form in which certain reliefs are sought. Also filed was a Statement of Claim in which the following contentions are pleaded:

1. The Claimants are the Personal Representatives and two of the persons entitled to share in the Estate of James Isaiah George, deceased.

2. The Decedent was owner of premises which is more particularly described as Cassada Gardens and New Winthorpes Block 42 1893B Parcel 129.
3. At all material times the Defendant resided on the said premises with the express consent of the said Decedent.
4. By Notice dated 4th September 2007, the Claimants terminated the Defendant's licence. The Defendant is still in possession of the said premises.
5. As a consequence of the Defendant's actions the Claimants have suffered loss as they have been deprived of the use and enjoyment of the premises. A reasonable sum for their loss is \$500.00 per month.

[2] The Claimants claim the following:

1. Recovery of possession of premises situate at Clare Hall described as Registration Section: Cassada Gardens and New Winthorpes Block 42 1893B Parcel 129.
2. Damages of \$500.00 per month from 1st January 2007 to 31st May 2009.
3. Mesne profit of \$500.00 per month commencing on 1st June 2009 until the Defendant vacates the premises.

[3] A number of fees are also claimed and they also seek such further or other relief as to the Court may seem just.

[4] In her Defence the Defendant admits that the Claimants are entitled to share in the Estate of James Isaiah George, deceased, but it is contended that the deceased was only a part beneficial owner of the premises described in paragraph 2 of the Statement of Claim. And further that the Defendant is entitled to a share in the beneficial ownership of the said property "by virtue of her direct and indirect contributions to the maintenance and increasing value of the said premises upon which are situate two part wooden and part concrete houses".

[5] The Defendant also admits the Claimants' contention that she was permitted to reside on the said premises with the express consent of the said Decedent, but contends that she

has resided on the said premises from December 1995 *"until today"*. It is contended further that the deceased died on 5th January 2004 leaving the Defendant residing on the said premises; and the Defendant and the deceased lived for the last ten years of the deceased's life as man and wife.

[6] With respect to the matter of the Notice to terminate *"an alleged licence"*, the Defendant admits the Notice but contends that it is of no force and effect as the Defendant was there and still is a part beneficial owner of the premises and as such entitled to remain on the premises being entitled to a one-half share of the said premises. Finally, the loss pleaded by the Claimants is denied.

[7] **Counterclaim**

In her counterclaim the Defendant contends that throughout her habitation with the deceased, the deceased represented to her that as a taxi driver he made very little income and in the circumstances if the Defendant assisted with the living expenses generally and cared for him in his illness he would give her half of the premises.

[8] The Defendant contends further that in reliance on the deceased's representations she expended all of her earnings on the maintenance and improvement of the said premises as well as other living expenses for a ten year period until the deceased died.

[9] It is also the Defendant's contention that in fact the deceased misrepresented to her that he was indigent when in fact he had deposits of \$135,034.81 and \$195,000.00 at the Bank of Nova Scotia at the time of his death. And that even in spite of the wealth hidden from the Defendant, the deceased persuaded the Defendant to give him \$25,000.00 towards the purchase of a new taxi which he claimed to be purchasing on terms when in fact the taxi was purchased for cash and the Defendant's \$25,000.00 was pocketed.

[10] The Defendant's therefore counterclaims for:

1. A declaration that she is entitled to a one-half share in all those premises and improvements thereon known as Parcel 38 of Block 61 1893F of Gambles Registration Section.
2. An Order directing the Registrar of Lands to amend the register of lands in respect of the said parcel to show the Defendant as a Tenant-in-Common with the deceased.
3. Such other Order as This Honourable Court may seem fit.
4. Costs.

[11] **Reply**

The Claimants join issue with the Defendant upon her defence and denies the Defendant's claim to any beneficial interest in the deceased property which was in his possession for upwards of 41 years.

[12] **Defence to Counterclaim**

In their defence to counterclaim the Claimants dispute the counterclaim on a number of grounds including the following: *"At all material times the Defendant knew that the deceased James George was a man of means who supported her during their time together"*.

[13] **The Evidence**

In their witness statements both of the deceased's sons, James N. George and Wentworth George, testify that their father, the deceased purchased the properties in issue in 1963 and 1979. This is put beyond doubt by the land.

[14] At paragraph 4 of their respective witness statements, Core Bundle at pages 35 and 38 respectively Certificates exhibited at pages 9 and 10 of the Core Bundle.

[15] Both Claimants also give evidence that they were not aware of any agreement between their father and the Defendant to give her an interest in Parcel 129. This was restated in cross-examination by Mr John Fuller, learned counsel for the Defendant.

[16] The Defendant for her part testified that she spent money on the house in purchasing items for the household for which the deceased would not give her money for this purpose. Then this: *"That was always the way he operated with me but he always told me that the house belonged to both of us and so I had no problem about contributing to the upkeep of the house and using her own monies in this way"*.

[17] In further evidence the Defendant spoke of her expenditure on bills for the house and of her contribution *"single handedly"* to the purchase of various pieces of furniture and appliances for use in the house.

[18] In cross-examination by learned counsel for the Claimants, Mr George Lake, the Defendant conceded that she did not have a document which says that she and Mr George agreed to give her an interest in [Parcel 129]. She added that she did not believe that people are entitled to a free ride through life.

[19] On the other hand, James George testified in cross-examination that he is a carpenter and works for himself. He also said that Eldica never gave him money and that it was his father who paid him for work done on the house. He went on to testify that that the Defendant took care of his father for ten years but he denied that she helped him since he had his own money.

[20] Concerning Eldica he said that she worked at a garment factory. He also said that he did not know who paid for lumber, paint, who painted, who paid for parts for his father's car and who paid for utilities and food. He went on to say that the furniture in the house was there before Eldica came.

ISSUE

[21] The issue for Determination is whether a trust was created by the deceased's words or conduct for the benefit of the Defendant; and whether the Defendant acquired a beneficial interest in Parcel 129? It is the submission of Mr George Lake on behalf of the Claimants

that in this regard the Defendant must establish that the property in issue was held on a constructive or resulting trust for the Defendant. The other submissions are as follow:

1. There are no submissions on behalf of the Defendant.
2. The deceased did not by his words or conduct convey to the Defendant that she had or would have a beneficial interest in his properties.
3. In cross-examination the Defendant admitted that her name is not on the Land Certificates for land owned by the deceased and that the deceased had acquired the land and such houses thereon before she had even met him.
4. The Defendant in cross-examination stated that in the course of her relationship with the deceased she did nothing that was not expected of two persons living together, including the sharing of expenses.
5. The deceased never represented to the Defendant that he would give her a beneficial interest in his property.
6. At no time did the Defendant expend any of her monies on the upkeep or improvement of the property prior to the death of the deceased that would entitle her to a beneficial interest in his premises and whatever fittings were purchased were for her own use and benefit.
7. The repairs done to the deceased's premises were done by the First Claimant and the materials were purchased by the deceased.
8. The only evidence which the Defendant gave with respect to her alleged contribution to the upkeep and improvement of the deceased premises was that she painted the house they lived in and contributed to the labour and payment for replacing the floor.
9. The Defendant admitted that her contribution to the replacement of the floor, which was a big job was \$50.00 towards labour costs.
10. The Defendant earned between \$580.00 to \$800.00 per month during the relationship and it is more than likely that it was the Defendant who relied upon the deceased, as the deceased had various sources of income which exceeded that of the Defendant.

11. The Defendant has received the funds from their joint bank account; the only one of the deceased's possessions of which he intended the Defendant to have.

[22] Mr John Fuller on behalf of the Defendant submitted that it is well established that where one party does not contribute to the purchase price of the property, the Court is still entitled to find that later contributions to the household and its expenses and all the relevant circumstances can indicate an intention that the property is to be shared between the parties on the basis of what is fair *Passe v Passe* [1988] 1 FLR 263.

[23] Other submissions include the following:

1. In appropriate circumstances the Court is entitled to infer that where a beneficial interest in the property itself is not made out, a life interest in the property was intended between the parties *Ungarian v Lesnoff* [1990] 3 WLR 840.
2. Where no expenses agreement can be identified prior to the acquisition of the property the "search as to ascertain the parties shared intentions, actual inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it". *State v Bowden* [2007] UKHL 17; and *Abbott v Abbott* [2007] UKPC 53.
3. The deceased by his words and conduct conveyed to the Defendant and caused the Defendant to believe that she had an undetermined beneficial interest in the property or at the very least a life interest.
4. The Defendant relying on this representation of the deceased went about expending her own monies to the upkeep and improvement of the home.
5. The Defendant paid for telephone and other utilities for the household and purchased curtains, appliances, furniture and other items for the use and benefit of the household.
6. The Defendant contributed directly by purchasing lumber and other materials necessary for the improvement of and repairs to the home.

7. The Defendant helped in the deceased taxi business by cleaning and helping (including financially) to maintain the deceased's vehicle.
8. The Defendant in reliance on the deceased's actions and words, and in the belief that she had an interest in the property, further contributed by taking care of virtually all the household chores such as cooking, cleaning, laundry, landscaping and related tasks.
9. The deceased by a combination of his words and actions, including but not limited to his moving the Defendant from her home in St. Kitts to live with him in a relationship akin to man and wife, intended to transfer to the Defendant an undetermined beneficial interest or life interest in the property.
10. The Defendant expended all monies in reliance on this representation and did so to her clear detriment.
11. The combination of the deceased's representations and conduct, the Defendant's detrimental reliance on the conduct and representations, and all the circumstances as a whole, renders it only just that the Court declared that the Defendant has a beneficial interest in the property situate at Clare Hall or at the very least a life interest therein.

[24] **The Law**

The matter of a constructive or resulting trust is very much alive given the varying circumstances of human conduct.

[25] In **Lloyds Bank PLC v Rossett**¹ Lord Bridge stressed the matter of the common intention and more in this way:

"The first and fundamental question which must always be resolved is whether independently of any inference to be drawn from the conduct of the parties in the course of sharing the house and managing their joint affairs there has at any time prior to acquisition or exceptionally at some later date been any arrangement or understanding reached by them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on

¹ [1990] 1 ALL ER 1111

evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or proprietary estoppel."

[26] And in **Midland Bank PLC v Cooke**² it was held that in the context of a constructive trust and in the absence of direct evidence the Court must undertake a survey of the whole course of dealings between the parties relevant of their ownership and occupation of the property and their sharing in its burden and advantages and would take into account all conduct which threw light on the question of what shares were intended.

[27] Other recent cases such as **State v Bowden** and **Abbott v Abbott** have followed the principles enunciated in the foregoing case. However, in **Thorne v Major** there was some modification. What the House of Lords held in that case was first that whether a representation had sufficient clarity to establish a proprietary estoppel depended upon the context in which it was made. And secondly the property which is claimed to be in issue must be sufficiently identified.

[28] **Analysis**

It may be said that for the purposes of establishing constructive trust or proprietary estoppel the following must be satisfied or considered: the existence of a common intention to share the property arising from an agreement or by way of representation by one party to the other; the context in which the representation was made; the party claiming an interest must show that he or she acted to his or her detriment or significantly altered his or her position, the property in issue must be clearly identified.

² [1995] 4 ALL ER

[29] **Common Intention by Way of Agreement or Representation**

The unique situation in this case which is common ground is that the deceased acquired his properties and built houses long before the deceased and the Defendant came together as man and wife.

[30] The only evidence of an agreement or representation comes from the Defendant. Such an agreement is denied by both Claimants. But while the context of the representations made to the Defendant by the deceased is not clear the rest of the evidence must be brought to bear on the issue.

[31] To begin with Mr Fuller for the Defendant interprets the recent ruling in *Thorne v Major* as being to his client's advantage. On the contrary, the Court interprets the ruling about context to mean that representation made in different context will carry certain weight while others in other circumstances may be given little or no weight. However, the context is not in evidence in this instance.

[32] It was also established in the evidence that the deceased was frugal. Therefore having brought his properties long before the Defendant came about; it is likely that he would suddenly turn and represent that he would share his properties with the Defendant. The Court thinks not and by saying that the Court does not accept that any representation was made nor can it be inferred.

[33] **Defendant Acted to her Detriment or Significantly Altered her Position**

By the Defendant's own evidence she worked in a garment factory and earned about \$145.00 per week. And there is no evidence of any huge sums being expended on the property. What she does say in her testimony is that she paid for half of the food, utility bills, purchased curtains and appliances for the home. With respect to appliances the Claimant testified that the appliances were in place prior to the Defendant's arrival.

[34] More relevantly the Defendant admitted in cross-examination that what she did in terms of expenditure was what is expected of two persons living together. It will be recalled that

this is one of the submissions made by learned counsel for the Claimants. A further point is that the Defendant's claims for expenditure are not supported by receipts or other evidence of expenditure. In fact receipts are exhibited by the Defendant which relate to expenditure after the death of the deceased.

[35] The \$25,000.00 towards the deceased's taxi in this context is a large sum. Again there is no evidence of a withdrawal. But the fundamental question is whether as Mr Fuller contends that the Defendant contributed to manual labour, helping putting up board (lumber) painting the house, cut the grass and the \$25,000.00 to purchase the deceased's taxi came as a result of the agreement or representation. The question is really rhetorical since it has already been determined that there was neither an agreement with the deceased nor any representations by him to her.

[36] It is important to note that in *Lloyd's Bank PLC v Rossett* Lord Bridges spoke of "significantly altered his or her position". To this must be juxtaposed the Defendant's admission that what she did in terms of the house which she occupied with the deceased was what she was expected to do.

[37] It is also of some importance to note that although there is mention of the Defendant caring for the deceased, there is no evidence that he was bed-ridden despite being asthmatic. In fact, he did on the job at VC Bird International Airport.

[38] **Conclusion**

Based on the law and the evidence analyzed it is the conclusion of the Court that no trust was created and no question or issue of beneficial interest arises in favour of the Defendant.

[39] With that said the Court agrees with the submission by Mr Lake that the joint account established in the names of the Defendant and the deceased which at the time of the deceased's death contained \$12,900.00 represents the deceased's intention as far as his

property is concerned. The Defendant has benefited from this sum without question by the Claimants.

[40] Accordingly there is judgment for the Claimants and they are entitled to possession of Parcel 129.

[41] **Defendant's Counterclaim**

Given the ruling in favour of the Claimants it follows that the Defendant's counterclaim must be dismissed.

[42] **Life Interest**

In seeking to argue that the Defendant is entitled to a life interest Mr Fuller sought to rely on the decision in **Ungurian v. Lesnoff**.³

[43] In that case the Plaintiff purchased a house while he and the Defendant were in a man and wife relationship after the Defendant gave up a flat in Poland in which she could have lived in for life. When the four year relationship ended the Defendant effected considerable works of improvement; central heating was installed and the house was rewired and replumbed in addition to other works of improvement and redecoration. All the work was carried out by the Defendant except in so far as it demanded skilled craftsman. When the parties separated the Defendant remained in the house.

[44] In an action to recover possession the Court held that the intention of the parties made it plain that the intention was that the Defendant would have the right to the house for life; that since these were hereby created successive interests in the property within the settled Land Act, 1925.

³ [1989] 3 WLR 840

[45] To begin with, Mr Fuller has not cited any legislation to the Court, equivalent to the settled Land Act of England, which would render the subject property 'settled land'. More fundamentally, however, the subject property was not purchased while the deceased and the Defendant began their relationship. The evidence shows that it was purchased by the deceased much before that and there can be no comparison between what the Defendant did in **Ungurian v Lesnoff** and the Defendant in this case, except for the fact that she migrated from St Kitts.

[46] By this Defendant's own admission, whatever money she spent represented what would be expected in such a relationship. The Defendant, Ms Benjamin is therefore not entitled to a life interest in Parcel 129.

[47] **Costs**

In the circumstances the Claimants are entitled to their costs and as such it is the determination of this Court that the Defendant must pay costs in the sum of \$7500.00 to the Claimants.

Apology

It is common ground that after this judgment and others had been reserved a number of other matters which touch and concern governance and/or the national interest of Antigua and Barbuda and in the Commonwealth of Dominica arose and as such were given priority. Further, this judge was transferred to another jurisdiction, where a single judge presides with effect from 1st September 2010 with the foreseeable consequences. This accounts for the delay. Despite the foregoing a deep sincere apology is tendered for the delay.

[48] **ORDER**

IT IS HEREBY ORDERED AND DECLARED as follows:

1. There was no constructive trust, resulting trust, or beneficial interest arising in favour of the Defendant by virtue of any agreement between the deceased and the Defendant or any representation by the deceased to the Defendant.

2. The deceased's sole intention in terms of property was that the Defendant should get the content of the joint account in their names, namely \$12,900.00.
3. The Defendant's counterclaim is dismissed.
4. The Defendant is not entitled to a life interest in Parcel 129.
5. The Defendant must pay the Claimants costs in the sum of \$7500.00.



High Court Judge
Errol L. Thomas