

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2015/0089

BETWEEN

PATRICIA WILLIAMS-MORRIS

CLAIMANT

and

EVAN WILLIAMS

DEFENDANT

Appearances:

Mr. Stephen Williams and Mr. Sten Sergeant for the claimant.

Mr. Ronald Marks and Mrs. Patricia Marks-Minors for the defendant.

2016: Dec. 13

2017: Apr. 6

JUDGMENT

BACKGROUND

[1] **Henry, J.:** This case arises from a disagreement between a daughter, Patricia Williams-Morris and her father Evan Williams, over ownership of land situated at Belle Isle on the Walliabou Estate, St. Patrick's Parish in the State of Saint Vincent and the Grenadines ('the disputed property'). Ms. Williams-Morris claimed that she purchased 3.11 acres from the government after her father encountered financial difficulties which prevented him from completing the payments under a lease/purchase agreement. She alleged that Mr. Williams subsequently entered the land and destroyed her crops and livestock. She is seeking a declaration that she owns the land, possession of the property, an injunction to restrain Mr. Williams from trespassing, damages and costs.

[2] Mr. Williams alleged that his daughter tricked him into signing a letter whereby he assigned his interest to her. He alleged further that Mrs. Williams-Morris procured his signature by fraud and/or misrepresentation. He denied destroying her crops or livestock. He counterclaimed for a declaration that he owns the subject lands, an order cancelling the deed of conveyance to Mrs. Williams-Morris, an order authorizing him to repay her the purchase price, an injunction to prevent her from trespassing on the lands, damages and costs. I have found that Mr. Williams is entitled to a beneficial interest in the property, commensurate with his contributions towards the purchase price.

ISSUES

[3] The issues are:

- (1) Whether Mrs. Williams-Morris deceived or induced Mr. Williams to assign his interest in the disputed property to her?
- (2) Who owns the disputed property?
- (3) To what remedy is Patricia Williams-Morris and/or Evan Williams entitled?

Issue 1 - Did Mrs. Williams-Morris deceive or induce Mr. Williams to assign his interest in the disputed property to her?

[4] Mrs. Williams-Morris is registered¹ as owner of the disputed property by Deed of Conveyance 2902 of 2012. The deed reflects that she bought the property from the Government of Saint Vincent and the Grenadines ('the government') for \$19,048.75. Mr. Williams lives there to date. Mrs. Williams-Morris' account differs from her father's as to the circumstances under which she became registered as owner. The determination of how this happened hinges largely on their credibility.

[5] Mr. Williams occupied the disputed property from 1983, cultivating crops and breeding livestock. In 1996, he formalized a 30 year lease/purchase agreement with the government under which he was granted an option to purchase the property. The agreement stipulated the yearly rental payment and included a formula for calculation and payment of the purchase price if Mr. Williams took up the

¹ On 14th September, 2012.

option. Mr. Williams admitted that he defaulted on payment of rent. No evidence was adduced as to the date he last paid rent.

[6] Mr. Williams had several children with his ex-wife Jeanetta, including Calvin and Henry Providence. He fathered Patricia Williams-Morris with someone else. Jeanetta Williams, Calvin and Henry Providence recalled that they assisted Mr. Williams with farming for many years. They indicated that he spent a considerable amount of time on the farm and lived there in a house which had been erected on the property before he went into occupation. Mr. Williams said that he and his family planted fruit trees and reaped the crops as his sole means of livelihood. Mrs. Williams-Morris was not party to the family's farming enterprise.

[7] Mr. Williams, his ex-wife Jeanetta, Calvin and Henry Providence testified that the relationship between Evan and Patricia was never a close one. Mr. Williams agreed. He said he was closer to his other children. From all accounts, the relationship between Evan Williams and Patricia Williams-Morris was less than ideal during the latter's infancy, childhood and adolescence. It appears to have improved when Mrs. Williams-Morris became an adult. She testified that her father 'stood for her' on her wedding day. He did not dispute this. He insisted that he played a role in her life as best he could while she was growing up.

[8] Mrs. Williams-Morris alleged that after she started working, her father developed a close relationship with her and she assisted him when he fell on hard times around 2012, by supplying him with groceries. In this regard, she explained that she sold him goods on credit from her mini-mart and bought him a stove and cellphone. She testified that she had to write off Mr. Williams' debt of \$921.07 because he told her that he did not have the means to pay her.

[9] Mr. Williams acknowledged that he and Mrs. Williams-Morris had a good relationship in 2010 and admitted that she bought him a stove. However, he denied ever receiving assistance from her, crediting any goods from her or that she had to write off his debt. He was adamant that he had a large farming enterprise in 2012. He asserted that he was always in a position to pay for the land when the time came and intended to go to the credit union presumably to get a loan.

[10] Mrs. Williams-Morris claimed that in 2010, Mr. Williams confided in her that since 2000 he had fallen into arrears on his rental payments and that one Mr. Quow and Budu were interested in getting the disputed land. She alleged that Mr. Williams told her that Mr. Quow and Budu were supporters of the New Democratic Party (NDP) who threatened to ensure that his lease was forfeited for non-payment of rent, if NDP won the next general elections. Mrs. Williams-Morris explained that her father was petrified by the prospect of losing the property under those circumstances and he offered to assign his interest in the lease/purchase agreement to her. She testified that she told him that could not refinance it at that time because she had a loan and would be unable take up his offer. Mr. Williams denied that any of this ever happened.

[11] Mrs. Williams-Morris explained that two years later, her father visited her home, brought her a copy of the lease and complained to her that he had granted permission to one Lazo Hamlet to cultivate part of the land and was now having problems with Lazo who threatened to go to the Lands and Survey Department ('L & S Department') and buy the land, because he knew that Mr. Williams was in arrears. He therefore wanted Hamlet to leave the property. She alleged that Mr. Williams told her that he had not supported her as a child, his other children had turned their backs on him although he had supported them, therefore he wanted her to get the land and she should accompany him to L & S Department to sort things out.

[12] Mr. Williams acknowledged that he encountered difficulties with Lazo. He explained that against his objections, Lazo wanted to build a pig pen on the disputed land. He insisted that he got Lazo to leave the property and that he had no conversations with Mrs. Williams-Morris either about Lazo or Mr. Quow and Budu as she alleged. He maintained that he had the means to pay the rent and purchase the property and that he never indicated to Mrs. Williams-Morris that he wished to hand over the property to her.

[13] Mr. Williams recalled that she told him that people in the area were saying that he was the only lessee who had not paid for the lands at Belle Isle. He said he was surprised at those rumours and told his daughter that he still had time to pay under the lease. He indicated that he told her that he intended to call Calvin who was then in Cuba, because he wanted Calvin to be with him and assist him to pay for

the land and also because he has difficulty reading and was feeling weak as he had just come out of the hospital.

- [14] He said that Mrs. Williams-Morris dissuaded him from calling Calvin, convinced him that it was not necessary to do so and volunteered to go with him. He agreed to do so and went with her since they were only going there to get information and to ascertain if there was any problem with him and the land. He testified further that when they arrived at the L & S Department they were assured that no one at Belle Isle Estate had paid for their lands and there was a delay in completing those arrangements because 'Solid Waste'² was using the lands above the road. He discovered that he had about 16 years before the lease expired and he asked the officer to calculate the amount due and owing. He acknowledged that his rent was in arrears.
- [15] Mr. Williams said he decided to obtain a loan from the Teachers Credit Union to purchase the land and was told that he needed a letter from L & S Department reflecting that the government had offered him the lands for sale. He claimed that he intended to go back the L & S Department for the letter by Mrs. Williams-Morris prevailed on him to do so another day. He agreed because he was feeling tired by then.
- [16] He testified that sometime later Mrs. Williams-Morris brought him the letter from L & S Department. He said that he was annoyed that she had gone behind his back and he wanted to know how she got the letter in his absence. He explained that Mrs. Williams-Morris told him that Mrs. Providence who worked at the Department arranged for her to get the letter as they were church sisters. Once again, he went to L & S Department accompanied by Mrs. Williams-Morris because he wanted to find out how to move things along.
- [17] He recounted that before going to the L & S Department on that second occasion, they stopped at Singer because Mrs. Williams-Morris had some business to take care of there. He explained that she called him over to the cashier to sign a document. Assuming that she was taking out credit, he signed thinking that she wanted him to be her security. He said Mrs. Williams-Morris did not allow him to see the top of the document and he had no idea what he was signing. According to him, they then

² Presumably, a government entity.

proceeded to L & S Department where Mrs. Williams-Morris told him to wait outside while she went in to speak with Mrs. Providence. He alleged that he went back to L & S Department in a bid to move things along. He stopped short of explaining what was to be moved along and in what way. He claimed that he learnt subsequently that the property was transferred to Mrs. Williams-Morris contrary to his wishes and without his consent.

[18] He explained that he had given her the lease and his receipts to hold and assumed that she was going inside to make queries about the information he needed to take to the Credit Union. He implied that he never went inside the office or asked Mrs. Williams-Morris about the conversation she had inside. He did not testify about the specifics of any conversation he had with her after she supposedly exited the building. Rather, Mr. Williams stated that she told him that everything was alright. He did not elaborate. He did not give the details of any further conversation they had on that matter, or of any further information she gave him.

[19] This account is more than passing strange and incredible for a number of reasons. Firstly, according to him, Mrs. Williams-Morris had already obtained the letter from L & S Department about which the credit union had asked. By then, they had already told him that they had halted sales because of the Solid Waste project. Unless he was going there to obtain additional information, why return with Mrs. Williams-Morris before an invitation from the L & S Department. Secondly, if he was waiting on Calvin before purchasing the land, why involve Mrs. Williams-Morris at this juncture?

[20] Thirdly, and most significant of all, if he was pursuing the queries for himself and intended to seek Calvin's assistance at a later date, or obtain a loan from the Credit Union, why allow Mrs. Williams-Morris to leave him on the outside of the building while she went inside and why did he not go in after to transact his separate business? From his account, it appears that Mr. Williams went into town on that day on a wild goose chase. I reject that conclusion because it is not reasonable. The only reasonable inference is that he and Mrs. Williams-Morris went into town together to pursue a transfer of his interest (in purchasing the land) to her.

[21] Mr. Williams adduced no evidence that he ever went back to the L & S Department to pay rent as it became due, pursue purchase of the land through his own initiative, with Calvin's help or through a loan from the Credit Union. Had he abandoned his interest in the land? He did not provide an

explanation. His mission that day to ascertain from L & S Department how to move things along, appeared to have been abandoned without rational explanation or further inquiries from him at any subsequent date. Even if the government had not contacted him, he should at least have resumed his rent payments.

[22] This is borne out by Ms. Corcella Roberts' testimony. She recalled travelling into town with Mr. Williams and Mrs. Williams-Morris on 22nd June, 2012 in van driven by Keith Morris. Coincidentally, she was going to the L & S Department to sort out the purchase of government lands she had been occupying for some time. As they travelled to their destination, she struck up a conversation with Mr. Williams who confided in her that he was going to the surveys department to hand over 'his' land to his daughter 'Girly' because he had diabetes and pressure and could no longer manage the land.

[23] Ms. Roberts said that Patricia Williams-Morris was also known as 'Girly'. She told Mr. Williams that she did not know that Girly was his daughter and he replied that she was his first born. She asked him about his other daughter and he responded that he did not intend to give her the land because Girly could take care of him. Ms. Roberts questioned him about his wife and he replied that he had left her because she ill-treated his other children. She exited the van in Kingstown and later that day met Mr. Williams and Mrs. Williams-Morris at the L & S department. She asked them if they got through and Mr. Williams replied that they would have to return another day because Mrs. Williams-Morris did not have all the money to pay for the land.

[24] Under cross-examination, Ms. Roberts maintained that her encounter with Mr. Williams that day transpired exactly as she testified. She was not discredited. Her demeanour remained stoic throughout. Mr. Williams admitted riding in a van with Ms. Roberts as she alleged but denied having any such conversation with her. Ms. Roberts' testimony had the ring of truth to it and I believe her. In the face of this testimony, I reject Mr. Williams' denial that this conversation did not take place.

[25] Mr. Williams accused Mrs. Williams-Morris of misleading him into signing the letter authorizing the L & S Department to prepare the deed in her name. The letter was produced into evidence and contained the signature of one Kendolph Providence as witness. Essentially, Mr. Williams' claim is one of fraud or deceit. He pleaded that:

- 'a) (she) was aware at all material times that (he) had no intention for her to own his land and misled him at all material times in signing the letter dated 21 June, 2012.
- b) That (she) perpetrated a fraud on (him) by causing him to sign this document which he thought was in furtherance of (her) gaining a credit account at ... Singer while it was in fact a letter allowing her to get the title of his land into her name.
- c) That (she) further cemented her fraudulent actions by having a Justice of the Peace sign and stamp the document as if (he) had signed same before the Justice of Peace Randolph Providence.
- d) That armed with the knowledge that (he) never intended for (her) to own property in question, (she) did not make (him) aware of the Deed of conveyance she had fraudulently procured in 2012 through the said letter until she had her solicitors write to (him) in April 2013.'

[26] Mr. Kendolph Providence testified that he has been a J.P since 2001. He recalled that he, Noreen and Vernon Scott were on their way to attend bible study one evening when they decided to stop and visit Mrs. Williams-Morris. They met Mr. Williams when they got there and he showed them the boundaries to the lands he was cultivating and the cultivation being undertaken by Mrs. Williams-Morris. He recalled that Mr. Williams invited them to his home where they engaged in conversation during which he told them that Mrs. Williams-Morris was the only daughter who made him feel like a father and he was going to hand over the land to her.

[27] Mr. Providence said that the following week, they returned to visit with Mr. Williams. He explained that they did so because on the previous occasion it was getting late and they had to leave so they had promised Mr. Williams that they would return. He recalled that Mr. Williams told him that he understood that he was a Justice of the Peace ('J.P.'). He asked him to write a letter for him to take to the L & S Department so that he could hand the land over to his daughter. He alleged that this transpired in the presence of Mrs. Williams-Morris and her husband.

[28] Mr. Providence admitted that he wrote the letter, telephoned Mr. Williams and told him to come to collect the letter. He said that Mr. Williams told him that he knew him very well, had a lot of

confidence in him and asked him to send the letter to the Leeward bus terminal where he would collect and sign it. He agreed to do so and proceeded to sign the letter, stamp it and sent it as Mr. Williams instructed.

[29] Mr. Providence indicated that he and Mr. Williams used to attend the same church but that Mr. Williams is no longer a member. He said that Mrs. Williams-Morris also attends that church and is friends with his wife, Patricia Providence. He denied that Mrs. Williams-Morris instructed him to write the letter, but admitted that she had given him the lot and plan number which were referenced in the letter. He acknowledged that he was not present when Mr. Williams signed the letter. He said that he knew that as J.P. he must actually observe and ensure that a signatory signs a document before affixing his signature as witness.

[30] Mrs. Williams-Morris denied instructing Mr. Providence to prepare the letter. She testified that she and her husband were at the subject lands during the first week in June 2012 when Mr. Providence, Noreen Scott and Vernon Scott came to visit them. She said that Mr. Williams came out of his house and greeted them and they carried on a conversation. The following week the Scotts and Mr. Providence returned and it was then that Mr. Williams asked Mr. Providence to prepare the letter. She said that she was also present when her father received a telephone call from Mr. Providence later that month. She recounted the Mr. Williams told her that Mr. Providence had prepared the letter and wanted him to come to his house to sign it as it was already late in the evening he would collect it at the bus terminal.

[31] She said that her father collected in when they arrived at the bus terminal and gave it to her to hold for him. He asked for it when they were at Singer and she gave it to him whereupon he signed it and gave it back to her.

[32] Mr. Williams submitted that the letter should be rejected as the signature of a J.P. carries significant weight which signifies to the reader that the signatory is aware of its contents and fully agrees to same. In this regard, he contended that the only way a J.P. can establish this is by reading the document to the individual and witnessing his signature in person. As this was not

done in the case at bar, he submits that Mr. Providence could not have had the assurance that Mr. Williams understood what he was signing.

[33] Mr. Williams contended further that Mr. Providence was part of the fraud orchestrated by Mrs. Williams-Morris and the court should place no reliance on the letter as evidence of his intentions. He argued that it was never his intention to transfer his interest in the land to Mrs. Williams-Morris. He submitted that he was deceived by her and is therefore entitled to have the transfer of the lands to her set aside.

[34] Mrs. Williams-Morris submitted that the case of **Derry v Peek**³ is the *locus classicus* in connection with cases dealing with allegations of deceit or fraud. She contended that the case is authority for the legal proposition that in order to prove fraud it must be established that a false representation has been made knowingly or without belief in its truth, or recklessly (carelessly as to whether it is true or false).³

[35] Mrs. Williams-Morris submitted further that Mr. Williams has not particularized the representation on which he purports to establish fraud. Relying on the decision in **Leni & Oil and Another v Malta Oil PTY and Another**⁴ she contended that the particulars advanced by her father do not amount to representation, much less a false one. She set out part of his pleadings in which he alleged that she:

‘... was aware at all material times that (he) had no intention for her to own the land....’⁵

and opined that this is not a representation but a vague allegation that she knew his mind.

She contended that this is incapable of proof.

[36] Mrs. Williams-Morris argued that the particulars of fraud outlined in the counterclaim are respectively not false representations dishonesty made by her and on which he could have relied,

³ (1889) 14 App. Cas. 337.

⁴ [2014] EWHC 893 (Comm).

⁵ Para. 13 a) of the Defence and Counterclaim.

but rather that they constitute a dispute of fact as to whether he knew what he was signing when he signed the impugned letter; and an omission by her to inform him of the deed. She submitted that it was unnecessary for her to so inform him, since he had constructive notice of it.

[37] She submitted further that none of the assertions of fraud made by her father amount to false misrepresentations dishonestly made, nor has he indicated for what purpose she intended him to rely on them, nor has he suffered loss as a consequence. She added that this is not a case involving rescission of a contract.

[38] **Derry v Peek**³ is the leading case on the law of fraud. Fraud has been described as a false misrepresentation made knowingly or recklessly by someone through words or conduct with the objective of inducing another person to act on it to his or her detriment.³ It may be ‘... a statement of what is false or a suppression of what is true.’⁶ It must be specifically pleaded and proved.

[39] Fraud may be either actual or constructive. Instances of constructive fraud are characterized by allegations that the ‘victim’ was induced by to make a gift which was:
(1) extorted by him being rendered powerless, or through deceit; and
(2) not freely and voluntarily done.

[40] I agree with Mrs. Williams-Morris that Mr. Williams has not established that she knew that he had no intention for her to own his land. This is not an allegation which he could easily establish based on his say so. His story was so convoluted and fraught with inconsistencies that it could not form a factual basis from which to conclude that his daughter knew that he did not want her to get his interest in the property. In any event, such an assertion does not constitute a false misrepresentation which would transform it into an element of fraud. Mrs. Williams-Morris vehemently denied that her father ever communicated such an intention to her. I accept that he did not.

⁶ Halsbury’s Laws of England, 4th Ed. Vol. 16, para. 663.

- [41] The father and daughter proferred divergent accounts of how Mr. Williams came to sign the letter. Mrs. Williams-Morris and Mr. Providence had a coherent tale. Even to his detriment, Mr. Providence admitted that he did not witness Mr. Williams' signature as reflected in the letter. He accepted that he was aware that the office of J. P. conferred tremendous responsibility on him and that he had failed in his duty by counter-signing the letter without actually witnessing its execution by Mr. Williams. He contributed to a course of conduct which ultimately resulted in conveyance of incorrect information to the L and S Department who received and acted on its contents.
- [42] This dereliction of duty cannot be ignored. In this regard, the Registrar of the high court is directed to bring this decision to the attention of the Hon. Attorney General for appropriate action by the relevant authorities.
- [43] Mr. Williams was not a credible witness. His assertion that he had difficulty reading was shot down through Mr. Providence's testimony and by Mr. Williams himself when he read quite competently from the witness statement. His claim that he signed the letter believing that it was intended to be used by Mrs. Williams-Morris to obtain credit, just does not wash. Firstly, he reported no conversation between his daughter and him or between the Singer staff and him about such a transaction. In the normal world, creditors generally seek to ascertain that a guarantor meets its requirements, before sanctioning them to serve in that capacity. According to Mr. Williams, no such due diligence was conducted in his case.
- [44] Moreover, Mr. Williams did not state where and how he concluded that Mrs. Williams-Morris was seeking credit and for what purpose. His defence in the instant case demonstrates that he was at the time well in charge of his faculties and should not have been viewed by Mrs. Williams-Morris as a push over who would sanction her wishes, which did not coincide with his own. Such a person to my mind would not willingly and unwittingly sign as guarantor without requesting and being provided with specifics. I reject his story as being improbable and untrue.
- [45] Furthermore, Mr. Williams did not accuse Mrs. Williams-Morris of representing to him that she was applying to Singer for credit. He pleaded expressly that she perpetrated the fraud by:

‘... causing him to sign this document **which he thought** was in furtherance of (her) gaining a credit account at ... Singer while it was in fact a letter allowing her to get the title of his land into her name.’ (Bold mine)

[46] Mr. Williams stopped short of stating what omission or action by Mrs. Williams-Morris amounted to a false misrepresentation. He implied that it was communicated through their presence in Singer. I make no such inference. I find that Mrs. Williams-Morris made no such representation to her father. He was not induced to sign as he claimed.

[47] Mr. Williams accused his daughter of cementing her fraud by having the J.P. sign and stamp the document. Kendolph Providence’s signature appears on the letter an inch below Mr. Williams’. It is positioned in such a way that Mr. Williams would have been able to see it unless it was obscured by Mrs. Williams-Morris. Interestingly and significantly Mr. Williams complained that Mrs. Williams-Morris held the document in such a way that he was unable to see the top of it. I infer that he was able to see the bottom which contained only the signature and name of Kendolph Providence and the words ‘Justice of the Peace’. Certainly this would have put him on notice that it was not related to an application for credit as he alleged.

[48] This part of Mr. Williams’ defence raises the plea of ‘*non est factum*’ by which he admits signing the letter but denies that it was his ‘deed’, done intentionally and voluntarily. To succeed on this limb of his claim, Mr. Williams must establish that:

1. when he signed the letter he believed that it had a particular character or effect and has since discovered otherwise; and
2. he was given reasons to believe as he did; or
2. before signing, he made inquiries which confirmed his belief.⁷

[49] Mr. Williams did not testify about taking any such steps to ascertain what he was signing. In fact, he responded that he did not know why they went into Singer because his daughter only told him that she had business to conduct but never told him what it concerned. He even said that he hustled

⁷ Gallie v Lee [1971] AC 1004 (Lord Reid).

and signed the paper for her not knowing what it was about. He had no valid reason to believe as he said he did. He has therefore failed to establish that the letter was not his deed. The defence of '*non est factum*' is not available to him. I find too that he understood and knew exactly what he was signing and further that he had agreed for his daughter to take over his 'interest' in the lands and exercise the option to purchase, as his designee. That is the import of the letter.

[50] I accept Mr. Providence's testimony that Mr. Williams instructed him to prepare the letter and told him to send it to the bus terminal for him to collect. He was wrong to follow through on the second part of those instructions. That does not absolve Mr. Williams from the undertaking he gave to L & S Department by signing the letter. Even without Mr. Providence's signature, the L & S Department could have acted on it, if satisfied that Mr. Williams was the author and intended for them to so act.

[51] Mr. Williams' allegation that Mrs. Williams-Morris did not alert him to the existence of the impugned deed before he received the letter from her lawyer, does not comprise a misrepresentation which could have operated on his mind to induce him to sign the letter. It came after the fact and could not constitute any element of the tort of fraud. I am satisfied that Mrs. Williams-Morris did not perpetuate a fraud against Mr. Williams. His claim to have Deed of Conveyance 2902/2012 set aside is dismissed. I therefore make no order setting it aside.

Issue 2 - Who owns the disputed property?

[52] Mr. Williams submitted that he is entitled to be registered as owner of the subject property on reimbursing Mrs. Williams-Morris for the purchase price. He insisted that he never intended to part with his interest to the lease. He did not indicate what efforts he made between 2012 and 2013 to find out what was happening at the L & S Department with the Solid Waste Project which allegedly was holding up the sale of lands to him. He did not testify that he had paid any rent or any part of the purchase price since then. He testified that he gave Mrs. Williams-Morris all the receipts in respect of payments made by him. That did not prevent him from seeking replacement copies. His inactivity in this regard is puzzling. Neither he nor Mrs. Williams-Morris produced those receipts. He said that he

could not remember if he made any payments towards the land since 2000. He was clear that he had not paid any part of the purchase.

[53] Mr. Williams stated that he was always in a position to pay for the land, had a large farming enterprise in 2012 and intended to go to the Credit Union when the time came to purchase it. He added that he never got to go back to the Credit Union. His assertion that he had ready cash at all material times sufficient to make his payments to the L & S Department conflicts with his testimony that intended to get Calvin's assistance in this regard. I do not believe him.

[54] The lease⁸ reflects a freehold value of \$19,048.75, for the land as at 17th May, 1996, when it was signed. The Deed of Conveyance records that the identical sum was paid by Mrs. Williams-Morris as the purchase price. She testified that Mr. Williams had paid \$1500.00 towards the lease but had told her that he had not made any payments from 2000. In the absence of receipts from either party, I am unable to make a finding regarding how much Mr. Williams paid and towards what aspect of the lease agreement.

[55] Mrs. Williams-Morris said that she paid approximately \$25,017.00 as the purchase price. She was adamant that she did not pay \$19,048.75. She did not supply a receipt. She submitted that Mr. Williams is not entitled to be reimbursed the sums he paid to the government. The Second Schedule to the lease stipulated the purchase price, the formula for computing the lease purchase payments and the timeline for making the down payment, second payment, annual payments of \$1215.97 and the balance. An annual interest rate of 5% was payable in respect of the annual payments.

[56] The lease also provided that the earliest purchase date would fall on the five year anniversary⁹ of the date on which the lease was executed. On that date, the purchase price would be \$16,308.85, if the interest rate remained unchanged during the intervening period. The down payment of \$311.00 was payable on the date of signing. Within 24 months thereafter, a further payment of \$622.00 was due. It

⁸ No. 1760 of 1996.

⁹ 16th May, 2001.

appeared to have been structured to apportion part of the interim payments¹⁰ towards the purchase price as is usual with such agreements.

[57] The purchase price in the Conveyance remained unchanged from the original price. If Mrs. Williams-Morris paid \$6,000.00 more, the excess could be referable either to:

1. an outstanding balance on the lease purchase payments for the intervening period; or
2. a variation in the interest payment.

If it is the former, Mrs. Williams-Morris would have acquired 100% legal and beneficial interest in the subject property, if the purchase price was comprised only of the payments made by her. If any payment made by Mr. Williams was applied to the purchase price, he would have acquired a beneficial interest in the property to the extent of his contribution. He would therefore be entitled to receive the benefit of such contribution.

[58] If the final price was adjusted due a variation in the interest rate, similarly, Mr. Williams would be entitled to a benefit in the property if any part of his payments were applied to the purchase price. There is insufficient evidence before the court as to what if any contributions were made by Mr. Williams towards the \$19,048.75 price. It seems to me that Mr. Williams must have paid the down payment and part of subsequent payments. The lease was silent regarding which payments and how much of each would be applied towards the purchase price. What is clear, is that portions of the interim payments were applied to the purchase price. However, even if Mr. Williams contributed towards it, Mrs. Williams would have gained a substantially larger beneficial interest in the property. I am satisfied that she paid well in excess of any sums paid by Mr. Williams, but he is not thereby denied an interest in it.

[59] If Mr. Williams paid \$1500.00 as his daughter claimed, this would include the down payment. \$1500.00 is roughly 17% of \$25,017.00 and 13% of \$19,048.75. In all the circumstances, I am led to the irresistible conclusion that Mr. Williams' payments were applied in some measure towards the purchase price. In either event, Mr. Williams would have gained a beneficial interest in the subject property which Mrs. Williams-Morris now holds in trust for him.

¹⁰ Down payment, second payment and annual payments.

[60] The parcel of land comprises 3.11 acres. It is large enough to accommodate a partition between the parties in relation to their beneficial interests. Alternatively, Mrs. Williams-Morris may compensate Mr. Williams for his interest in the property at the current market value. I find that Mrs. Williams-Morris is the legal owner of the subject property subject to a beneficial interest in Mr. Williams' favour, referable to his payments towards the purchase price.

[61] The parties are required to make a joint approach to the L & S Department to obtain all necessary information regarding Mr. Williams' total payment under the lease agreement. They are to use all such information as the basis for computing Mr. Williams' contributions towards the purchase price, and for ascertaining their respective beneficial interests in the property.

[62] Mr. Williams did not seek an order to be reimbursed his portion of payments to the L & S Department and he did not claim a beneficial interest in the property based on his contributions to the purchase price. Nonetheless, the court has a duty as between the parties to act justly and resolve the issues by granting each party such relief disclosed on the facts and the applicable law.¹¹ Mr. Williams would have accrued an interest in the property which cannot be ignored. The justice of the case demands that his interest be recognized.

Issue 3 - To what remedy is Patricia Williams-Morris or Evan Williams entitled?

Declaration

[63] Mrs. Williams-Morris and Mr. Williams both seek a declaration that they are the fee simple owners of the subject property. Declaratory relief is discretionary in nature. The court is mandated to consider all relevant circumstances including the parties' conduct when deciding if a declaration is in order. In light of the factual matrix in this case, it seems to me that the parties could have resolved this matter by taking a collaborative approach to arriving at a compromise position.

[64] I am mindful that Mrs. Williams-Morris is the holder of a Deed of Conveyance which reflects sole ownership of the legal estate in the land. Based on the facts, neither she nor Mr. Williams is entitled

¹¹ Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

to an outright beneficial interest in the property. It is prudent to ensure that the record is corrected to reflect Mr. Williams' interest in it. The Registrar of Deeds is accordingly directed to enter a charge in the Deeds Registry against the subject property, reflecting Mr. Williams' yet to be determined beneficial interest. I make no declaration of fee simple ownership in favour of either party.

[65] In light of the foregoing, Mrs. Williams-Morris shall on or before 12th May 2017:

- (1) obtain a valuation of the subject property at Belle Isle, from a licensed valuer agreed by the parties; and
- (2) file copies of the valuation at the court office and serve a copy on Mr. Williams; and
- (3) after deducting the expenses associated with the valuation report and any related survey, either
 - (a) pay to Mr. Williams a sum of money representing his share of the beneficial interest in the subject land, based on the value ascribed in the valuation report; or
 - (b) arrange with Mr. Williams for a fair and equitable partition of the land, representative of their respective interest in it, based on a survey to be commissioned from a licensed land surveyor, agreed by the parties; and
- (4) If necessary, commission a survey of the subject property.

[66] Mr. Williams seeks an order cancelling Deed of Conveyance No. 2902 of 2012. Until his interest is ascertained and quantified it is not advisable to do so. In view of the option proposed to give effect to his beneficial interest, it would be premature to make such an order. I refrain from doing so.

[67] For the foregoing reasons I make no order restraining Mr. Williams, his servants or agents from entering the subject property. Neither party accounted for the arrangements agreed by them regarding Mr. Williams' continued occupation of the property. I infer that there was no such agreement and that he was allowed to remain under the same arrangements which existed before Mrs. Williams-Morris paid off for the land. I therefore make no finding that Mr. Williams trespassed on her property and destroyed her crops and animals. She is not entitled to general or special damages for the alleged acts of trespass.

[68] Mr. Williams has not established that Mrs. Williams-Morris trespassed on his property. I make no order restraining her, her servants or agents from trespassing, or any order for damages to be assessed. Mr. Williams is not entitled to the declarations or injunctions claimed.

Costs

[69] Both parties have succeeded to some degree. The claim has resulted in somewhat of a draw. I therefore make no order as to costs. Each party is to bear his or her own costs.

ORDER

[70] It is ordered and declared:

1. Mrs. Patricia Williams-Morris and Mr. Evan Williams are the beneficial owners of the disputed property situated at Belle Isle and registered by Deed of Conveyance 2902 of 2012.
2. Mrs. Williams-Morris shall on or before 12th May 2017:
 - (1) obtain a valuation of the subject property at Belle Isle, from a licensed valuer agreed by the parties; and
 - (2) file copies of the valuation at the court office and serve a copy on Mr. Williams; and
 - (3) after deducting the expenses associated with the valuation report and any related survey, either
 - (a) pay to Mr. Williams a sum of money representing his share of the beneficial interest in the subject land based on the value ascribed in the valuation report; or
 - (b) arrange with Mr. Williams for a fair and equitable partition of the land representative of their respective interest in it, based on a survey to be commissioned from a licensed land surveyor, agreed by the parties.
 - (4) If necessary, commission a survey of the subject property.
3. Each party shall bear his or her own costs.

[71] I am grateful to counsel for their written submissions.

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Esco L. Henry
HIGH COURT JUDGE