

THE EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. NEVHCV2015/0089

BETWEEN:

Doreen Harris
Wilbert Harris by his next friend
Doreen Harris

Claimants

and

Jeremiah Ezekiel Rawlins

Defendant

Appearances:-

Mrs. Sherry-Ann Liburd-Charles for the Claimants.

Mr. Jeffery Nisbett for the Defendant.

2017: December 13

Closing submissions filed on 2018: January 15

2018: December 13

JUDGMENT

[1] WILLIAMS, J.: On the 3rd September 2015, the Claimants filed a Fixed Date Claim Form, Statement of Claim and Affidavit in support against the Defendant for;

- a) Payment of the sum of \$99,543.60 or whatever sums are found to be due to them representing the unpaid balance of the proceeds of sale of land owned by the Claimants situate at Trinity, Palmetto Point, Saint Kitts and recorded in Register Book Q 2 Folio 218 of the Register of Titles for St. Christopher.

- [2] On the 10th November 2015, the Defendant filed an Affidavit in response denying that the said sum was owed to the Claimants, and claimed an entitlement to retain the balance of the proceeds of sale of the property.
- [3] On the 24th December 2015, the Claimants filed an Affidavit in response denying the Defendants allegations and again claimed the balance of the purchase price that was retained by the Defendant.

The Claimant's evidence

- [4] At the trial on the 1st March 2017 the Claimant Mrs. Harris gave evidence she and her husband Wilbert Harris were the joint registered owners of all that piece or parcel of land measuring two acres situate in the parish of Trinity, Palmetto Point, West Farm, St. Kitts.
- [5] The Claimants who resided in England asked the Defendant to act as their agent since they wished to sell their land.
- [6] The Defendant agreed to act as agent for the Claimants and was given a Power of Attorney dated 19th July 2007 by the said Claimants.
- [7] The Claimant Mrs. Harris stated that she and her husband had no discussion or agreement with the Defendant with regard to any remuneration, neither did they discuss any specific price for the sale of the land, but their expectation was that the Defendant would get the best possible price for the land, since she and her husband had sold expensive stocks and shares to purchase the land.
- [8] In 2007, the said land was sold to Leslie Troy Govia and Kenneth Thompson for the sum of US\$365,000.00 and the Defendant collected the sum of US\$321,200.00 representing the **purchase price of US\$365,000.00 less the vendor's stamp duty of 12% of the purchase price.**
- [9] In January 2008, the Defendant paid to the Claimants the sum of US\$207,956.10 in relation to the sale of the land. The Claimant Mrs. Harris stated that this is not what she had expected and both herself and her husband were surprised at the amount of money they received from the Defendant from the sale of the land in 2008. According to Mrs. Harris the Defendant told them that he was having problems with his business and that he had borrowed some of the money.
- [10] Mrs. Harris stated that the Defendant was not authorized by herself or her husband to keep the balance of the proceeds of sale.
The Claimant states that the Defendant signed a loan agreement whereby he agreed to repay the sums owed.

[11] The Claimant, Mrs. Harris also gave evidence of the efforts she made to collect the debt owed from the Defendant. The Defendant according to her told her he was looking to see how he could put things together to repay the loan.

Mrs. Harris avers that at all material times the Defendant knew he owed the Claimants a sum of money which represented the unpaid balance of the proceeds of sale.

The Defendant's evidence

[12] The Defendant admits that he kept the sum of US\$89,300.00 from the sale of the Claimants land.

[13] The Defendant avers however that Mr. Wilbert Harris made an agreement with him to sell the land for about \$5-\$7 per square foot, to pay him £100,000.00, and to keep the excess.

[14] The Defendant states that he did not enter into any loan agreement and had grave doubts as to whether the signature on the agreement was that of Mr. Harris; he never received a loan of US\$150,000.00 from Mr. Harris and he did not owe any of them.

He said out of the proceeds of sale he paid stamp duty of US\$43,800.00 and US\$21,900.00 to the real estate agent as commission; so it was mathematically impossible for there to be a balance of US\$150,000.00 due on the purchase price.

[15] The Defendant avers that the Claimants never made any demands on him for any monies owed and it was only in 2013 that Mr. Harris told him that he owed money on the sale of the land.

[16] Mr. Rawlins was adamant in his evidence that there is any debt due from him to the Claimants and that he never signed a document headed **"Sale of land at West Farm, St. Kitts, West Indies."**

[17] The Defendant states that while he was abroad in 2014, he was informed by his wife Iona Rawlins that she had received a letter from the Claimant Doreen Harris. However he did not authorize nor did he instruct his wife to reply to the letter from Mrs. Harris. He did not authorize her to acknowledge that he owed money to the Claimants neither did he authorize her to dispute the sum owed.

The Issues

[18] The issues to be determined by this Court are:

- 1) Whether the Defendant is in breach of his fiduciary duty towards the Claimants as their agent by his retention of the balance of the proceeds of sale of the land.
- 2) Whether the Defendant had any lawful justification to retain any portion of the proceeds of sale for his own use and benefit.

- 3) What sums (if any) are due and owing to the Claimants from the balance of the proceeds of sale of the property which were retained by the Defendant.

The Law

[19] According to the learned authors Bowstead & Reynolds on Agency¹;
“**Agency is the fiduciary relationship which exists** between two persons one of whom expressly or impliedly consents that the other should act on his behalf so as to affect his **relations with third parties, and the other of whom similarly consents so to act or so acts...** Since the agent has conferred on him special powers which enable him to change the legal position of another, the law also imposes on him special duties of a fiduciary nature towards that other.

The fiduciary duties lead to another feature of agency. It is inconsistent with those duties that an agent should act in respect of his relationship with the principal for his own profit unless he discloses this to the principal and the principal consents. His relationship with his principal is commercially related rather than commercially adverse.

Thus he should be remunerated by commission in respect of the services he has rendered and should **NOT take his own undisclosed profit as an independent intermediary.**”

[20] Also according to the Halsbury Laws of England Vol 1 (2) at paragraph 87:
“The relationship of agency is of a fiduciary nature; in some cases commonly where property or money has been placed in the hands of the agent for a specific purpose, the agent becomes a trustee for his principal.

See: Catlin vs Bell²

Cook vs Ward³

Turpin vs Bilton⁴

In all cases, the agent owes the principal duties of a fiduciary character, to keep accounts, **to disclose any conflict of interest, and not to receive any commission or bribe.**”

¹ 17th Edition Chapter 1

² (1815) 4 Camp 183

³ (1877) 2 CPD 255

⁴ (1843) 5 Man 26 435

- [21] At paragraph 99 of **Halsbury's Laws of England Vol 1 (2)** it states:
"When an agent is employed to carry out any transactions which involves payment to him on his principal's behalf, he must not compromise his principal's rights or part with his property until he has received payment.
All monies received on the principal's behalf must be paid over or accounted for to the principal upon request.
See: Harsant vs Blaine⁵
Where the moneys are received on behalf of joint principals, the Agent is liable to account to them jointly, and is not discharged by payment to one or more of them only unless by authority of all.
See: Lee vs Sankey⁶

Analysis

- [22] The Claimants and the Defendant were obvious friends for many years. They were house guests of each other with their children in England and Nevis. In 2006, the 1st Claimant who resided in England asked the Defendant who resided in Nevis to sell their land located at West Farm in St. Kitts and to act as their Agent. According to the witness statement of Doreen Harris, the Defendant agreed to act as their agent for the sale of land and a Power of Attorney was executed appointing the Defendant as their lawful agent in relation to the sale of land on the 19th July 2007 (copy of Power of Attorney recorded as Deed No. 15616 Liber A Volume 8 Folios 1-4) (Exhibit DH2).
- [23] I accept the Defendant's evidence that pursuant to the Claimants request he retained real estate agents and it was the second realtor Alison Philip who was able to procure purchasers for the land and the land was sold for US\$365,000.00.
I however accept that the Defendant paid to the Claimants the sum of US\$207,956.10. However I also accept Mrs. **Harris' evidence that she told the Defendant that the cheque** she received from him was not showing what they had expected from the sale of the land, and the Defendant told them he was having problems with his business and that he borrowed some of the money.
- [24] Mrs. Harris in her evidence was adamant that the Defendant was not authorized by either of them to keep the balance of the proceeds of sale and produced a Loan Agreement dated 23rd February 2008 in support of her claim signed by Mr. Harris and the Defendant.

⁵ [1887] 56 LJQB248

⁶ [1873] LR 15

[25] The Defendant has disputed that it is his signature on the Loan Agreement because his signature appears on the third page with part of the attestation clause and part of the bracket enclosing the attestation clause appears on the second page, and part appears on the third page.

[26] Apart from this bold statement the Defendant has not produced any evidence to dispute or rebut the appearance of his signature on the document whether it be by handwriting expert evidence or otherwise. I therefore have great difficulty in categorizing the Loan Agreement as a fictitious document, and I accept it as a genuine Loan Agreement document signed by the Defendant as an acknowledgement of the balance that was owed to the Claimants, from the balance of the proceeds of sale.

[27] I have examined the evidence of Mr. Rawlins in detail and have drawn certain conclusions:

- a) Mr. Rawlins defence is based on an alleged conversation with Mr. Harris who is not capable of giving evidence because of his mental condition. (I refer to a medical report dated 14th October 2015 signed by Dr. Pravir Sharma)
- b) Mr. Rawlins purportedly signed a Loan Agreement in which he admitted that he owed the Claimants. While he disputes the signature on the document as being his and the figures in the Loan Agreement because they did not take into account the expenses of the sale transaction. Mrs. Harris rebuts this and gave direct evidence stating that neither she nor her husband gave the Defendant permission to keep for himself the balance of the proceeds of sale.
- c) Mr. Rawlins when questioned under cross-examination by learned counsel Mrs. Sherry-Ann Liburd-Charles admitted that the Power of Attorney did not provide for any remuneration to him based on the price of land per square foot.
Mr. Rawlins also admitted he retained US\$89,300.00 and paid the realtor 6% US\$21,900.00 but was adamant that he did not sign the Loan Agreement in February 2008.
- d) In relation to the letter written by Mrs. Ivana Rawlins wife of Mrs. Jeremiah Rawlins to Mrs. Doreen Harris, Mr. Rawlins admitted that his wife did not tell Mrs. Harris that no monies were owed to them but did not agree that his wife and himself were aware that they owed Mr. and Mrs. Harris.

[28] This evidence from Mr. Rawlins is perplexing, confusing, and unbelievable, but the letter from Mrs. Rawlins is instructive and a cogent piece of evidence in this case, (see Bundle 3 pg. 23). **The fact that the Defendant's wife admitted that the debt was still due and owing** but disputed the calculation, illustrates to me that there are monies still due and owing to

the Claimants from the sale of their land. The only issue is how much is still due and owing to the Claimants by Mr. Rawlins.

- [29] Further the evidence from Mr. Rawlins which was also stated in the witness summary of Amon Rawlins that he gave £7000 to Mrs. Harris as a kind gesture of gratitude because he **had learnt of Mr. Harris's illness and wanted to repay him for all that he had done over the years**, has only served to fortify my belief that Mr. Rawlins was making a part payment on the monies he owed to Mr. Harris.

I do not accept the evidence that Mr. Amon Rawlins out of the generosity of his heart and somewhat out of the blue made a significant gift to Mrs. Harris.

According to Mrs. Harris's evidence, she had an altercation with Mr. Rawlins concerning the repayment of the loan and soon afterwards Amon Rawlins materialized with a cheque of £7000.00.

Loan Agreement

- [30] **The Defendant's submission** on this issue is that there is nothing in the Loan Agreement **which connects it to the proceeds of sale of the Claimant's property** and there is no reference to the US\$150,000.00 being the balance of monies due from the sale of the **Claimant's property and no receipt clause in the said agreement.**

However the question must be asked why would the Defendant sign a Loan Agreement in which he admits that he still owes the Claimants? The fact that the Loan Agreement is not perfectly worded and executed does not shake my opinion that the intention behind and effect of the Loan Agreement signed by both parties is an acknowledgement by the Defendant, that he owes a debt to the Claimants arising out of the proceeds of the sale of land.

Document headed Re: Sale of Land at West Farm

- [31] **The Defendant's submission in relation to this document is that it is erroneous and authored** by someone with an imperfect knowledge of the transaction. Mr. Rawlins states that he wire transferred the sum of £100,000.00 to Mr. Harris's Lloyd's Bank in the Isle of Man on his instructions after closing the transaction. However I can find no evidence that these monies were wire transferred to the Claimants Isle of Man account.

There is a blurred document headed Lloyd's TSB in the Bundle of documents not agreed upon by the parties. I attach no weight to that document. I am of the opinion and accept **Mrs. Harris's oral evidence** that what she received from Mr. Rawlins was a receipt of a

deposit from Lloyd's Bank and that it was not a cheque. She had mistakenly called it a cheque.

[32] I am profoundly convinced of Mrs. Harris's honesty and I accept her oral evidence that Mr. Rawlins signed the document entitled "Sale of Land at West Farm St. Kitts West Indies" and that while the document showed an overestimated account, she had prepared that document based on instructions from Mr. Hesketh Benjamin Attorney-at-law and her husband had signed it.

The Loan Agreement according to Mrs. Harris was drawn up by Mr. Harris and Mr. Rawlins, she was not a party to the Agreement and was not there at the signing. She believed her husband when he said that the document was drawn up to give Mr. Rawlins some time to repay the loan.

[33] I am of the opinion that it is the intent of the parties that is relevant in the determination of this matter. I am also of the opinion that while Mrs. Harris may not have been privy to all of the communication between Mr. Harris and Mr. Rawlins, I am satisfied that Mrs. Harris had adequate information concerning the sale of the land and the expenses associated with the transaction.

[34] Based on the totality of the evidence, the Claimants are claiming the sum of US\$77,643.60 being the balance of proceeds of sale due and owing to them as follows:

- a) Sale price of the Land- US\$365,000.00
- b) Less the expenses for stamp duty- US\$43,800.00
- c) Less cleaning of land- US\$3200.00
- d) Less 6% commission for Real Estate Agent- US\$21,900.00

Total expenses = US\$68,900.00

- e) Balance- US\$296,100.00
- f) Less payment received- US\$207,956.10
- g) Less further payment received of £7000.00 from Amon Rawlins- US\$10,500.00

Total payment received = US\$218,456.10

Balance due and owing- US\$296,100.00

-US\$218,456.10

US\$77,643.90

Conclusion

[35] Mrs. Harris has related to the Court, a coherent, plausible and assured story. I view her as a reliable witness of truth. Mr. Rawlins on the other hand has not impressed me as a witness

of truth and reliability. He knows fully that he acted as Mr. and Mrs. Harris's agent to sell their land and retained the balance of their monies from the sale without their permission or authority.

[36] In the circumstances Mr. Rawlins is in breach of his fiduciary duties as Agent and I therefore award the Claimants:

- a) The sum of US\$77,643.90 being the amount due and owing to the Claimants representing the monies had and received by the Defendant as agent on behalf of the Claimants in relation to the sale of land to Leslie Troy Govia and Kenneth Richard.
- b) Interest on the said sum of US\$77,643.93 at the rate of 5% per annum from January 2008 to date of full and final payment of the Judgment debt.
- c) The Defendant is to provide to the Claimants a full accounting of all monies received and expenses paid by him in his capacity as agent of the Claimants in relation to the sale by him of the land to Leslie Troy Govia and Kenneth Richards for the period July 2007 to December 2008.
- d) Prescribed costs have been agreed upon by both parties in the sum of EC\$28,704.72 and I so award to the Claimants.

[37] I thank Counsel on both sides for their patience in awaiting the delivery of this Judgment and for their very helpful submissions.

Lorraine Williams
High Court Judge

By the Court

Registrar