

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2018/0053

BETWEEN:

ARTHUR ALBAN RICHARDS
ALSO KNOWN AS ALBAN RICHARDS

CLAIMANT

AND

JENNIFER RICHARDS

DEFENDANT

Appearances:

Mr. **Cecil 'Blazer' Williams** for the Claimant
Mr. Ronald Marks for the Defendant

2019: March 5
April 30

Judgment

Byer, J.:

- [1] This was a simple matter in which father was pitted against daughter. Despite this court sending the matter to mediation with a view to somehow salvaging the familial relations which appeared to have only materialized in recent times, the parties remained entrenched and this court has now the unenviable task of deciding whether the parent or the child will be vindicated.
- [2] Having said so, this court finds on a balance of probabilities that from the evidence elicited at trial and the law in relation to this use of a power of attorney, that the Deed of Gift bearing registration number 654 of 2015 should be cancelled and is so cancelled.
- [3] The claimant having been successful on his claim is therefore entitled to his costs on an unvalued claim pursuant to Part 65.5.CPR 2000.

Reasons for Decision

The Pleadings

- [4] This claim started by way of claim form filed on 4 April 2018.
- [5] The prayer in the claim was for the cancellation of a Deed of Gift dated 2 March 2015 and recorded as 654/2015¹ (the Deed).
- [6] The basis of the claim was as stated in the Statement of Claim that set it out succinctly and shortly:
- “1. The claimant by a Power of Attorney dated 17 September 2014. Registration Number 270 of 2014, appointed the Defendant, his daughter as his Attorney on Record.*
- 2. The Defendant, without the knowledge, consent permission or authorization of the Claimant had prepared a Deed of Gift, which purportedly granted and conveyed, 4,389 square feet of land situate at Richmond Hill the subject of Deed of Conveyance Registration Number 125 of 1978 and owned by the Claimant, from herself as Attorney on Record to herself as Donee. The Defendant registered the said Deed of Gift bearing Registration Number 654 of 2015.*
- 3. At all material times the Defendant well knew that the said Power of Attorney was never intended for her to convey the said property the subject of Deed of Conveyance Number 125 of 1978 to herself.”*
- [7] This claim was defended by the defendant, the daughter of the claimant, in which she stated that she had only done what she had been instructed to do by her father in 2014. She therefore made a claim by way of counterclaim that she was entitled to the parcel of land conveyed in the Deed and sought a declaration to that extent.

The Evidence

- [8] The Claimant was his sole witness.
- [9] The evidence on examination in chief revealed that he was aware that he had signed a power of attorney to his daughter the defendant. He however stated categorically that the actions of the defendant in conveying the land the subject matter of the Deed was without his “knowledge, consent, permission or authorization”² and then went on to say “*I had absolutely no knowledge of her actions. I never promised to give her my land and I never instructed her to have a Deed of Gift done for herself. If I wanted to give her my land, I would not have made a Power of Attorney*”³.
- [10] **However in this court’s** mind the most telling evidence was what was elicited on cross examination.
- [11] In answer to questions from counsel Mr. Marks, the claimant told the court, that the document that he signed was never read over to him and that when the Pastor came, he never told him what it

¹ Page 16 of the Trial Bundle filed on the 26/2/19

² Paragraph 3 of the Witness Statement of the claimant filed 19/11/18

³ Paragraph 4 of the Witness Statement of the claimant filed 19/11/18

was. However, he went on to say, when he signed the document, he thought that the defendant **would be a “good girl” and if she “behave herself I could have given her the property”**.

- [12] It was also clear from the cross examination that the relationship of father and daughter was established late in the life of the defendant, as it was on the advances of the defendant that the relationship was established. The defendant evidently visited him and did chores around the house but he told this court clearly in answer to a question from the court that the defendant would come to the house and change up things and he did not like that. It was at this juncture he told the court, and evidence that this court believes, that the defendant having started to change up things, that the claimant then decided to not have anything further to do with her.
- [13] The defendant on the other hand called three witnesses besides herself.
- [14] The evidence of the defendant was that she had only done what her father had instructed her to do. He sent her to the lawyer with his deed, and it was based on his instructions that the power of attorney was drafted and presented for his signing.
- [15] The defendant also told this court that it was only after she had had to stay away from the claimant while she was ill, that when she returned to his home he told her for the first time that he no longer wanted her around.
- [16] In her evidence the defendant admitted that she now knew that the claimant did not want her to **have the land but that this decision was “influenced by a third party or third parties”**.⁴
- [17] On cross examination, the court heard the defendant say that she always knew who her father was and that she always carried his last name and which seemed to deny the claim of the claimant that he only got to know her as an adult.
- [18] The defendant admitted that when her father called for her in 2014, even though she had known him before that was the first time she had brought him groceries and money or in fact paid any real attention to him.
- [19] The defendant also told the court that she had not realised that the power of attorney had not in fact conveyed the property to her but that any documents that were prepared were done so solely on the authority of the claimant her father. Even though she maintained this position throughout her evidence she did admit that the lawyer who had prepared the power of attorney had explained to her that this document was to assist in her ability to take charge of his business at the time. The defendant in fact told the court that it was only when she was served with court proceedings that she realized the power of attorney had not conveyed title of the property to her. However, the defendant maintained that the Deed that was subsequently done was based on the indication of the claimant who told her to take the property with the provision that she was not to displace him from his home.
- [20] One of the defendant’s **witnesses was her** daughter and another was her partner of over 20 years. Their evidence did not take the issues very much further **in this court’s mind** but what was of some

⁴ Paragraph 17 of the Witness Statement of the defendant filed 19/11/18

import was the information elicited from the daughter of the defendant that she had not in fact met her grandfather the claimant until she was almost 19 years old. **In this court's mind this indeed** further painted the picture of a very new and nascent relationship between the claimant and the defendant. As has been already noted, the partner of the defendant, Joel Daniel, did not crystallize any of the major issues for the court. He however did admit that he had no knowledge of the contents of the document that the claimant signed or its legal intent although he did add that the claimant had informed him that he wanted the defendant to have his land.

[21] The witness that could have assisted the court the most was Mr. Ezekiel Creese, the person who witnessed the signature of the claimant as a Justice of the Peace.

[22] This witness had no vested interest in the matter and if during the entire process he had been more discerning **there is no doubt in this court's mind that he would have been of great assistance**. Be that as it may, Mr. Creese was able to tell the court that he read the power of attorney over to the claimant and that the claimant had told him that he wanted to give his property over to the defendant. He however did tell the court that from his perusal of the document it was clear that the **document itself was not conveying any property to the defendant but that** "*probably after the power of attorney, a deed would have come*"⁵. This witness was however clearly not in a position to give the claimant any legal advice as he is not a legal practitioner and he himself did not seek legal advice to understand the intention of the power of attorney to explain the same.

[23] So that was the totality of the evidence. From this evidence the court accepts on a balance of probabilities the following:

- i) **The claimant and the defendant knew of each other's existence** prior to 2015, but the relationship was not close;
- ii) The claimant sent messages for the defendant to attend at his home and indicated to the defendant that he would give the defendant the land upon which he lived;
- iii) The claimant wanted the defendant to assist him with his business and may have eventually given the defendant the parcel of land (*given it to her if she was a good girl*)⁶;
- iv) The defendant without the specific permission of the claimant instructed the drafting of the deed of the property to her based on the power conferred by the Power of attorney;
- v) That the Power of attorney was read over to the claimant but not its legal intent;
- vi) That the claimant did not instruct the defendant to prepare the Deed nor did he give any other party instructions to prepare the Deed on his behalf;
- vii) The claimant being dissatisfied with the acts of the defendant interfering with his lifestyle changed his initial plan to have the defendant benefit from his property.

⁵ Evidence of Mr. Creese on cross examination at trial

⁶ Evidence of the claimant on cross examination at trial

The Power of Attorney

- [24] As this document is central to the case at bar, it bears some examination.
- [25] However before I proceed, I wish to make it clear that at commencement of the writing of this, the **defendant's counsel had not** yet filed any submissions despite the date of 15 March 2019 having long passed. By application filed 20 March 2019 and heard 5 April 2019, this court subsequently granted counsel for the defendant an extension of time to file the submissions on behalf of his client and deemed the submissions filed on 4 April 2019 properly filed. This judgment therefore has taken into consideration both of the submissions and arguments contained therein.
- [26] That being said, the power of attorney is as follows:

“NO: 270/2014

STATE OF SAINT VINCENT AND THE GRENADINES

THIS GENERAL POWER OF ATTORNEY is made the 17th day of September in the Year of Our Lord Two Thousand and Fourteen By ALBAN RICHARDS of Richmond Hill in the Parish of Saint George in the State of Saint Vincent and the Grenadines. -----

I, ALBAN RICHARDS of Richmond Hill in the Parish and State aforesaid HEREBY APPOINT JENNIFER D. RICHARDS of Peters Hope in the Parish of Saint Patrick in the State aforesaid to be my ATTORNEY in accordance with Section 8 of the Power of Attorney Act, CAP. 130 of the Revised Laws of Saint Vincent and the Grenadines 2009 to do the following: -----

- 1. Demand, sue for, enforce payments of and receive and give effectual receipts and discharges for all moneys, securities for money, rents, debts, legacies, goods, chattels and personal estate of or to which I am now or may hereafter possessed or entitled or which are or may become due owing payable or transferable to me from any person or persons or corporation. –*
- 2. From time to time if and when the said Attorney may think fit to sell exchange, surrender, give up mortgage, charge, pledge, demise or lease of any house buildings lands or hereditaments of any nature or any chattels or effects in Saint Vincent and the Grenadines belonging to or held by me and to transfer lease or otherwise deal with any mortgage charge or security upon real property in the State of Saint Vincent and the Grenadines to which I may be entitled and also to enforce any powers of sale or remedies incident to any such mortgage charge or securities as aforesaid or otherwise to release and obtain the benefit thereof in such manner as may be thought proper and to assure or dispose of any estate which may be vested in my name as Trustee or Mortgage. -----*
- 3. To manage or superintend the management of all property to which I am or shall become seised possessed or entitle and effect repairs to any house or other buildings fences erections and to improve any of the premises. -----*

4. To appear for me in any court in any action or other proceedings which may be instituted against me and to defend the same or suffer judgment to go against me and to commence and prosecute any action or other proceedings on my behalf in court in any matter as the Attorney shall think proper. -----
5. To execute and do in my name or otherwise all such deed covenant agreements and things as the said Attorney may think proper for the purpose of giving effect to the power hereby conferred. -----
6. Generally to manage all my concerns and affairs of every description in her absolute discretion and as fully and effectually as I could do if I were present and acting in my proper persons and without being liable to account for any act or default done or committed in good faith. -----

And I the said ALBAN RICHARDS agree to confirm all whatsoever my attorney shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal the day and year hereinabove first written.

Alban Richards”

[27] It would therefore appear that the clause that the defendant sought to invoke for the Deed was clause two.

[28] **However in this court’s mind, clause two contains no such general power that would have allowed the defendant pursuant to her powers there under to convey the legal title to her father’s land to herself.** Additionally, it was of grave concern to this court how the Deed could have been in any event prepared pursuant to this power of attorney.

[29] By the Powers of Attorney Act CAP 130 (the Act) section 7 sets out the clear way in which a power of attorney is to be construed:

“7. Execution of instrument, etc., by donee of power of attorney

(1) *The donee of a power of attorney may, if he thinks fit-*

- (a) *execute any instrument with his own signature and, where sealing is required, with his own seal; and*
- (b) *do any other thing in his own name,*

by the authority of the donor of the power. Any document executed, or thing done, in that manner shall be as effective as if executed or done by the donee with the signature and seal or, as the case may be, in the name of the donor of the power.

(2) *This section applies whenever the power of attorney was created.”*

- [31] This court therefore agrees with the submission on behalf of the claimant that the defendant could only have done what she was given authority to do by the provisions of the executed power of attorney.
- [32] In fact, it is generally accepted that documents that purport to act as a power of attorney are to be construed strictly by the courts. Indeed, regard is usually first had to the general object of the power attorney and then an assessment is undertaken to determine whether those general objects control the general terms of the operative part of the deed.⁷ Thus in the case of *Danby v Coutts & Co*⁸ the court held that a power of attorney that was not limited as to duration was however limited as to period of operation where it stated specifically that the power was applicable only while the donor was abroad. Therefore, the defendant was liable for those acts that the attorneys purported to do while the donor was actually physically present in England.
- [33] Additionally, general words are interpreted as being limited by any special or specific powers but those powers that are incidental to carrying out the authority conveyed will however in all necessity, be implied⁹.
- [34] Indeed this court agrees with the words of Lord Ellenborough in the ancient case of *Payler v Homersham*¹⁰ in which he stated that with regard to the construing of a release, a statement of law which is just as appropriate to a power of attorney, that ***“the general words of a release may be restrained by the particular recital. Common sense requires that it should be so and in order to construe any instrument truly you must have regard to all its parts and most especially to the particular words of it”***.
- [35] In this power of attorney, clause two is the only clause that spoke specifically to property. When one closely examines this, it is clear to this court that the clause spoke of acts incidental to dealing with property within the parameters of alienating the same pursuant to mortgages that may have existed, leases that may have existed or any other type of *pledge* or *demise*. **In this court’s mind** there was no incidental power implied therein that allowed for transfer of the property to the defendant simpliciter.
- [36] In fact what is clear to this court is that the general powers that were conferred upon the defendant were only in relation to **those powers stated therein and in this court’s mind could not have allowed** for the expansion of the same to include the purported act of the defendant in the creation of the Deed.
- [37] Indeed it is pellucid in this **court’s mind**, that if the claimant really intended to confer on the defendant the power without reference to him, to convey the property to herself as she purported to do, then that had to have been specifically stated.

⁷Halsbury’s Laws of England Vol 1 (2017) paragraph 31

⁸ [1185] 29 Ch.D. 500

⁹ Op Cit

¹⁰4 M & S 423

- [38] That being said, I have also considered the authority from this jurisdiction submitted to the court on behalf of the defendant, Veronica Nelson v Naomi Duncan¹¹. In that case, the learned judge had found that the attorney who signed the deed purportedly on behalf of the donor under a power of attorney in fact had the authority conferred on him by the document. However, what was not clear from perusal of the authority was what were in fact the words of the power of attorney that the court considered had given the attorney power to bind the vendor and in any event the attorney therein had contracted with a third party, not himself, two very clear distinguishing factors.
- [36] This court therefore finds that the power of attorney in this case at bar, conveyed no power on the defendant **to convey the title of the claimant's land to herself**.
- [37] Additionally, I wish to comment on the way this power of attorney was in fact executed.
- [38] Upon an examination of the evidence that surrounds the execution of the power of attorney, this court found that the actions of the witness Mr. Creese (Bishop Creese as referred to by counsel for the defendant) were woefully inadequate in asking himself and the claimant the requisite questions. Even though the Court of Appeal in the case of Marguerite Desir and Sabina James Alcide¹² set the bar high for an attorney at law who witnesses a deed of an elderly infirm individual, it also gave some useful guidance as to how a witness for an elderly person is to consider the manner in which the document is executed and to make a careful note of what was asked, the circumstances in which the execution took place and to take a note of whether the individual was signing knowing what they were signing and that it was their voluntary act.
- [39] Of course there was no issue raised as to undue influence and quite rightly so, however what transpired in this case, **solidified in this court's mind the casual manner in which matters of this nature are dealt with**, with parties not taking the requisite time or effort to ensure that the donor of a power is fully cognizant of their actions and the legal purport of the same. It was also not lost on the court that there also existed an obligation on counsel who prepared the deed to ensure that the requisite authority lay with the donee of the power and to advise of independent legal advice.
- [40] That being said, I must also add at this juncture that the act by the claimant to raise on submissions the issue of breach of trust is highly improper, implicit though the same may have been on the pleadings.
- [41] In order for this court to have addressed its mind to this issue, it would have had to have been pleaded and as this appears nowhere in the statement of claim or claim, this court makes no determination on this issue.

The Deed

- [42] This court has already found that the Power of Attorney did not entrust the defendant with the requisite power to execute any deed in her favour.

¹¹ SVGHCV2011/372

¹² St Lucia HCVAP2011/0030

[43] Therefore it follows that the deed must be set aside.

[44] The Deed is therefore cancelled, and costs are awarded to the claimant.

The order of the court is therefore as follows:

1. The Deed of Gift dated 2 March 2015 is cancelled and set aside.
2. Costs to the claimant on an unvalued claim pursuant to Part 65.5 CPR 2000.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar