

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2023/0189

BETWEEN:

NADIA FENTON

Claimant

And

ALLAN LEBLANC

Defendant

Appearances:

Mrs. Andrea Smithen-Henry with Chantal Marshall for the Claimant
Ms. Talia N. DaCosta for the Defendant

2024: October 29th, 30th
November 19th

JUDGMENT

[1] **WILLIAMS, J.:** The Claimant by Fixed Date Claim Form filed on 25th May 2023 seeks the following relief:

1. A Declaration that the Claimant has a beneficial interest in and equitable entitlement to property comprising land and a commercial building and residential dwelling thereon situated in Golden Grove, St. John's, Antigua and more particularly registered in the Land Registry as Registration Section: Five Islands; Block: 45 1489A; Parcel: 1214;
2. A Declaration that the Defendant holds property comprising land and a commercial building and residential dwelling thereon situated in Golden Grove, St. John's, Antigua and more particularly registered in the Land Registry as Registration Section: Five Islands; Block: 45 1489A; Parcel: 1214

3. A Declaration that the Claimant is the sole and true ultimate beneficial owner of the property particularly registered in the Land Registry as Registration Section: Five Islands; Block: 45 1489A; Parcel: 1214;
4. An Order for the rectification of the Land Register of the property particularly registered in the Land Registry as Registration Section: Five Islands; Block: 45 1489A; Parcel: 1214 to vest the legal ownership of the said property in the Claimant and/or the Interested Party and for rectification of the corresponding Land Register of the property particularly registered in the Land Registry as Registration Section: Five Islands; Block: 45 1489A; Parcel: 1213 to vest legal ownership in the Defendant;
5. All necessary and consequential accounts, inquiries and directions;
6. Any further relief that this Honourable Court deems just; and
7. Costs.

Affidavit in Support of the Claim

- [2] In her affidavit in support of the claim, the Claimant alleges that prior to his death her father Mr. David Fenton (the Deceased) was the owner of a parcel of land located at Golden Grove. In 2006 this parcel was sub-divided into Block: 45 1489A; Parcels: 1213 and 1214 respectively. Parcel 1214 has frontage with the Golden Grove Main Road, on the other hand, parcel 1213 is only accessible by an access road along its western boundary and has no frontage at all with the Golden Grove Main Road.
- [3] The Claimant further alleges that her father transferred title to parcel 1214 to the Defendant (who is the Deceased's son and the Claimant's half-brother) in error. She alleges that the Deceased intended to transfer parcel 1213 to the Defendant.
- [4] She further alleges that she only realized that parcel 1214 was registered in the Defendant's name in 2022 when the Defendant contacted her. She further alleges that prior to her father's death she contributed to the construction of a building on the said parcel and after her father's death operated a supermarket and clothing store there.
- [5] The Claimant alleges that she had a close relationship with her father and that he had promised her that she would gain the front parcel after his death. She gives

details of how she assisted her father with his business affairs and for a time was a signatory to his bank account until she moved abroad.

- [6] She alleges that in March 2022 the Defendant through his agent gave her notice to vacate the building and informed her that the locks would be changed. This apparently prompted the Claimant to lodge a caution in respect of parcel 1214 and to commence these proceedings in 2023.

Defendant's case

- [7] The Defendant for his part alleges that his father owned land which was registered as Block 51 1489A Parcel: 453 which was subdivided into Parcels 1213 and 1214. He obtained title to the Parcel 1214 by instrument registered in the land registry on 18th June 2008. He makes no admissions as to whether the Claimant constructed anything on the front parcel and puts the Claimant to strict proof of this.
- [8] He denies the alleged close relationship between the Claimant and the Deceased and recounts alleged conversations where his father complained about the Claimant.

Trial

- [9] Trial of this matter was held on 29th and 30th October 2024 with all witnesses giving evidence on 29th October and counsel for the parties making oral submissions on 30th October 2024. The Claimant and Defendant gave evidence via video link as they both reside out of the jurisdiction.

Claimants Evidence

- [10] The Claimant tendered an array of seven witnesses including herself.

Althea James

- [11] Althea James is a legal secretary with the law firm of Lockhart Mendes and Co. and her evidence in chief was given by witness statement filed on 12th January 2024. Lockhart Mendes and Co. is the firm which prepared the instrument of transfer of parcel 1214 to the Defendant.
- [12] Ms. James recounts that she is a close friend of Ms. Cecilia Williams who is the Defendant's mother. She states that Ms. Williams told her that she would ask the Deceased for a piece of land for the Defendant. She later updated that the

Deceased had agreed to do so and indicated that he would subdivide his land retaining the front portion for himself and transfer the back to the Defendant. According to her, Ms. Williams indicated that the deceased planned to operate a supermarket on the parcel which he retained.

- [13] The deceased engaged Lockhart Mendes and Co. to prepare the transfer and the subdivision was prepared in 2006. The instrument of transfer was signed in 2006 but was not registered until June 2008 when the Defendant visited Antigua.
- [14] Under cross-examination Ms. James states that she never took direct instructions from the Deceased in relation to this transfer.

Joan Tucker

- [15] Joan Tucker's evidence-in-chief was given by witness statement filed on 12th January 2024. Ms. Tucker is a retired legal secretary and Cecilia Williams' sister (the Defendant's mother). According to her in or about November 2005 Cecilia Williams informed her that she was going to ask the Deceased for a piece of land for the Defendant. Sometime later Cecilia Williams told her that the Deceased had agreed that his land at Golden Grove would be sub-divided.
- [16] She recalled that the subdivision was carried out and parcel 1214 was transferred to the Defendant and parcel 1213 was retained by the deceased. She further states that it was the Deceased's intention to retain parcel 1214 (the front parcel) as around 2014 he had built a structure on it. She then reiterates that parcel 1214 was erroneously transferred to the Defendant.
- [17] Under cross-examination Ms. Tucker elaborated that she and Cecilia Williams visited a mutual friend for lunch. During that visit, Cecilia Williams pointed out the area of land which she said belonged to the Defendant. She reiterated that the Defendant's land was the back parcel (meaning parcel 1213). The witness also stated under cross-examination that she had not spoken to the Deceased in relation to transfer of the parcel of land.

Sue Ann Smith

- [18] Sue Ann Smith is a day-care teacher and in her witness statement states that she knew the Deceased since 2016. She claimed that she assisted the Deceased in his shop from time to time and also regularly visited him along with her children. Of relevance is her assertion that during one of these visits the Deceased pointed out

some land which he had given to one of his sons. Ms. Smith not being familiar with the Defendant, asked the deceased which of his sons he was referring to. She was told that this son (that is the Defendant) lived in Florida. The land which Ms. Sue Ann alleges she was shown was the vacant parcel behind the shop.

- [19] Under cross-examination it was pointed out that this alleged conversation took place over ten years after the relevant instrument of transfer had been signed by the deceased. She further agreed that she could not have known what the deceased intentions were in 2006.

Eustice Titre

- [20] Mr. Eustace Titre is a retired security officer who also alleges to have been well acquainted with the Deceased and his family. He recounts that he met the Deceased in 2010 when he moved to the Golden Grove area. Sometime in 2015 the deceased showed him the land behind the shop/supermarket and indicated that he had given that land to the Defendant. He further recalls that he had never met the Defendant, he was only familiar with the Claimant and the Deceased's other daughter Jennifer Willock who assisted the Deceased in his shop from time to time.
- [21] As with Ms. Smith, under cross-examination it was pointed out that this alleged conversation with the Deceased took place long after the instrument of transfer had been executed and registered.

Dave Fenton

- [22] Mr. Dave Fenton is the Deceased's son. In his evidence-in-chief he recounts that construction of the supermarket began in the mid-2010. At the time the Deceased was resident in England. According to him, his father would send him money and he would then purchase materials and transport the same to the site. Due to the passage of time, much of the receipts are now faded or illegible but according to him most receipts date from the period 2014 to 2015. He also stated that the Claimant was responsible for the construction of the top floor of the building.
- [23] Under cross-examination it was put to Mr. Fenton that the Deceased was responsible for construction of the structure on parcel 1214. Mr. Fenton stoutly denied this and insisted that the Claimant had assisted with construction. In re-examination he clarified that he meant the Claimant had assisted financially.

Jennifer Willock

- [24] Jennifer Willock is the Claimant's sister and the executrix of the Deceased's Last Will and Testament dated 14th March 2018. Her evidence-in-chief was given by witness statement filed on 12th January 2024.
- [25] She states that the said will has not been admitted to probate due to insufficient funds. She indicates that it was not until February 2022 that the Defendant contacted her by telephone and informed her that parcel 1214 was in his name. Ms. Willock was very surprised by this as she had always understood that it was the Deceased's intention to retain that parcel for himself and operate a supermarket there. She also states that she assisted the Deceased with the operation of the supermarket. According to her, the Claimant also operated a business namely a clothing store in the same building after the Deceased's death.

The Claimant

- [26] The Claimant's evidence was similar to what was stated in her affidavit in support of the claim which has already been summarized. Under cross-examination it emerged that most of her expenditure in terms of construction on parcel 1214 took place after her father's death.

Defendant's Evidence

Allan LeBlanc

- [27] The Defendant's evidence-in-chief was given by witness summary filed on 12th January 2024. The Defendant describes that the deceased subdivided parcel 453 into parcels 1213 and 1214. He indicates that parcel 1214 was transferred to him by instrument registered on 18th June 2008 whilst parcel 1213 was retained by the deceased.
- [28] The Defendant stated that the Deceased erected the building on the property. He also states that the Deceased told him that the Claimant used to assist him (the Deceased) with his affairs but this had to stop because the Deceased accused the Claimant of stealing his money. He also states that the Deceased sent money to Dave Fenton to purchase materials for construction but had to stop this since Dave Fenton was using these funds for his own use. He outlines further alleged instances of misappropriation of the Deceased's funds by the Claimant, Dave Fenton and Jennifer Willock.

- [29] In terms of the Claimant's occupation of parcel 1214, he alleges that the Claimant was a bare licensee of the Deceased and that licence terminated upon the transfer of title to him. He further alleges that any construction took place after the Deceased's death and was most likely funded with the remainder of funds from his father's bank account.
- [30] The Defendant also confirms that his mother requested the Deceased to give him a parcel of land as his inheritance. However, due to him living abroad he was not even sure of the land's location until his brother showed it to him during one of his visits to Antigua. The Defendant also admits that prior to 2022 he did nothing with the property other than pay property taxes.
- [31] According to the Defendant, he instructed his property manager Mr. Dalton Graham to give the Claimant notice to vacate and this was done. However, the Claimant refused to vacate the property and instead lodged a caution in respect of parcel 1214. The Defendant states that the Claimant's allegation of mistake is fabricated and has only come about as a result of him giving her notice to vacate the property.
- [32] Under cross-examination the Defendant admitted that he had not been involved at all in the construction of the structure on parcel 1214.

Hyacinth LeBlanc

- [33] Hyacinth Le Blanc gave evidence on behalf of the Defendant. The primary thrust of her witness summary filed on 12th January 2024 was that the Deceased had shown her the land many years ago before anything was built on it. At that time the Deceased had indicated that the parcel of land was for her and the Defendant. She also states that the relationship between the Deceased and the Claimant was not close as the Deceased had accused the Claimant of stealing from his shop. The witness was not cross-examined.

Assessment of the Evidence

- [34] As outlined in **Luis Jarvis v. American Airlines**¹ the onus is on the Claimant to prove her case on a balance of probabilities. Justice Blenman (as she then was) stated as follows:
- "This is a civil case and he who asserts must prove. This is known as the burden of proof. It is the law that the standard of proof is on the balance of probabilities."

¹ Claim No. ANUHCv2004/0465 decided 18th December 2008 (unreported)

- [35] This case centres on what was the deceased's intention when he signed the instrument of transfer in 2006. The only witnesses who attempted to give evidence as to what his intention may have been, were Ms. James and Ms. Tucker. Unfortunately, both of them are relaying evidence of Ms. Cecilia Williams (the Defendant's mother) who did not give evidence in this matter. Further, it appears that none of them spoke to the Deceased directly. Accordingly, this evidence is inadmissible hearsay and cannot be relied upon.
- [36] Ms. Sue Ann Smith and Mr. Eustace Titre both gave evidence of conversations with the deceased nearly ten years after the instrument of transfer had been executed and registered. I cannot give much weight to this evidence as these alleged conversations would not assist in assessing what the deceased may have intended back in 2006.
- [37] Mr. Dave Fenton gave evidence that the Deceased commenced construction of the structure on parcel 1214 in the mid-2010. He provides some receipts as evidence of this and his overall testimony seems reliable. From his evidence it appears that the Deceased commenced and completed construction of a single-storey structure. Construction of the upper floor seems to have commenced by the Claimant during the Deceased's lifetime and continued thereafter.
- [38] In the circumstances, it is not possible to state on a balance of probabilities that the deceased did not intend to transfer parcel 1214 to the Defendant. However, it is clear that the Deceased by his conduct and (perhaps explicitly) had indicated to the Claimant that she would receive parcel 1214 upon his death. Nothing else would explain the claimant's expenditure in respect of the structure.
- [39] It is important to remember however, that even before the Deceased died, title to the front parcel had already vested in the Defendant. It no longer belonged to the Deceased to transfer either inter vivos or gift by will. However, it can be accepted that the Claimant would have been unaware of this state of affairs.

Issues

- [40] In my view the issues to be determined are as follows:

1. Whether the Defendant obtained title to parcel 1214 by mistake?

2. Whether the Claimant is entitled to rectification of the land registers for parcels 1213 and 1214?
3. Whether the Defendant holds parcel 1214 on constructive trust for the Claimant?
4. Whether the Defendant has been unjustly enriched?

Discussion

Mistake and Rectification of the Register

- [41] The Claimant's claim for rectification of the land registers of the relevant parcels will be examined first. The Claimant seeks to be registered as proprietor of parcel 1214 with the Defendant registered as proprietor of parcel 1213. However, for the reasons which follow it is not possible to order rectification to register the claimant as owner of the relevant parcel.
- [42] This is as firstly there is no evidence indicating how the supposed mistake occurred. Although Ms. Althea James and Ms. Joan Tucker in their evidence state their belief that mistake occurred, they do not say how this happened. Furthermore, their testimony is hearsay evidence as they are relaying what the Defendant's mother Cecilia Williams allegedly told them as they did not speak to the Deceased directly. Ms. Williams did not give evidence at trial.
- [43] Secondly, during oral closing arguments the court pointed to counsel for the Claimant that the basis of her claim is that the deceased promised to gift her parcel 1214 in his will. In fact, the Deceased's will gifts the Claimant parcel 1213 along with the entirety of his estate. However, this will however has not yet been admitted to probate.
- [44] In **Roberts v. Gill & Co and another**² the UK Supreme Court stated as follows:
- “As a beneficiary in an estate not yet administered the claimant has no interest, either legal or equitable, in any asset of that estate but merely a right against the personal representative to have the estate properly administered.”
- [45] Similarly in **Daphne Gumbs v. Estate of James Fahie et al**³ the Court of Appeal was held that that while an estate remains unadministered, a beneficiary under it is entitled merely to an expectation of proper administration of that estate and no distinct proprietary interest. Thus, it will not be possible for any rectification to be

² [2011] 1 AC 240 at pg. 245

³ BVIHCV2013/0070 (delivered 6th March 2020, unreported).

ordered to record the Claimant as the registered proprietor as she has no proprietary interest in the parcel. Therefore, rectification if ordered would have directed the Registrar of Lands to record the estate of David Fenton as the registered proprietor of parcel 1214 and not the Claimant.

[46] **Section 140** of the **Registered Land Act**⁴ provides as follows:

“**140.** (1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.”

[47] The term mistake is not defined in the legislation. However, similar legislation has been judicially considered in the Eastern Caribbean⁵ and in England. The Defendant relies on the decision of the **NRAM Ltd. v Evans**⁶ where the Court of Appeal of England and Wales gave guidance as to the circumstances that will govern when the land register may be rectified.

[48] According to the court in **NRAM**, there will have been a mistake where the registrar (i) makes an entry in the register that he would not have made; (ii) makes an entry in the register that he would not have made in the form in which it was made; (iii) fails to make an entry in the register which he would otherwise have made; or (iv) deletes an entry which he would not have deleted ;had he known the true state of affairs at the time of the entry or deletion. The mistake may consist of a mistaken entry in the register or the mistaken omission of an entry which should have been made. Whether an entry in the register is mistaken depends upon its effect at the time of registration.

[49] **NRAM** has been applied by the Privy Council in the case of **Brelsford v. Providence Estates**⁷ where the Privy Council accepted that rectification was dependent on whether an instrument was void or voidable at the date of registration. Only a void instrument would be rectified on grounds of mistake.

[50] The instrument of transfer in this case cannot be considered to have been void when it was registered on 18th June 2008. The deceased was the registered owner of the land and thus had the capacity to transfer it as he deemed fit. This

⁴ Cap. 374 of the Revised Laws of Antigua and Barbuda

⁵ *Prisca Irving v. Geest Industries (Estates) Ltd.* decided 19th July 2019 (unreported)

⁶ [2017] EWCA Civ. 1013 at paragraph 51

⁷ [1972] 3 All ER 744 at pg 747 per Lord Denning MR

is unlike the case of **Brelsford v. Providence Estates**⁸ where lands owned by a company were sold by someone who had no authority to do so. Thus, the claimant's claim for rectification on the grounds of mistake must fail.

Constructive Trust

- [51] The Claimant relies on the doctrine of constructive trust as outlined in the well-known case of **Hussey v. Palmer**⁹. According to Lord Denning in that case:

“By whatever name it is described, it is a trust imposed by law whenever good conscience require it. It is a liberal process, founded on large principles of equity, to be applied in cases where the defendant cannot conscientiously keep the property for himself alone, but ought to allow another to have the property or a share in it. The trust may arise at the outset when the property is acquired or later on as the circumstances may require. It is an equitable remedy by which the court can enable the aggrieved party to obtain restitution.”

- [52] In this case, the instrument of transfer was registered on 18th June 2008. At that point the Defendant became the registered proprietor of Parcel 1214. However, based on the available evidence that any construction expenses incurred by the Claimant were incurred from about 2014 at the very earliest and in subsequent years. The Claimant's testimony is that she incurred this expenditure on the basis that the Deceased would leave the property for her after his death. However, at that point, the Deceased no longer owned the property.

- [53] In these circumstances it would not be appropriate to order that the Defendant holds parcel 1214 on constructive trust for the Claimant. This is for the simple reason that by the time the Claimant would have acted in reliance on any representations made by the Deceased, the Defendant was already the registered proprietor of the property. The Deceased could not promise the Claimant property which he no longer owned. Accordingly, the claim for a constructive trust must be dismissed.

Unjust Enrichment

- [54] The Claimant relies on the case of **Caribbean Development (Antigua) Ltd v Electronic Technology International Antigua Ltd**¹⁰ where the Court of Appeal outlined the basic principles of unjust enrichment as follows:

⁸ [2022] UKPC 46 at paragraph 65

⁹ [2022] UKPC 46

¹⁰ Civil Appeal No. 13 of 2005 decided 18th September 2006 (unreported)

“Unjust enrichment presupposes three things. “First the defendant must have been enriched by the receipt of a benefit. Secondly, that benefit must have been gained at the plaintiff’s expense. Thirdly, it would be unjust to allow the defendant to retain that benefit.” The first and second presuppositions are matters required to be proved by the claimant (respondent) and the third is a matter of legal inference derived from the evidence.”

- [55] This is consistent with the Privy Council decision in **Samsoondar v. Capital Insurance**.¹¹ In terms of the first proposition the Defendant admits that he had no part to play in the construction of the structure on Parcel 1214. Actually, it seems that the parcel was vacant when it was transferred to him. Thus, he has benefited from the increased value of the parcel as a result of the structure now erected on it.
- [56] In terms of the second proposition, the court accepts that the upper floor of the structure was largely constructed with funds provided by the Claimant. Mr. Dave Fenton also states (and this was not controverted) that she contributed some funds towards the construction of the lower floor.
- [57] In **Samsoondar v. Capital Insurance**¹² the Privy Council outlined examples of unjust factors such as mistake, duress, undue influence, failure of consideration, necessity and legal compulsion. Such an unjust factor must be identified in order for a claim in unjust enrichment to succeed. In this case it is apparent that the Claimant believed at all material times that Parcel 1214 belonged to her father and after his death believed that belonged to his estate. Otherwise, it is clear that she would not have expended her own resources to help construct the building on the parcel.
- [58] This was therefore a mistake of fact on her part as is outlined at paragraphs 5 to 7 of her affidavit in support. It was clear in evidence that although the Claimant and Defendant knew each other their relationship was not close. Thus, it is implausible that the Claimant intended to confer a benefit on the Defendant in any event. Thus, the Claimant’s claim in unjust enrichment succeeds.
- [59] In this case having already refused to order rectification of the relevant parcel, the appropriate order is that the Defendant should compensate the Claimant for the value which he has unjustly gained. However, this cannot be the value of the entire building since Mr. Dave Fenton’s evidence is that the Deceased was mostly responsible for construction of the ground floor with some contribution by the

¹¹ [2020] UKPC 33

¹² [2020] UKPC 33 at paragraph 19

Claimant. The upper floor of the structure, however seems to have been constructed by the Claimant. Accordingly, the appropriate order is that the Defendant should compensate the Claimant for 60% of the present value of the structure.

Costs

- [60] The Claimant is entitled to costs pursuant to CPR Rule 65.4 and Appendix B. This being a claim with no stated value the default value of \$50,000.00 will be used as the value of the claim leading to costs to \$10,000.00. However, pursuant to CPR Rule 64.6(3) (c) this will be reduced to 30% to take into consideration that the Claimant's claims for rectification and constructive trust have failed.

Order

- [61] It is hereby ordered as follows:
1. The Defendant shall pay the Claimant 60% of the present value of the structure erected on the land registered as Block: 45 1489A; Parcel: 1214 and situated at Golden Grove, Antigua.
 2. The matter is adjourned to 24th January 2025 in Chambers for further directions in aid of assessment.
 3. All other aspects of the Claimant's claim are dismissed with no order as to costs.
 4. The Claimant is awarded costs of \$7,000.00.



Rene Williams
High Court Judge

By the Court

Registrar