

EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2019/0147

WENDELL O'GARRO
(Through His Attorney on Record Thomas O'Garro)

Claimant

And

DWAYNE JOYLES
NODETTE JOYLES-LEWIS

Defendant

Before: Her Ladyship the Hon. Justice Gertel Thom (Ag.)

Appearances:

Mr. Maxron Holder of Counsel for the Claimant

Mr. Ronald Marks of Counsel for the Defendant

2024: May 24

July 26

September 20

JUDGMENT

- [1] **THOM J (Ag):** Helen O'Garro (now deceased) and her children including the two defendants resided at Richard Park on land belonging to her family. Around 1998 she began an intimate

relationship with Wendell O' Garro. He moved into her home and subsequently they got married.

- [2] Helen O' Garro by Deed of Gift transferred her property to herself and Wendell O'Garro. The property was mortgaged, and they built a house on the land. Helen O'Garro took ill and died on 4th August 2019. Prior to her death she made a will gifting her share in the property to her children. Helen O'Garro was buried on the 18th day of August, 2019. On the following day Wendell O'Garro caused a Notice to vacate the property to be issued to the defendants. The defendants refused to vacate the property and Wendell O'Garro instituted these proceedings in which he claims among other things possession of the property, damages for trespass and an injunction restraining the defendants from trespassing on the property.
- [3] The defendants denied was the sole owner of the property and entitled to exclusive possession of the property and in their counterclaim alleged that the property was held as tenants in common and they were entitled to Helen O' Garro's interest in the property. They claimed among other things that they are entitled to Helen O'Garro's share in the property by virtue of her Will dated 7th March 2017.

Issues

- [4] The following issues arise for determination by the Court:
1. Whether Wendell O'Garro and Helen O'Garro held the property in dispute as Joint Tenants or Tenants in Common.
 2. If a Joint Tenancy existed whether the joint tenancy was severed (by the Will of Helen O' Garro) prior to the death of Helen O' Garro.

The Evidence

- [5] Wendell O'Garro testified and called one witness, Ruby Lewis. The defendants gave evidence and called two witnesses, Alisha Warren and Admore Joyles-St-Marie.

Wendell O' Garro

- [6] Wendell O'Garro testified that in 1998 he commenced a relationship with Helen O'Garro then Helen Joyles who at the time had four children. The youngest was about 7 years old and the eldest about 14-15 years old.
- [7] Helen O'Garro and her children lived in a one room structure on a small plot of land. They had no toilet facilities nor was the property serviced by pipe borne water. He built an outdoor toilet and arranged for pipe borne water to be connected to the property. He also built a second bedroom on the existing structure and moved to live with the family.
- [8] In 1999 he gained employment with the Cruise Ship Industry where his average salary is US\$3000 per month. In 2001 Helen O'Garro stopped working and she was maintained solely by him. He was the sole provider for the household. He was trying to acquire a piece of land to build a house. Helen O'Garro persuaded him to construct the house on the land where they

lived. He was reluctant to do so, but his wife agreed for them to own the property jointly and the property was conveyed to them jointly. He obtained a loan from the Kingstown Cooperative Credit Union to construct the family home. In 2008, he obtained a further charge to complete the house. He is solely responsible for repaying the loan payments.

- [9] Under cross-examination he testified that Helen O'Garro was willing to transfer the entire property to him because she did not want her children to put him out, but he objected and told her the property should be put in their joint names. His marriage did not breakdown even though he had an extra-marital relationship which bore one child and Helen was aware of the relationship. He was not aware that Helen had made a Will.

Ruby Lewis

- [10] Ruby Lewis is the aunt of Wendell O' Garro. She testified that he was in a relationship with Helen O' Garro. They were subsequently married and Wendell O' Garro built a house on the land where the family lived.
- [11] Under cross-examination she testified that she lives at Richland Park and knew Helen O'Garro and her family. The defendants were not living at the property in dispute during the period that Helen O'Garro was ill.

Evidence of the Defendants

Nodette Joyles-Lewis

- [12] Nodette Joyles-Lewis is the daughter of Helen O'Garro. Before marriage she resided with her mother and siblings at Richard Park in a concrete structure which was partly covered and consisted of a bedroom and a living room.
- [13] During the late 1990's Wendell and Helen O' Garro were in an intimate relationship. Helen O' Garro built another room on the existing structure and Wendell O' Garro moved in to live with them. They lived as a happy family. Wendell and Helen O' Garro got married on the 22nd day of August 2004.
- [14] In 2007, Helen O' Garro informed her and her siblings that she was going to put Wendell O' Garro's name on the property. Helen O' Garro explained that herself and Wendell O' Garro wanted to complete construction of the house and Wendell O' Garro did not have any assets. Herself and siblings did not protest as they were living as one family.
- [15] In 2017 the relationship between Helen and Wendell O'Garro began to breakdown and Helen O'Garro wanted to protect her share of the property for her children. On March 7, 2017, Helen O'Garro made a Will and devised her share in the property to her children in equal shares. Nodette Joyles-Lewis acknowledged that Wendell O'Garro paid the mortgage payments, but she added that her mother, herself and her siblings contributed to the maintenance and upkeep of the family home.
- [16] Under cross-examination she agreed that she was 18 years old when the land was conveyed to Helen and Wendell O'Garro. She denied that a new house was built on the land and insisted that an additional floor was added to the existing structure.

Alisha Warren

- [17] Alisha Warren testified that she is the daughter of Helen O'Garro. She was 14 years old when her mother and Wendell O'Garro commenced a relationship. He lived close to their home in Richland Park in a rented house. Her mother would visit him at his home and clean, cook, and wash for him. Her mother also worked as a domestic help. She also did odd jobs to assist with the maintenance of her children. From 2007-2008 she was employed with Blue Sky Communications. She was later employed at the Bank of St. Vincent and the Grenadines in the Finance Recovery Department where she worked for two years before migrating to Canada where she currently resides. While employed in St. Vincent and the Grenadines, she contributed towards the general expenses and upkeep of the home. Her other siblings also contributed to the home when they gained employment. She agreed that prior to herself and siblings gaining employment, Wendell O'Garro assisted their mother in caring for them. Their fathers also gave occasional support. The relationship between her mother and Wendell O'Garro began to deteriorate and in 2017 her mother made a Will gifting her share in the property to her children.
- [18] Under cross-examination, she testified that she was 19 years old when Helen conveyed the property to herself and Wendell O'Garro.

Admore Joyles - St. Marie

- [19] Admore Joyles-St. Marie gave evidence in similar terms to the evidence of her siblings Nodette Joyles-Lewis and Alisha Warren.
- [20] Under cross-examination she testified that she migrated to St. Lucia in 2005. At that time, she was 25 years old. The bottom floor of the house was already built. The upstairs was to be built. Her mother wanted herself and siblings to have an interest in the property therefore she made a Will in 2017.

Dwayne Joyles

- [21] Dwayne Joyles gave evidence of the relationship between Wendell O'Garro and his mother and siblings in similar terms to his siblings Nodette Joyles-Lewis, Alisha Warren and Admore Joyles-St. Marie.
- [22] Under cross-examination he testified that he was 20 years old when the property was mortgaged. From 2019 the relationship with Wendell O'Garro and himself and siblings broke down.

Issue No.1

Joint Tenancy or Tenancy in Common

- [23] Learned Counsel Mr. Holder for Wendell O' Garro submitted that the property was registered in the names of both Wendell O' Garro and his wife Helen O'Garro. No mention is made in the

Deed of Gift that the property is held as Joint Tenants or as Tenants in common. Learned Counsel contends that in such circumstances the law favours a joint tenancy.

- [24] Learned Counsel referred to the following passage at p.335 in **Commonwealth Caribbean Land Law** by Sampson Owusu:

"Joint tenancy was more favoured than tenancy in common at common law. Words of severance which have been recognized as effective to create tenancy in common include- "in equal shares", "share and share alike", "to be divided between", or "equally". Thus, to create a tenancy in common words pointing to severalty of interest should be used. In the absence of such words to delineate the respective undivided share of the grantees, the common law presumes that a joint tenancy was intended."

- [25] Learned Counsel also relied on the following statement in the House of Lords decision in **Stack v Dowden** 2007 UKHL at para 66:

"...But the questions in a joint names case are not simply what is the extent of the parties' beneficial interests? But did the parties intend their beneficial interests to be different from their legal interests? And if they did, in what way and to what extent? There are differences between sole and joint names cases when trying to divine the common intentions or understanding between the parties. I know of no case in which there is a sole legal owner (there being no declaration of trust) the parties are also beneficial joint tenants. Another difference is that it will almost always have been a conscious decision to put the house into joint names. Even if the parties have not executed the transfer, they will usually, if not invariably, have executed the contract which proceeds it. Committing oneself to spend large sums of money on a place to live is not normally done by accident or without giving it a moment's thought."

- [26] Learned Counsel invited the Court to examine carefully the terms of the Deed of Conveyance and submitted that the land was not conveyed to the Parties as tenants in common. The Deed of Conveyance does not contain the words "in equal shares", or "share and share alike", or "to be divided between", or "equally" or words to that effect. On the contrary, Wendell O' Garro was the breadwinner of the family. He paid the mortgage payments and provided for the household. Helen O' Garro was unemployed. All the factors point towards a joint tenancy.
- [27] Learned Counsel Mr. Marks for the defendants agreed that the Deed of Gift was not specific on how Wendell O'Garro and Helen O'Garro held the property. The Deed merely stated that Helen O'Garro "has decided to convey all her shares and interest in the said hereditaments premises to the Grantees."
- [28] Learned Counsel however relied on the case of **Celestine Adams v Coreen Franklyn** SVG HCV343/1995 where Mitchell J found that a land which was purchased by the claimant and the deceased when they were in a common law relationship where the Deed did not specifically state how the parties held their interest in the land, was held to be tenants in common, notwithstanding the parties never co-habited in the disputed property.
- [29] Mr. Marks submitted that the case at bar is even more compelling than **Adams**. He contends that in this case, the parties were in a common law relationship for several years. They got married while she had four living children who were living with her on the property which had a

small dwelling house. The claimant moved into the small dwelling house and resided there with Helen O' Garro and her children.

- [30] The property was used as collateral to extend the existing house. Mr. Marks submitted that in these circumstances it is open to the court to find that in executing the Deed of Gift, Helen O' Garro did not intend to only reserve a life interest for herself when she had four children, living at the property with her, all in a good relationship. Further the existence of the Will is strong evidence that Helen O'Garro knew and understood that she had an interest in her own right and how she wanted her assets distributed upon her demise.

Discussion

- [31] There is no dispute between the parties on the applicable principles of "joint tenancy" and "tenancy in common".
- [32] It is also not disputed that Helen O' Garro was the sole owner of the property when it was gifted to her by her grandmother Delta Lynch on 17th February 2004 by Deed of Gift 568 of 2004. At that time, she was in a relationship with Wendell O' Garro. Six months later they got married on 22nd August, 2004.
- [33] Shortly thereafter, on December 22, 2005, Helen O'Garro by Deed of Gift conveyed the property to herself and Wendell O'Garro. The property was then mortgaged to construct the current house. At the time Helen O'Garro conveyed the property to herself and Wendell O'Garro, while three of her children were living with her, they were adults. Her children were not aware that she had transferred the property to herself and Wendell O'Garro. Nodette Joyles-Lewis the second defendant who remained living in St. Vicent and was in a close relationship with Helen O'Garro and who took care of her during her illness, testified that in 2007 Helen O'Garro added Wendell O'Garro's name to the Deed so that they could obtain a mortgage to build the family home.
- [34] I also believe Wendell O' Garro's testimony that Helen O'Garro having children who resided with her and with the property being solely in her name, he was not willing to build the family home on her land. He was willing to purchase a piece of land. Helen O' Garro persuaded him to build on her land and agreed to transfer the land to both of their names. The evidence of the history of their relationship supports his testimony. During the period Wendell and Helen O'Garro lived in a common law relationship, which is a period of approximately 5 years, Helen O' Garro had no paper title to the property. A mere six months after Helen O'Garro got the paper title to the property she and Wendell O' Garro got married. Helen O'Garro then conveyed the property to herself and Wendell O'Garro. The Deed of Gift reads in part:

"THIS INDENTURE is made the 22nd day of December in the year of Our Lord Two Thousand and Five BETWEEN HELEN LYNCH otherwise known as HELEN WARREN and HELEN JOYLES now lately called HELEN O'GARRO who resides in the state of Saint Vincent and the Grenadines (hereinafter referred to as "the Grantor" which expression shall where the context so admits include her heirs executors administrators and assigns) of the One Part AND HELEN LYNCH otherwise known as HELEN WARREN and HELEN JOYLES now lately called HELEN O'GARRO and WENDELL O'GARRO both of Richland Park in the State of Saint Vincent and the Grenadines aforesaid (together

hereinafter referred to as "the Grantees" which expression shall where the context so admits include their executors administrators and assigns) of the Other Part"

And also :

"NOW THIS INDENTURE WITNESSETH that in consideration of the above-mentioned natural love and affection of the Grantor for the Grantees and for divers other good causes and consideration the Grantor doth hereby Give Grant and Convey unto the Grantees and their heirs all of the share interest and right of the Grantor in the said hereditaments and all the estate right title interest claim and demand of the Grantor in to and upon the said hereditaments TO HAVE AND TO HOLD the same UNTO and TO THE USE of the Grantees as Forever."

- [35] The terms of the Deed of Conveyance are consistent with the testimony of Wendell O' Garro and the history of the relationship which is not in dispute. Helen O'Garro was a single mother with four children. She worked as a domestic and then doing odd jobs. She lived with her children in an incomplete house which had a single bedroom. Helen O' Garro undoubtedly was desirous of having improved living conditions. Indeed, the house constructed is a three-story building. Helen O' Garro lived in the house from the time it was built around 2008 until her death in 2019.
- [36] Having regard to the terms of the Deed of Gift from Helen O'Garro to Wendell O'Garro and herself, and the evidence surrounding the making of the Deed of Gift, I find that Helen and Wendell O'Garro held the property as joint tenants.
- [37] In my view, the decision in Celestine Adams v Coreen Franklyn does not assist the defendants. Celestine Adams was in a common-law relationship with Benson Charles. They purchased a home in their joint names and commenced building a dwelling house on the land. Celestine Adams emigrated to Canada and some years later Benson Charles married the defendant and they moved into the incomplete house and resided there until the death of Benson Charles. On the death of Benson Charles, Celestine Adams by and through her agents forcefully evicted the defendant from the property. Celestine Adams claimed that the property was held as joint tenants and on the death of Benson Charles she became the sole owner of the property by right of survivorship. The defendant contended that the property was held as tenants in common and as the wife of Benson Charles she was entitled to his half share in the property.
- [38] Mitchell J at paragraph 12 noted that "The deed did not condescend to particularize whether the co-purchasers, the Plaintiff and Benson Carles, held the land either jointly or as tenants in common. The Vendor merely stated in the deed that he:
- "...doth hereby Grant and Assure unto the Purchasers their heirs and assigns ALL THAT Lot piece or parcel of land mentioned and described in the Schedule hereto AND ALL THE ESTATE right title interest claim and demand whatsoever of the Vendor unto and upon the said premises and every part thereof TO HAVE AND TO HOLD THE hereditaments and premises hereby granted or expressed so to be Unto and To the Use of the Purchasers their heirs and assigns forever."
- [39] The learned judge having reviewed the evidence made the following findings:

"It seems most unlikely that the house was built by the Plaintiff entirely by herself without any financial or other assistance from Benson Charles as she testified. She and Benson Charles had taken title to the property together, they were living in what the Plaintiff claims was a common law relationship, they did not have a home of their own, they were having their babies together, they lived and work together. Why would they not build their house together? I am satisfied that Bensen Charles and the Plaintiff contributed equally to the construction of the house. The evidence seems to be clear, however that Bensen Charles never lived in the house in dispute before he separated from the Plaintiff and later married the defendant in 1984. The main reason for this is that the construction of the house was not finished at the date when the relationship between the Plaintiff and Bensen Charles broke down. When Bensen Charles and the Plaintiff parted, he preferred to rent another apartment to live in rather than to move into the incomplete house in which he and the Plaintiff held joint interest.

I am satisfied that the house was incomplete and unoccupied both before and after the time when the Plaintiff emigrated to Canada and up to the date when Benson Charles and the Defendant began to occupy it."

- [40] Thereafter the judgment does not contain any reference or discussion of the law relating to joint tenancy or tenancy in common. The Learned judge simply focused on the egregious conduct of the Claimant and her agents in evicting the Defendant from the house leading the learned judge to award substantial sums for both special and general damages. The learned judge also made a declaration that the Deed of Conveyance created a tenancy in common between the Plaintiff and Benson Charles.
- [41] In my view this case was decided on its own peculiar facts and does not establish any precedent.

Issue No. 2

Severance of the Joint Tenancy

- [42] At the trial this issue became moot as Mr. Marks acknowledged that a Will is not capable of severing a joint tenancy. This is a well settled principle.

Conclusion

- [43] For the reasons stated above, I find that the Claimant succeeds. By the Deed of Conveyance, the property was conveyed to Helen and Wendell O' Garro as joint tenants. On her death he became the sole owner of the property having survived her. The parties have agreed that there shall be no order as to costs.

Order

- [44] It is ordered:
- (1) Judgment is granted for the Claimant.

- (2) Wendell O'Garro is the sole owner of the parcel of land described in Deed No. 105 of 2006 and the dwelling house thereon.
- (3) An injunction is hereby granted restraining the Defendants, their servants and their agents from trespassing onto the said property.
- (4) The Defendants should deliver up possession of the property within six (6) months of this judgment.
- (5) No order as to costs.

Gertel Thom

High Court Judge (Ag.)

By The Court

Registrar