

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2019/0026

BETWEEN:

SHERMA CHARLES

Claimant

and

AUL CHARLES

Defendant

CONSOLIDATED WITH

GRENADA

CLAIM NO. GDAHCV2020/0323

BETWEEN:

[1] YOLAND THOMAS
[2] ELROY CHARLES
[3] SHANNA CHARLES
[4] AUL CHARLES

Claimants

and

SHERMA CHARLES

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Derick Sylvester for Sherma Charles

Mr. Ruggles Ferguson for Yoland Thomas, Elroy Thomas, Shanna Charles
and Aul Charles

2022: June 14th
September 26th
2023: August 17th

JUDGMENT

- [1] **ACTIE, J.:** These consolidated claims concern a familial dispute in the ownership of a parcel of land situate at Pearls in the parish of St. Andrew, Grenada, measuring three Thousand Five Hundred and Fourteen Square Feet (3, 514 sq. ft.) (hereafter called “the Pearls property”).
- [2] The parties, Sherma Charles, Aul Charles, Elroy Charles and Shanna Charles are siblings and children of Linda Charles, deceased. Yoland Thomas is the sister of the deceased and aunt of the siblings.

The case of Sherma Charles

- [3] In fixed date claim **GDAHCV2019/0026** filed on 15th May 2019, Sherma Charles avers that she is the fee simple owner of the Pearls property, through a Deed of Conveyance dated 2nd February 2017 from its previous owner, the estate of her grandfather, Maurice Thomas. She avers that in or around 2002, she orally gave her brother Aul Charles permission to enter the dwelling while she resided in the USA. She alleges that Aul Charles as a bare licensee has refused to deliver possession even after having been served with a notice to quit. Sherma avers that Aul Charles through his negligence and wanton actions has cause damage to the said dwelling house in the sum of \$12, 034.32. She claims the following reliefs against her brother, Aul Charles:

- (1) An order that Aul Charles, forthwith deliver vacant possession of the Pearls property with dwelling house thereon.
- (2) A declaration that the claimant is the lawful owner of the Pearls property.
- (3) A declaration that the Aul Charles is not entitled to enter or trespass on the Pearls property.

- (4) An injunction restraining Aul Charles whether by himself, his servants or agents or otherwise howsoever from entering or crossing the property.
- (5) Cost for damage to property in the sum of \$12,034.32 and continuing.
- (6) Damages for trespass and mesne profit; aggravated damages, costs and further reliefs as this Honourable Court deems just.

[4] In fixed date claim **GDAHCV2020/0323** filed on 20th August 2020, Yoland Thomas, Elroy Charles, Shanna Charles and Aul Charles claim against Sherma Charles for the following:

- (1) A declaration that the Pearls property forms part of a larger undivided parcel of land which was owned by Maurice Thomas, deceased, at the time of his death.
- (2) A declaration that Maurice Thomas disposed of the Maurice Thomas land by way of his will to his reputed wife for the duration of her life and thereafter to his children in undivided shares.
- (3) A declaration that Elroy Charles, Shanna Charles, Aul Charles and Sherma Charles and other descendants of Maurice Thomas are beneficial owners of undivided shares and interests in the Maurice Thomas land.
- (4) A declaration that the purported transfer of ownership of the Pearls property by the Executor without the written consent of Yoland Thomas is contrary to the provisions of Real Property Devolution Act and is void.

Alternatively

- (5) A declaration that the purported transfer of ownership of the Pearls property by the Executor of the Will of Maurice Thomas, Claudius Charles, to Sherma Charles in the absence of a partition deed signed by all the parties with interests in Maurice Thomas' land or a partition order from the court is contrary to the provisions of the Partition Act and is void.

- (6) A declaration that the alleged contract between Maurice Thomas and Sherma Charles for the sale of the Pearls property is void because Sherma Charles in 1983 lacked capacity to enter such a contract.

Further or Alternatively

- (7) A declaration that the alleged contract between Maurice Thomas and Sherma Charles for the sale of the Pearls property is void for non-compliance with the formalities required for a contract for the sale of real property.
- (8) An order directed to the Registrar of the Supreme Court to strikeout from the records of the Deeds and Land Registry the deed made between Claudius Charles and Sherma Charles.
- (9) An order restraining Sherma Charles, her servants or agents or whosoever from preventing or impeding Yoland Thomas, Elroy Charles, Shanna Charles and Aul Charles' enjoyment of possession of the Pearls property and building thereon; Further or other relief; and Costs.

The Conveyance Deed

- [5] The Deed of Conveyance in dispute is dated 2nd February 2017 and was made between Claudius Charles aka Thomas as executor of the late Maurice Charles, as vendor and Sherma Charles as purchaser. The executor, in the recitals of the deed, states (i) that the late Maurice Charles, in 1983 contracted and agreed for the sale of the disputed property to the purchaser for the sum of \$1000.00 EC (ii) by virtue of the said agreement the purchaser paid the deceased and took possession of the said property with the permission of the deceased, but no conveyance had been made (iii) the executor at the request of the purchaser agreed to complete the sale on behalf of the deceased by virtue of the said agreement and consideration which had been paid to the deceased. and acknowledged by the executor.
- [6] The claimants, Yoland Thomas, Elroy Charles, Shanna Charles and Aul Charles challenge the deed of conveyance mostly on two grounds namely, capacity to

contract and failure of compliance with the requirements of the Real Estate Devolution Act¹.

The agreement between Maurice Thomas and Sherma Charles and Resulting Conveyance - capacity to contract

- [7] Mr. Ruggles Fergusson, counsel for Yoland Thomas, Elroy Charles, Shanna Charles and Aul Charles, contends that Sherma Charles who was a minor at the time of the purported agreement for the purchase of the Pearls property lacked capacity to contract and accordingly the agreement was void and unenforceable.
- [8] Mr Derrick Sylvester, counsel for Sherma Charles, in response states that it is settled law that an agreement entered by a minor is voidable at the instance of the minor². Counsel relies on the authority in **Proform Sports Management Ltd v Proactive Sports Managements Ltd and another**³ where it is stated that a minor could validly enter into certain contracts, and that contracts with a minor are not void ab initio, but voidable at the instance of the minor.
- [9] The court agrees with Mr Sylvester as it is trite law that a contract entered by a minor for the purchase of land, like any other contract, is valid and is only voidable by the minor during his/her minority or within a reasonable time of attaining full age. The contract is binding unless and until expressly repudiated by the minor. It is the evidence that Sherma Charles was indeed a minor at the time of the purported agreement with her grandfather. Sherma Charles states that the contract with her grandfather was made through her mother and agent, Linda Charles. It is Sherma's evidence that the money for the purchase of the disputed lot was provided by her father who resided and worked in the USA. Joseph Thomas, father of Sherma Charles and Aul Charles, both in his witness statement and at trial, confirmed that he provided the money for the purchase of the Pearls property at the request of Linda Charles.

¹ Chapter 274 of the Laws of Grenada

² Norman Aviation Flight Training Academy Inc v Leroy Smith et al, ANUHCv2013/0523

³ [2006] EWHC 2812 (Ch)

- [10] There is no evidence before the court to challenge the evidence that the Pearls property was purchased by Sherma. The agreement having been ratified by Sherma Charles and the executor of the deceased cannot fail for lack of capacity. Accordingly, the Deed of Conveyance to Sherma Charles is a valid legal document.

Whether the Deed of conveyance is void for lack of compliance with the requirements of the **Real Estate Devolution Act**

- [11] Counsel, Mr Fergusson, argues that the Deed of Sale by the executor to the Sherma Charles is void as the executor failed to obtain the written consent of the other parties beneficially entitled to the disputed land which is in breach of Section 6 of the Real Estate Devolution Act. Counsel further posits that the conveyance is also in breach of Section 19 of the Partition Act.
- [12] Mr. Sylvester in filed submissions argues that the personal representative was duty bound to continue the obligations of the testator to give effect to any binding contract as the testator's contract does not die with him but becomes the responsibility of the personal representative.
- [13] **Section 6 of Real Estate Devolution Act**⁴ stipulates certain restrictions on the power of personal representatives' dealings with real estate forming part of a deceased's estate. The Section reads:

6. "Notwithstanding anything contained in this Act, real estate devolving to and becoming vested in the personal representatives of a deceased person shall not be sold or mortgaged or leased for a period exceeding one year by such personal representatives without the consent in writing of the persons beneficially entitled thereto or the authority of the High Court.

⁴ Chapter 274 of the Laws of Grenada

- [14] Section 6 the **Real Estate Devolution Act** requires a personal representative under a will or intestacy to first obtain the consent of beneficiaries where any real estate forming part of the beneficial estate is being sold, mortgaged or leased for a period in excess of one year. The effect of this provision is to nullify any purported disposition by sale, mortgage or lease of the estate which fails to safeguard the beneficiaries' interests and to preserve their entitlements. Any disposition, mortgage or lease other than in accordance with the terms of the section shall be void and ineffectual.
- [15] The section speaks to estates devolving and becoming vested in the personal representative for distribution to the beneficiaries. Contracts or other dispositions made inter vivos during the lifetime of the testator would not fall within the realm of section 6 as such transactions or dispositions of the real estate would not devolve to the personal representative for distribution to the beneficiaries. A personal representative has the same power over the title to property of the estate that an absolute owner would have and to hold in trust for the benefit of the creditors and others interested in the real estate. A personal representative is duty bound to perform or refuse performance of the deceased executory contracts that continue as obligations of the estate. The personal representative in performing enforceable contracts, may among other possible courses of action, convey, mortgage or lease real estate for payment of all sums remaining due or already paid to give effect to an inchoate transaction against the estate. Every such transaction shall be as valid and effectual as if the executor in the place of the deceased was seized or possessed of the fee simple or leasehold estate to be sold, mortgaged or leased.
- [16] The court is in full agreement with the Mr Sylvester's submissions. The executor in the instant case acknowledged the existence of an agreement between the deceased and Sherma Charles for the Pearls property. The Deed of Conveyance was executed to give effect to the transaction. The parties in their defence pleaded that the conveyance was void as there was no memorandum in writing. This argument is of no moment as it was for the executor to have raised that objection against Sherma Charles if there was any doubt of an existing memorandum in writing or an enforceable agreement with the deceased. The executor in the deed

of conveyance expressly stated that Sherma Charles paid the amount of \$1,000.00 to her grandfather for the purchase of the property and acknowledged her occupation of the Pearls property. The claimants did not file an action against the executor during his lifetime to declare the deed null and void for want of compliance with the requirements now being challenged. The claimants only filed the claim alleging the breach after Sherma Charles filed the action for the declaration of ownership and vacant possession of the property in 2019.

[17] The executor having acknowledged there existed a binding contract between his deceased father with Sherma Chales and that his deceased father had already divested himself of the property did not require the intervention of the beneficiaries of the will to give their written consent for the conveyance to give effect to the statutory requirements of section 6 of the **Real Estate Devolution Act**. The Pearls property was not within the reach of the executor to vest into the beneficiaries to require their consent since the property no longer forms part of the heritable estate. In such circumstances, the property is deemed adeemed. The doctrine of ademption applies where a testator has parted with the subject matter in a will then it is no longer in the power of the executor to vest the property and therefore the legacy ceases to exist. It is settled law that a testator cannot give what he does not own⁵.

[18] Accordingly, the court finds that the beneficial interest in the Pearls property rests with Sherma Charles and that the property does not form part of the deceased estate, capable of devolution to beneficiaries under the Will of the late Maurice Charles.

The Dwelling House

[19] Sherma Charles pleads that she owns the concrete dwelling house on the Pearls property. Yoland Thomas, Elroy Charles, Shanna Charles and Aul Charles all concede that Sherma Charles contributed significantly to the construction of the said house but dispute that she is the sole owner. They contend that all the

⁵ Claim No. BVIHCV2017/0004 Shirley Hodge v Chief Registrar of Lands

siblings are all equally entitled to a share of the house which belonged to their deceased mother, Linda Charles.

[20] At the trial, the court heard the evidence of both parties in relation to the construction and contribution made to the construction of the concrete dwelling house.

[21] Both parties agree that the building contractor, Derick Joseph, was responsible for constructing the concrete house on the Pearls property. Derick Joseph in examination in chief states that Linda Charles, who was working at Pearls Airport at the time, contracted him to build the house but he did not know the source of funding.

[22] Joseph Francois states that he worked at the old Pearls Airport where Linda Charles also worked as a cleaner in the office. They shared a very close friendship. He states that Linda Charles frequently spoke about the construction of the dwelling house from the time it started in 2002 and always stated throughout that the house belonged to Sherma. He stated that Linda Charles told him that Sherma either remitted or came with money whenever she travelled, and she (Linda) assisted in disbursing the money. He states that when work was held up for lack of funds for labour and material then work would only resume when Linda received remittances from Sherma. He said that Sherma and her mother had a good mother/daughter relationship, and Linda consistently stated that the house belongs to Sherma.

[23] Durant Thomas acknowledged that Sherma sent money to Linda Charles sometimes and he occasionally helped in buying blocks.

[24] Yolande Thomas states that when their father died in 1992, her sister Linda Charles was living on rented land in a wooden house. After two years of their father's death, their mother Harriet told Linda to erect the wooden house on the Pearls property. She states that Linda broke down the wooden house which was converted to wall sometime between 2002 and 2003. She states that Linda, while in hospital in 2015, told her that Sherma helped with turning the house from wood

to wall and so there is a room for Sherma. She said she observed Linda's other children Elroy and Roy helping in the construction of the house but did not give any further information as to the extent of their financial contributions in the construction of the house.

[25] Elroy Charles states that he did not contribute financially but provided labour and used his vehicle to transport materials. He states that his mother told him that his sister, Shanna, contributed money but did not provide any further details. He states that his mother had twenty-three (23) sheep and six (6) cows which were sold to help finance the construction of the house. He said it was mainly himself and Aul that lived with their mother as Shanna was living in town and Sherma was overseas.

[26] Shanna Charles states that the construction of the house started in 2000 and was completed in 2001. She states that she did not live at the house but asserts that all the siblings apart from Curtis contributed to the construction of the concrete dwelling house. She states that she contributed through a loan in the sum of \$3000.00 for labour to build the bathroom but did not provide any supporting evidence. Shanna acknowledged that Sherma sent barrels of items to their mother to sell, and the proceeds went toward the construction of the house. However, she said that her mother was working as cleaner and contributed to the construction of the house.

[27] Aul Charles who born in 1995 states that he lived with his mother in the wooden house and after it was converted into wall in 2002. He states he was sixteen years at the time and assisted in cleaning and providing water to the workers and helped Elroy in the delivery of the materials in his van. He said that he understood that the house belongs to his mother and that all five children are equally entitled.

[28] The witness, Bernard Alexander, said that he was asked to conduct a survey to determine the exact quantity of land. He states that the request was made through Linda Charles. The survey was conducted by Mr David Abraham, Licensed Land Surveyor. He states that at the time of survey there was a concrete house erected on the Pearls property and Linda Charles directed him to put the survey plan in

Sherma's name. It is the evidence that he received payment for the said plan from Sherma through her brother and his wife, Gale Charles. This evidence was confirmed by Gale Charles.

[29] The overwhelming evidence by all the witnesses in both claims is that Sherma Charles played a significant role in the construction of the concrete dwelling house. There is absolutely no evidence before the court to prove the siblings' assertions of contributions made to the construction of the concrete dwelling house. Aul Charles against whom Sherma seeks vacant possess was a minor when the house was constructed and cannot give any evidence of the arrangements in relation to the construction and ownership of the house. Linda Charles, whom the siblings assert to be the owner of the dwelling house, openly acknowledged that the house was constructed and belonged to Sherma. The action of Linda Charles in putting the survey plan in the name of Sherma Charles in 2014 long after the construction of the house is another clear indication of her acknowledgement of Sherma Charles ownership of the concrete house erected and attached to the Pearls land owned by Sherma.

[30] It is the evidence that Aul Charles being the youngest sibling remained with his mother in the dwelling house until her death. It is Sherma's evidence that she allowed her minor brother to remain in occupation with the intention that he would keep the home and land in good repair in exchange for his occupation. The court finds that this is a typical familial arrangement in Caribbean families where younger siblings are left in care of properties especially where the ownership vests in older siblings residing overseas. However, the continued occupation of the dwelling house as a licensee in a familial arrangement did not confer any entitlement of ownership. Although, Aul Charles claims that he is part owner, yet it is the evidence that he has caused wanton neglect and destruction of the house which is not in keeping in what a true owner would have done in preserving his property.

[31] The court having heard the totality of the evidence in both claims is of the view that Sherma Charles has proved on a balance of probability, her ownership and

entitlement of the Pearls property together with the concrete dwelling house erected thereon and the court so declares.

[32] Sherma Charles also seeks vacant possession against Aul Charles. The court notes that Aul Charles failed to comply with the notice to quit the premises by 15th April 2017. Aul Charles only challenged Sherma's ownership of the house after she filed the claim against him. It is also the evidence that Aul Charles has caused extensive damage to the property. In the circumstances, it is for Aul Charles to give vacant possession of the property and to pay the damages pleaded and proved in the sum of \$12,034.32.

Conclusion

[33] In summary, it is ordered and declared as follows:

- (1) The claimant, Sherma Charles, is hereby declared the lawful owner of the Pearls property and the concrete dwelling house.
- (2) Aul Charles, shall within thirty (30) days of today's date deliver vacant possession of the concrete dwelling house erected on the Pearls property owned by Sherma Charles.
- (3) Aul Charles is not entitled to enter or trespass on the Pearls property.
- (4) Aul Charles is restrained whether by himself, his servants or agents or otherwise howsoever from entering or crossing the Pearls property.
- (5) Aul Charles shall pay the cost for damage to property in the sum of \$12,034.32 with interest at the rate of 3% per annum from the date of filing the claim until judgment and at the rate of 6% per annum from the date of judgment until payment.
- (6) Damages for trespass and mesne profit to be assessed, if not agreed within thirty (30) days of today's date, upon application by the claimant, Sherma Charles.

- (7) Prescribed Costs against Aul Charles unless otherwise agreed by claimant, Sherma Charles.
- (8) Claim **GDAHCV2020/0323** filed by the claimants, Yoland Thomas, Elroy Charles, Shanna Charles and Aul Charles against Sherma Charles stands dismissed with Prescribed Costs in the sum of \$7,500.00 to be paid to Sherma Charles within thirty (30) days unless otherwise agreed by the parties.

Agnes Actie
High Court Judge

By the Court

Registrar