

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. ANUHCV 2019/0327

BETWEEN:

DEODATH SOOGRIM

Claimant

and

[1] IRA ARCHIBALD JR.

(AS PERSONAL REPRESENTATIVE OF THE ESTATE OF IRA ARCHIBALD DECEASED)

[2] AUDREY PATRICIA HALSTEAD

(AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CHARLESWORTH REGINALD HALSTEAD
DECEASED

[3] AUDREY PATRICIA HALSTEAD

Defendants

Appearances:

Peyton Knight, Counsel for the Claimant

Septimus Rhudd, Counsel for the Second and Third Defendants

2022: July 26th
October 4th
December 12th

JUDGMENT

- [1] **ROBERTSON, J.:** The claimant has initiated these proceedings seeking a declaration that he is the owner of a property described as Registration Section: St. John's South; Block No. 66 1692 E, Parcel 49 (the property).
- [2] The claimant seeks proprietary title on the basis that the claimant entered into a sale agreement with the first defendant for the property for the sum of EC\$180,000.00 but the property was not transferred to the claimant. In the alternative the claimant seeks EC\$180,000.00 and interest thereon. The claimant also seeks damages for breach of contract.
- [3] The second and the third named defendants have filed a defence and have defended the claim.

The Background

- [4] The claimant was informed that the property registered at Parcel 49 was available for sale. The claimant and a friend went to the office of Ira Archibald to make enquiries about the sale. It was represented to the Claimant that the property was being sold by one, Charlesworth Reginald Halstead (the second defendant) for the price of EC\$180,000.00. On the initial visit to the office the Claimant was persuaded to make a down payment in the sum of EC\$18,000.00. Later the Claimant made a payment of the outstanding balance in the sum of EC\$162,000.00. Charlesworth Reginald Halstead was not present when the deposit was paid. The Second Defendant by his legal representative and the Third Defendant, have denied that authority was given to Ira Archibald to act as an agent for the Second Defendant in the sale of the property.

The Evidence

- [5] In these proceedings the claimant gave evidence and Ajim Tahir gave evidence in support of the claimant's case. The third defendant gave evidence in support of the case presented by the second and third named defendant.
- [6] The admission into evidence of the sale agreement was challenged by the Counsel of the second and third defendants on the basis that the said agreement, a deed, was not registered in accordance with the provisions of the **Registration and Records Act**. In an oral ruling at trial, this Court upheld the objection made by the Counsel for the second and third named defendants and the document was not admitted into evidence.
- [7] The following documents were admitted into evidence in these proceedings by agreement:
- a. The death certificate of Charlesworth Reginald Halstead.
 - b. Death certificate of Ira Archibald.
 - c. Grant of Probate dated 4th June 2010 and Will and Testament of Mary L. Dunbar.
 - d. Land Transfer Instrument (unregistered).
 - e. Copy of Land Register (uncertified).
 - f. Payment receipt -Balance of Purchase Price dated 18th December 2013.
 - g. Bank Draft to Ira Archibald -Customer's copy.
- [8] The issues before the Court are:
- a. Whether a valid enforceable contract/agreement of sale exists between the claimant and the first, second and third defendants.
 - b. Whether the claimant has established a principal/agent relationship between the first defendant and the second and third defendants.
 - c. Whether the estate of the second defendant and whether the third defendant are liable so that a court ought to declare the claimant to be the owner of the said property or alternatively, whether the claimant is entitled to the sum of EC\$180,000.00.

- d. Whether the claimant is entitled to damages for breach of agreement.

The Agreement/Contract for the Sale of Property

- [9] Simply put, a contract is an agreement giving rise to obligations which are enforceable or recognized by law. The Claimant pleads that he entered into an agreement for the purchase of property registered as Registration Section: St. John's South; Block No. 66 1692 E, Parcel 49.
- [10] The evidence of the claimant is that he was alerted that the property was being sold and he telephoned Mr. Ira Archibald's Real Estate company and was informed of the purchase price of EC\$180,000.00 and that he would have to pay a 10% deposit upon signing of the sale agreement. On 2nd August, 2013 the claimant had a meeting with Mr. Ira Archibald and Ed Archibald concerning the property. At that meeting the Claimant's friend, Ajim Tahir, was also present. The second and third defendants were not present at the meeting of 2nd August, 2013 at which:
- a. The claimant was informed that the second defendant was the owner of the property.
 - b. Ira Archibald indicated that he would be the agent in the sale for the claimant and for the second Defendant.
 - c. A sale agreement was presented and was available for the claimant's signature.
- [11] The attorney-at-law who was said to have prepared the sale agreement was neither present at the meeting of 2nd August, 2013 nor at any other time during the transaction.
- [12] Despite the claimant's admitted misgivings about certain representations being made by the first defendant and not having consulted his attorney-at-law about the transaction, the claimant was persuaded to move forward with the transaction on that on 2nd August 2013. Thus, on that date the claimant entered into an agreement with Ira Archibald Real Estate Agent to purchase the said property for the sum of EC\$180,000.00 and the sum of EC\$18,000.00 was paid, by cheque, by the claimant to the Ira Archibald. The Claimant relied wholly on the information received from the first defendant regarding the ownership of the property, the price of the property and the intention, and the ability of the second defendant to transfer a valid title.
- [13] On or about the 18th or 19th of December 2013 the claimant made a further payment, by certified cheque, in the sum of EC\$162,000.00 and after this payment the claimant executed a transfer. The evidence of the claimant is that the second defendant was present at this meeting and that the second defendant also signed the instrument of transfer. The second defendant was introduced to the claimant by the first defendant. The evidence of the claimant's friend is that he is familiar with second defendant and the second defendant was present at the second meeting.
- [14] The evidence of the claimant is that *"a few months, I went back to Mr. Archibald and he sent me to Mr. Michael Archibald Attorney at Law. I went to Mr. Michael Archibald's office, and the clerk at the time said to me, 'I told them they can't sell that land'." It was always represented to me*

that the owner of the property was Mr. Halstead and I relied on the expertise and knowledge of Mr. Archibald. I went back to Mr. Ira Archibald and relayed the message, and he suggested that I occupy the property as I had paid for the property. I told Mr. Archibald "No. It doesn't work like that," and informed him that I would be going to my Attorney Mr. Peyton Knight."

- [15] The Claimant went on to indicated that, *"After some investigation into the land I was told that ...the beneficiaries of the estate were Mr. Halstead and his wife. My attorney informed me that the 3rd named Defendant also had to sign the Land Transfer Instrument as she was a beneficiary under the Will"*. It was during this time that the Claimant became aware that the second Defendant had passed away.

The Finding of the Court and Analysis of the Evidence

- [16] The claimant is required to prove his case on a preponderance of evidence. In this regard the claimant is required to prove that the first defendant was an agent for the second and third defendants at the time when the claimant entered into the agreement for the sale of the property. The general principle of agency is that 'he who does an act through another does it himself'. The claimant is also required to prove that the first and the second defendants acted with the intention of ultimately conferring to the claimant interest in the property. These matters are established on the evidence as findings of fact by the Court.

The Case against the Third Defendant

- [17] There is no evidence before the Court which suggests that the third defendant was aware of the transaction and/or that the first defendant acted for and on behalf of the third defendant. In fact, it is clear that the claimant was not aware that third defendant had a proprietary interest in the property in question. It was after the claimant signed an instrument of transfer that the claimant became aware that the third defendant held a proprietary interest in the property. The claimant has not, in his pleadings, disputed the proprietary interests of the third defendant.
- [18] This Court also notes the evidence of the third named defendant where she indicated that she was not aware of the sales transaction until she was served with these proceedings.

The Case against the Second Defendant

- [19] Although the claimant indicated that Ira Archibald represented that he was selling the property on behalf of Mr. Halstead, the claimant has admitted that the first defendant presented no documentation which demonstrated that the first defendant was selling the property on behalf of the second defendant. There is no evidence, formal or otherwise, of actual authority being given to the first defendant.

- [20] The claimant indicated that on or about 19th December, 2013 he was, for the first time, introduced to the second defendant. The introduction was done by the first defendant and no identification was presented to independently verify the identity of the second defendant. It was on this occasion that transfer documents were signed. The attorney at law who was said to have prepared the transfer document was not present, yet a signature is affixed to the transfer document as having witnessed the claimant's signature. There was no signature of anyone having witnessed the second defendant's signature.
- [21] Counsel for the second and third defendants asked that the Court note the signatures affixed to the transfer document. Without the assistance of a handwriting expert, it is clear that the signatures representing the second defendant are differently written on the transfer instruments although the signatures would have been affixed on one day.
- [22] These matters raise the question of whether the person introduced to the claimant as the second defendant was in fact the second defendant. Mr. Ajim Tahir, a friend of the claimant who was present, indicated that he had a general knowledge of Mr. Charlesworth Reginald Halstead and that he was able to identify that the second defendant was present. However, this Court does not find Ajim Tahir to be a strong witness and the memory of this witness can be called into question since during cross-examination he, at times, contradicted the clear evidence of the claimant and his testimony was, on occasions, easily led by the counsel for the second and third defendants.
- [23] Additionally, the claimant has not, through the evidence, supported the existence of agreement to sell the property by demonstrating that the funds which were received by the second and third defendants. The evidence of the claimant is that the deposit and the balance of the purchase price were paid by cheques issued in the name of the first defendant.
- [24] The evidence before the Court can be summarized as the claimant entered into a transaction for the purchase of property for the sum of EC\$180,000.00:
- a. Without evidence of who owned the property,
 - b. Without evidence that the agent was in fact the agent of the vendor(s),
 - c. Without verification of the purported vendor,
 - d. Without the advice of the claimant's attorney-at-law,
 - e. In the absence of an attorney at law,
 - f. In circumstances where the first defendant held out that he would be the agent of the claimant while holding out that he was the agent of the second defendant.
- [25] It is noted that the claimant does not have a relationship with first defendant which could have weighed in the balance as being a justification for the claimant entering into an agreement for sale in light of the matter raised in paragraph 24. Additionally, this Court notes that the claimant admits that that this was not his first property purchase transaction and that he has a professional relationship with an attorney-at-law. These matters make it curious for the claimant to have continued with the transaction.

- [26] In this Court's opinion the claimant has failed to show on the preponderance of evidence that the first defendant was an agent for the second defendant so that the requirement of privity of contract could be satisfied.

Equitable Interest in the Property

- [27] The claimant asserts a beneficial interest in the property. The beneficial interest arising from the payment of EC\$180,000.00 from the claimant to the first defendant for the benefit of the second and third defendants in consideration for the sale of the property. It is noted that this Court has determined that the claimant has not proven that an agency existed between the first defendant and the second and/or the third defendants. The Court is also not of the view that the claimant has proven on a balance of probabilities the involvement the second defendant in the transaction. Finally, it is noted that the claimant has also not been able to prove on a balance of probabilities that any of the funds paid by the claimant were received by the second and/or the third defendants or that any funds were received with the intention that the claimant would obtain ownership of the property.

The Claim against the First Defendant

- [28] The Claimant obtained an order on 18th October, 2019 for Ira Archibald Jr. to be the personal representative for the Estate of Ira Archibald, deceased. The Counsel for the Claimant gave instructions to the serving officer to effect service on one Ira Archibald Jr. The affidavit of service of the serving officer indicated that the amended fixed date claim, amended statement of claim, notice of hearing and a copy of the order of 21st October, 2019 (which should in fact read 19th October, 2019) were served on Ed Archibald and that this Ed Archibald was known to the serving officer. The person upon whom the documents were served accepted the documents but indicated that his name was not Ira Archibald Jr.
- [29] The serving officer on 22nd July, 2022 attempted to serve Ira Archibald Jr. with the notice of hearing and the trial bundle and was again informed by the person that he was not Ira Archibald but Ed Archibald and, on this occasion, he refused to accept the documents. On both occasions the person being served indicated that he was not Ira Archibald Jr. There may well be an Ira Archibald Jr. and an Ed Archibald, and the person being served clearly identified that he was Ed Archibald. The person who was ordered as a representative party to the estate was Ira Archibald Jr. The onus rests upon the Counsel for the Claimant to ensure that the correct person was served with the pleadings. Counsel ought to have been alerted when Ed Archibald indicated that he was not the person named as acting in a representative capacity for the estate. The serving officer indicated that Ed Archibald is known to the serving officer. There is no independent evidence that the name Ed Archibald and the name Ira Archibald Jr. refer to the same person. The affidavits of service of 26th July, 2022 and 4th August, 2022 are insufficient. Accordingly, the

Court is not satisfied that there was service of the claim on the representative of the estate of Ira Archibald.

[30] As a consequence of the foregoing the claim is dismissed against the Defendants. The Claimant to pay to the second and third Defendants prescribed costs.

Justice Marissa Robertson
High Court Judge

By the Court

Registrar