

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

GRENADA

CLAIM NO. GDAHCV2015/0570

BETWEEN:

WILFUS DELFISH

(In his Capacity as Administrator of the Estate of Ivan Delfish, deceased)

Claimant

and

[1] WENDY ANDREWS nee JOSEPH

[2] SYRUS JOSEPH

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Michael Lindo for the Claimant

Mr. Ian Sandy for the First Defendant

2022: March 30
November 22

JUDGMENT

[1] **ACTIE, J.:** This claim is one of the numerous familial land disputes in this jurisdiction involving siblings. The claimant's claim raises the issues of constructive/resulting trust, and lack of requisite mental capacity. The claim was originally filed on 23rd December 2015 by Ivan Delfish who died on 26th January 2016 (hereafter "the deceased") and his son Wilfus Delfish was substituted in the capacity as administrator of the deceased's estate. Wilfus Delfish and the defendants are siblings.

Background Facts

- [2] The deceased and Agustina Joseph were in a common law union from 1968 but entered into a marriage union on 2nd January 1993. Sometime in 1983, they moved to a portion of land at Frequente in Saint George forming part of Grand Anse Estate. The Government relocated persons to the Grand Anse Housing Scheme in order to facilitate the expansion of the airport. It is the claimant's pleaded case that the deceased and Augustina agreed to acquire the house and land with money provided by the deceased. However, by Deed of Conveyance dated 17th December 2009 made between the Government of Grenada and Augustina Delfish, the land was conveyed solely to Augustina in her maiden name Agustina Joseph, despite being married to the deceased since 2nd January 1993.

- [3] By Deed of Gift dated 7th March 2012, Augustina Delfish conveyed the property to the defendants.

- [4] The claimant seeks a declaration that the defendants hold the property on trust the claimant as administrator of the deceased, or in the alternative on trust for the claimant and the defendants in shares which are proportionate to the respective contributions of the deceased and Augustina Delfish, to the purchase price.

- [5] The claimant contends that the transfers were done without the knowledge or consent of the deceased. The claimant states that at the time of the deed of gift to the defendants, the said Augustina Delfish was seriously ill and suffered severe memory lapses and mental difficulties.

- [6] The claimant further argues that the defendants have actual or constructive notice that at the time of his death, the deceased was entitled to the property, and contends that the deceased contributed to the extension, improvement and repair of the house situated on the property, and that neither of the defendants has made any contributions to the acquisition or improvement of the property. The claimant contends that because of this, Augustina Delfish must have reasonably expected the deceased to have an interest in and be the owner of the property.

- [7] The first defendant in her filed defence denies the claimant's claim and states that the deed of gift was executed voluntarily by Augustina Delfish. The second defendant did not file a defence although served via registered post on 22nd June 2016.

Evidence at Trial

- [8] Wilfus Delfish, in his witness statement and at trial, states that his mother, Augustina Delfish, had other children including the defendants from a previous relationship. He states that his father, the deceased, was the primary breadwinner having worked at the Lanse Aux Epines Stone Quarry, St. George's University as groundsman until retirement, and as a gardener at Coyaba Hotel after his retirement. He asserts that his mother worked on a temporary basis as a cleaner, babysitter or kitchen assistant at guest houses for short periods and also reared chickens for sale.
- [9] It is the evidence that the deceased extended and added an annex to the existing structure consisting of two bedrooms, kitchen and bathroom apartment for the said Wilfus Delfish.
- [10] Monica Delfish, sister of the deceased, also gave evidence in support of the claimant. She states that she knows that the first defendant, Wendy Andrews and her mother, Augustina Delfish had an acrimonious relationship and were not on speaking terms for a number of years. She further stated that she was the one that encouraged Wendy to visit her mother during her final days of her illness.
- [11] Dr. Spencer, House Officer in the Mt Gay Mental Hospital, and witness of fact for the claimant, both in his witness statement and at trial states that he examined Augustina Delfish in 2011. At the time she was diagnosed with moderately severe chronic cognitive disorder. He states that he was of the view that Augustina Delfish's chronic cognitive disorder and general poor health in 2011 were significant and would have gotten worse by the date of the Deed of Gift in 2012.

[12] The defendant, Wendy Andrews, confirmed that the relocation of the Augustina and the deceased after 1979 to facilitate the construction of the international airport. She states that the PRG built the house on the disputed property comprising of 3 bedrooms, bathroom, kitchen and sitting room. She further stated that her mother, Augustina Delfish, paid the purchase price of the said property without any contribution from the deceased. She states that at all times when the discussions regarding the land were taking place, her mother was not married to the deceased hence the reason why the conveyance was registered in her maiden name. She avers that her mother expended her own money to extend the house to accommodate her brother Wilfus and his wife after they got married. In cross examination she asserts that she was a minor at the age of nine to ten years old when her mother and the deceased lived at Frequente.

Legal Analysis

Whether the property is subject to a constructive or resulting trust in favour of the deceased

[13] The claimant submits that a constructive trust arose as a result of the substantial direct and indirect contributions made by the deceased, Ivan Delfish, to the acquisition of the property.

[14] The case of **Hussey v Palmer**¹ establishes the principle that where it is inequitable on the grounds of justice and good conscience that the legal owner of property should take the property for himself and exclude another from it, the law would impose a trust for the other's benefit. The court would look at the circumstances of each case to decide in what way equity could be satisfied.

[15] Moreover, in **Grant v Edwards**² it was held that a constructive trust has to be demonstrated by a common intention that parties should both have a beneficial interest and also that the claimant had acted to his or her detriment on the basis

¹ [1972] 3 All ER 744

² [1986] 2 All ER 426

of that common intention, and on the belief that by so acting he or she would acquire a beneficial interest.

- [16] In **Lloyds Bank Plc v Rosset & Anr**³, in resolving a dispute between two persons who shared a home in circumstances where one party was entitled to the legal estate and the other party claimed to be entitled to a beneficial interest, the House of Lords held that the fundamental question to be resolved was whether, on the basis of evidence of express discussions between the partners and independently of any inference to be drawn from their conduct in the course of sharing the property and managing their joint affairs, there had been at any time prior to the acquisition of the property, or exceptionally at some later date, any agreement, arrangement or understanding reached between them that the property was to be shared, beneficially coupled with detrimental action or alteration of position on the part of the person claiming the beneficial interest. Failing that, the question was whether there had been direct contributions to the purchase price by the person claiming the beneficial interest from which a constructive trust could be inferred.
- [17] The first defendant argues that there is no evidence to support the claimant's case that there was agreement between the deceased and Augustina Delfish to acquire land and a house with money provided by the deceased, Ivan Delfish. The first defendant also argues that there is no documentary evidence regarding the purpose of the loans taken out.
- [18] The purchase price of the property was a total of \$25,429.00, which would have been paid by Augustina Delfish, and purportedly the deceased, on or before 17th December 2009. There is no evidence of payment of the land by instalments as suggested by both parties.
- [19] The evidence shows that on 7th September 2010, the deceased and Augustina Delfish obtained a loan from Scotiabank in the sum of \$25,000.00. The claimant argues that said loan demonstrates the contribution of the deceased to the acquisition of the property and the improvements of the household. Given the date

³ [1990] 1 All ER 111

of this loan however, it is evident that said loan was not used to purchase the property. Moreover, the purpose for which the loan was obtained is not before the court.

[20] The claimant provides evidence as to the deceased's salary earned from the St. George's University where he worked from 1st March 1984 to 31st December 2003 as a groundsman. In addition, it is the first defendant's evidence that Augustina Delfish was employed doing housekeeping for hotels and private individuals and reared and sold chickens, turkeys and eggs. The court accepts the evidence that both the deceased and Augustina Delfish were employed during the acquisition of the property and the improvements made to same.

[21] The claimant raises a presumption that the deceased would have contributed to the acquisition of the property, as well as to the improvements of the property. This presumption is not disproved by the defendant. The first defendant concedes that there exists an addition to the property consisting a self-contained two (2) bedroom unit constructed for the use and benefit of Wilfus Delfish.

[22] There is no evidence provided by the first defendant to support that Augustina Delfish was the sole contributor to the purchase of the property, the maintenance of the household and the family so as to disentitle the claimant. There is no evidence of the salary of Augustina Delfish but it is the evidence that she was employed in low income jobs. Given this circumstance, the court accepts that there would have been contribution by both the deceased and Augustina Delfish during the Twenty-Six (26) years it took for the purchase of the property. The court rejects the first defendant's evidence that the purchase of the said property was provided solely by her mother. The first defendant was a minor at the time of the purchase and had left her parents' home during her early teenage years. The court also accepts the evidence that the first defendant did not have a cordial relationship with her mother for a significant number of years and her evidence that her mother was the sole contributor to the acquisition and improvements made to the property is merely speculative.

[23] Where, upon a purchase of land, one person provides the purchase money, and the conveyance is taken in the name of another there is a presumption of a resulting trust in favour of the person providing the money⁴. As a rule, unless there is some further indication of an intention at the time to benefit the other person, or some presumption of such an intention, the property is deemed in equity to be held on a resulting trust for the purchaser⁵. Thus, where the purchase money is contributed, partly by the person in whose name the property is taken and partly by another, then in the absence of evidence to the contrary, a resulting trust is established. The parties are presumed to intend that they are to obtain the share that they paid for in the absence of any evidence of a gift in favour of the person in whose name the property is conveyed.

[24] Looking at the totality of the evidence, this court is of the view that the deceased and Augustina had a common intention to own the property and the deceased contributed to the purchase of the property resulting in a trust in favour of the deceased, Ivan Delfish to satisfy the demands of justice. There is no evidence of a gift to Agustina Delfish. The natural inference is that the beneficial ownership of the property was intended to pass to both owners. It would be inequitable to rule otherwise.

[25] Regardless of the name in which the legal title is purchased, those who make direct contributions of cash at the date of acquisition are presumed to have intended to beneficial interests commensurate with their respective contributions⁶.

[26] The question then becomes the extent of Ivan Delfish's, deceased, beneficial interest in the property. The claimant argues that the deceased made most of the contributions to the acquisition, preservation and enhancement of the property, thus the deceased and Augustina Delfish must reasonably have expected the deceased to have an interest in and be an owner thereof.

[27] In **Midland Bank PLC v Cooke**⁷, the court said:

⁴ Halsbury's Laws of England Vol 47 (2014) para 230

⁵ Halsbury's Laws of England Vol 98 (2019) para. 139

⁶ *Petit v Petit* (1970) AC 777

⁷ (1995) 27 HLR 733

"I take it to be clear that if the Court is satisfied that it was the common intention of both spouses that the contributing wife should have a share in the beneficial interest and that her contributions were made upon this understanding, the court in the exercise of its equitable jurisdiction would not permit the husband in whom the legal estate was vested and who had accepted the benefit of the contributions to take the whole beneficial interest merely because at the time the wife made her contributions there had been no express agreement as to how her share in it was quantified.

...In such a case the court must first do its best to discover from the conduct of the parties whether any inference can reasonably be drawn as to the probable common understanding about the amount of the share of the contributing spouse upon which each must have acted in doing what each did, even though that understanding was never expressly stated by one spouse to the other or even consciously formulated in words by either of them independently. It is only if no such inference can be drawn that the court is driven to apply as a rule of law, and not as an inference of fact, the maxim "equality is equity" and to hold that the beneficial interest belongs to the spouses in equal shares."

[28] There is no evidence that either the deceased or Augustina Delfish contributed to the acquisition of the property and its maintenance one more than the other, given that:

- (1) The deceased and Augustina Delfish were married from 1993.
- (2) Both the deceased and Augustina Delfish were employed at the time of the acquisition of the property; and
- (3) Both the deceased and Augustina Delfish were living on the property together for the period from 1983 until their respective deaths.

[29] Accordingly, the court finds that both the deceased, Ivan Delfish, and Augustina Delfish shared an equal beneficial interest in the property.

Whether Augustina Delfish was incapable of effectively executing the Deed of Gift to the Defendants

[30] The issue for determination is whether the gift was as result of the free exercise of independent will by the donor. The onus lies on the donee to prove that the gift was the result of the free exercise of Augustina Delfish's will, and that she also understood the nature and effect of the gift.

[31] In **Inche Noriah v Shaik Allie Bin Omar**⁸ it was held that:

“it is necessary for the donee to prove that the gift was the result of the free exercise of independent will. The most obvious way to prove this is by establishing that the gift was made after the nature and effect of the transaction had been fully explained to the donor by some independent and qualified person so completely as to satisfy the court that the donor was acting independently of any influence from the donee and with the full appreciation of what he was doing; and in cases where there are no other circumstances this may be the only means by which the donee can rebut the presumption.”

[32] In the case of **Re Beany (deceased)**⁹, it was held that:

“The degree or extent of understanding required in respect of any instrument is relative to the transaction which it is to effect.”

[33] If the effect of the gift was to dispose of the donor’s only asset of value and pre-empt the devolution of her estate under her Will or her intestacy, the understanding required was as high as that required for a Will. The donor has to understand the claims of all potential donees and the extent of the property to be disposed of.

[34] The claimant argues that by Augustina Delfish purportedly gifting the defendants the property without retaining a life interest for herself or her husband, Ivan Delfish, and without making provision for her other children and grandchildren who resided on the property, is evidence of Augustina Delfish not acting independently and with the full appreciation of what she was doing. The claimant asserts that it is probable that Augustina Delfish did not understand the claims of all potential donees and the extent of the property purportedly disposed.

[35] The claimant argues that the deed of gift to the defendants does not refer to the building on the land, and that this fact raises a crucial question as to whether Augustina Delfish believed that she was conveying land only.

⁸ [1929] AC 129

⁹ [1978] 2 All ER 595

- [36] The claimant also states that Augustina Delfish was elderly, ill and suffering from chronic cognitive disorder and that she did not have the mental capacity to properly sign the alleged deed of gift and dispose of all the property.
- [37] The claimant further argues that there is a lack of evidence that at the time Augustina Delfish signed the deed of gift she received adequate legal advice as required by law.
- [38] On the other hand, the first defendant states that Augustina Delfish was not suffering from dementia or Alzheimer's. She states that Augustina Delfish instructed her attorney, who had prepared the initial conveyance from the Government of Grenada, to prepare the deed of gift, and executed it in his presence.
- [39] It is the evidence of Dr. Evelyn Spencer that he examined Augustina Delfish in the last quarter of 2011 and diagnosed her with moderately severe chronic cognitive disorder.
- [40] It is also the evidence that Augustina Delfish had five children in total, four of which were born to her prior to her marriage to the deceased in 1993. These children are the defendants, Steve Joseph (now deceased), Jarvis Joseph, and the claimant subsequent to the marriage.
- [41] The court notes that the deed of gift made in 2009 only described the parcel of land but did not include the house which is a permanent structure. The claimant maintains that the Augustina Delfish at the time of making the gift lacked mental capacity or failed to appreciate the nature of the transaction. The burden shifts to the defendant to prove that Augustina Delfish had the necessary capacity to execute the deed¹⁰ or understood the effect of the transaction.
- [42] Given the evidence concerning the mental challenges experienced by Jarvis Joseph, and the death of Steve Joseph, the first defendant offers context to the

¹⁰ *Wainwright & Anr v Wilson* (1929) AC 129

transferring of the property in the sole names of the defendants. Nevertheless, it is clear that by transferring the property in the defendants' sole names, Augustina Delfish would have disinherited her husband, and her son, the claimant. Moreover, Augustina Delfish did not, by her actions, retain any interest in the property in which she resided until her death, thereby effectively dispossessing herself.

[43] The first defendant attempts to explain Augustina Delfish's rationale in not including the deceased and the claimant in her devise. She states that the deceased was a notorious alcoholic. The first defendant also states that the claimant was placed on the bank account of Augustina Delfish but offers no corroborating evidence of same.

[44] However, it is also the evidence of the first defendant that the said Augustina Delfish modified the house located on the property to accommodate her brother, Wilfus and his wife after his marriage. From this piece of evidence alone, it is established that the said Augustina Delfish and the now claimant, Wilfus Delfish, shared a good relationship.

[45] Moreover, the first defendant does not offer any explanation as to why the said Augustina Delfish dispossessed herself in making the gift of the property to the defendants.

[46] It is also the evidence that the said Augustina and the first defendant had an acrimonious relationship. It is the evidence in cross examination that she left her mother's home in the 1990's and was not in a mother/daughter relationship. They were not on speaking terms for most of her adult life. The first defendant was not privy to any of the financial affairs of the deceased and his wife Augustina. The court rejects the first defendant's evidence having regard to the fact that she was a minor at the time of the purchase of the property and also her unpleasant relationship with her mother at the time of the construction of the annex to the said dwelling house. The court accepts the evidence that the deceased was in full employment at St. George's University from 1st March 1984 to 31st December

2003 (19 years) and was the main bread winner with Augustina Delfish doing menial jobs not of any permanence like the deceased.

Conclusion

[47] Given these circumstances, the court is of the view that Augustina Delfish did not understand the claims of all potential donees and the extent of the property to be disposed of in gifting the property solely to the defendants depriving herself of an interest in the property during her lifetime. If she wanted to make provisions for her son Jarvis as the first defendant contends, then it would be more feasible that she would have added his name on the said deed of donation or make a testamentary disposition by will. The court is of the view that the said Augustina Delfish dispossessing herself and disinheriting the claimant cannot be shown to have understood the claims of all potential donees and the extent of the property disposed.

[48] The court accepts that the parties were living as husband and wife when they were relocated to the Grand Anse property. The court is of the view that the property was built in the joint effort of Augustina and Ivan. The second defendant having not filed a defence and accordingly the claim is determined on evidence filed by the first defendant. The claimant has proved his case on a balance of probabilities that there was a common intention to establish a constructive trust between the deceased and his wife. The court finds that the property and the dwelling house erected thereon is held on a resulting trust for the benefit of deceased, Ivan Delfish and Augustina Delfish nee Joseph in equal shares.

ORDER

[49] For the forgoing reasons, it is ordered and directed as follows:

- (i) The Deed of Conveyance dated 17th December 2009 made between the Government of Grenada and Augustina Delfish (thereinafter called "Augustina Joseph") and recorded in the Deeds and Land Registry of Grenada in Liber 12-2010 at page 19 was made subject to a resulting trust

in favour of Ivan Delfish and the said Augustina Delfish nee Joseph in equal shares.

- (ii) The Deed of Gift dated 7th March 2012 and made between Augustina Delfish (thereinafter called “Augustina Joseph”) and the defendants recorded in the Deeds and Land Registry of Grenada in Liber 7-2012 at page 298 is null and of no effect and is accordingly set aside and expunged from the Land Registry records.
- (iii) Prescribed costs to the claimant in the sum of \$7,500.00 shall be paid by the first defendant, Wendy Andrews nee Joseph, to the claimant, Wilfus Delfish, pursuant to CPR 65.5 (2)(b).

Agnes Actie
High Court Judge

By the Court

Registrar