

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

GRENADA

CLAIM NO: GDAHCV 2017/0303

BETWEEN:

RUTH MASON

Claimant

and

STEPHEN CELESTINE PHILLIP

Defendant

Before:

The Hon. Mde Justice Agnes Actie

Appearances: (Via Zoom)

Ms. Rosana John with Ms Shireen Wilkinson for the claimant
Mr. Derek Sylvester and Ms. Hazel Hopkin for the defendant

2021: March 30th;
: April 7th.

RULING

- [1] **ACTIE, J:** On August 3rd 2017, Ruth Mason (the claimant) filed a fixed date claim against her brother, Stephen Celestine Philip (the Defendant) seeking a declaration that a purported agreement dated 29th December 2012 made between the parties be declared null and void and an order for recovery of possession of all that piece of land situate at Bailles Bacolet, St. George owned by the claimant and wrongfully occupied by the defendant.

- [2] On November 7th, 2017, Stephen Celestine Philip, filed a defence and counter claim to the claim. The defendant's counterclaim seeks a declaratory order that the agreement is valid and enforceable and that the said property be declared to be the property of the parties as tenants in common in equal shares; a declaratory order that the deed of conveyance to the claimant is void and should be struck out from the record and for the claimant to execute a Deed in favour of the defendant evidencing the defendant's entitlement of ½ share together with damages for breach of contract. In the alternative, a declaratory order that the claimant holds one half share in the property on resulting and /or constructive trust in favour of the defendant and an order that the claimant forthwith repay the defendant the \$400,000.00 with interest being the money provided by the defendant.
- [3] The court, having heard the parties and reading the evidence, is of the view that the claimant has not satisfied her claim on a balance of probabilities and accordingly the claim fails. The court finds in favour of the defendant on the counter claim for the following reasons outlined below.

Background

- [4] The parties, Ruth Mason and Stephen C. Phillip, are siblings and from all accounts had a very congenial relationship. Ruth Mason was married Ralph Mason. Consequent on the grant of divorce, it was agreed that Ralph Mason would transfer his undivided half share of the matrimonial property to the Ruth Mason for the sum of \$400,000.00. Ruth Mason was unable to finance the entire sum and asked her brother to assist her in the purchase of the half share. By Deed of Indenture made on 17th May 2012; Ralph Mason conveyed his half share interest to Ruth Mason.
- [5] An Agreement dated 29th December 2012 made between Stephen Philip and Ruth Mason, referenced the fact that Ralph and Ruth Mason were divorced and the sale of the undivided half share to Ruth Mason. Paragraphs 3 & 4 of the Agreement read as follows:

“3. It was orally agreed between the Brother and Sister that the Brother would provide the sum of \$400,000.00 to the Sister for the purchase of the said one half share in the said property owned by the said Ralph Mason.

4. It was further agreed between the Brother and that Sister that the Brother on paying the said sum of Four Hundred Thousand Dollars (\$400,000.00) would be entitled to one half share in the said property, so that the Brother and the Sister shall stand seised of the entirety of the said property as tenants in common in equal shares and that the Brother will be the owner of the upstairs of the residential building thereon.”

[6] The matter before the court turns on a simple issue namely, whether the agreement made by the parties is enforceable. It is the evidence that the building comprises of a two-storey home. Ruth Mason resides downstairs, and Stephen C. Phillip resides upstairs the dwelling home. Ruth contends that she never signed the agreement and would never have signed the agreement on her own free will and volition because the information was grossly incorrect. She alleges that her brother never provided her the full \$400,000.00 but only assisted her with a sum of \$104,000.00 for the purchase of the half share for which she is willing to repay.

[7] The purported agreement was prepared by Mr. Ferron Lowe, an Attorney-at-Law who filed a witness statement on 30th August 2019. Mr. Lowe said that he received a call from the defendant on behalf of himself and sister for the preparation of the agreement. He met the parties at the home. The claimant acknowledged that the defendant provided her with the sum of \$400,000.00 for the purchase of the half share and in exchange would obtain half share interest in the property. It was also agreed that the defendant would be the owner of the upstairs of the home. Mr. Lowe states that he did other legal work for the claimant. Mr. Lowe was a witness at the trial and was presented for cross-examination which was declined by the claimant.

[8] Mr. George Philip, brother of both parties, in his witness statement and cross-examination at trial stated that he constructed a home for his sister in Sauters

which was sold some time later. He said he was not interested in the construction of the sister's matrimonial home as his sister owed him money for the construction of the first house and for which they had a disagreement. He said he was aware that his brother sent money to his sister to bank and to do business for him. He said his brother regularly visited Grenada but never stayed for any significant length of time. He said he was aware that his brother, Stephen, assisted his sister, Ruth, financially both in USA and in Grenada as she was always in debt and owed many people.

[9] The defendant, Stephen C. Phillip, states that he was the owner of a very profitable construction company in the USA and made regular deposits at Citibank. He opened a joint account number 300015357 with his sister in which he regularly deposited large sums of money. He transmitted money via cash and cheques with instructions that his sister would deposit in the joint account and also made direct wire transfers to the account. He states that all three payments made for the purchase of the half share interest were drawn from the Joint account. He said he was alarmed when he saw that the deed was prepared in the claimant's sole name contrary to their oral agreement. He said he called Mr. Lowe to give effect to their oral agreement as he was about to travel out of Grenada the following day.

[10] The defendant states that he bought an adjoining parcel of land and had his house plans for the construction of his own home but changed his mind at the urging of his sister to purchase the half share of the property. He said he obliged based on their congenial relationship. The defendant states that the sum of \$104,000.00 alleged by the claimant to have been the only contribution was for the purchase of two vehicles. The defendant states that he has maintained the building and paid all bills in reliance of the promise and oral agreement with his sister. He said he and sister parted ways when he took away the bank book and closed the joint account.

- [11] Counsel for the defendant states that the agreement was made out of mutual love and convenience that existed between the siblings. The evidence before the court is clear that the defendant acted on the to his detriment. A letter from counsel for the claimant acknowledged the payments made by the defendant. The letter asked that the defendant cease the payment of the mortgage on the land and indicated the claimant's willingness to repay the principal and interest. It is the claimant's evidence that her children said" that they would not be going to live with uncle'. The court notes correspondence from the claimant's son acknowledging the defendant's contribution and his willingness to payback the sum to the defendant.
- [12] The claimant seeks an order to declare the agreement null and void. The claimant wants the court to accept that the agreement was not a voluntary act and also that she purchased the half share property with her personal funds with limited contribution from the defendant. The claimant has not led any evidence to prove that the agreement signed was not her act or that she was coerced in signing the document. The claimant has not provided a scintilla of evidence to support any of her assertions. Mr. Lowe, the lawyer who prepared the agreement was not cross-examined at the trial. A bare statement without more cannot assist the claimant's in obtaining a declaratory relief that the agreement dated 29th December 2012 is null and void. The court accepts that the parties once shared a strong bond as siblings, and it appears that one of the contributing factors in the change in attitude may have been as a result of the claimant's children unwillingness to share the property with their uncle, amongst other things.
- [13] The evidence is palpably clear that all deposits made on the joint account were made by the defendant. The court accepts the overwhelming evidence in support of the counter claim. The several wire transfers to the joint account and other deposits were all from the defendant. The court notes two significant deposits in the sum of \$53,758.90 and \$80 640.90 respectively deposited by Ruth Mason on the account of Stephen C. Phillip. The claimant did not provide a scintilla of evidence of any deposit of her own funds on the said joint account. The claimant states that the

payments were made from disability benefits sent to her by her daughter. The court notes the sums remitted were all paltry sums with no evidence of a single deposit on the joint account.

- [14] The issue as to whether the payments made by the defendant equates to a resulting trust is provided in Halsbury's **Laws of England Vol 47 (2014) para. 230.**¹

“ Nature of resulting trust.

A resulting trust may arise solely by operation of law, as where, **upon a purchase of land, one person provides the purchase money and the conveyance is taken in the name of another; there is then a presumption of a resulting trust in favour of the person providing the money**, unless from the relation between the two, or from other circumstances, it appears that a gift was intended.

- [15] The defendant relies on the common law of constructive trust and common intention guidelines in **Stack v Dowden**.² The court accepts the preponderance of the defendant's evidence in this case. The conduct of the parties, the deposits and payments made by the defendant from the joint account together with the agreement drafted and witnessed by an attorney- at- law lead to the ineluctable conclusion that there existed a common intention between the parties. The defendant acted to his detriment in the honest belief that he would be entitled to an undivided half share interest in the property as a tenant- in- common with his sister.

- [16] **Halsbury's Laws of England: Trust and Powers Vol 98 (2019) para. 139** speaks to the effect of purchase in or transfer into another's name:

“Where a person purchases property in the name of another or in the name of himself and another jointly, or gratuitously transfers property to another or himself and another jointly, then, as a rule, unless there is some further indication of an intention at the time to benefit the other

¹ Equitable Relief in Cases of Fiduciary Relationship/(1) Trustees and other Persons in Fiduciary Positions.

² 2 AC 432.

person or some presumption of such an intention, the property is deemed in equity to be held on a resulting trust for the purchaser or transferor.”

- [17] This court having accepted that the Agreement is a binding document, is of the view that the payment of the purchase price by Stephen C. Phillip was not intended to be a gift to Ruth Mason. Applying the law to the facts, the court finds in favour of the defendant on his counterclaim that the Deed of Sale of the undivided half share by Ralph Mason to Ruth Mason was on trust for the Defendant, Stephen Constantine Phillip.

Order

- [18] In summary and for the forgoing reasons, it is ordered and declared as follows:
- (i) The claimant's claim stands dismissed, and the defendant succeeds on the counterclaim.
 - (ii) It is declared that the agreement dated 29th December 2012 made between Ruth Mason and Stephen Phillip is a valid and enforceable document.
 - (iii) It is declared that the claimant, Ruth Mason and the defendant, Stephen Constantine Phillip, hold the property described in the Agreement as tenants-in-common with an undivided half share each.
 - (iv) The claimant Ruth Mason shall pay the defendant, Stephen Constantine Phillip, the sum of \$400,000.00 with interest at the rate of 3% from the date of the conveyance made on 17th May 2012 until judgment and at the rate of 6% from the date of judgment until payment in full within two (2) months from today's date together with damages for breach of contract to be determined, if not agreed.

- (v) In the alternative, the claimant, Ruth Mason, shall execute a Deed of transfer of half share interest of the said property to the defendant, Stephen Constantine Phillip, within two (2) months of today's date.
- (vi) Should the claimant Ruth Mason fail to execute the deed in compliance with clause (v), The Registrar of the High Court is authorized to sign the Deed on behalf of the claimant to give effect to the transfer.
- (vii) Costs to the defendant agreed in the sum of \$5000.00.

AGNES ACTIE

HIGH COURT JUDGE

BY THE COURT

REGISTRAR