

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

**GRENADA
CLAIM NO: GDAHCV 2009/0020**

BETWEEN

Phyllis Cecilia Frederick

Claimant

and

Raheeman Joy Frederick

Defendant

**Consolidated with
GRENADA**

CLAIM NO: GDAHCV 2009/0149

BETWEEN

Raheeman Frederick

Claimant

And

**Phillip Neptune
Marva Neptune
Zorina Fredrick
Cecilia Phyllis Frederick**

Defendants

Appearances:

Mr. Ruggles Ferguson for the Claimant

Mr. Alban John for the Defendant for Raheeman Frederick

2020: December 9
2021: February 25
2021: March 15

JUDGMENT

- [1] **ACTIE, J:** This claim is of some vintage and further highlights the malaise in the court system in Grenada. The two claims filed on 21st January 2009 and 16th April 2009 respectively relate to a family dispute involving mother and daughter and their beneficial interest in property forming part of the estate of Albert Nicholas Frederick, husband and father respectively,
- [2] The matter came on for trial and the court having heard the evidence and being informed that the claimant Phyllis Cecilia Frederick was at an advanced age and unwell referred the matter to mediation with a view to an amicable settlement. Counsel for the parties informed the court by letter that the claimant passed away and asked that the court makes a ruling on the evidence.

Background

- [3] The claimant, Phyllis Cecilia Frederick, at the time of filing the claim was the named executrix of the will of her deceased husband, Albert Nicholas Frederick. The will made on 30th April 1980 and probated on the 7th June 1985 made the following devise:

“Subject to the payment of my just debts and funeral expenses, I give devise and bequeath all my property, both real and personal, whatsoever and wherever (including specifically my lot of land situate at Tempe aforesaid containing estimate half an acre together with dwelling house thereon, and my lot of land situate at woodlands in the parish of Saint George aforesaid containing by estimate half an acre) to my wife Phyllis Frederick for and during the term of her life and from and after her death to our four (4) lawful children Cuthbert, Raheeman, Zorina and Amoran in equal shares as tenants in common.”

- [4] In 1993, Phyllis Frederick qua Executrix of the late Albert Nicholas Frederick filed a claim number GDAHCV1993/0513 against “the Jeromes” who owned property adjoining to the Frederick’s property. The Jeromes home was built substantially on the Frederick’s property. Terrance Cromwell, the original owner of the Jeromes’ property was joined as a third party to the claim. On 13th October 2003, Benjamin J. (as he then was) by a consent order ordered inter -alia:

3. “ The Third Party (Terrence Cromwell) shall convey to the claimant (Phyllis Frederick (Executor of the Will of Albert Nicholas Frederick, Deceased) all that lot piece or parcel of land measuring 2108 square feet and delineated as Lot C in the plan drawn by Gilbert Massell Licensed Land Surveyor dated 23rd day of October 1999”

4. That the claimant do pay to the third party the sum of \$118,000.00

[5] The said consent order was varied by consent by Benjamin J. on 15th June 2007 to allow the Registrar to sign the conveyance. The amended clause reads: “The Registrar is authorised to convey the property for and on behalf of the estate of Terrence Cromwell deceased”.

[6] By Deed of Indenture dated 29th October 2008 made between Robert Branch, Registrar of the Supreme Court, acting on behalf of the Estate of Terrance Winsondale Cromwell (The Registrar) on the one part and Raheeman Frederick (the Purchaser) on the other part, the entire property measuring 2108 together with the building referred to in the court order was transferred to Raheeman Frederick as absolute owner.

[7] On 21st January 2009, Phyllis Cecilia Frederick, in her personal right, filed fixed date claim **2009/0020** against her daughter Raheeman Joy Frederick seeking several declarations inter alia:

- (1) A declaration that the claimant is the legal and /or beneficial owner of all that lot of land with building thereon containing 2108 square feet described in the conveyance between Robert Branch (the Registrar’s Conveyance) made on 29th October 2008 and the defendant.
- (2) A declaration that the defendant holds in trust for the claimant the title to the Woodlands property or in the alternative,
- (3) A declaration that the Registrar’s conveyance is null and void and of no effect.
- (4) An order that the Registrar’s Conveyance be set aside forthwith.
- (5) An order directing the defendant to convey the Woodlands property forthwith to the claimant.
- (6) An injunction restraining the Defendant from conveying transferring or in any way disposing of the Woodlands property to any one other than the claimant or whosoever the Claimant may so direct.

- [8] Phyllis Cecilia Frederick states that on 10th November 2006 she executed a power of attorney authorizing Raheeman to do certain transactions on her behalf, including the right to do all financial transactions to the property with full rights to select a builder to repair the Frederick's property. The claimant avers that she requested Raheeman as her agent to raise the sum of \$118,000.00 for the exchange of the Woodland property to be repaid through monthly collections from tenants occupying the Frederick's Property. The said power of attorney was revoked on the 9th July 2008.
- [9] The defendant, Raheeman Joy Frederick in her affidavit in response states that the order of the court made on October 13, 2003 could not mean that the property be conveyed to the claimant absolutely save a life interest referred to in the will of Albert Nicholas Frederick. Raheeman states that the claimant brought the claim in her capacity as executrix of the said will, a capacity which never changed and the said order to convey was in that capacity.
- [10] Raheeman states that it was at her prompting that her mother gave her a power of attorney in an attempt to raise a loan to restore the property. She said her mother, 74 years at the time, could not qualify for a loan. Raheeman states that the loan application was unsuccessful. Raheeman denied that any request was made of her to raise funds on behalf of the claimant. Raheeman states that her mother indicated on several occasions that she was not interested in the property. Raheeman states that she never used the power of attorney or purported to act under the power of attorney once her mother indicated her lack of interest in the property.
- [11] Raheeman in cross examination states that she was informed that the property was being sold by the court. She said that she was informed that there existed a court order giving her mother ninety (90) days to pay the purchase price failing which the property would be sold. Raheeman said she purchased the property to preserve her beneficial entitlement in the said property. She stated further that she did not need any authorization from her mother and did not act on her mother's behalf.
- [12] Zorina Frederick, sister of Raheeman and one on the four named beneficiaries as tenants in common states that she was appointed by her mother by a power of attorney made on 9th July 2008 and 23rd January 2009 with full powers to conduct all financial affairs, management of the Frederick properties and including instituting court actions. She vehemently denies Raheeman's evidence. Zorina in cross examination states that Raheeman refused to communicate with her mother and herself when they discovered the sale made in Raheeman's sole name. Zorina states that her mother never authorized Raheeman to purchase the property as sole owner.

[13] In claim **2009/0140**, Raheeman Frederick seeks possession and Mesne Profits from Phillip and Marva Neptune, Zorina Frederick and Phyllis Frederick.

[14] The sole issue for determination is whether the Registrar had the authority to transfer the Woodlands property to Raheeman Frederick and the legal effect of the Deed of Indenture.

Analysis

[15] The order of the court in Claim 1993/0513 made on 13th October 2003 and varied on 15th June 2007 directed the sale of the Woodlands property to Phyllis Frederick, Executrix of the late Albert Nicholas Frederick, deceased. The terms of the order were to give effect to the will of Albert Nicholas Frederick to convey the life interest to his wife with the remainder share to his four children in equal shares as tenants in common.

[16] The Deed of Indenture made Robert Branch, Registrar and Raheeman Frederick was purportedly made pursuant to the order of Benjamin J. The third recital of the Deed reads:

“ AND WHEREAS by a Consent Order before the Honourable Justice Benjamin Pusine Judge dated Fifteen day of June Two Thousand and Seven varying the Order dated the Thirteenth day of October Two Thousand and Three in Civil **SUIT NO. GDAHCV 0513 OF 1993 AND INTITULED PHYLISS FREDEREICK CLAIMANT ANTHONY AUSTINE JEROME AND STETTY JEROME DEFENDANTS AND TERRANCE CROMWELL THIRD PARTY** it was ordered inter alia that the Registrar of the Supreme Court be and is hereby authorized to convey the property for and on behalf of the estate of Terrence Cromwell deceased”.

[17] It is clear that the Registrar derived the power to act on behalf of the estate of the Terrence Cromwell to give effect to the sale to Phyllis Frederick (Executor of the Will of Albert Nicholas Frederick, Deceased) by virtue of the amended order of Benjamin J. made on 15th June 2007.

[18] Raheeman states that she became aware of a court order that the purchase had to be completed within ninety days. She did not provide evidence of such an order which she said was in her lawyer's

possession. She further states that she decided to purchase the Woodlands property in her sole name as her mother had repeatedly stated that she was not interested in the property.

[19] Raheeman further states that she provided the full purchase price for the said property and made significant repairs to the building after hurricane Ivan. This assertion was vehemently denied by her sister Zorina who said that Raheeman was granted a power of attorney to raise funds to pay the purchase price through rental income of the said properties.

[20] The court notes that Raheeman did not provide any evidence to establish that she provided the full purchase price for the property. She merely presented a valuation to indicate the market value of the property. Mr John, counsel for the Raheeman indicates that his client raised the finance by way of mortgage however no evidence of the mortgage document was provided. Raheeman in her own evidence states that attempts to raise a mortgage loan for her mother was unsuccessful.

[21] The court having heard the totality of the evidence is more inclined to accept the claimant's "Phyllis Cecilia Frederick" version of facts. The court does not accept Raheeman's evidence of the alleged renunciation by her mother. In any event, any purported renunciation by Phyllis would be limited only to her life interest and did not extend to the remainder beneficial interest of the four children as tenants in common after her death. Raheeman did not provide any evidence that she made contact with her other three siblings or that they renounced their interests under the will.

[22] The evidence before the court confirms the power of attorney by Phyllis to Raheeman which was revoked on 9th July 2008 to buttress the fact that she was granted authority to raise funds for the purchase price. There are several receipts of rental income from the Woodlands property from 2007 to 2008, prior to the conveyance to Raheeman on 29th October 2008. Raheeman in her own defence asked that her mother account for rent received from the Tempe's property dating back some Twenty (20) years.

[23] The life interest granted under the will entitled Phyllis to occupy or to receive the rents of the properties during her lifetime. Phyllis was not under any duty to account to Raheeman on the rental income derived from the properties.

Should the Deed of Indenture be set aside?

[24] The main problem in this case is that the Registrar and Raheeman imprudently arrogated upon themselves an authority which was not conferred by the Court. The Registrar as an officer of the court was only authorized to sign as vendor to give effect to the court's order to facilitate the transfer to Phyliss Cecilia Frederick as Executrix of the Estate of Albert Nicholas Frederick. An order of the court is valid until it is said aside varied or appealed. The Registrar could not have purported to act and transfer the trust property to the Raheeman Frederick as sole proprietor in clear breach of the court's order and the terms of the will. The most prudent approach if Raheeman wanted to buy out the other beneficiaries' interest were to obtain a variation of the court order or have the other beneficiaries join in the conveyance to renounce their beneficial interests under the will, if they were so inclined. Raheeman asserts that her mother indicated a lack of interest in the property but did not lead any evidence that she contacted her other siblings before she decided to unilaterally have the property conveyed to her sole name.

[25] The Privy Council in **Isaac V Robertson** citing with approval **Chuck v. Cremer** (1846) 47 E.R. at p. 841 said:

'A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it. . . It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed. '

[26] The Registrar's jurisdiction was limited only to the extent stated by Benjamin J. The Registrar was not authorized and neither did the order of the court authorised the Registrar to convey the property absolutely to Raheeman to the detriment of the other beneficiaries.

[27] The court notes the timing of the claim filed exactly three (3) months after the Deed of Indenture by the Registrar in October 2008. The actions of the claimant in filing the claim within this short period of the execution of the conveyance is indicative of the fact that the claimant and remaining beneficiaries did not have any intention to abandon their beneficial interests under the will.

[28] Having regard to the full circumstances and the order of Benjamin J, the only logical conclusion is that the Deed of Indenture facilitated acquisition but did not complete the true intention of the order of the court and the testamentary dispositions in the will.

[29] Raheeman acted in full knowledge of the terms of the will and could not have unilaterally decide to purchase the property in her sole name under the same trust created by her father, with a life interest to her mother's and remainder to her other three siblings without their acquiescence. Good conscience and fairness are required especially in transactions between family in this case mother and siblings.

[30] As indicated before Raheeman did not provide evidence of payment of the full purchase price neither did she counter claim for recovery of the alleged payment. It can only be inferred on the evidence that she was accepting and receiving the title for and on behalf of Phyllis Frederick as Executrix of the estate of Albert Nicholas Frederick in order to benefit in her personal capacity as a life tenant. Raheeman cannot now come to the court of equity to seek help. "He/she who comes to equity must come with clean hands". To allow the deed to stand means that Raheeman Frederick would be unfairly enjoying a windfall to the detriment of her mother and her other siblings.

[31] **Section 23 of the Deeds and Land Registry Act** provides for the Rectification of errors, etc and reads: -

"The High Court may, on the application by summons of any person claiming any interest in any land in Grenada, order that any entry in the registry books be cancelled, or that any omission or mistake therein be rectified, or that any certificate indorsed or given under this Act be amended or cancelled, or that any instrument not registered be proved and registered, or that any person appear before the Court or before the Registrar and produce or prove any instrument and answer any question with reference to the registration or intended registration of any instrument.

[32] The court is of the view that the conveyance in the sole name of Rahemaen as purchaser is merely some evidence of ownership but is not conclusive of the substantive ownership contemplated by the will and the court's order. The court is of the view the effect of the transaction is that Raheeman holds the property on trust for the estate of the deceased Albert Victor Frederick. In the circumstances, the Deed of Indenture should be rectified to do justice between the parties and to maintain the integrity

of the court and the orders made by Benjamin J. The Registrar of the High Court is therefore directed to rectify the Deed of Indenture to reflect the true intention and effect of the order of the court.

[33] Having regard to decision in claim **2009/0020**, the consolidated claim number **2009/0149** filed by Raheeman Frederick against Phillip Neptune et al stands dismissed.

ORDER

[34] It is hereby ordered and declared as follows:

- (i) Raheeman Frederick holds the property described in the Deed of Indenture made on the 29th October 2008 on trust for the benefit of the claimant as having a life interest with the remainder for the four beneficiaries namely Cuthbert, Raheeman, Zorina and Amoran in equal shares as tenants in common.
- (ii) The Registrar shall sign a Deed of Correction of the Deed of Indenture executed on the 29th October 2008 to convey the said property to Phyllis Frederick (Executor of the Will of Albert Nicholas Frederick, deceased).
- (iii) The claim number 2009/0149 stands dismissed.
- (iv) Prescribed Costs to the claimant, Phyllis Frederick, in the sum of \$7500.00 to be paid by Raheeman Frederick pursuant to CPR 65.5.

Agnes Actie

High Court Judge

By the Court

Registrar