

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ON MONTSERRAT
CASE MNIHCV 2019/0007
BETWEEN

PENELOPE BEADLE

Claimant

AND

WENDY IRISH

Defendant

APPEARANCES

Ms Lovetta Silcott, for the Claimant.

Mr Jean Kelsick, for the Defendant.

2020: SEPTMEBER 17, 18
NOVEMBER 20

JUDGMENT

On who owns a house

- 1 **Morley J:** I am asked to decide who owns the home of Mary Lee who died on 09.07.19 aged 93.
- 2 Mary had twelve children, eleven surviving, including the claimant Penelope now 61, and her sister Loretta now 65. By another daughter, she had a granddaughter the defendant Wendy, now 49¹. The claimant and defendant are respectively aunt and niece.

¹ The parties will be referred to by their first names for ease of reading, and no disrespect is intended by not writing out each time full names and title or the legalese of whether claimant or defendant.

- 3 Penelope is a retired New York bus driver, living there, and Wendy is an accountant working for Montserrat Utilities Ltd.
- 4 Trial took place on 17-18.09.20 on zoom, owing to covid, with the judge on Antigua, Penelope in the US, and both counsel and Wendy in the Montserrat courtroom. Throughout the court has had opportunity to weigh the case and the parties' veracity.

Facts and findings

- 5 In around 1981 Mary acquired plot 11/05/58. In 1989 following the devastation of Hurricane Hugo, Wendy aged 18 moved in with Mary. In January 1996, Wendy on Montserrat signed a first land transfer document, form RL1, later signed on 25.02.96 by Mary in New York, witnessed by notary public Borrell, where for \$1 Mary transferred her property to Wendy, which produced a land certificate dated 17.06.96 in Wendy's name.
- 6 The reason for the transfer, per Wendy, was she was looking after Mary, then 70 in 1996, and Wendy was being threatened with eviction by Mary's son James, (who could be very difficult, indeed being the subject in 2019 of a restraining order regarding Mary), so that Mary resolved to protect Wendy by giving her the property from which she could not then be evicted.
- 7 However, in 2001 Penelope persuaded Wendy to sign a second land transfer document, dated 12.04.01, for 'love and affection' giving Penelope the land, which, per Penelope, she promised would be shared with Loretta. But Penelope did not present it to the Land Registry for issue of a land certificate until 12.07.18, by which time it was unenforceable and defunct, under any reading of the **Limitation Act**, under **ss4 and 6**, as to contract (requiring action within 6 years) or land (12 years), having been unactioned for 17 years.
- 8 Although acting-Registrar of Lands Meade made the mistake of actioning the defunct transfer on 12.07.18, cancelling the 17.06.96 certificate, this was reversed by Registrar Isles Hillocks, who now required a fresh transfer form. One was signed by Wendy and by Loretta, being in this case a third transfer document, but not signed by Penelope, who instead by letter of 13.12.18 to Wendy from Counsel Silcott asked that any new transfer be to her alone. Wendy now refused, as she has felt manipulated by Penelope, who Wendy believes is out to get the property for

herself, and not share it with Loretta. The third transfer form, incomplete, has since been lost by Wendy, perhaps as a result of her irk.

- 9 As no new transfer form has been presented, a fresh land certificate was re-issued by the Land Registry in the name of Wendy on 12.01.19. At present, Wendy is the registered owner of plot 11/05/58, and has been since 1996.
- 10 Penelope complains, and pleaded, that the 1996 transfer was obtained by undue influence over Mary, who she said then had dementia, and could not read.
- 11 However, in support there is no persuasive evidence. Mary's signature was witnessed by a New York lawyer, Borrell, and while evidence at trial tentatively offered by Penelope suggested there may have been cognitive issues in 2002, and possibly in 1998, though wholly unsupported by any medical material, there was nought raised for 1996 or earlier. Moreover, Penelope suggests Mary told her in 2000 she could have her plot, relying on this, yet on her account was demented; she cannot have it both ways. If Mary was demented in 2000, anything said was unreliable; if not, the transfer in 1996 was valid: and in any event even if demented in 2000, there is no evidence of it in 1996. It follows insofar as Penelope has sought to say the 1996 transfer is invalid, the burden being on her, I find she has failed to prove this, so that the 1996 transfer stands.
- 12 Thereafter Penelope persuaded Wendy to sign the 2001 transfer, but did not action it. The reasoning offered to Wendy, per Penelope, was Penelope and Loretta were the only two siblings without property on Montserrat, and it was to be owned jointly. Penelope says she thought just having the 2001 transfer form was enough to cede her ownership. If so, it is striking she did not seek to include Loretta, for 17 years, nor when she finally presented the form in 2018 (when Mary was ailing, ultimately to die). The evidence does strongly suggest Penelope was not honest when saying she wanted the property for Loretta too, supported then by Penelope not signing the 2018 transfer, signed by Loretta and Wendy, but instead through her counsel asking for exclusivity, now refused by Wendy.

- 13 Moreover, the court does not accept Penelope had no understanding the 2001 transfer had to be logged at the Land Registry, as she is intelligent, owns property in the US, understands what it means to have title to land, and so instead the court inclines to believe she sat on it, as a secret from Loretta and any others, to be produced later, in the closing stages of Mary's life, as she ailed, surprising the family, as happened.
- 14 Having reviewed the materials and evidence, I am satisfied on balance Penelope has wanted the property for herself and has sought to manipulate Wendy. This is an important finding, as it negatives there was real agreement in 2001, Wendy being tricked into the 2001 transfer into the name of Penelope alone. There is in addition suggestion from Wendy the reason she was asked by Penelope to transfer the land to Penelope, being different from what Penelope says, is Penelope was offering to improve Mary's home, and needed a bank loan, which required she own the land, though never took one out, and was not true, nor ever needed a loan as she had savings, and improvements only began as Mary ailed; in light of my finding Penelope has been manipulating Wendy, I am inclined to believe this account, so that *a fortiori*, the agreement in 2001 was flawed and cannot be relied upon.
- 15 Further, Penelope has said she has since 2001 spent at least \$58000ec renovating the plot, and later in evidence at least \$100000us, which seems exaggerated, while receipts show monies have been spent since 2017, not sooner, more in keeping with moving in after Mary dies, than upkeep since 2001 for Mary's comfort, and consistent with Wendy saying there were no improvements til long after the 2001 transfer, further supporting her account.
- 16 It follows that as this analysis approaches the 2018 transfer, the plot remains owned by Wendy, the 2001 transfer being unenforceable and voidable as on balance obtained by misrepresentation.
- 17 In 2018, Wendy did agree to cede the plot to Loretta and Penelope. Loretta agreed too. But Penelope did not. She wanted it for herself. The parties have not been ad idem then. And now Wendy has changed her mind, which is her right. If Penelope has wanted to co-own the plot with Loretta, as she said to the court she had said to Wendy in 2001, then at the very least she should have followed through on the 2018 transfer. That she did not, but instead had Counsel Silcott

- write the letter of 13.12.18, means no agreement was reached, and Wendy can walk away, which she has. It is telling no credible reason was offered by Penelope for not signing, at trial, where instead her evidence seemed evasive. There being no third transfer form, in 2018, no rights over the plot have freshly accrued, even in equity. The fact Penelope now invites the court to order transfer into both names is too late, she has missed the boat in 2018 while holding out for better, notwithstanding if there is application to transfer into both names Loretta would need to be a party.
- 18 Wendy lives elsewhere, with her family, not on the plot, and has said the property will always be available for family to use for visiting, including Penelope and Loretta. It is perhaps unfortunate the court did not hear from Loretta, who Penelope explained for religious reasons did not want to be involved in court proceedings, as the court would have been interested to know what Penelope had told her was why the 2001 transfer did not result over 17 years in shared ownership and why the 2018 transfer was not signed by Penelope.
- 19 Various queries arose at trial, in particular:
- a. Who took Mary to the New York lawyer on 25.02.96?
 - b. What property did Penelope remove recently from the plot and why?
 - c. What happened to James Lee being in occupation of the plot?
- 20 However, none need resolve, as moot to deciding the issue.

Legal position

- 21 As can be seen above, this case turns on its facts, and on how the court prefers the evidence of Wendy, rather than resolves in fine distinctions of law. But to consider legal arguments offered:
- a. Relief sought at trial for proprietary estoppel does not arise because:
 - i. It was not pleaded;
 - ii. In any event, Wendy never intended to cede the plot to Penelope alone, so that if Penelope has acted to her detriment in doing renovation, it was her calculation the value of the renovation supported her cause pretending it was for her mother (which

the court rejects as done too late), or shared with her sister (which the court has found Penelope did not intend), meaning instead on balance the court finds she has contrived to put money into the property hoping manipulatively it would bolster her later exclusive claim;

- iii. As regards the 2001 transfer, the court does not accept it was a mere inadvertence not to lodge it with the Land Registry, as instead on balance it was deliberately held back, so that a remedy in equity should not follow a manipulation;
- iv. Moreover, any enforceable interest in land arising in 2001 ought to have been actioned within 12 years, per **s6 Limitation Act**, and was not; and
- v. As regards the 2018 transfer, no agreement was reached and Penelope knew it, so estoppel cannot arise.

b. Remedy sought at trial for breach of contract does not arise because:

- i. It was not pleaded;
- ii. Any agreement offering the 2001 transfer was based on a misrepresentation, either that Penelope was going to share the property with Loretta, or get a loan to renovate to make her mother more comfortable, and so not enforceable;
- iii. If there was ever any enforceable contract from 2001, it fails **s4 Limitation Act**, requiring action within 6 years, noting the court has found Penelope was aware the transfer needed to be lodged; and
- iv. No agreement arose over the 2018 transfer, meaning there was no contract to enforce.

c. Undue influence fails, as regards the 1996 transfer, though pleaded, as on the facts it has not been shown to have occurred.

22 In all the circumstances the action brought by Penelope fails, and the money she has invested in her mother's home is not recoverable from Wendy, who remains the owner of plot 11/05/58, under the land certificate of 19.01.19, so that none of Penelope's heads of claim succeed.

- 23 Costs following the event, there shall be prescribed costs of \$7500ec to Wendy, payable within three months.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

20 November 2020