

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

Claim no. MNIHCV2013/0009

BETWEEN

PETER ALFRED WEEKES Claimant

and

DAISY WEEKES-RYAN Defendant

Appearances

Mr David Brandt for the claimant.

Ms Marcelle Watts for the defendant.

2017: September 13

September 14

JUDGMENT

- 1 **Morley J:** Daisy is Peter's daughter by his former wife Veronica¹. On 11.06.13, a plot of land marked as 11/01/012 was registered at the Montserrat Land Registry as belonging to Daisy².

¹ First names are used for ease of reference and to avoid confusion using same-surnames, and no disrespect is intended to any party.

² See page 8 of trial bundle 3 (TB3.8).

Peter claims it is his land, jointly owned with Veronica, and wants an order that the land is registered as theirs, and sold, being valued on 18.07.13 at EC\$178530³, with the proceeds divided.

- 2 On 13.09.17, the matter was listed for trial, Peter attended in person, Daisy did not, nor her witnesses, by skype as allowed (all being on St Kitts), I permitted her counsel Ms Watts to withdraw from the record for want of cooperation from Daisy, and non-payment of any fees, and the trial proceeded in Daisy's absence.
- 3 Having heard evidence for an hour from Peter, and on hearing submissions from Counsel Brandt, for the reasons which follow I will order in part as sought by Peter.

The history of the plot

- 4 Peter was born on 20.04.54 and is now 63. He is a carpenter. He married Veronica on 22.01.75. Together they had three children – Daisy (born in 1974, now about 43), then Leona, and then Luschell.
- 5 In about 1976 the plot was purchased and a home erected in which the family lived. Veronica was the higher wage earner. Monies were borrowed to extend, mostly repaid by Veronica. Hard times meant the family moved to St Kitts in 1994. Peter and Veronica divorced in 2001. They remained on good terms. Daisy qualified as a Quantity Surveyor.
- 6 In 2009, Daisy wanted a US visa. She had to show she had ties to Montserrat. Peter and Veronica agreed the way to do this would be to sign a transfer of the plot to her. A 'transfer of land' deed form was obtained by Daisy and sent to Veronica. What happened next has been why there has been a court action.
- 7 Peter says he never signed a transfer deed. However, there is a transfer deed to Daisy dated 28.12.09 which appears to have his signature on it, and Veronica's, witnessed by an attorney

³ TB3.14

on St Kitts named Nassibou Butler⁴. All three say in affidavits that Peter signed in their presence⁵.

8 However, Peter has obtained the opinion of a handwriting expert on Trinidad, named Glenn Parmassar, in a report dated 11.07.14, in which the expert explains that it is '*highly probable*' the signature is not from Peter⁶.

9 In evidence before me, Peter said that although he had said he would sign the transfer deed, to help Daisy get the visa, it was known to Daisy and Veronica that he had no intention it would mean the property would in fact be gifted to Daisy and registered as hers, as he had two other children who should in time obtain an equal share. Instead, if signed, the document was simply only ever to be a dodgy device to satisfy the visa query.

10 But in any event he never signed as the transfer deed form was never shown to him. He explained he phoned Veronica three times for information about the form, and in the end was told Daisy did not need his help anymore.

11 In 2012, Peter returned from St Kitts to Montserrat. The plot was in need of repair. Peter discussed this with Veronica, began works, and later found the locks changed. Veronica told him she arranged for change of the locks for 'personal reasons'. Peter consulted Counsel Brandt to regain access to the plot. On 04.09.12, Counsel Brandt wrote to Veronica. On 01.10.12, Attorney Jean Kelsick replied for Veronica, enclosing a copy of the transfer deed. Peter says this is the first time he saw it. He took a copy to St Kitts with his girlfriend Angela to challenge Attorney Butler, who stuttered, saying 'I don't even know' and suggested Peter talk to Veronica. Veronica will not discuss how his signature got on the deed. He thinks she wrote it. He confronted Daisy, who told him to discuss the deed with a lawyer, and asked him '*are you sure you didn't really sign this document?*' I asked him the same, and he was adamant and incredulous, denying he had forgotten.

⁴ TB3.30

⁵ TB2.2 para 14 (Daisy); TB2.10 para27 (Veronica); TB2.14 para 10 (Attorney Butler).

⁶ TB2.21

- 12 Peter filed an action on 17.05.13 against Veronica that the plot was jointly owned together. The action having begun, Veronica and Daisy had the transfer deed registered at the Land Registry so that on 11.06.13 Daisy was issued with a certificate the land was hers. On 18.05.16, Peter's claim was amended so that Daisy was substituted as defendant. The case was unsuccessfully fixed for trial three times, on 18.09.15, 27.03.17, 17.07.17, and finally refixed for 13.09.17.

Trial in absence

- 13 In the afternoon of 12.09.17, Counsel Watts applied under rule 63.6 CPR 2000 to withdraw for want of payment and client cooperation, explaining why by affidavit. She attended in Court for 09.00 on 13.09.17, when she showed the Court her whatsapp (WA) messages to and from Daisy and Veronica.
- 14 I am satisfied on hearing from Counsel Watts and reading her affidavit that both Daisy and Veronica have known about the listing for trial of 13.09.17 and that they are being evasive, with Daisy in particular being non-responsive to regular communication.
- a. I have myself seen on Counsel Watt's phone that Daisy responded by WA on 07.07.17 that she was aware the new trial listing was 13.09.17.
 - b. From Counsel Watts' affidavit, both received reminder, plus invoice, on 14.08.17, (to which on 06.09.17 Daisy replied by email on 06.09.17 that she cannot pay, and Veronica replied by phone she only had EC\$20, showing by implication both got the reminder and knew of the trial listing).
 - c. There were further reminders sent by WA on 20.08.17 and 01.09.17, and by email on 27.08.17 and 05.09.17.
 - d. There was a further email sent on 11.09.17, warning of counsel's need to withdraw from the coming trial for lack of cooperation and payment.
 - e. I have myself seen on Counsel Watt's phone that on 12.09.17 Veronica received further reminder by WA, marked by two blue ticks as 'seen'.
 - f. Registrar Meade tried to contact both by phone, during 10.45-11.10, on the morning of 13.09.17, and while Daisy's phone rang to voicemail, Veronica's was busy, but then when

not, rang out twice (showing she had been using the phone, strongly suggesting she was choosing not to answer).

- 15 I also saw on Counsel Watt's phone WA messages in July from Daisy describing difficulty in getting Attorney Butler to commit to assisting at trial.
- 16 The trial being listed, for the fourth time, Counsel Brandt pressed for the case to go ahead in absence under rule 39.4 CPR 2000, saying he would limit his costs application to EC\$7500, which before the decision for her to come off the record Counsel Watt's agreed would be a reasonable sum given the age and complexity of the case and four trial fixtures. The decision being made the trial should proceed in absence, Counsel Watts then successfully applied to withdraw. The Court then decided in its discretion under rule 39.4b to hear evidence from Peter during which, in addition to his affidavit being received as his evidence, he was asked many questions by the Court and by his counsel, in particular concerning the transfer deed.
- 17 This Court recognizes that a trial in absence is unusual. However, it is not prohibited. It is permissible if in the interests of justice, as here, where justice delayed is justice denied and the action is becoming unconscionably old, Daisy knows of the trial listing, which is the fourth, and there is evidence of her evasiveness by affidavit from her counsel and sight of WA messages.
- 18 Parties must be aware that trials can and may proceed if a party chooses to be non-responsive to communications from counsel and avoids attendance.

Findings

- 19 Having reviewed the evidence available, reading all the affidavits, exhibits, and the handwriting report, I find the following facts.
 - a. The impugned signature is probably not from Peter. This because:
 - i. Peter says so and on oath I find him credible;
 - ii. The expert says it is highly probable it is not his signature; and
 - iii. The defendant has not attended to defend the action, knowing full well it is listed, to an extent suggesting she has no confidence in it.

- b. What has probably happened is that Veronica wrote Peter's signature, thinking he had agreed to sign, which he had, but in fact he was not shown the document, and at the time he did not imagine any transfer deed would ever be lodged at the Land Registry. Since then relations between Peter and Veronica have become strained, as happens between folk through no particular fault, and Veronica has sought in 2012 to exercise greater ownership over the plot as she mostly repaid any loans on it. Once challenge arose, via lawyers, Veronica had to lodge the transfer deed, or admit to forgery, and understandably chose the latter. I find that Daisy probably did not know the signature is not by Peter. As to assertions in affidavits that Peter's signature was witnessed, at best this is probably faulty recollection in the heat of litigation.
- c. In any event, even if it was Peter's signature, I find both Veronica and Peter had probably not intended in fact to pass exclusive ownership to Daisy, so that the deed was never supposed to have been lodged, and if lodged (as has happened) Daisy could only ever have held the land in equity on trust for both parents.
- d. In short, whether the signature was from Peter or not, I find as a fact that the transfer deed was only ever a device for a visa, and was never supposed to give Daisy ownership.

Forced sale

- 20 It follows that I order that the Land Registry on Montserrat record the plot as belonging jointly to Peter and Veronica and not to Daisy.
- 21 Peter has asked that sale of the plot be forced, as he is in rented accommodation, is long divorced from Veronica, wants to buy somewhere to live, and needs the money. He suggests the proceeds are divided equally.
- 22 However, Veronica may wish to resist any sale, or may wish to argue she is entitled to a greater share.
- 23 In the present action before the Court, Veronica is not the defendant, and this trial has proceeded without hearing from her at least as a witness. There have been no representations in the affidavit from her (or Daisy) as to the fairness of forcing sale or division. The requested additional order, forcing sale equally divided, would affect the rights of a third party who is not

heard, and I consider would be in breach of the principle of *audi alterem partem* (meaning 'let the other side be heard as well'). On the one hand, the Court does understand Peter's unease that forcing sale may take years in a separate legal action (just as this action has lasted four years); on the other hand, this judgment finds that Veronica jointly owns what was the family home, since 1976, and her views on disposal are important.

- 24 If Peter wishes to force sale and division, I have decided that he must bring a fresh action against Veronica.

Costs

- 25 Because Peter has succeeded in this action to have the plot recorded as belonging to him and Veronica, costs should follow the event, and therefore I order that Daisy must pay her father's reasonable costs of EC\$7500.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

14 September 2017