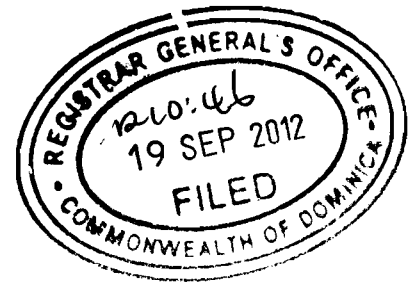


IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
DOMHCV2011/0128
[CIVIL]



BETWEEN:

DORIAN LAFOND

**FLORIAN GILL as Personal Representatives of Marie Sarah
Judith Williams deceased** Claimant
and

**LENNOX ST.AIMEE as Personal Representative of
Christopher Williams, deceased** Defendant

Before:

The Hon. Justice Brian Cottle

Appearances:

Mrs. Heather Felix-Evans for the Claimant
Mr. Wayne Norde for the Defendant

[2012: January 27th
: September 19th

JUDGMENT

- [1] **COTTLE J:** The facts in this matter are not in dispute. The claimants are the personal representatives of Marie Sarah Judith Williams, deceased, also known as Judith Williams. The claimants obtained a grant of probate of the last will and testament of Judith Williams on the 2nd day of November 2007. The defendant is the personal representative of Christopher Williams, deceased. The defendant obtained a grant of probate of the last will and testament of Christopher Williams, deceased, on the 14th day of October 2008.
- [2] Judith Williams and Christopher Williams were married on the 5th day of January 1962 and lived in Castle Bruce in the parish of St. David in the Commonwealth of Dominica. Judith Williams was a school teacher and Christopher Williams was a chauffeur. Through their join efforts, Judith and

Christopher acquired several properties in Castle Bruce (hereinafter the Castle Bruce properties) most of which are registered in the name of Christopher Williams.

- [3] On 23rd June 1991 Judith Williams and Christopher Williams executed an agreement wherein they acknowledged their joint efforts in acquiring the Castle Bruce properties and divided said properties between themselves, stating specifically which of the said properties or part thereof should belong to each of them. That agreement was duly registered in 2009 in accordance with the Registration of Records Act, Chap. 19:04 of the Laws of the Commonwealth of Dominica and is recorded in Book of Deeds L13 Folio 177-178. Judith Williams duly executed her last will and testament on the 8th day of October 1994 and in this will devised to various persons the properties agreed to be hers pursuant to the agreement of 23rd June 1991.
- [4] Judith Williams died on the 19th day of August 2001. Christopher Williams duly executed his last will and testament on 1st day of September 1996 and devised to various persons properties which are not clearly and specifically described in his will but which appear to include the properties agreed to be Judith's by the June 23rd 1991 agreement. Christopher died on the 19th day of June 2006. The personal representative of Christopher Williams is refusing to acknowledge and/or regard as binding the agreement of 23rd June 1991 and wishes to deal with the Castle Bruce properties registered in the name of Christopher Williams as belonging to Christopher Williams alone. The claimants have placed caveats on the Castle Bruce properties to prevent any dealing in same until a determination is made by the court on the validity and effect of the agreement of 23rd June 1991.
- [5] The court is called upon to determine the validity of the agreement made on 23rd June 1991 and whether the personal representative of Christopher Williams is bound by the agreement. As both parties agreed on the facts the court ordered that written submissions with authorities in support be filed. Only the claimants complied, thus the court did not have the benefit of submissions by the defendant.
- [6] Section 6 (2) of the Title by Registration Act chap 56:50 provides
"dealings with lands brought under the operation of this Act, which are not in accordance with the provisions of this Act, shall operate as contracts only, and shall not confer any right in respect to the land, except the right of enforcing the contract as against the parties, and persons claiming otherwise that as purchasers or mortgagees for value under the parties"

"In principle, the personal representatives of a contracting party are bound, so far as his assets will extend, to perform all his contracts although not named therein." is the way in which the learned authors of Chitty on Contract put the principle in chapter 20-005 of their work. The court has applied this principle in several cases including Youngmin v Heath [1974] 1 WLR 135 and Kennewell v Dye [1949] Ch. 517. Applying this principle to the present case admits of only one result. I reproduce the agreement in full. It is quite brief:

This is an understanding agreement and a declaration made between us Christopher Williams the husband, and Judith Williams, the wife. We do hereby declare that we

have agreed to share the property or properties that we have acquired through our efforts which goes as follows

- 1. Our dwelling house at Glu-Glu the upstairs of which with all that is there will be for Judith and the downstairs the same way with all that is in it for Christopher.**
- 2. The portion of land at Co-Co Richmond will be for Christopher while the piece on the Castle Bruce Estate better known as TEN ACRE, will be for Judith.**
- 3. The lot at Lorie Borde bounding with Ettienne, Vou-Vou, T-Boy and Francois will be for Judith, while the rest of the lot on which our dwelling house is on which is the Generation House will be for Christopher**
- 4. The Bakery and the workshop will be for Christopher while the conference room and the CCFD office is for Judith**

Note:

After the death of any of us, the one living should live on the whole property till but cannot sell, mortgage or do any financial transaction with the portion of the other and that our beneficiaries can only inherit after the death of the one alive

- [7] The parties acknowledged that the properties were acquired through their joint efforts. They agreed on how they should be divided. They intended that the agreement be honoured by their respective personal representatives. That is why they inserted the provision about inheritance and specifically noted it. In the circumstances of this case I find that a binding contract existed. The deceased husband did nothing in his lifetime to alienate or encumber any of the properties that he had agreed should be for the wife.
- [8] Judgment is entered for the claimants. It is declared that the agreement entered into between Judith and Christopher Williams is valid and binding. A declaration is further granted that the defendant, as personal representative, is a trustee for the performance of the obligations of Christopher Williams under the said agreement. The defendant is ordered to execute all necessary documents to effect the transfer to the claimants of those properties identified as belonging to Judith Williams in the agreement.
- [9] The defendant will pay the claimants costs in the sum of \$4,000.00. I would have been content to order prescribed costs of \$7,500.00 but the claimants were content to seek only \$4,000.00 in costs

