

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2008/0677

BETWEEN:

AMOS CHARLES

Claimant

and

TESSA CHARLES

Defendant

Appearances:

Mr. Steadroy Benjamin for the Claimant
Mr. D. Raimon Hamilton for the Defendant

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2010: September 29
2011: August 17
November 15
.....

JUDGMENT

[1] **MICHEL, J.:** Amos Charles, who was 75 years old when the trial of this matter began on 29th September last year, was apparently born in St. Kitts, raised in Antigua, where he resided from since he was 3 months old until he was between 30 to 31 years old, from where and when he journeyed to St. Thomas and appeared to have resided there since.

- [2] Whilst in Antigua, Amos Charles had an intimate relationship with Sylvia Browne, with whom he had a daughter, Katherine Charles, in 1962 and who in turn had a daughter, Tessa Charles, in 1978.
- [3] Amos Charles appeared to have developed a very close and loving relationship with his granddaughter, Tessa Charles, and showered her with gifts and money from childhood to adulthood.
- [4] In 2006 a property comprising a portion of land at Swetes Village in St. Paul, together with the dwelling house on it (hereafter "the property") was purchased by Tessa Charles at an auction sale using funds withdrawn from the bank account of Amos Charles. The transfer of land document dated 19th December 2006 (hereafter "the land transfer") reflected a transfer of the property to Amos Charles and Tessa Charles as joint tenants.
- [5] The close and loving relationship between grandfather and granddaughter - having developed and endured for 28 years - did not appear to survive for more than a year following the purchase of the property and by 2007 they were communicating to each other by lawyers' letters.
- [6] When the communication between the lawyers representing the parties and other attempts to resolve the dispute that had developed between them over the rights to ownership and occupation of the property remained unresolved, on 1st December 2008 Amos Charles (hereafter "the Claimant") filed a fixed date claim against Tessa Charles (hereafter "the Defendant") seeking declarations that he is the sole owner and solely entitled to the beneficial interest in the property and that the Defendant obtained registration of the parties as joint tenants of the property by fraud;

an order that the register pertaining to the property be rectified by deleting the names of the Claimant and the Defendant and by substituting the name of Katherine Elizabeth Charles (the daughter of the Claimant and the mother of the Defendant) or some other suitable person nominated by the Claimant; damages; further or other relief; and costs. On 30th June 2009 the Claimant filed a statement of claim setting out in full his claim against the Defendant, which the Defendant responded to by a defence filed on 22nd October 2009. On 27th October 2009 the Claimant filed a reply joining issue with the Defendant on her defence. After case management of the matter, the filing of all documents pursuant to the case management order and the vacating of a trial date in order to seek a resolution of the matter, the case eventually came to trial on 29th September 2009. After the taking of the evidence of the Claimant and the Defendant, the case was adjourned for a date to be fixed for the taking of the evidence of Mingonette Mascall-Henry (hereafter "Ms. Henry") for whom a witness summary was filed, but who was unavailable to attend court on the date fixed for trial. The trial resumed on 17th August 2011, but on that date the Defendant closed her case because Ms. Henry was still unavailable.

[7] Both parties were directed to file written closing submissions (with authorities) within 3 weeks, which directive was complied with by the Claimant, but not by the Defendant, who has not filed any written closing submissions within the nearly 3 months which have since elapsed. The Court will nonetheless render its judgment without the closing submissions of the Defendant.

[8] Only two witnesses gave evidence in this case – the Claimant and the Defendant.

[9] In his witness statement, the Claimant declared that over the years following the birth of the Defendant, he and the Defendant developed a very loving and warm relationship and that he

bought several valuable gifts for the Defendant and also gave her huge sums of money. He declared as well that as he advanced in age the issue of retirement loomed large in his mind since he had no relatives in St. Thomas where he lived and his daughter, his nieces and nephews and his grandchildren all resided in Antigua. He declared that he formed the impression that he must return to Antigua and reside there and he so conveyed to the Defendant. He declared too that in or about April 2006 the Defendant suggested to him in a telephone conversation that he should come to Antigua to live and he instructed her to locate an appropriate property for him. He declared that the Defendant obtained the services of a public auctioneer, Mr. Nathaniel "Paddy" James (hereafter "Mr. James") and that in July 2006, upon his return to Antigua, he visited the property along with the Defendant and Mr. James, after which he agreed to purchase the property using his substantial savings at the Bank of Nova Scotia. He declared also that since he was not a citizen of Antigua and Barbuda and was not the holder of a non-citizen's land holding license, it was agreed that the Defendant would purchase the property as trustee for him. He declared that he then took the Defendant to Scotia Bank and had her name placed on his account there so that she could withdraw the appropriate sums from his account to purchase the property on his behalf, but he made it plain to her that she should only withdraw the money required to purchase the property.

- [10] The Claimant declared that after putting all arrangements in place for the Defendant to purchase the property, he returned to St. Thomas. He declared that on 21st July 2006 the Claimant won the bid to purchase the property and paid a deposit on the property of \$27,500, which amount was withdrawn from his bank account; then on 10th August the balance of the purchase price of the property – the sum of \$247,000 drawn from his bank account – was paid to complete the purchase of the property. He declared further that upon his return to Antigua some months afterwards he

discovered that the Defendant had withdrawn \$19,296.99 from his bank account without his consent and had failed to properly account to him for this money when he called upon her to do so.

- [11] The Claimant claimed that he is the sole beneficial owner of the property notwithstanding that the property was registered in the joint names of the Defendant and himself, which he stated was a mistake. He asserted that he and the Defendant were not and are not joint tenants or equitable tenants in common of the property and asked that the Court exercises its powers under the provisions of **the Registered Land Act**, Cap. 374 of the Laws of Antigua and Barbuda Revised Edition 1992 and direct the Registrar of Lands to rectify the register pertaining to the property and to correct and/or amend the obvious mistake or fraud. The Claimant claimed in the alternative that the Defendant was able to obtain title to the property in the joint names of the Claimant and herself as tenants in common by fraud, which fraud he only became aware of when he saw a copy of the land certificate in December 2006. The Claimant itemized in his statement of claim the representations which had been made to him by the Defendant to induce him to purchase the property, which representations he claimed were made to him on or about 9th August 2006, just before the sum of \$247,000 was paid to complete the purchase of the property. He claimed that he believed the representations to be true and, acting on the faith of the representations, he was induced to purchase the property. He claimed that these representations were false and that at the time of making them the Defendant knew they were false or made them recklessly without caring whether they were true or false and that she made them to induce him to buy the property. The Claimant claimed that the property, which was purchased for him and on his behalf, was of no value to him since he is not able to hold any interest in the property because he is not the holder of a non-citizens land holding licence and that the Defendant well knew that he could not own any interest in the property unless and until he had obtained a licence, yet she induced him to pay

\$275,000 to purchase the property. The Claimant claimed that he had therefore lost the sum of \$275,000 which he had paid for the land, or had lost the use of that money, and had also lost interest on the \$275,000 and had suffered loss and damage.

- [12] Under cross examination, the Claimant conceded that in an affidavit in support of his fixed date claim, which affidavit he had sworn to on 18th June 2009, he "said" that when Mr. James told him that without a licence he could not buy and own land in Antigua, he remarked that the Defendant can buy land in Antigua. He conceded too that he did not "say" in the affidavit that the Defendant had induced him or caused him to do anything in relation to the purchase of the property as is stated in his witness statement and that nowhere in the letter written to the Defendant on his behalf by Attorney Dexter Wason was it alleged that the Defendant had perpetrated any fraud against him. He testified though that this was a matter for his attorney. He conceded that he did sign the land transfer of the property at the law office of Phillips, Phillips & Archibald and that some months later, after he had fallen out with the Defendant, he went back to the law office and told them to remove the Defendant's name on the property and that when this was not done he went back to the law office and took his files. He conceded that the house was bought unfurnished and that it is now furnished, but insisted that he did not authorize the Defendant to take any money from his account to buy furniture and that she did not tell him that she bought furniture with the funds from his account. He testified that it was he who bought the furniture from Courts and that the Defendant was with him when he did so. He conceded that he did mention to his lawyer that the Defendant had a man in the house but he denied that this was his only reason for instituting proceedings against her.

[13] Under re examination, the Claimant asserted that he did not buy the property as a gift to the Defendant and he intended that she should hold the title to the land for him.

[14] In her witness statement, the Defendant declared that she knew the Claimant for all of her life and that he always treated her as his daughter and encouraged her to think that way about him. She declared that over the years he would look into her interests, give her advice on the direction of her life, provide her with financial and other support and that whenever she needed assistance he was there and would send money or whatever she needed for her. She declared that in the first quarter of 2006 the Claimant called her from St. Thomas and, in the course of conversation, expressed his displeasure over the fact that she was living in a small one bedroom home with her boyfriend and that her son was staying with his father, and the Claimant told her that her children should be living with her. She declared that he also told her then that he could assist her in purchasing a 'home' without going to the bank, that he would give her the money to purchase a 'home' and that he would use it when he came to visit Antigua. She said that after this conversation "we made arrangements to go about this purchase," which 'we' could only be understood to be referring to the Claimant and the Defendant. She declared that she went looking for 'homes' for sale and was told about an auction in Swetes; that she got a number to call Mr. James and did call him; that Mr. James told her about how much the property was valued and she relayed that information to the Claimant. She declared that this is when the Claimant made arrangements for her to access the money at Scotia Bank so that she could bid on the property at the auction.

[15] The Defendant claimed that she did not initiate any discussion in relation to the purchase of a 'home' and that the Claimant told her that he was making a gift to her. She claimed that he also expressed an intention to visit Antigua and told her that he would stay in the house whenever he

visited. She claimed too that all decisions relative to the auction were left to her and that the Claimant did not return to Antigua to see the property until after the auction sale. She further claimed that the Claimant never told her that he wanted to use the master bedroom and he told her that on his visit he would take the bedroom in the back. She claimed that he never told her that she could not have any man in the 'home,' but she claimed that the whole action arose out of a falling out between them in respect of a period of time that her then boyfriend stayed at the house while he was looking for a new 'home' to rent. She claimed that it was only when this happened that the Claimant started complaining, calling the police and verbally abusing her and that prior to this she and the Claimant had no problems.

[16] In amplification of her witness statement, the Defendant testified that the Claimant was not available to view the property before the purchase, but that after the purchase he went with her and Mr. James to view the house to see what it looked like.

[17] Under cross examination, the Defendant testified that she had an extremely close and loving relationship with the Claimant; that the Claimant would often come to Antigua to visit his family here; that the Claimant did not tell her that he wanted to come back to Antigua to live, but it was she who told him that he should do so, which she said was after she purchased the house; that the Claimant told her that her children should be living with her and that he would help her buy a 'home'. She testified that this was in addition to the house he would purchase for himself.

[18] The Defendant testified that what was said to her by the Claimant when the property was being acquired was that he was buying a house for her, which is what she told Ms. Henry at the law office of Phillips, Phillips & Archibald. She conceded though that Ms. Henry told her that if the transfer

was in her name and the Claimant's name then it would have to be sent to St. Thomas for execution by the Claimant. She testified that when Ms. Henry told her so she made a phone call to the Claimant and he told her to go ahead and sign and he would probably come to Antigua to sign afterwards. She testified that it was supposed to be her and her children who were to be residing in the house and that at that time she had two children – a son and a daughter. She testified too that it was the Claimant who asked for his name to be included on the land transfer.

[19] Having earlier insisted that the Claimant was not available to and did not visit the property before the auction and that it was only after the deposit was paid and the contract of sale was concluded that he visited the property with her and Mr. James, the Defendant testified that she withdrew monies from the Claimant's account and paid the deposit and the Claimant told her that he would go to St. Thomas and transfer other monies so that she could pay the balance due on the \$275,000 and that he did so.

[20] Having stated in her witness statement that it was in the course of a conversation with the Claimant in the first quarter of 2006 that he told her that he could assist her in purchasing a 'home', she testified under cross examination that from the time she was 23 years of age the Claimant told her that he would help her acquire a 'home'. It is to be noted that, given the date of her birth on 30th October 1978, she would have been 27 years old in the first quarter of 2006.

[21] Under re examination, the Defendant testified that, as it stands now, she accepts that she holds the title to the property as joint proprietor with the Claimant.

[22] Having reviewed the evidence of the parties to this case, who were the only witnesses in the case, one gets a sense of the parties' evidence proceeding unsteadily from their respective starting points and meandering uncertainly to their destinations, with multiple deviations and diversions during the course of the journey.

[23] The Claimant's evidence proceeds from the starting point of his closeness to and love for the Defendant, whom he showered with gifts and money. He claims though that, with respect to the purchase of the property, his only intention was to buy a house for himself, which was to be his retirement home in Antigua, and which he would permit the Defendant to live in it under certain conditions, to include the master bedroom being reserved for his use and the Defendant not bringing her male companion(s) to live in the house. He claims too that he asked the Defendant to identify a suitable property for purchase by him and that when she had done so he visited the property with her and Mr. James. He claimed that he was informed of the value of the property by Mr. James, that he was satisfied with the property and went with the Defendant to the Bank of Nova Scotia (where he had substantial savings) and placed her name on his account there to enable her to withdraw monies to purchase the property. He claimed (and she admitted) that he instructed her to withdraw money from his account only for the purchase of the property. The Claimant's evidence then proceeds to its destination with his claim that the property was to be purchased in the name of the Defendant only, as his agent, because he learnt from Mr. James that he could not own property in Antigua without being the holder of a non-citizen's land holding licence. Despite this though, on 19th December 2006, he signed a land transfer which expressly stated that the property was being acquired by the Claimant and him as joint tenants. The Claimant's evidence continues unsteadily to its destination with a claim not made in his original demand letter to the Defendant from Attorney Dexter Wason, that the provision of the funds to the

Defendant to purchase the property and the placement of his name on the land transfer, along with the name of the Defendant, were procured by the Defendant by a fraud perpetrated against him by her. The Claimant's evidence then arrives at his destination with a claim that he is the sole owner and is solely entitled to the beneficial interest in the property and that the names presently on the register should be deleted and replaced by that of his nominee.

[24] The starting point from which the Defendant's evidence proceeds is a claim that, in conversation with the Claimant in the first quarter of 2006, the Claimant expressed dissatisfaction with her living arrangements and informed her that he could assist her in purchasing a 'home' (without going to the bank) and that he would give her the money to purchase the 'home' which he would use when he came to visit Antigua.

[25] The Defendant's evidence encountered a snag on the journey when one recalls her evidence under cross examination to the effect that 4 years before the conversation in the first quarter of 2006, the Claimant had told her that he would help her acquire a home.

[26] The Defendant's evidence proceeds from there with the Claimant and her making arrangements to go about the purchase; her speaking to Mr. James about a property at Swetes and he telling her its value; her relaying this information to the Claimant; his making arrangements for her to access the money at Scotia Bank so that she could bid on the property at auction; he telling her that he was making a gift to her; he expressing an intention to visit Antigua and telling her that he would stay in the house whenever he visited; his not returning to Antigua until after the auction sale; her attending the auction on 21st July 2006, inspecting the house with Mr. James, winning the bid and paying a deposit on the purchase price; the Claimant coming to Antigua to see the house and him speaking to Mr. James only after the deposit was made and the contract signed.

[27] The Defendant's evidence encountered another snag on its journey in that the Defendant conceded under cross examination that, prior to the purchase of the property, the Claimant placed her name on his account so that she could pay for the property and told her that he would return to St. Thomas to transfer more funds to Antigua so that she could complete the purchase of the property for \$275,000 and that he did so. The only way this evidence could make sense is if the Claimant was in Antigua at the time of the Defendant becoming aware of the value of the property, which would then have enabled him to view the property before its purchase and would therefore make untrue the Defendant's evidence of the Claimant not being in Antigua to be able to view the property prior to its purchase. The evidence also shows that the Claimant attended at the Bank of Nova Scotia in Antigua on 7th July 2006 and signed the authorization for the Defendant's name to be added to his account there and that the auction took place two weeks afterwards, so it is likely that he was available to view the property before the auction.

[28] The Defendant's evidence then continues on the route of the house being purchased without furniture and the Claimant agreeing for her to withdraw money from his account to buy furniture, on the basis of which agreement she proceeded to withdraw the funds and to buy furniture for the house at Courts and she produced receipts to verify the purchase.

[29] The Defendant's evidence encountered another snag here resulting from the fact that the Claimant said that he was the one who went to Courts (accompanied by the Defendant) to purchase the furniture, and the receipts show that the furniture was purchased on 24th November 2006, while the land transfer shows that the Claimant signed it on 19th December 2006, again placing the Claimant

in Antigua on a date proximate to the date on which he claimed to have been present, in this case, the date when the receipts show that the furniture was purchased at Courts.

[30] The Defendant's evidence nears its destination with the Claimant's visit to the office of the lawyers executing the land transfer, whereupon he insisted that a new land transfer be prepared in both his name and the Defendant's name when the transfer had already been prepared in her name only, and that a new transfer was then prepared in both their names, which the Claimant signed.

[31] Here the Defendant's evidence encountered a major road block, the Defendant having given evidence previously of Ms. Henry at the lawyers' office having told her that if the transfer was to be done in her name and the Claimant's name then it had to be sent to St. Thomas for the Claimant to sign; her calling the Claimant to inform him of this; and he telling her to go ahead and sign and that he would probably come to Antigua to sign afterwards.

[32] The destination that the Defendant's evidence eventually reached of the Defendant being solely entitled to the legal and beneficial interest in the property on the basis of an unconditional gift of the funds to her by the Claimant, including the deposit on the purchase price, the balance of the purchase price, the cost of furnishing and refurbishing the house, and the fees and costs for the transfer of title, was reached with extreme difficulty and with deviations and diversions, including her sworn statement in her affidavit in response to the fixed date claim filed on her behalf on 24th July 2009 that "it was always the intention of the Claimant that I should benefit from the purchase of the home as a co-owner."

[33] In the end, the Court cannot proclaim that it is satisfied on a preponderance of the evidence that the property was purchased by the Defendant as agent for or upon trust for the Claimant, which would in any event constitute an illegality under **the Non-citizens Land Holding Regulation Act**, Cap. 293 of the Laws of Antigua and Barbuda Revised Edition 1992, nor is the Court satisfied that the Claimant had proved fraud against him by the Defendant. The Court cannot however proclaim that it is satisfied on a preponderance of the evidence or by any standard of proof whatsoever that the Defendant is or was intended to be solely entitled to the property funded in its entirety by the Claimant, to include the bed on which the Defendant apparently sleeps with her male companion(s), which the Claimant vehemently objects to, apparently in the master bedroom, which the Claimant insists was intended to be his room. If that was the Claimant's intention then he would not have insisted, as the Defendant alleged that he did, that his name be included on the land transfer, nor would there have been any cause for Ms. Henry to have to say to the Defendant, before the Claimant's alleged insistence of his name being included on the land transfer, that if the property had to be in the joint names of the parties that the land transfer would have to be sent to St. Thomas for execution by the Claimant, neither would the Defendant have had to call the Claimant in St. Thomas to ascertain how then he wished the land transfer to be done.

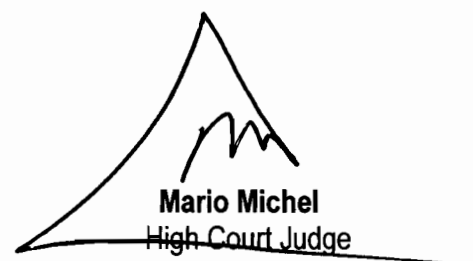
[34] The Court considers that since the Claimant cannot hold the property as the owner thereof, whether solely or jointly with any other person or persons, having regard to his status as an unlicensed alien, the property will have to be conveyed to a person or persons capable of holding it as owner, which can only be the Defendant if she purchases the Claimant's entitlement.

[35] On the issue of the sum of \$19,296.99 deducted from the Claimant's bank account by the Defendant allegedly for the refurbishing and furnishing of the house, the Court is not convinced that

the Claimant ever authorized the Defendant to withdraw this money from his account and so the money is to be repaid to the Claimant by the Defendant, with interest thereon at the rate of 5% per annum from the date of its withdrawal from the Claimant's bank account to the date of its repayment to the Claimant. Since, however, there is no definitive date emerging from either the oral or documentary evidence in the case on which date his sum was withdrawn from the Claimant's account, the Court will deem that date to have been 24th November 2006, since it was on this date that the Defendant alleged that she bought furniture for the house using the sum withdrawn from the Claimant's account.

[36] In the circumstances, the Court determines and declares that the Claimant and the Defendant are jointly entitled to the property consisting of a portion of land described in the Land Registry as Registration Section: South East, Block: 56 2184C, Parcel: 8, and that the property be sold at a price to be determined by an independent valuer and the proceeds of sale be divided equally between the parties, but with the sum of \$19,296.99, plus interest at the rate of 5% per annum from 24th November 2006, to be deducted from the Defendant's share of the proceeds and added to the Claimant's share, unless the Defendant shall have paid the aforesaid sum to the Claimant prior to the sale.

[37] Each party to the proceedings shall bear his or her costs.



Mario Michel
High Court Judge