

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

(CIVIL)

A.D. 2010

CLAIM NO. ANUHC⁷V2002/0383

BETWEEN:

BOBB PERSAUD

Claimant

And

WARREN HEADLEY-HALL

Defendant

Appearances:

Mr Hugh Marshall and Mrs Cherissa Roberts Thomas for the Claimant

Mr Loy Weste for the Defendant

2010: February 03

2011: February 04

JUDGMENT

- [1] **THOMAS J:** In a Fixed Date Claim filed on July 11, 2007 the Claimant, Bobb Persaud, claims against the Defendant, Warren Headley-Hall, the following: a declaration as to his beneficial interest in the properties more particularly described as Registration Sections McKinnons, Block 45

1695B and 45 1695B, Parcels 328 and 330; an injunction "to forthwith restrain the Defendants whether by themselves personally or by their agents and or servants from carrying out any further works whatsoever on the properties", and an order that the properties be sold and the proceeds of sale be divided as the Court deems fit.

Affidavit in Support

- [2] In his affidavit in support the Claimant outlines the circumstances in which he became involved with the Defendant in the purchase of property. In this regard he says it was agreed between the Defendant and himself that they would purchase land jointly, construct houses and the houses would be marketed for sale or rental in the United Kingdom upon completion. He says further that the profits were to be divided equally.
- [3] The Claimant contends that under the arrangement the Defendant was to supply the financing for the purchase of land; while the Claimant had the responsibility of negotiating the acquisition of land, holding the lands in his name, financing and supervising the construction, and to manage the rental or sales after the construction was completed.
- [4] At paragraph 7 of his said affidavit in support the Claimant details the agreement he entered into with Andre Alexander of Cedar Valley with respect to the purchase of two parcels 328 and 330 situate at McKinnons. He also details the manner in which money was transferred to him by the Defendant and the ultimate transfer of the said two parcels.
- [5] At paragraph 11 of the said affidavit the Claimant contends that after the purchase of the property, the Defendant wanted to change the original business arrangement so as to build one building and the land being divided between them as follows: (a) Parcel 328 to the Defendant; (b) 0.25 acres of parcel 330 to the Claimant; and (c) the remainder of parcel 330 to the balance of parcel 330 to the Defendant.
- [6] At paragraphs 12 to 16 of the said affidavit in support the Claimant describes the events that took place on the said lands after the Defendant took up residence in Antigua in or about August 2003. These events concern mainly construction carried out by the Defendant which was substantially different from the drawings approved by DCA.

- [7] The Claimant further contends that as a result of these events the relationship with the Defendant broke down and the Defendant has not subdivided nor caused the subdivisions of the properties as agreed.

Affidavit in Answer

- [8] In his Affidavit in Answer filed on October 17, 2007 the Defendant denies the existence of any arrangement with the Claimant for the purchase of land jointly. He contends that it is his intention to purchase land in Antigua for himself and his family for the purpose of relocating in Antigua.
- [9] The circumstances of the purchase of parcels 328 and 330 are given by the Defendant at paragraphs 7 to 14 of his said Affidavit. The Defendant also contends that all the monies used to acquire the said parcels 328 and 330 were supplied by him. The money not only covered the sale price but also stamp duty, legal costs, architectural costs, surveyor's cost, electrical costs and water costs.
- [10] It is the Defendant's contention that the only agreement he had with the Claimant was to sell him a portion of parcel 330, being 30 feet by 100 feet at the rate of \$4.50 per square foot. He contends further that the Claimant has not taken any positive steps towards the completion of the proposed purchase and so far has only paid ten thousand dollars.
- [11] At paragraphs 30 and 31 of his said Affidavit in Answer the Defendant deposes as follows:

"30. That as to paragraph 20 of the Claimant's affidavit in support I pray that in light of the aforementioned this Honourable Court denies the Claimant's application form an order determining the extent of any interest in the said Parcels 328 and 330 and an Order that the said parcels of land be sold and the proceeds of sale be divided according to the interest determined. Instead, I pray that this Honourable Court grants an Order declaring that I am the rightful owner of the parcels of land more particularly recorded and registered in the Land Registry as Registration Section: McKinnons, Block: 451695B, Parcels 328 and 330 and requiring the Claimant to transfer the said Parcels 328 and 330 to me. Further I pray that the Claimant pays my legal costs for the proceedings herein.

31. That as to paragraph 21 of the Claimant's affidavit in support, I also pray that in light of the aforementioned, this Honourable Court denies the Claimant's application for an injunction preventing me from carrying out any further work on the said Parcels 328 and 330 pending the determination of this matter."

- [12] In a Supplemental Affidavit in Answer the Defendant deposes to this affidavit for the sole purpose of exhibiting an agreement between the Claimant and Andre Alexander with respect to the sale and purchase of property at a price of one hundred and twenty eight thousand, six hundred and seventy four dollars. The affidavit deposes further that he was a witness to the said document and was required to pay the said Andre Alexander the sum of twenty-five thousand dollars in addition to the sale price.

Affidavit in Response

- [13] On 7th December, 2007 the Claimant filed an Affidavit in Response in which he restated his case that there was a certain agreement for a joint venture to buy land and build houses for purposes of real estate development.
- [14] As to the sale agreement exhibited by the Defendant, the Claimant deposes that "even to date and to my recollection I have not sign neither a sale agreement nor a transfer in relation to the subject lands."
- [15] In reference to paragraphs 15 and 25 of the Defendant's Affidavit in Answer, which concern the transfer of money, the Claimant says that the sums particularized were used to acquire the land, but they were not all transferred to him.
- [16] With respect to the Defendants Supplemental Affidavit, the Claimant contends that he "need only respond to say that the document speaks for itself and evidence of the sale transaction as I recollect."

Bobb Persaud

- [17] In cross examination Bobb Persaud maintained that there was an agreement with the Defendant to buy land, construct houses and sell or rent them. He testified further that Warren Headley-Hall wanted to amend the agreement to build only one house and that he agreed to such an amendment. And further that the Defendant was supposed to sell him ¼ acre of parcel 330, but this was not in the agreement.

- [18] In reference to a document at page 54 of the Trial Bundle, the Claimant acknowledged that it was a letter from the Defendant which does not correspond with his evidence in Court. He went on to say that there is a difference between 30ft and ¼ acre and that he disagreed with the content of the said letter, but could not recall if he responded to the said letter of 20th March, 2003.
- [19] On the matter of the sale of the ¼ acre of parcel 330, the Claimant denied the suggestion by the learned counsel, Mr Loy Weste, that there was no such agreement.
- [20] As to paragraph 6 of his Affidavit in Response the Claimant agreed that he held parcels 328 and 330 in trust for the Defendant.
- [21] In relation to paragraph 15 of the Defendant's Affidavit in Answer, which relates to the transfer of money, the Claimant testified that the monies were wired to him and were applied towards the acquisition of the two parcels. He went on to say that he did not put any money towards the original purchase price nor towards the stamp duty.
- [22] In re-examination Mr Bobb Persaud explained that the documents appearing at pages 38 and 39 of the Trial Bundle have nothing to do with parcels 328 and 330.

Warren Headley Hall

- [23] In cross-examination by Mr Hugh Marshall, learned counsel for the Claimant, Warren Headley Hall testified that the dispute relates to parcels 328 and 330 McKinnons.
- [24] Regarding 12 of his Affidavit in Response the Defendant testified that he placed the parcels in the Claimant's name because he did not have a licence and was not seeking to avoid the law.
- [25] With respect to the Claimant, it is the Defendant's testimony that he has known him for over 30 years, but the relationship was never close until Antigua and Barbuda. The Defendant testified further that the relationship was such that he could extend his offices to him, but it was not such that he could go into business with him in a joint enterprise.
- [26] Continuing his evidence, the Defendant testified that he visited the Claimant in 2002 with his wife and fell in love with Antigua and wanted to settle there.

[27] As far as the matter of the transfer of \$100,000.00 to Barclays Bank, Mr Warren Headley-Hall said that the money was for the purpose of purchasing the property, and was credited to Mr Armstrong's company account at the said Bank and denied that he was misleading the Court.

[28] On the matter of architectural designs of the houses, it was put to the Defendant that he had agreed to such designs, but this was denied. He also denied having seen the invoice for designs, at page 80 of the Trial Bundle, prior to the trial.

[29] There was no re-examination.

ISSUES

[30] The following are the issues to be determined by the Court:

1. Whether there was in fact a Joint Venture Agreement between the Claimant and the Defendant to acquire property in Antigua, construct houses and sell or rent the houses.
2. Whether the Claimant holds parcels 328 and 330 as trustee for the Defendant as sole beneficial owner in law.
3. Whether the Defendant as beneficial owner is entitled in law to have parcels 328 and 330 registered in his sole name.

ISSUE NO 1

Whether there was in fact a Joint Venture Agreement between the Claimant

[31] In his Affidavit in Support the Claimant contends that there was an agreement with the Defendant to jointly purchase lands, construct houses and he, the Claimant would market the houses for sale or rental. It was further contended that the Defendant was to supply the financing for the purchase of the land while the Claimant was responsible for negotiating the purchase of the lands, holding the lands in his name and financing and supervising the construction. Added to this was the matter of the management of the rental and sale of the houses.

[32] The Defendant flatly denies any such arrangement in his Affidavit in Answer. He described the Claimant's contention as being "wholly untrue".

[33] It is submitted on behalf of the Defendant that the Claimant has not presented any cogent evidence to suggest that there was an agreement as claimed. It is further submitted that the written correspondence between the parties up to two months before the land was registered in the Claimant's name is significant in that there is no mention of the joint venture between the parties. In this regard the written correspondence between the parties dated 20th March, 2003 indicates that the Defendant was about to inject EC\$300,000 into the building of a single house on one of the parcels of land. Further still, it is submitted that the Claimant in his response on the same day does not mention the joint venture and/or to correct the Defendant's apparent misunderstanding of the alleged business arrangement.

Analysis and conclusion

[34] The Court considers that the above-mentioned correspondence between the Defendant and the Claimant is critical to the determination of this issue. By way of preliminary observation the Court notes that in the correspondence the Defendant speaks of "saving me" rather than saving us and secondly the reference is to "build the house".

[35] Further, in the context of the contention of an agreement the following extract from the said correspondence directly contradicts the notion of a joint venture. "Terrence is aware that you will be purchasing 30ft of the land directly behind your property."

Conclusion

[36] The Court agrees with the submission of Mr Weste in saying that the Claimant has not adduced any evidence to warrant the finding of an agreement between the two parties.

[37] The Court notes further that in cross-examination the Claimant testified that Warren Headley-Hall wanted to amend the agreement to build a house to which he agreed. He also testified that the proposed sale of a portion of parcel 330 was not in the agreement.

[38] This evidence which the Court rejects points clearly to the difficulty which the Claimant faced in the correspondence dated 20th March, 2003 which, as noted above, speaks to the Defendant's plans to secure an alien landholding licence and building his single home as distinct from houses for sale or rent.

[39] It is therefore the determination of the Court that no agreement exists between the Claimant and the Defendant to acquire land in Antigua and build homes for sale or rent.

ISSUE NO 2

Whether the Claimant holds parcels 328 and 330 as trustee for the Defendant

[40] It is common ground that by a Transfer of Land dated 4th February 2003 Parcels of land identified on the Land Register as Registration Section: Mc Kinnons, Block 45 1695B, Parcels 328 and 330, were transferred to the Claimant, Bobb Persaud of McKinnons. This is the sequel to an agreement dated 4th November, 2002 between Andre Alexander, the representative of Pentagon Ltd, the Vendor and Bobb Persaud of McKinnons, the Purchaser, for the sale and purchase of the said parcels 328 and 330.

[41] The issue must be answered by identifying and analyzing the process by which this event materialized.

Submissions on behalf of the Claimant

[42] The following submissions were advanced on behalf of the Claimant at paragraphs 11-14 of the written submissions.

"11. The Claimant has maintained that he acted with the understanding of a joint business venture and no other. He engaged Architect Steve Graham to produce a design for the development of the properties and expended the sum of \$10,000.00 as a deposit for his services. This was but one of the initial steps towards pursuing the agreed joint venture which was subsequently aborted by the Defendant. In addition to the sums expended for architectural services the Claimant invested his time and energy into developing the concept of the project. Upon the determination of the joint venture the parties orally agreed that the Claimant would retain one quarter acre of the properties and the Defendant one half acre. The proportion of the Claimant's beneficial

interest in the subject property may be inferred taking into consideration the circumstances as set out above.

12. In the circumstances it is submitted that the Claimant's evidence should be preferred and the Claimant's claim upheld for an Order that he is entitled to one third of the subject properties (one quarter acre of parcel 330) with the remaining two third to the Defendant, being the remaining one quarter acre of the parcel 330 and the entire parcel 328.
13. Alternatively, should the Court favour the Defendant's evidence to that of the Claimant it is respectfully submitted that such an arrangement would have been an infringement of the Non-Citizens Landholding Licence Regulations Act and therefore illegal and unenforceable as it does not afford the Defendant an independent alternative intention behind the creation of the trust to that of the illegal purpose of the evasion of the Non Citizen Land Holding Licence Act: **St John Shipping Corporation v Joseph Rank Ltd {1956} 3 All ER 683** applied in **Universal Caribbean Establishment v Egg-Hill Holding Co. Ltd. [1992] 41 WIR 124.**
14. On this basis the defence of the Defendant must fail and the properties remain vested in the Claimant in absolute title as the trust, would have been created for an illegal purpose and therefore cannot avoid the consequences of illegality."

Submissions on behalf of the Defendant

- [43] The submissions on behalf of the Defendant may be summarized thus: 1. Halsbury's Laws states that a resulting trust may arise solely by operation of law, as where upon a purchase of land, one person provides the purchase money and the conveyance is taken in the name of another. 2. At paragraph 6 of his Affidavit in Response, the Claimant does not dispute that there is an intention to create a trust in favour of the Defendant. 3. At paragraph 20 of his Affidavit in Support the Claimant states that the Defendant hold a beneficial interest in parcels 328 and 330. 4. The Defendant submits that he is the sole beneficial owner of the entire parcels of land having paid all the requisite monies for the acquisition of the property. 5. The veracity [of the payments by the Defendant] is evidenced in the Claimant's letter dated 25th October, 2002 where the Claimant states by facsimile communication: 'Andre has instructed me to pay the bank EC\$100,000.00 and organize for the balance to be paid within a week... The estimated cost is ...EC\$58,766.00. I would suggest that you transfer a total of EC\$69,000.00 so as to cater for any other miscellaneous expenses that may arise. 6. It is quite clear that the Claimant and the Defendant intended for the Claimant to acquire the property as trustee on behalf of the Defendant. 7. According to De la

Bastide J in **Neptune v Taitt**, in law a purchaser who provides money to acquire property is entitled to an equitable interest in the property to the extent of the purchase money provided.

Analysis and conclusion

[44] In ELEMENTS OF LAND LAW the following learning is to be found:

"A resulting trust is created by the payment or part payment of the purchase price. By operation of law the resulting trust arises in favour of the party who has provided money for that purpose. The time at which the beneficial interest 'crystalises under the resulting trust is the date of the acquisition. However the conduct of the parties subsequent to the acquisition date may be used as a basis for retrospective inference as to the parties actual intention on the date of the acquisition."

[45] There can be no speculation as to who supplied all of the purchase money as the Claimant admitted that the Defendant did. And it will be recalled that the transfers to the Claimant are dated 4th February, 2003.

[46] Using the principles enunciated by Gray as to events subsequent to the acquisition the following is helpful:

1. The Defendant's correspondence to the Claimant dated 20th March, 2003 in which he stated inter alia that "Terrence is aware that you will be purchasing 30ft of the land directly behind your property, and I will honour this agreement. If you feel you no longer want to buy it then I may have to look at cutting costs somewhere. I am hoping that I will be able to start building the foundation before the hurricane season starts."
2. The Defendant took up residence in Antigua and Barbuda around October, 2003.
3. In his Affidavit in Response the Claimant deposes as follows:

"7... However, after the Defendant migrated to Antigua and began building a dwelling house instead of the proposed project, it became obvious that we would have to part ways. It was therefore agreed that I would purchase a portion of the lands, in particular 0.25 acre of Parcel 330, with consideration given for my contributions and efforts. However, I never communicated this to Terrance Small or any person other than my wife and subsequently my Attorneys.

8. That I had initially requested Parcel 328, which is immediately adjacent to my house and is 0.25 acre but the Defendant indicated he preferred to subdivide parcel 330 so as not to build his house at the back of mine.
9. That I had advanced the sum of \$10,500.00 to the Architect, Steve Graham, who commenced working on the drawings for the project which were to have been taken into consideration and the balance I was to have paid upon the completion of the sub-division. However, the Defendant has not to date subdivided the said Parcel as agreed. I exhibit hereto a copy of the receipt from Steve Graham as "BP1".

[47] The essence of these events is that the Claimant came to accept that the parcels were purchased by him on behalf of the Defendant. Indeed, in the end the Claimant indicates his desire and preferences in purchasing a portion of the said parcels from the Defendant.

[48] As far as the matter of the money advanced to an architect is concerned, the evidence is that this relates to the agreement to build houses for sale or rent as claimed by the Claimant. But the Defendant denied any knowledge of or participation in any such agreement which the Court accepts as the truth. Indeed the Defendant evidence is that the only plan he knew about was that which relates to his family home. In short the payment to the architect had nothing to do with the Defendant.

[49] It is therefore the determination of the Court that the Claimant holds parcels 328 and 330 aforesaid as trustee for the Defendant by virtue of the payment of the full purchase price and the conduct of both the Claimant and the Defendant subsequent to the transfer of the two parcels to the Claimant.

[50] The Court determines further that the Defendant's failure to comply with the Non-Citizen Land Holding Licence Act does not prohibit the Court from declaring that the parcels are held in trust by the Claimant for the Defendant.¹

¹ See: Young v. Bess [1995] 46 WIR 165; Murphy v. Quigg [1996] 54 WIR 162; English Haven Limited v The Registrar of Lands et al ANUHC 2007/0277.

ISSUE NO. 3

Whether the Defendant as beneficial owner is entitled in law to have parcels 328 and 330 registered in his sole name as the proprietor.

- [51] The answer to this issue is interwoven with that in relation to the last issue. The critical fact being that the Court determined that the Claimant holds parcels 328 and 330 in trust for the Defendant for the reasons given.
- [52] The Claimant dwells on the issue of an illegality pertaining to the Non-Citizen Land Holding Licence Act; but the authorities are quite clear on the point. The point being that the beneficial interest of the Defendant is enforceable notwithstanding any illegality surrounding the trust. One of the relevant authorities on the point is **Murphy v Quigg and Another**² in which Chief Justice Floissac enunciated the following:

“In any case, the fact that a contract, trust or other transaction is illegal in the sense that it is prohibited by statute or at common law does not necessarily invalidate every claim or title which is contaminated by the illegal transaction. A plaintiff’s claim is enforceable if it is based on a legal or equitable title or on facts which generate such a title and if the plaintiff can sustain the claim solely by reference to that title or to those facts without the need to disclose, invoke or rely on illegality.”

- [53] The determination of the Court is that the Defendant as beneficial owner is entitled in law to have parcels 328 and 330 registered in his sole name.

Apology

It is common ground that after this judgment and others had been reserved a number of other matters which touch and concern governance and/or the national interest of Antigua and Barbuda and in the Commonwealth of Dominica arose which had to be presided over by this judge and judgments rendered and as such these were given priority. Further, this judge was transferred to another jurisdiction, where a single judge presides, with effect

² (1996) 54 WIR 162 at page 170 - 171

from 1st September 2010 with the foreseeable consequences. This accounts for the delay. Despite the foregoing a deep and sincere apology is tendered for the delay.

[54] **IT IS HEREBY ORDERED AND DECLARED** as follows:

1. There was no agreement between the Claimant and the Defendant to acquire land in Antigua to construct houses and sell or rent such houses.
2. The Claimant holds parcels 328 and 330 aforesaid in trust for the Defendant by virtue of the payment of the full purchase price and the conduct of both the Claimant and the Defendant subsequent to the transfer of the said parcels to the Claimant.
3. The Defendant is entitled to have parcels 328 and 330 registered in his sole name as proprietor thereof.
4. The Claimant must pay the Defendant costs in accordance with Part 65.5 (2) (b) (iii).



Errol L. Thomas
High Court Judge