

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
SUB REGISTRY, SAN FERNANDO

H.C.A. NO.S-1272 of 2000

BETWEEN

VIREN ANNAMUNTHODO

Plaintiff

AND

NAGENDRA ANNAMUNTHODO

Defendant

Before the Honourable Mr. Justice David Alexander (Ag.)

Appearances:

Mr. Harrikissoon instructed by Mr. Walesby for the Plaintiff.

Mr. Cherry instructed by Mr. R. Bissessar for the Defendant.

JUDGMENT

1. The Plaintiff Viren Annamunthodo and the Defendant, Nagendra Annamunthodo are brothers. Their father, Walter Annamunthodo (the deceased) died on the 9th October, 1992.
2. By deed dated 26th November, 1975, and registered as No. 1000 of 1976, the deceased was assigned the unexpired residue of a lease of State lands with the building thereon situate at and known as No. 13 Pleasantville Avenue, San Fernando (the subject premises). This lease expired on the 4th February, 1983,

- but the deceased remained in possession of the subject premises until the date of his death without the lease being renewed.
3. Since sometime in 1976, the deceased together with the Plaintiff and the Defendant operated a grocery and bar on the subject premises.
 4. On the 21st August, 1979, a company called Unique Services (Supermarket and Hardware) Limited (the company) was incorporated by the deceased. The Plaintiff and the Defendant from September, 1979, operated a supermarket under the company's name on the subject premises. Also on the 1st September, 1979, the deceased granted the company a lease of the subject premises for five years.
 5. On the 15th September, 1985, the Plaintiff stopped work in the supermarket which was then thereafter solely managed by the Defendant.
 6. The deceased appointed the Plaintiff the sole executor and trustee of his will dated 14th November, 1990. By this said Will, the deceased devised the subject premises to "Unique Services Limited" a company which he was in the process of incorporating, but failed to do so by the date of his death. This gift therefore lapsed and formed part of the residuary estate of the deceased which he devised to his wife Bernadette Annamunthodo and the Plaintiff. The Plaintiff obtained a grant of probate of the said Will on the 15th January, 1993.
 7. On the 16th September, 1992, in High Court Action No. S-1597 of 1992, between the Defendant and his wife Dawn Annamunthodo against the deceased, the Court granted an injunction restraining the deceased inter alia from entering and or remaining on the said premises and ordered the deceased to remove one padlock from the steel door, the only entrance to the supermarket situated on the subject premises.
 8. This injunction was discharged by the Court on the 23rd September, 1992.

9. By letter dated 25th January, 1993, the said Bernadette Annamunthodo informed both the sub-intendent of State lands and Mr. Reynold Beharrylal, the Defendant's Attorney at Law that she had relinquished all her rights, title, estate and interest in the subject premises.
10. Subsequent to the death of the deceased, the Defendant paid the monthly sum of \$900.00 to the Plaintiff as rent for the subject premises. The last payment of such rent by the Defendant to the Plaintiff was on the 12th February, 1998, as alleged by the Plaintiff.
11. On or about the 14th August, 1995, the company was struck off the Register of Companies. The Defendant has continued occupying the subject premises where he has started several business ventures, the last being the welding, straightening and painting of vehicles.
12. The Defendant has failed to vacate the subject premises despite a number of requests to do so by the Plaintiff.
13. The Plaintiff now claims against the Defendant:-
 - (a) A declaration that he has the legal right to obtain possession of the subject premises as executor of the last will and testament of Walter Annamunthodo.
 - (b) A declaration that the Defendant was the lawful tenant of the Plaintiff for the period commencing the 10th October, 1992 to the 28th February, 1998.
 - (c) An order that the Defendant do deliver up vacant possession of the subject premises to the Plaintiff.
 - (d) Mesne profits for the period commencing the 1st March, 1998, until the Defendant delivers vacant possession of the subject premises totalling \$18,065.60 at the date of commencement of the proceedings herein and continuing at the daily rate of \$80.65.

(e) Arrears on the WASA bill totalling \$61,927.00.

14. The Defendant counterclaims against the Plaintiff:-
1. Rescission of the agreement made by the Defendant in or about March, 1993 to pay rent to the Plaintiff for the said property on the basis of fraud and/or fraudulent misrepresentation.
 2. Specific performance of the agreement dated 12th June, 1992, whereby the deceased agreed to sell the subject premises to the Defendant for the sum of \$50,000.00
 - 2A. Alternatively to (1) an Order that the said agreement is rescinded for mistake.
 3. An account of such or any monies received by the Plaintiff being rental for the said property whether in his personal capacity and/or his capacity as executor of the estate of the deceased.
 4. An order that the sum of \$56,700.00 or such sum as has been paid by the Defendant to the Plaintiff being rental for the said property be repaid to the Plaintiff together with all interest earned at a commercial rate from the date of payment to the date of repayment.
 5. A declaration that the Defendant is discharged from making (further) rental payments to the Plaintiff and/or the Estate of the deceased and/or anyone else in respect of the said property.
 6. Without prejudice to (5), a declaration that the said agreement is null and void and of no legal effect or purport.
15. Mr. Anthony Cherry Counsel for the Defendant in his written submissions reminded the Court that at the commencement of the trial, the parties crystallized the issue for determination as being whether the Plaintiff is legally entitled to possession of the subject premises.
16. The Defendant's case in short is that by agreement in writing dated 12th June, 1992, the deceased agreed to sell the subject premises to the Defendant for the

sum of \$50,000.00 and in part performance thereof and in consideration of the said agreement the Defendant caused the sum of \$10,000.00 to be paid to the deceased (by Manager's cheque No. 10215108 dated 25th September, 1992) on account of the debt which said sum was received and accepted by the deceased.

17. Mr. Kemraj Harrikissoon for the Plaintiff states in his written submissions that it is undisputed by the Defendant that if he is unable to prove the validity of the alleged agreement dated the 12th June, 1992 and sufficient acts of part performance then his counterclaim will fail and the Plaintiff will be entitled to possession of the subject premises. He also reminded the Court, that it was further agreed between the parties before the Court that the other reliefs sought by the Plaintiff in his claim and by the defendant in his counterclaim would abide by the result of the determination of the substantive issue.
18. I will now reproduce the document which contains the alleged agreement dated 12th June, 1992, which is being relied upon by the Defendant:

12th June 1992.

Walter Annamunthodo #1 Circular St. Ste Madeline

I, Walter Annamunthodo residing at #11 Circular St, Ste Madeleine, do hereby declare:

1. I am the sole owner of the building on #13 Pleasantville Avenue San Fernando, having purchased it from Shaffie and Coan Mohammed by deed No. 1000 of 1976, dated 26th November, 1975.
2. The land of #13 Pleasantville Avenue is leased to me by the National Housing Authority.
3. I have authorized by son Nagen Annamunthodo to operate a supermarket in the major portion of the building.
4. My other son Dhiren Annamunthodo is permitted by me to use a small portion of the building as a Private Gym, which is separated from the rest of the building by a concrete wall.

5. In 1985, the manager of the grocery Viren Annamunthodo left to be self-employed.
6. Unique Printers and Publishers was permitted to store stationery paper and other equipment at the rear part of the supermarket warehouse.
7. Walter Annamunthodo agreed to pay (a) all expenses for the maintenance of the building at 13 Pleasantville Avenue (b) rates and taxes (c) Water and Sewerage (d) fire insurance on the building.
8. Nagen Annamunthodo agreed to pay all insurance on the stocks, furniture, fixtures and equipment.
9. Nagen Annamunthodo and his family to be allowed to live at #15 Pleasantville Avenue, until completion of his house at #11 Pleasantville Avenue, for this privilege he would pay \$500.00 per month.
10. Nagen Annamunthodo would be allowed to continue operating the supermarket at #13 Pleasantville Avenue, for this privilege he would pay me \$1,200.00 per month.
11. Nagen Annamunthodo agrees to pay all outstanding bills for goods and services carried on by him at #13 Pleasantville Avenue.
12. I Walter Annamunthodo on behalf of Dhiren Annamunthodo agree to pay \$150.00 per month for electrical power used by the Body Power Gym.
13. Viren Annamunthodo, Walter and Loken Annamunthodo have transferred all our shares of the business to Nagen Annamunthodo to continue operating the supermarket.
14. I Walter Annamunthodo agree to sell the property at #13 Pleasantville Avenue to Nagen Annamunthodo for \$50,000.00.
15. Nagen Annamunthodo agrees to vacate the residence at #13 Pleasantville Avenue by April, 1993.
16. Nagen Annamunthodo agrees to start making down payments on property at #13 Pleasantville Avenue (Lot No. 84) until final payment is received.

Signature

19. Mr. Harrikissoon is contending that the Defendant has failed to produce cogent evidence on a balance of probabilities to prove the existence of a genuine contract for the sale of the premises situate at No. 13 Pleasantville Avenue, the agreement relied upon by the Defendant is fabricated and should not be accepted by the Court.

20. He further contends, that if the Court were to accept this document for the truth of its contents then the Court must assess whether same is sufficient to provide a contract for the disposition of land – and cites Section 4 of the Conveyancing and Law of Property Ordinance Chapter 27 No. 12 which provides that:-
 4. (1) No action may be brought upon any contract for the sale or other disposition of and or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorized.
 - (2) This section applies to contracts whether made before or after the commencement of this Ordinance and does not affect the law relating to part performance or sales by the Court.

21. I think therefore that the issues for the Court's determination in this action can be stated as follows:-
 1. Whether or not there is an agreement in writing for the sale of the subject premises, if not
 2. whether there is some note or memorandum in writing signed by the deceased of an agreement for the sale of the subject premises, and if not
 3. whether there were sufficient acts of part performance by the Defendant that would excuse compliance with Section 4(1).

22. As to the first issue viz: whether there is an agreement in writing for the sale of the subject premises, I find that there is no such agreement. The document dated 12th June, 1992, in my view is not an agreement. The parties to this agreement are

not named; there are no terms and conditions stated regarding the sale of the subject premises; there is no signature by another party or parties who are to be bound by this agreement. In Stimson -v- Gray [1929] 1 Ch. 629 Maugham J in considering the question whether there was a completed contract stated at page 644: "... if the Court is unable to determine all the material terms of the alleged contract, either by interpretation of the language used, or by holding that the missing details are such as the law will supply, I do not think it is possible to say that there is a binding contract." The Court must be able to say precisely what the parties have agreed, which the Court cannot do in this instance.

23. As to the second issue, whether there is some note or memorandum in writing, I think there is not. According to Chitty on Contracts Vol. 1 29th edition Para 4-022 et seq in a discussion on what the memorandum should contain, the learned authors explain that Section 40 of the Law of Property Act 1925 – which is the equivalent of Section 4 of the Ordinance – does not specify the matters which the memorandum is to contain. These have been left to judicial interpretation and the Courts have laid down the following rules as to the contents of the memorandum. The memorandum must identify the parties and the capacity in which each of them contracts: it must name or describe them and state which is buyer and which is seller. The memorandum must describe the subject matter, but may sufficiently describe it even though the description has to be supplemented by extrinsic evidence. It must state the consideration provided by the purchaser. It must contain a statement of the material terms of the contract. In Hawkins -v- Price [1947] 1 Ch. 645, Evershed J pointed out at page 656, last paragraph:

“As I have indicated, in North -v- Loomes [1919] 1 Ch. 378 as in the present case, the document relied on did not purport to be an agreement and, therefore, might not fairly be expected to have to contain every term to which the parties agreed. Where, however the document is not on the face of it an agreement which would be expected to contain every term, it must contain at least – and, so far, I think, North -v- Loomes raises no

difficulty – every term which is, as has been said, material – every important term – of the contract for sale.”

24. Whether or not the document of the 12th June, 1992, is considered an agreement or a memorandum in writing for the purposes of Section 4(1), it lacks the major requirement of containing the material terms of what was agreed.
25. As to the acts of part performance, the Defendant contends that these acts are:
- (1) the agreement for sale;
 - (2) the payment of \$10,000.00 pursuant to the said agreement;
 - (3) the fact that he was allowed into possession;
 - (4) the fact that he remained in possession both with the consent and acquiescence of the deceased and even after the death of the deceased;
 - (5) the fact that he undertook substantial repairs and renovations to the said property; and
 - (6) he made contributions which were accepted as rates and taxes.

Only No. 2 above in my view is relevant to the question of part performance. No.1, the agreement for sale has already been dealt with and does not qualify as an act of part performance. Nos. 3 and 4 - the fact that he was allowed in possession and remained there has to be taken in its proper context. The Defendant was in possession of the subject premises by virtue of his employment with the company which operated a supermarket on the subject premises since September, 1979, long before any question of an alleged agreement for sale arose. The Defendant then became the Plaintiff's tenant and failed to vacate the subject premises when requested to do so by the Plaintiff. This in my view also does not qualify as part performance. No. 5 – the fact that he undertook substantial repairs and renovations to the said property does not arise, since there is no evidence of this. No. 6 – he made contributions which were accepted as taxes also does not arise, since at the time these alleged contributions were made, they were accepted by the Plaintiff as rent.

26. I am in total agreement with Counsel for the Plaintiff on his submissions with regard to the sum of \$10,000.00 being paid as a deposit towards the purchase of the subject premises. Counsel contended that the date of the cheque for the said sum coincided with a series of written agreements that were signed in the wake of the injunctive proceedings. He submitted that this sum was not paid pursuant to the alleged agreement but possibly was paid for other reasons, or alternatively, was the payment of legal costs arising from the injunctive proceedings between the Defendant and the deceased.
27. I also agree that it is very strange that no mention was made by the Defendant of the alleged agreement for sale and the alleged payment pursuant thereto at no time before this action and only until he amended his defence and counterclaim herein.
28. The acts of part performance relied on must be such as to be referable to some contract, and may be referred to the alleged one; they must prove the existence of some contract and be consistent with the contract alleged: Wakeham -v- Mackenzie [1968] 1 W.L.R. 1179 at 1181 C. In the instant case, there is no evidence or even an allegation of any contract other than that relied upon by the Defendant dated 12 June, 1992. In such a case, there is no contract to which the suggested act of part performance is referable. The Defendant is therefore found wanting on this issue.
29. Finally, I will make passing mention of the evidence of Glenn Parmassar, document examiner who was a witness for the Plaintiff. He was hired by the Plaintiff to examine the two pages of the alleged agreement of the 12th June, 1992 to determine whether or not there were any differences in the typewriting produced on page 1 and page 2 thereof and concluded that the questioned typewriting produced on those pages are not of common origin. In my view, Mr. Parmassar's evidence was of no assistance in the determination of the issues of this case, not because of any incompetence or fault on his part, but because the

origin of the typewriting on the document in question does not affect its authenticity.

30. For the reasons above-stated, I give judgment for the Plaintiff on his claim save and except the claim for arrears on the WASA bill as there is no evidence that the Defendant was responsible for this payment. The Defendant is to pay the Plaintiff's costs of the action certified fit for advocate Attorney to be taxed in default of agreement. The Defendant's counterclaim is dismissed with costs to be paid to the Plaintiff to be taxed in default of agreement. Stay of execution 28 days.

Dated this 19th day of December, 2008.

David Alexander

Judge (Ag.)