

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
(Port-of-Spain)**

Claim No. CV2013-03877

BETWEEN

MARIE RAMDHANIE

Claimant

AND

DEAN RAMDHANIE

Defendant

BEFORE THE HONOURABLE MADAM JUSTICE DEAN-ARMORER

APPEARANCES:

Mr. Gerard Raphael, attorney-at-law for the Claimant

Ms. Kayode Saunders, Mr. Cedric Neptune, Instructing attorney-at-law for the Defendant

JUDGMENT

Introduction

1. In these proceedings, the Claimant is the mother of the Defendant. She seeks a declaration as to her entitlement to a share in the beneficial interest in the tenancy rights in the subject premises¹. It was not disputed that the Claimant's husband had held tenancy rights in the

¹ All that piece or parcel of land situate in the Ward of Chaguanas in the Island of Trinidad known as House Lot No. 70/30/262 Location Woodford Lodge Area Felicity Section of Caroni (1975) Limited containing by admeasurement on the North side thereof 32.83m on the South side 10.56m and 18.55m on the East side 7.93m and on the West side 11.66m be the same measurement a little more or less and bounded on the North by Private Lands of Lall Mahabir and Dularie Lall on the South partly by lands of Lall Mahabir and Dularie Lall partly by Lot No. 261 and partly by Drain Reserve on the East by Private Lands of Lall Mahabir and Dularie Lall and on the West partly by Henderson Street, partly by Drain Reserve and partly by Lot 261 together with the old wooden house standing thereon.

subject premises that prior to his death, had transferred them to the Defendant, by executing a *House Lot Transfer Application*.

2. In the course of this judgment, I considered the principles which govern the formulation of a common intention to share the beneficial interest in the home. In particular the Court applied the principles in the recent decision of the UK Supreme Court in *Jones v. Kernott*².

Facts

3. The facts in this matter span some fifty-five (55) years. Apart from some isolated discrepancies, they are largely undisputed.
4. The Claimant, Marie Ramdhanie (Marie), is the mother of the Defendant, Dean Ramdhanie (Dean). In 1962, the Claimant was married to Charles Ramdhanie (Charles) who was employed as a labourer at Caroni Ltd. Together they had six children: Judy Bachan, the Defendant, Roger, Oliver, Anne Marissa and Ryan.
5. In 1972, Meena Sooknath, the sister of the late Charles Ramdhanie, transferred her tenancy rights in the subject property to her brother. Later on, in the year 1977, Charles borrowed the sum of eight thousand dollars (\$8,000.00) for the purpose of erecting a dwelling house. It is not disputed that the house that was eventually constructed was a two-storeyed dwelling home and the construction took place over many years.
6. Charles suffered a stroke in the early 1990s. It was the evidence of the Claimant that he was not bed-ridden, but it was accepted that he could not work. Charles died in 1994.
7. Prior to his death, Charles attended the offices of Caroni (1975) Ltd. in Felicity. Charles, who was taken there by the Defendant, signed over his tenancy rights to the Defendant by

² Jones v. Kernott [2012] 1 All ER 1265

executing a House Lot Transfer Application on the 16th June, 1993. The Transfer Application, by which the transfer was effected was exhibited in these proceedings as “*M.R.2*”³. There was no dispute that Charles affixed his thumb print to the Application for Transfer in the presence of witnesses thereby indicating his wish that the subject premises be transferred to the Defendant, Dean Ramdhanie.

8. A dispute arises as to whether Marie was present when Charles affixed his thumb print to the Application for Transfer. The Defendant insists that the Claimant was present. On the other hand, the Claimant, while admitting that she was present at the offices of Caroni Limited, on the day in question and contended that she arrived, after Charles affixed his thumb print, to transfer the Transfer Application Form.
9. There was no documentary evidence to support either the presence or the absence of Marie from the offices of Caroni Ltd., at the relevant time. The Court was therefore presented with a direct conflict of the Claimant’s word against the Defendant’s.
10. In resolving this issue, I was mindful that the issue was raised by the Claimant, in order to contend that the Defendant acted surreptitiously by taking his father, while afflicted with a stroke, to sign over the property. The burden was carried by the Claimant and it may have been open to her to call witnesses to support her contention. Therefore, on this issue of fact, my finding is in favour of the Defendant. I accept that Marie was present, when Charles placed his thumb print on the House Lot Transfer Application Form.
11. After the death of her husband, Marie applied for a grant of Letters of Administration which was later obtained and dated the 17th March, 1995. Marie executed a Bill of Sale transferring the chattel house to herself.

³ See the Witness Statement of the Claimant filed on the 13th May, 2014.

12. Because the Bill of Sale omitted to transfer any interest to the Claimant, Marie later executed of Deed of Assent, transferring the beneficial interest in the chattel house to herself and her children.
13. The issues of fact in this case arise and concern the contribution of the Claimant to the acquisition, construction and maintenance of the subject property.
14. There was no real dispute that the Claimant cooked, cleaned and washed for her family. The Claimant contends however, that she and her husband spent a total of fifteen thousand dollars (\$15,000.00) towards the construction of the family home. The couple raised eight thousand dollars (\$8,000.00) from the loan which had been taken. It was the Claimant's contention that she contributed to the remaining seven thousand dollars (\$7,000.00) by doing odd jobs, as well as by managing the family finances, so that there was savings. It was her evidence that Charles would give his earnings to her, for the triple purpose of running the household, covering household expenses and saving for the construction of their home.
15. The Defendant denied the contention of the Claimant. It was his evidence that he began working at the age of thirteen (13) or fourteen (14) and that he contributed to the construction of the family home.
16. Under cross examination, however, the Defendant found himself unable to contradict this aspect his mother's evidence. He admitted that his mother was hardworking. He also admitted that she sold amchar and other things at the Chaguanas Government School, but was not able to deny that the Claimant sold roti and babysat for his sister.
17. Learned Counsel, Mr. Raphael questioned the Defendant about the arrangement between his parents, whereby his father would give his mother his earnings for the purpose of running the home and saving for the construction of the house.

18. The Defendant's answer under cross examination was, in my view, critical. He replied that he could not answer since he did not know what transpired between his parents. When pressed, the Defendant answered in this way:

“Like I said, that transaction was between both of them and I would not know. I am not privy to that”

19. By this response, the Defendant admitted that there was an agreement between the Claimant and her late husband. The Defendant admitted, as well, that he was not aware of the details of the arrangement, since he was not privy to it. The effect of the Defendant's admitted lack of knowledge, was to leave the Court with the un-contradicted evidence of the Claimant and to entitle the Court to treat it as having been established as a matter of fact.

20. The Claimant contended that she made another significant contribution, following the death of her husband. It was her evidence that her husband had defaulted on mortgage payments and that the Sugar Industry Labour Welfare Committee had threatened to put the house up for sale. It was the Claimant's evidence that she worked at odd jobs and sold Indian delicacies and eventually paid off the debt.

21. The Defendant strongly resisted the suggestion that the property was put up of for sale. It was admitted however, that the mortgage fell into arrears. It was the Defendant's evidence that he gave his mother four hundred dollars (\$400.00) per month towards liquidating the arrears. The Defendant contended that his mother was not working at the time but that the loan was paid off in three (3) years.

22. Under cross examination however, the Defendant presented a different version. He initially stated that he, with Roger and his mother paid off the arrears. When questioned deeply, he stated that he and Roger gave money to their mother, who made the actual payment.

23. Having heard the evidence of the Defendant, it is my view that it is more probable that the Claimant in fact contributed to liquidation of the arrears. It is also probable that the Defendant also contributed and that together, they were able to salvage the property.
24. The Claimant also contended that she repaired the roof; tiled the lower floor and installed a sink on the lower floor. I accept the Claimant's testimony since under cross examination, the Defendant could not contradict these allegations.

Issues

25. The single issue in these proceedings is whether the Claimant, by virtue of a common intention constructive trust, is entitled to a beneficial interest in the tenancy rights in the subject premises.
26. In the course of his Written Submissions, learned Counsel, Mr. Neptune also presented arguments in respect of undue influence.
27. In respect of each issue, I will consider the relevant law and essay an application of the law to the facts.

Law and Discussion

28. It is useful at the outset to consider the issue of undue influence and to observe that it had not been raised at all by the learned attorney-at-law for the Claimant, in the course of his Written Submissions. In my view, this was wise, since there was no evidence of undue influence, and in my view, the transfer cannot be set aside on that ground.
29. The central question, which arises in these proceedings, is whether the Claimant and the late Charles Ramdhanie formed a common intention for the sharing of his beneficial interest in the subject property.

30. The latest and most authoritative statement on the subject of common intention constructive trust may be found in the decision of the House of Lords in *Jones v. Kernott*⁴. This case followed the House of Lords decision in *Stack v. Dowden*⁵. In the later case, their Lordships in the House of Lords revisited the issue of the common intention trust. Their Lordships formulated the principles which govern this area of law. The relevant principles were formulated by and are set out below and I will seek to apply them to the instant case:

“1) *The starting point is that equity follows the law and they are joint tenants both in law and in equity.*

2) *That presumption can be displaced by showing (a) that the parties had a different common intention at the time when they acquired the home, or (b) that their respective share would change.*

3) *Their common intention is to be deduced objectively from their conduct:*

“the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party’s words and conduct notwithstanding that did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party” (Lord Diplock in Gissing v. Gissing [1971] AC 886, 906).

Examples of the sort of evidence which might be relevant to drawing such inference are given in Stack v. Dowden, at paragraph 69.

4) *In those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but is not*

⁴ Jones v. Kernott [2012] 1 All ER 1265

⁵ Stack v. Dowden [2007] UKHL 17

possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, 'the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property.

Chadwick LJ in Oxley v. Hiscock [2005] FAM 211, paragraph 69.

In our judgment, 'the whole course of dealing...in relation to the property' should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties' actual intentions.

5) *Each case will turn on its own facts. Financial contributions are relevant but here are many other factors which may enable the court to decide what shares were either intended (as in case (3)) or fair as in case (4).''⁶*

31. The beneficial interest in the tenancy rights in these proceedings was held solely by the late Charles Ramdhanie. Accordingly, there is a presumption that he was invested in him alone. The Claimant, who seeks to assert that she shared the beneficial interest with her late husband, carries the burden of proving the existence of a common intention.

32. It has been accepted that the authorities of *Stack v. Dowden*⁷, followed by *Jones v. Kernott*⁸ have widened the ambit of the common intention trust, and she who would assert its existence is no longer hemmed in by the strictures which were laid down in *Lloyd Banks Plc v. Rosset*⁹, *Pettitt v. Pettitt*¹⁰ and the earlier cases. In fact, by *Jones v. Kernott*¹¹, the

⁶ See the joint judgment of Lady Hale and Lord Walker in *Jones v. Kernott* [2012] 1 All ER 1265 at page 1280

⁷ *Stack v. Dowden* [2007] UKHL 17

⁸ *Jones v. Kernott* [2012] 1 All ER 1265

⁹ *Lloyd Banks Plc v. Rosset* [1990] 1 All ER 1111

¹⁰ *Pettitt v. Pettitt* [1969] 2 All ER 385

¹¹ *Jones v. Kernott* [2012] 1 All ER 1265

Court is empowered, in the absence of evidence as to the intentions of the parties, to decide what is fair, having regard to the whole course of dealings between the parties¹².

33. In these proceedings however, it is my view there is clear evidence of a common intention, and this was clarified by the evidence of the Defendant under cross-examination. One finds an agreement between the Claimant and the late Charles Ramdhanie that his earnings would be given to her not only to run the household, but to manage their funds, so that they would save to construct their home.
34. By *Jones v. Kernott*¹³, the Court is required to consider the whole course of dealings between the parties. The span of fifty-five (55) years, shows the Claimant as a young wife and mother taking care of the home and doing odd jobs in order to achieve the goal of constructing the home.
35. In this Claim, there was no evidence as to the proportion in which the beneficial interest was agreed to be shared, between the Claimant and the late Charles Ramdhanie. In the course of their joint judgment, Lord Walker and Lady Hale alluded to situations where it:
- “...is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, ‘the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property’... ”*¹⁴
36. From the evidence of the Claimant, it was clear that there was a shared goal and in my view, it would be fair, having regard to evidence of the whole course of dealing between Charles and Marie, to hold that their intention was that the beneficial interest be shared equally.

¹² Ibid at page 1280 g-h

¹³ *Jones v. Kernott* [2012] 1 All ER 1265

¹⁴ *Jones v. Kernott* [2012] 1 All ER 1265 at 1280g

37. Accordingly, when the late Charles Ramdhanie transferred his tenancy rights to the Defendant, he would have done so subject to the constructive trust which had been formed in favour of the Claimant.
38. Accordingly, it is my view and I hold that there should be judgment for the Claimant. She is entitled to the declaration which she has sought in her claim from that she is entitled to one half share in the dwelling house and in the tenancy rights in the subject property.

Order

39. A declaration that the Claimant is entitled to a half share and/or interest in the dwelling house and the parcel of land on which it stands described as All that piece or parcel of land situate in the Ward of Chaguanas in the Island of Trinidad known as House Lot No. 70/30/262 Location Woodford Lodge Area Felicity Section of Caroni (1975) Limited containing by admeasurement on the North side thereof 32.83m on the South side 10.56m and 18.55m on the East side 7.93m and on the West side 11.66m be the same measurement a little more or less and bounded on the North by Private Lands of Lall Mahabir and Dularie Lall on the South partly by lands of Lall Mahabir and Dularie Lall partly by Lot No. 261 and partly by Drain Reserve on the East by Private Lands of Lall Mahabir and Dularie Lall and on the West partly by Henderson Street, partly by Drain Reserve and partly by Lot 261 together with the old wooden house standing thereon.
40. The Defendant to pay to the Claimant the costs of this action quantified in the sum of fourteen thousand dollars (\$14,000.00).

Dated this 3rd day of July, 2017.

M. Dean-Armorer
Judge