

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2014-3735**

BETWEEN

MARK FITZGERALD RICHMOND

Claimant

AND

JACQUELINE BAPTISTE

Defendant

Before the **Honourable Madame Justice Mira Dean-Armorer**

Appearances:

Mr. Cedric Neptune for the Claimant

Mr. Haresh Ramnath for the Defendant

REASONS

Introduction

1. These proceedings concern the ownership of a parcel of land at No. 112A Hilltop Road Claxton Bay. The Claimant applied for an Order for possession of those premises, on the ground that it had been given to him by his late father by the Deed of Gift registered as No. DE201300355322. The Claimant also applied for an Order that the Defendant vacate the premises.
2. On January 9, 2020, I delivered a *viva voce* decision in favour of the Claimant. My reasons for so doing are set out below.

Pleadings

3. The claim was instituted by a Fixed Date Claim Form filed on January 7, 2019. A Statement of Case was filed on the same day. This was amended on December 4, 2014.
4. The Defendant filed an amended Defence on December 4, 2014, together with a Counterclaim. By her counterclaim, the Defendant applied for these orders:

“(1) An order that the Deed registered as DE20130035532 is void and be set aside.

(2) A declaration that the Claimant is the only person lawfully entitled to occupy No. 12A Hilltop Avenue by virtue of the last will and testament of the deceased.

(3) The Defendant Claim that the Court shall pronounce for the force and validity of the will ...”

The Claimant filed his Defence to Counterclaim on February 27, 2015.

Evidence

5. At trial, the Court heard the evidence of Mark Richmond and Rocine Gould, in support of the Claim. The Defendant herself testified in support of the Defence and Counterclaim.
6. The Court also heard the expert evidence of Forensic Document Examiner, Glenn Parmassar.

The Evidence of Mark Richmond

7. Mark Richmond, left Trinidad and Tobago in 1988. As at the date of his witness statement, he had been living in the USA for 27 years.
8. The Claimant's father, Martin Richmond and his mother Ann Richmond had three (3) children: the Claimant, as well as Julien Richmond and Paulette Richmond.
9. The Claimant testified that he had a good relationship with his father, that he visited Trinidad whenever he could. On those occasions, he would visit his father.
10. The Claimant came to Trinidad when he learnt of his father's death but upon his arrival in Trinidad, he discovered that his father was already buried. He was not aware of the location of the grave.
11. The Claimant testified that his father was the owner of a house on Hilltop Drive Claxton Bay and that in the year 2011, his father executed a Deed of Gift, in his favour, in respect of the house. The Deed was annexed and marked M.R.1

The Evidence of Rocine Gould

12. Rocine Gould, pensioner, 69 years of age, told the Court that she had been living at No.7 Hillcrest Drive, Claxton Bay for the 20 years from the date of her witness statement on July 31, 2015.
13. Ms. Gould said that she knew Martin Richmond for about 20 years before his death and that in 2011, Martin spoke to her by the Cookshop on the junction at Claxton Bay, where he bought food every day.

14. Ms. Gould testified that she signed the Deed of Gift and that on the day that she did so, she had gone to the cook shop, and had a meeting with Martin and Ann, parents of the Claimant and another neighbour whose name was Jordan.
15. Ms. Gould stated that the lawyer joined them later. She stated that the neighbour, Jordan moved aside and the lawyer told her that he wanted her present.
16. At paragraph 13 of her witness statement, Ms. Gould stated that, she saw Mr. Martin sign the paper, then Ann and when everyone had signed, she saw the lawyer sign.
17. Ms. Gould said that she was present when the Deed of Gift was signed. She admitted that she had never seen either Martin or Ann sign their names before that date.
18. In response to the question, who was present when the deceased signed, she said “*the Lawyer and I*”
19. Ms. Gould said that she signed the paper and another page. She said that she did not know the difference between a will and a deed, but that she alone signed the document, on another page.
20. She told the court that she knew Mr. Martin because he played music for her birthday and did so until she stopped partying and started giving a prayer.
21. Ms. Gould stated that she knew Martin very well and had got a lady to take care of him, but that when the lady got to work, the Defendant locked up and left with the key.
22. Ms. Gould described the death and burial of the Claimant as a midnight thing.

Evidence of the Defendant

23. By her witness statement, Jacqueline Baptiste stated that she was the niece of the deceased. She asserted that the Deed was not executed by Martin Richmond and that the signature on the deed was not that of Martin Richmond and that at the time of execution of the deed, he was not of sound mind.
24. The Defendant stated that the Deceased executed a will bequeathing all his property both real and personal to her.
25. She alleged that the Deceased was continuously ill, that he was hypertensive, diabetic and diagnosed with a variety of illnesses.
26. From these ailments, the Defendant concluded that the Deceased was of unsound mind, and was so when he allegedly signed the Deed of Gift in 2011.
27. Under cross-examination, the Defendant told the Court that she knew Mark since he was a child admitted that he visited his father in hospital and admitted that he had made arrangement for his father to have home help.
28. The Defendant was cross-examined about the funeral of the deceased and admitted that the officiating person was her mother and that she had not contacted mark or his mother.
29. She admitted that the Claimant's name was omitted from the programme, as well as the names of his siblings. The Defendant told the Court that the omission was due to typographical error. She admitted however, that she made no attempt to contact anyone.

30. The Defendant agreed that the deceased died on August 28, 2012 and was buried 8 days later on September, 2012. She informed the Court that the deceased was buried at Mc. Beans Public Cemetery.

31. The Defendant admitted that she was not a blood relative of the deceased she admitted that she was not his niece.

Evidence of Mr. Parmassar

32. Mr. Parmassar, handwriting expert, examined 5 documents. In his report, Mr. Parmassar came to the conclusion it was probable that the questioned signature Martin Richmond on Exhibit was not executed by the Deceased.

33. Submissions

34. By his written submissions, Counsel for the Claimant identified this issue:

“....the main issue for determination....is whether the Deed of Gift....is a fraudulent document....”

35. Counsel cited section 16 (1) of the ***Registration of Deeds Act*** Chap 19:06:

“Every Deed whereby any lands maybe in any way affected at law or in equity shall be registered under this Act and every such Deed duly registered shall be good and effectual both at law and in equity”

36. Counsel submitted that allegations of fraud must be specifically pleaded and proved.

Counsel relied on Bullen and Leake (14th Edition Section 48-02) in respect of the standard of proof, for allegations of fraud :

“The standard of proof required at trial is the civil standard of a preponderance of probability. It is not an absolute standard. A civil court, when considering a charge of fraud will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as the criminal court but it still requires a degree commensurate to the occasion”

37. Counsel Mr. Neptune cited **Wallingford v Mutual Society** (1880) 5 App Cases 685

where Lord Watson said:

“It is well-known and a very popular rule that a general allegation of fraud is not sufficient to infer liability on the part of those who are said to have committed it. The rule must require not only a general and vague allegation but some actual fact or circumstance or circumstances which taken together imply or at least very strongly suggest that a fraud must have been committed, these facts being assumed to be true.”

38. By Written Submissions in reply, Mr. Ramnath distinguished the rule as stated by Lord

Watson in **Wallingford**, saying that it related to general and vague allegations of fraud.

In his submissions, however, this case concerned a specific allegation of fraud.

39. Mr. Ramnath had this to say at paragraph 4 of his Reply submission:

“The evidence of Mr Parmassar, the failure to produce a witness who on paper witnessed the so-called execution, the location of the alleged execution, the Will

*and all the circumstances suggest and when taken together, inclusive of the
Forsensic Report must lead to the conclusion that the Deed was not signed by
the Deceased.”*

Discussion

40. There was no dispute that this property originally belonged to the late Martin Richmond, deceased, who was the father of the Claimant.
41. It was the case for the Claimant that in 2011, prior to his death, Martin Richmond executed a Deed of Gift, transferring the property to the Claimant as beneficial owner in fee simple.
42. The Deed of Gift was executed on May 3, 2011. Martin Richmond died the following year. The Deed was stamped by the Board of Inland Revenue on December 18, 2012 and registered on February 15, 2013.
43. It was not in dispute that prior to his death, Martin Richmond allowed the Defendant, Jacqueline Baptiste to live with him. The exact circumstances of her occupation are uncertain. However, when Martin Richmond died, Jacqueline Baptiste organised his last rites and his burial. The funeral programme was tendered into evidence, showing Jacqueline Baptiste as his niece and her mother and father as his siblings.
44. Under cross-examination, Ms. Baptiste admitted that there was no blood relationship between her or her parents and the deceased.

45. It was also not in dispute that the Defendant never contacted the Claimant or his siblings to inform them of their father's death and never informed them of the location of his grave. She explained her failure to mention them on the funeral programme by saying that it was a typographical error.

46. Nonetheless, the Defendant produced a will purportedly executed by the deceased on June 2, 2008. By this will, the deceased bequeathed everything to the Defendant, including the subject property. It is very curious that this document had not been annexed to either the Amended Defence and Counterclaim nor the witness statement of Ms. Baptiste.

47. Nevertheless, the Defendant produced the grant of Probate duly signed by the Registrar of the Supreme Court. The grant of probate was dated September, 2014.

48. There was one issue, in this Claim , that is to say whether the Deed of Gift, executed on May 3, 2011 could be set aside, either on the ground of fraud or on the ground of the incapacity of the deceased . Should the court hold that the Deed of Gift is valid , it will follow that the testator , Mr. Richmond at the date of his death in August,2012 , had nothing to bequeath by will .

49. I considered the question of the lack of competence of the deceased first.

At paragraph 1.1 of the Amended Defence and Counterclaim, the Defendant made this plea:

“The Defendant contends that the said Deed was not executed by the deceased, Martin Fitzgerald Roger Richmond, as the signature that appears on the purported deed is not the signature of the deceased or alternatively that the time of the execution of the purported Deed, the deceased was not of sound mind.”

50. The only evidence in support of this plea was found at paragraph 5 of the Witness Statement of the Defendant. This paragraph is set out below:

“Around 2004, the deceased continuously suffered from numerous illnesses. He was hypertensive diabetic and diagnosed with various illnesses. By the year 2011, he suffered from several strokes and could not talk properly. Hence he was of unsound mind at the time of the alleged Deed of Gift”

51. If it needed to be said, it is clear that the Defendant lacked the expertise to provide an opinion as to the state of the health of the deceased. The defendant lacked the expertise to say whether or not the deceased was unsound mind.

52. It was therefore my view that the Defendant had failed to establish that the deceased was of unsound mind at the time of execution of the Deed of Gift. She may have done so by calling expert medical and psychiatric evidence. Her failure to call such evidence left her allegation as to the in capacity of the deceased altogether unsupported by evidence. I therefore reject the allegation that at the time of the execution of the deed, the deceased was of unsound mind.

53. I proceed now to consider whether the Deed of Gift should be set aside on the ground of fraud.

54. As a matter of principle, the Defendant was required specifically to set out particulars of his claim as to fraud. See Bullen and Leake (14th Edition 48-02). An examination of the Amended Defence and Counterclaim reveals that there was no specific plea as to fraud. At paragraph 1.1 of the Amended Defence and Counterclaim contends as follows:

The Defendant contends that the said deed was not executed by the Deceased....as the signature that appears on the purported is not the signature of the deceased....”

55. The Defendant fell short of an express plea of fraud and left it to the Court to infer that fraud was being alleged. The Defendant had also provided no particulars of fraud. For this reason alone, the defence of fraud should be rejected. In the event that I was wrong, however, I proceeded to consider the evidence in support of the fraud.

56. The Defendant relied on the expert evidence of Mr. Parmassar, who came to this conclusion :

“From the evidence disclosed in examination it has been concluded that it is probable that the questioned signature of Martin Richmond was not executed by the K1-K5 specimen writer (Martin Richmond)”

57. Along with his conclusion, Mr. Parmassar identified the limitation on his finding”

“However due to the absence of additional contemporaneous specimen signatures a more conclusive forensic determination could not be made.”

58. Mr. Parmassar provided details of the Range of Opinion Terminology used in Forensic Document Examination. The range contains five levels of confidence, ranging from “was executed by/was not executed by” to “Inconclusive”. Mr. Parmassar did not and could not make a finding of fraud. His finding was on an intermediate band of conclusiveness with express limitations.
59. The Defendant asserts as well that there was no witness who signed the Deed. In fact there was a witness, being Ann Harris-Thomas who signed a witness statement, testifying that she witnessed the execution of the deed by the deceased.
60. Ann Harris-Thomas died before the hearing of this matter. The Claimant filed a Hearsay Notice on December 31, 2018 to place her evidence before this Court.
61. Legal Counsel, Mr. Ramnath sought to draw a distinction between a statement and a witness statement for the purpose of section 37 of the Evidence Act. It was my view that this is an artificial distinction. When a witness has died the proper procedure is to place his or her evidence before the Court by way of a Hearsay Notice. The weight of the evidence is a matter for the discretion of the Court.
62. I considered whether the Deed should be set aside for fraud.

63. In the case of *Wallingford v. the Official Liquidator*¹ Lord Watson ruled that for an allegation of fraud to succeed there must be some “*actual fact or circumstance or circumstances which taken together imply or at least very strongly suggest that a fraud must have been committed.*”²

64. Mr. Ramnath distinguished *Wallingford*, arguing that it pertained to a general allegation and not a specific allegation of fraud. He submitted that a specific fraud which had been committed in this case.

65. It was my view that Mr. Ramnath’s contention could not be supported by the pleaded case or the evidence. There was no evidence of specific fraud, of a named person signing instead of the deceased. Rather there were a set of circumstances, which according to the Defendant together implied fraud.

66. I considered the circumstances to see whether, taken together, they imply or at least strongly suggest that a fraud might have been committed.

67. The circumstances are listed below:

- At the time of trial there was no witness who signed the Deed, the witness, Ann Harris-Thomas, having died prior to trial.
- The lawyer who prepared the Deed did not give evidence

¹ John Wallingford and Directors and Co. of the Mutual Society v. The Official Liquidator (1880) 5 App Cas 685

² Ibid . Per 709 per Lord Watson

- The witness who purportedly saw the deed being signed was confused as to details of the place where the deed was signed and the nature of the document which she signed.
- There had been an earlier will bequeathing the property
- Mr. Parmassar found, to an intermediate degree of conclusiveness, that Mr. Richmond probably did not sign the deed.

68. I have also taken into account the seriousness of a registered deed as a document. In my view, all the circumstances listed against the Deed are de minimis. Ms. Gould was clearly unsophisticated and her errors as to details must be seen in the light of her lack of sophistication.

69. It is true that the evidence of Mr. Neptune, as the attorney-at-law who witnessed the execution of the Deed would have been conclusive. The Court recognised however that Mr. Neptune, as advocate could not give evidence. It is therefore my view that the Defendant has failed to discharge the higher burden required of allegations of fraud.

70. It was my view that there was no ground, upon which the Deed of Gift could be set aside. At the date of his death, Mr. Martin Richmond was not seized of the property in question and the gift to the Defendant was doomed to fail.

71. I held that there should be judgment for the claimant in terms of paragraphs (1), (2) and (5) of the Fixed Date Claim Form.

Orders

It is ordered that there be:

1. Judgment for the Claimant in terms of paragraph 1, 2 and 5 of the Fixed

Date Claim.

a. Vacant possession of the premises situated at No. 112 A Hill Top Road Claxton Bay and which said property is more particularly described in Deed of Gift registered as No. DE201300355332.

b. An Order directing the Defendant to immediately vacate the said premises situate at No. 112A Hill Top Road Claxton Bay.

2. The Defendant to pay to the Claimant the costs of and associated with the action in the sum of Fourteen Thousand dollars (\$14,000.00).

Date of Delivery: January 10, 2020

Justice Dean-Armorer