

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2014-03701

GERTRUDE DHANPAT

Claimant

AND

NANDRAM DOORGAH

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Mr. Ronald Dowlath

For the Defendant: Mr. Riaz Seecharan instructed by Mr. Donald Seecharan

Date of Delivery: 20th day of September, 2019

REASONS

[1] By Claim Form filed on 10th October 2014, the Claimant sought an Order that:

- i. She is the owner of and entitled to possession of All and Singular that certain piece or parcel of land described in deed registered as No. 4356 of 1995 (hereinafter referred to as “the said property” and certain household items therein valued at \$46,000.00 and the Defendant has wrongfully failed and/or refused to vacate the said property and has wrongfully detained and/or converted to his own use the Claimant’s said household items.
- ii. Possession of the said property.
- iii. An injunction restraining the Defendant whether by himself, his servants and/or agents or howsoever otherwise from entering or remaining upon the said property.
- iv. Delivery of the said household items or their value thereof.
- v. Damages for detention and/or conversion.
- vi. Mense profit or damages for the use and occupation of the said property at the rate of \$2,500.00 per month from March, 2008 until possession is delivered to the Claimant.
- viii. Costs.

[2] The Defendant denied that the Claimant was entitled to possession of the said property and sought Orders that deeds dated 19 April 1995 and registered as No 8908 of 195, and Deed dated 11 August 1998 and registered as No 17345 of 1998 be declared null and void and be expunged from the Registry of Deeds. He also sought an Order that the Claimant hold the property on trust for him and that she be ordered to convey the title to him.

[3] After hearing the evidence and reading the pleadings and submissions on the 17th day of October 2018 I delivered an Oral Judgement in which I made the following Orders:

1. That the Deed registered as No. 8908 of 1995 is null and void. The Registrar General do expunge from the Register of Deeds this Deed.
2. The Deed registered as No. 17345 of 1998 is null and void. The Registrar do expunge this Deed from the Register of Deeds.
3. The Deed registered as No. 4356 of 1995 dated 2nd June, 1992 do stand. The property remains in the names of the parties (the Claimant and Defendant.)
4. On the Claim, the Claimant do pay the Defendant's costs assessed in the sum of Fourteen Thousand Dollars (\$14,000.00).
5. On the Counter-claim, the Claimant do pay the Defendant's costs assessed in the sum of Ten Thousand Dollars (\$10,000.00).
6. There be a stay of execution of forty-two (42) days.

The reasons are set forth below.

THE CLAIM

[4] By a series of transactions, the Claimant and one Marcelyn Dhanpat became owners of premises comprising 5,004 superficial feet and a house thereon situate at El Socorro, San Juan as joint tenants. The Claimant and the Defendant are both children of the said Marilyn Dhanpat.

[5] At all material times and up to his death on the 16 December 2012 Marilyn Dhanpat allowed the Defendant to live on the said premises with his family. The Claimant also lived on the property until February 2008 when she asserted that she was forced to flee as a result of the Defendant's violent and threatening behaviour toward her. The Claimant pleaded that she left many household items behind belonging to her valued at

\$46,000.00. She pleaded that she was forced to rent premises at a cost of \$2,500.00 per month from March 2008 to present.

- [6] The Claimant's lawyer wrote to the Defendant demanding that he vacate the premises, however, he refused to do so. The Claimant therefore claimed possession of the said premises, mesne profits for use and occupation of the said premises at the rate of \$2,500.00 a month until possession, delivery of the household items or damages for their detention.

THE DEFENCE

- [7] The Defendant pleaded that the said premises had been conveyed to himself, the Claimant and their mother Marilyn Dhanpat as tenants in common with their consent by the Administrator of their father's will, Ursula Knights Doorgah.

- [8] He stated that this transfer by Deed No 4356 of 1995 was effected with his and the Claimant's consent since their mother was not the lawful wife of their father but Ursula Knights Doorgah was.

- [9] The Defendant pleaded that Deed No 8909 of 1995 by which the Claimant and the Defendant conveyed their interest in the said premises to their mother for the price of \$140,000.00 was null and void because it amounted to an unconscionable bargain since his signature was procured without his having obtained independent legal advice and undue influence was exerted on him.

- [10] The Defendant averred that this was a family arrangement whereby his mother would hold the property on trust for him and the Claimant. He never intended to sell his share of the property/relinquish his title to same. Neither he nor his sister received money from his mother in consideration of the sale to her of their interest in the said premises; he was totally

unaware of the plan by the Claimant and his mother to deprive him of his share in the property by a reconveyance of same to the Claimant by their mother.

[11] The Defendant pleaded that he has lived on the property uninterrupted for over 50 years, without challenge while his son has been in possession for over 26 years. He argued that the Claimant is therefore estopped from denying the Defendant's title having regard to the foregoing.

[12] The Defendant also asserted that the transfer to the Claimant was a sham because the property was worth \$275,000.00 and not \$140,000.00. The Defendant averred that there was a conflict of interest in that attorney Anthony Manwah prepared both deeds; he argued that since his mother died intestate, he was therefore entitled to a share in her estate. This witness denied retaining the household goods of the Claimant or converting them to his own use. He also denied that the Claimant was forced to flee because of threats from him; rather, he stated that the Claimant left the premises to live with her boyfriend in February 2008. The Defendant contended that he has spent his money maintaining the property which has caused it to appreciate in value. He denied that he occupied the premises with the permission of his mother.

[13] By way of counterclaim the Defendant asserted that he was the owner of and entitled to possession of the said premises by reason of his continuous and undisturbed possession for over 50 years. He sought Orders that Deeds dated 19 April 1995 and registered as No 8908 of 1995 and Deed dated 11 August 1998 and registered as No 17345 of 1998 be declared null, void and be expunged from the Registry of Deeds. He also sought an Order that the Claimant hold the property on trust for him and that she be ordered to convey the title to him.

REPLY AND DEFENCE TO COUNTERCLAIM

[14] In her Amended Reply, the Claimant pleaded that the Defendant voluntarily conveyed his interest in the said property to the Claimant and their mother with the intention that the latter would be the sole beneficial owner. The Claimant asserted that neither she nor the Defendant 'has locus to respond to the issue of payment by Marilyn Dhanpat'.

Witness Statement of Gertrude Dhanpat

[15] The Claimant stated that her brother was an alcoholic who often drank away his salary. His mother supported him from her pension. She denied that he ever did improvements to the property and claimed that any improvements were effected by their mother and herself; they also paid the utility bills.

[16] She testified that she used her income and loans from her employer to erect walls to the front and back of the property and build drains and a concrete wash stand.

[17] Ms. Dhanpat revealed that the Defendant lived away from home for five years when he married his first wife. He returned to the premises upon the dissolution of his marriage.

[18] It was also her testimony that she returned her share of seventy thousand dollars (\$70,000.00) of the sale price to his mother, who used the money to repair the roof which was termite ridden; a concrete bridge and concrete wall were also erected.

[19] In cross examination the Claimant revealed that she was not advised by her attorney Mr. Manwah that she was required to sign the claim form and Statement of Case and signed the certificate of truth relative to her

pleadings. She also testified that she was not aware that Mr. Manwah had certified that she had been unavailable to sign these documents. She also appeared to be unfamiliar with the contents of the reply and defence to counterclaim. She acknowledged that she had not filed any receipts in support of her claim that her mother paid to the Defendant and herself \$140,000.00 for the subject property. Although she claimed to have repaid her mother \$70,000.00 in order for the latter to convey the subject property in her sole name no receipt was adduced relative to this payment.

Witness Statement of Nandram Doorgah

[20] The Defendant denied receiving any money from the alleged sale of the property to his mother.

[21] His son and daughter also gave witness statements on his behalf consistent with his defence and counter claim.

ANALYSIS AND CONCLUSION

[22] The Claimant has failed to discharge the onus on her to establish that this transaction was valid, above board and conscionable. She also failed to answer the allegation made by the Defendant that a conflict of interest arose when her attorney prepared the deed of conveyance which was against the Defendant's interest without advising him to seek independent legal advice or explaining the effect of the conveyance that he signed.

[23] An explanation for the conveyance transferring the Defendant's share in the subject property to his mother Marilyn Dhanpat was required in the circumstances where the Defendant alleged that this was a family arrangement whereby their mother would hold the property on trust for him and the Claimant. Their mother's subsequent transfer to the Claimant alone and unbeknownst to the Defendant required a full disclosure of all

the circumstances especially where the same attorney was involved in all of these transactions.

[24] I note that there was no evidence to support the Claimant's case that:

- (i) a consideration of \$140,000.00 was paid by Marilyn Dhanpat to the Claimant and Defendant for the acquisition of their share and interest in the subject property passed for the second deed
- (ii) as to the means by which the deceased could have obtained one hundred and forty thousand (\$140,000.00) to pay to the Claimant and Defendant since no evidence of Marilyn Dhanpat's income or savings was provided to the Court
- (iii) that the purchase price of \$140,000.00 was paid in that no receipt, cheque stub or bank statement was adduced in evidence

[25] This was another issue on which the evidence of the conveyancer Mr. Manwah was important, because he was well positioned to say whether, as the Claimant alleged that Marilyn Dhanpat paid her children for their respective shares and interest in the subject property or whether it was a family arrangement by which all the parties agreed that she would hold the property on trust for the Claimant and Defendant.

[26] I drew an adverse inference against the Claimant for her failure to call the attorney who prepared the deed to give evidence as to:

- (i) on whose behalf he acted
- (ii) whether he explained the nature of the transaction to the Defendant
- (iii) whether he obtained signed instructions from the Defendant for whether Marilyn Dhanpat paid \$140,000.00 to the Claimant and Defendant for the transfer to her for the subject property; if not whether this was a family arrangement whereby it was agreed that Ms. Dhanpat held the property on a resulting trust for the Claimant and Defendant.

Ian Sieunarine v Doc's Engineering Works (1992) Limited 8, Rajnauth-Lee J. held:

"In the absence of the witnesses ... the Court is entitled to infer that the defendant has chosen to withhold evidence which should have either supported the plaintiff's case or at the very least would not have displaced the prima facie case. Accordingly, this court finds that the prima facie case has become a strong case in the absence of any evidence to dispute the matters established by the evidence of the plaintiff and his witnesses."

[27] The Claimant's failure to call Mr. Manwah who was present in court on the first day of the trial led me to conclude that if called his evidence would not support her case.

[28] From the evidence before me it would appear that Mr. Manwah failed to advise the Claimant that she was required to sign the certificate of truth on her pleadings; further by signing the pleadings on her behalf he indicated that she was unavailable to sign the certificate of truth which does not appear to be the case from the Claimant's own evidence. His apparent conduct in acting for all sides in this transaction and failing to advise the Defendant that he ought to obtain independent legal advice when acting against his own interest fell far short of the conduct of a responsible attorney.

[29] I hereby order that:

1. The Deed registered as No. 8908 of 1995 is null and void and be expunged from the Register of Deeds.
2. The Deed registered as No. 17345 of 1998 is null and void and be expunged from the Register of Deeds.

3. The Deed registered as No. 4356 of 1995 dated 2nd June 1992 do stand. The property remains in the names of the parties.
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5. On the Counter-claim, the Claimant do pay the Defendant's costs assessed in the sum of Ten Thousand Dollars (\$10,000.00).
6. There be a stay of execution of forty-two (42) days.

Joan Charles

Judge