THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2007-02389

BETWEEN

THOMAS THEOPHILUS BLEASDELL

Claimant

AND

AKNATH SINGH

Defendant

Before The Hon. Madam Justice C. Gobin
Appearances:

Mr. K. Ramkissoon for the Claimant
Mr. Deonarine instructed by Mr. Jagai for the Defendant

JUDGMENT

1. The claimant seeks to set aside a deed dated 12th May 2005 by which he transferred a half share of his interest in a valuable piece of land to the defendant, a person who was a complete stranger up to about one year before. The conveyance was a voluntary one, that is, it was not one for valuable consideration. I have considered the evidence and the comprehensive submissions on the law and give judgment for the claimant. I find that the defendant holds his interest in the subject property on trust for the claimant. I shall set aside Deed registered as No. DE 200501517344D001 and direct the Registrar General to cancel and expunge the deed from the records.

History

2. The claimant's case as originally pleaded left a lot to be desired. Skilful arguments of counsel for the defendant led to the early elimination of unsustainable claims of misrepresentation and undue influence. It was eventually directed that the matter would proceed to trial on certain grounds which arose out of an allegation that the claimant had agreed to "list" the defendant's name on the property pursuant to an arrangement that the defendant would provide services to build the roads and infrastructure to develop the subject lands and that in return the defendant would be given about five lots of land. When the claimant's witness statement was filed, much of the evidence as to the agreement was struck out on the defendant's submissions, because it was not consistent with the pleadings. The claimant's case was left almost bare save for the fact of a voluntary conveyance to the defendant.

The issue

3. The trial proceeded on one issue only, that is whether in the above circumstances the defendant held the property on a resulting trust for the claimant. Counsel for the claimant recalls it was framed in this way –

> Whether in the circumstances of this case, that is, a voluntary conveyance by the claimant to the defendant in circumstances where the presumption of advancement may not apply, whether there is a presumption instead of a resulting trust on the principle enunciated in *Standing v Bowring (1886) 31 Ch. D 282* and if there is such a presumption then whether the

Court would under its equitable jurisdiction be entitled to look behind the recital in the deed.

4. The following questions had to be answered –

(1) Whether as a matter of law a resulting trust arose in the circumstances of a voluntary conveyance.

(2) If it did, did the inclusion of the words "unto and to the use of" in the operative part of the deed avoid the resulting trust.

(3) If it did not, then did the defendant (not being a person who could raise the presumption of advancement to rebut the trust), prove to the satisfaction of the court that it was the intention of the claimant to make a gift of the half share of the land to him.

The answer to Questions 1 and 2

5. I have been greatly assisted by the very helpful and comprehensive submissions of counsel on both sides. Mr. Deonarine in particular has demonstrated in both his written and oral submissions, a level of industry and ability that deserves commendation from the court. The issue identified admits of no easy answer. Indeed it appears that in the last 75 years this question has not been definitively answered one way or the other.

6. It is a question which has arisen throughout the commonwealth in several cases and academic works. The Canadian case of **Neazor v Hoyle 1962 32 DLR (2d)131** to which I was referred by counsel for the defendant, was most instructive. It is a case cited by the learned authors of Underhill and

Hayton (The Law of Trusts and Trustees 17th Edn) as support for the proposition that a resulting trust is indeed presumed in the circumstances of a voluntary conveyance. In his judgment Mc Donald J.A. extracted passages from the works of several textbook writers and from the opinions of judges in well known cases on the subject. His judgment therefore includes a collation of the several and divergent views of the most erudite of legal minds and serves as a most useful reference on the point.

7. Judges are usually discouraged from citing long passages from the authorities in their judgments, but in this case I consider it essential to recite that part of the opinion of Mc Donald J.A. in its entirety. For all practitioners, students and any one interested in this issue it is just so convenient to find all of this learning in one source. Then too, the several works demonstrate the complexity of what at first appeared to be a simple issue. They conclude that the issue is indeed undecided. Thirdly they demonstrate that the effect of the inclusion of the words 'unto and to the use of the donor" is also (as Mr. Deonarine has candidly conceded) equally controversial and undecided. I therefore reproduce the following paragraphs 19 to 28 from the judgment. I have added my own emphasis on certain parts.

> **(19) In Maitland on Equity, 1932 ed., the following statement is found ad p. 79:**
>
> ***We pass to the cases in which there is no expressed declaration of intention that A, the grantee, devisee, legatee shall be a trustee. Well, if by will I give to A and declare no intention of making him a trustee, then he is not a trustee; and if inter vivos and for valuable consideration I convey or***

assign to A so as to vest the legal estate or interest in him and declare no intention of making him a trustee, then a trustee he is not. But otherwise is it of voluntary conveyance or assignment inter vivos. For no valuable consideration I convey land unto and to the use of A and his heirs. Here the use does not result, for a use has been declared in A's favour, so A gets the legal estate – but in analogy to the law of resulting uses, the Court of Chancery has raised up a doctrine of resulting trusts. If without value by act inter vivos I pass the legal estate or legal rights to A and declare no trust, the general presumption is that I do not intend to benefit A and that A is to be a trustee for me. However this is only a presumption in the proper sense of that term and it may be rebutted by evidence of my intention. You see the difference between this case and the one lately put – if I convey to A 'upon trust' and declare no trust, A can not produce evidence that I did not mean to make him trustee – but if there is no talk of trust at all in the instrument which gives A his legal rights, then he may produce evidence to show that I really intended him to enjoy the property.
Such is the general rule – upon a voluntary conveyance inter vivos the presumption is that a trust results for the giver.

(20) In the note to the said edition of Maitland respecting the general rule quoted above from Maitland, the following appears at p. 413:

Both judges and textbook writers have differed upon this question, and it is desirable to draw the student's attention to this diversity of opinion. In support of Maitland's view that a resulting trust for the grantor is presumed on a voluntary conveyance of real estate in the absence of evidence of intent to give, may be cited decisions of Nottingham, C. (Elliot v Elliot, [1677] 2 Ch Cas 231, 22 E.R. 922; and see dicta in Grey v Grey, [1677] 2 Swans 594, at p. 598, 36 ER 742); and Somers, L.K. (Norfolk [Duke] v. Browne [1697] Pr Ch 80, 24 ER 38; and see Rex v Williams, [1735] Bunb 342, 145 E.R. 694). In more recent times the illustration given by Jessel, M.R. in Strong v Bird (1874) LR 18 Eq 315, at 318, 43 LJ Ch 814, is merely a dictum, but it shows that he accepted this view. Against this however there are very clear statements by Hardwicke, C in Lloyd v Spillet (1740) 2 Atk 148, 26 ER 493, and Young v Peachey (1741) 2 Atk 254, 26 ER 557. The observations of

Lord Hardwicke upon this point in the latter case are plainly dicta. The former case may be a decision upon the question, but it is to be observed that the conveyance in that case contained a power of revocation and Lord Hardwicke having regard to common usage in conveyancing considered that the insertion of such a power made against a resulting trust.

In modern times James, L.J. in an emphatic dictum denies that the implication of a resulting trust arises on a voluntary conveyance of land: Fowkes v Pascoe (1875) LR 10 Ch 343, at 348, 44 LJ Ch. 367.

So far as the editors are aware, there are no expressions of judicial opinion bearing directly upon the point other than those cited.

A similar diversity of opinion is to be found in textbooks. Lewin (see Lewin, 2nd ed., p. 130; 6th ed., p. 127; 12th ed., p. 164; in his first edition at p. 170 Lewin had accepted Lord Hardwicke's statement in Lloyd v. Spillet, supra, and Young v Peachey, supra; in all subsequent editions he and his editors followed Lord Nottingham) in a very carefully drawn general statement accepted the decisions of Lord Nottingham and Sir J. Somers; Sanders (Sanders on Uses, 5th ed., p. 365) following Lord Hardwicke argues very strongly against the implications of resulting trust. Mr. Joshua Williams (see Williams' Real Property, 13th ed., pp. 164, 165) citing Sanders accepts his view, but in rewriting the portion of Williams' Real Property dealing with trusts the present learned editor Mr. T. Cyprian Williams adopted Lewin's position (17th ed., p. 172; 21st ed., pp. 183, 184).

The authorities as to both real and personal estate are cited in the eighth edition of White and Tudor's Leading Cases (pp 833-835), and it will be seen that a like diversity of opinion has existed in the case of personality, and apparently the only point definitely covered by authority is that on a voluntary transfer of stocks or shares there is a resulting trust for the transferor, where he is not the father or husband of the transferee.

(21) In Hansbury's Modern Equity, 6th ed., at pp 164 et. Seq., the learned author traces the development of the doctrine of resulting trusts and states in part as follows:

Resulting trusts were framed on the analogy of resulting uses. One of the results of the Statute of Uses was to destroy resulting uses, and to render a gift to A, made without consideration, or without declaring a use in favour of A, simply ineffectual. Therefore, after the Statute, it was inevitable that every conveyance of land must be accompanied either by consideration or by a use declared in favour of the donee. When equitable estates returned under the name of trusts, equity was again faced with the position that the donor might make an ostensibly complete conveyance, but in such circumstances that the consistence of equitable principle would demand that his intention must be read as an intention to retain the beneficial interest for himself. So the doctrine of resulting trusts was introduced.

In the case of land, Maitland laid it down as a general proposition that, where there was a voluntary conveyance by A unto and to use of B., B was presumed to hold on a resulting trust for A. But his opinion did not go unchallenged. The controversy has lost much of its practical importance since 1925, for the Law of Property Act, as we have seen, provides that, in the case of a voluntary conveyance by an instrument executed after 1925, a resulting trust for the grantor is not to be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of this grantee. This provision did away with all necessity for the word 'use' in a conveyance. Though, however, in a voluntary conveyance of land in the new form, no implication of resulting trust will arise merely because of the omission of the word 'use', it remains to be seen whether it will not arise for another reason, simply because the conveyance is voluntary. Underhill thinks that the presumption will arise, and certainly its language, in expressly excluding one circumstance as a reason for raising the presumption, may be said to elevate the other circumstance, the absence of consideration, into a potent lever for its implication from the conveyance. And further, if Underhill's view is correct, that in cases of a voluntary conveyance unto and to the use of the grantee, the word 'use' rebutted the prima facie presumption of resulting trust, then it follows that the subsection, by removing the word from conveyances, has removed the sheet-anchor from the voluntary conveyance, which now drifts in headlong career towards the whirlpool of the presumption.

22. In Cheshire's Modern Law of Real Property, 6th ed., p. 107, the following appears:

If a feoffment was made before the Statute of Uses to a stranger in blood without the receipt of a money consideration (i.e., a voluntary conveyance), and without declaring a use in favour of the feoffee, the rule was that the land must be held by the feoffee to the use of the feoffor. The equitable interest that thus returned by implication to the feoffor was called a resulting use. The effect of the enactment by the Statute of Uses that a cestui que use should have the legal estate was, of course, that the legal estate resulted to the feoffer. In order to prevent this it became the practice in the case of such a conveyance to declare in the habendum of the deed that the land was granted 'unto and to the use of' the grantee. The repeal of the Statute of Uses by the legislation of 1925 would, in the absence of a further enactment, have restored the original rule, and it might have led practitioners to believe that the expression "to the use of' was still necessary in order to render a voluntary conveyance effective. It is, however, enacted that 'in a voluntary conveyance a resulting trust for the grantor shall not be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantee'.

23. In The Law of Real Property by Megarry and Wade, 1957 ed., after discussing the doctrine of when on a conveyance of property, a trust arises by the operation of equity, the learned authors state at p.419:

Where property was conveyed without any consideration, but not expressly on trust, more difficult questions could arise under the pre-1926 law. It was first necessary to distinguish between resulting uses and resulting trusts. For after the Statute of Uses, 1535, a resulting use would be executed by the statute and so carry the legal estate back to the grantor; but a resulting use would be executed by the statute and so carry the legal estate back to the grantor; but a resulting trust would be purely equitable, so that the grantee would continue to hold the legal estate as trustee for the grantor. Before 1535 it had been settled that if A granted land to B., a stranger, in fee simple without any valuable consideration or declaration of use, there was a resulting use to the grantor. This was a natural doctrine in

a period where it was the common practice to lodge the legal estate in feoffees to uses for the benefit of the feoffor. Such a conveyance was thus totally ineffective, and A was regarded as holding the same legal estate as before. But of course this resulting use could be rebutted by declaring that the feoffee should hold to his own use, for otherwise gifts of land could not be made; or it might be rebutted by evidence that a gift was intended. When trusts later came into use and a grant 'unto and to the use of B' became common form merely for the purpose of vesting the legal estate in B., whether or not upon further trusts, it was arguable that a voluntary grant in such terms raised a resulting trust inequity for the grantor, by analogy with the old doctrine of resulting uses. But, rather curiously, this question was never settled. The old authorities seem to show that a resulting trust would arise if circumstances pointed to the conclusion that the grantee was not intended to take beneficially, but that in the absence of such evidence the grantee would take for his own use. In practice it would nearly always be made clear whether a voluntary conveyance was intended as a gift or not, so that the point was never squarely raised in a modern case.

24. In Lewin on Trusts, 15th ed., at p. 131, the following statement appears:

If an estate be granted either without consideration or for merely a nominal one, and no trust is declared of any part, then if the conveyance be simply to a stranger and no intention appear of conferring the beneficial interest, as the law will not suppose a person to part with property without some inducement thereto, a trust of the whole estate -- as in the analogous case of uses before the statute of Henry VIII – will result to the settler.

25. But in the note at the bottom of p. 131, the following is found:

The effect of a voluntary conveyance of land or transfer of personality to a stranger is a question upon which the opinions of both Judges and textbook writers have differed.

26. In M.D. Donald Ltd v Brown, [1933] S.C.R. 411 (S.C.C.), at 414, which reversed (1932), 46 B.C.R. 406 (B.C. C.A.), Duff, C.J., in delivering the unanimous judgment of the court, states as follows:

Now, the question whether or not, today, a voluntary deed gives rise to a resulting trust in favour of the grantor, is a question about which there is a good deal of dispute. I refer to paragraph 108 in the 28th volume of Lord Halsbury's collection, upon the subject of Trusts and Trustees, which is in these words,

'It would seem that a voluntary conveyance of real property is deemed, in the absence of evidence to the contrary, to pass the beneficial interest in the property conveyed.'

That statement is based mainly upon the observations of Lord Hardwicke in Young v Peach [supra], and of Lord Justice James in Fowkes v Pascoe [supra]. In the note, however, it is observed that a contrary view is expressed in Lewin on Trusts and concurred in by the eminent property lawyer, Mr. Joshua Williams in his Law of Real Property, as well as by others.

The question as to the effect of a voluntary deed, without more, is, beyond doubt, a question upon which there is difference of opinion among real property lawyers. But there is no dispute about this: all the circumstances are to be looked at, and if the conclusion is that, in view of all the circumstances, no resulting trust was intended, then no resulting trust arises.

27. In Niles v Lake, [1947] S.C.R. 291, reversing [1946] O.R. 102, Kerwin J (now C.J.) states at pp. 297 and 298:

The old law, before the coming into force of the Law of Property Act, 1925, in England, is set forth in all the text books and a convenient statement appears in the second edition of Norton on Deeds, page 410: 'where A conveys the whole fee simple by a conveyance operating at common law, without consideration, there is a resulting use to him in fee simple, unless uses are declared.' The doctrine of resulting trusts has been raised up, as is pointed out in Maitland's Equity, at page 79, in analogy to the law of resulting uses. It is not necessary to go into the moot point discussed by Maitland at the page indicated, but these matters are mentioned to show that the mere fact of the document in question being under seal does not prevent the

appellants from showing that there was no consideration. That, they have done, and the resulting trust follows.

28. In the same case, Taschereau, J states at p.302:

All these authorities, as well as many others which it would be superfluous to cite here, clearly indicate that a mere gratuitous transfer of property, real or personal, although it may convey the legal title, will not benefit the transferee unless there is some other indication to show such an intent, and the property will be deemed in equity to be held on a resulting trust for the transferor.

8. As I have said before, these extracts confirm that two issues raised by the defendant as to whether a resulting trust is presumed and the effect of the words "unto and to the use of the donee' remain undecided. Academics and judges have until now it seems been unable to resolve it. In the United Kingdom with the enactment of the Conveyancing and Law of Property Act 1925, it was anticipated that the debate would be rendered merely academic. But very recently, in the case of ***Lohia and Another v Lohia [2001] EWCA Civ 1691***, the judge at first instance held that on a plain reading of S.60 of the Act, a voluntary conveyance did not give rise to a presumption of a resulting trust. On appeal Mr. Justice Mummery preferred to express no concluded view on the question which he described "so inextricably bound up in centuries of English Legal history". This is yet another reason why a judge sitting in Trinidad in 2010 should decline to unravel it. In his judgment in **Lohia**, Sir Christopher Slade too, preferred to "express no views on the "knotty" question.

9. In his submissions, counsel for the defendant concedes the law on both questions in Trinidad is similarly controversial and that the debate has not been resolved by the passage of statute. He is however, asking me to resolve it debate in favour of the defendant. I must decline to do so. Having recognized that the complexity of the question which has been considered by so many distinguished writers and judges before, without resolution, I find it convenient to adopt the approach of Mac Donald J in **Neazor v Hoyle** above. While this is a Canadian case which I have been urged should be viewed as of persuasive value only, in the absence of any definitive authority on the subject, I am prepared to follow it. The wisdom of the judge's decision cannot be doubted in the circumstances. After reciting the divergent views his Lordship simply concluded –

> ***"I think that by reason of the voluntary transfer by the deceased to the appellant, there could very well be a presumption of resulting trust in favour of the donee and if so that the burden is on the appellant to establish as a fact that she received the beneficial interest in the lands so transferred*** **……."** (emphasis mine)

He then proceeded to deal with the case on that basis.

10. Applying that approach to this case then, I find that the conveyance to the defendant is capable of resulting in a trust of the equitable interest in the property in favour of Mr. Bleasdell. As a consequence of this finding it is for the defendant to demonstrate that at the time of the transfer, the claimant intended to transfer the beneficial interest to him as well as the legal interest.

The intention/claimant's evidence

11. At the trial, the burden of proof on this issue having fallen upon the defendant, he should have opened on the evidence, but on the morning he was ill and absent. The claimant did not object to beginning. His witness statement was tendered. He was not cross-examined. The matter was adjourned for the attendance of the defendant. When the matter resumed before the claimant was recalled and questioned by me. I sought to probe him on his intention.

12. Of significance was that the claimant denied the account of the defendant as to what transpired in Mr. Doodnath's office. He specifically denied telling Mr. Doodnath he considered the defendant to be a son, that the defendant would take him anywhere and that his wife and children did not treat him as well. He did not tell Mr. Doodnath that the defendant had never asked him for anything. He said "it would sound like madness" for him to say the things about his family as alleged by the defendant. He did not tell the defendant that the reason he wanted to transfer the land to him was that the defendant treated him so well.

13. When asked specifically if he did not transfer the lands for the reason advanced by the defendant, why then did he transfer it, the claimant said there was an arrangement between the defendant and him that he would give him a few lots. He specifically said "I had no intention to give him half of my land.

Mr. Singh told me he would do works for me and I would give him a few lots". He threw in that he had thought five lots would be sufficient. When asked did he ever consider what would happen if he transferred the land and the defendant did not do the works, the claimant said he did not. The defendant's attorney declined to ask the claimant any questions on these responses. The claimant accepted that a close relationship had developed with the defendant, that the defendant assisted him in many things for which he was grateful. He accepted that the defendant referred to himself as his son and he never corrected this impression when he said it in front of other persons.

Intention – Defendant's Evidence

14. The defendant's case as to the claimant's intention is that the deed speaks for itself. He relies on the form and wording of the conveyance. It clearly demonstrates that the claimant intended to transfer both the beneficial and legal interest. In particular he relies on the recitals in the deed as to the desire of the claimant to convey the property to the donees by way of gift with the consideration of "natural love and affection". Further he relies on his alleged close adopted filial relationship with the claimant as well as the contemporaneous utterances of the claimant at the time of the execution of the deed.

Findings on intention

15. Let me state categorically that I reject completely the defendant's evidence as to the alleged utterances of the claimant in the presence of his attorney at the time of the execution of the deed. I find these to be fabricated by the defendant. Since the burden of proving the intention fell on the defendant, I find his failure to call Mr. Doodnath to support his allegation that the claimant made these statements to be significant. I do not believe that the claimant expressed any intention to make a gift to the defendant or that he made any statements about his family and his children to justify conferring this benefit on the defendant. I reject his statement as to what the claimant allegedly said on the way after executing the deed.

16. I reject these for two reasons. While the right to property must include the right to give it to anyone including strangers, I find it inherently implausible that barely one year after meeting the defendant in the circumstances that he did, the claimant who lived with his wife and who had a family would simply decide to give away a half share in a valuable piece of property. The defendant was a contractor who offered his services to the claimant who need them and who accepted them. At all times even after this alleged gift, the parties continued in a business relationship with the claimant paying for all works on his property. Here in our country, land is a most precious asset. People especially the claimant's generation don't just give it away to strangers, that is, persons with whom they share no blood ties. For

almost twenty years since he had had plans drawn to make over one hundred lots in his contemplated development on the subject lands, the claimant had held on to his lands and no doubt to his dream of a development. That he would give it away completely to a stranger, albeit one who showed him some kindness is simply not credible.

17. Having examined the claimant myself, and having heard his spontaneous and spirited responses on the occasion when he could not have expected to be called to give evidence, I accept his evidence that he never made the statements as to his intentions to make a gift to the defendant of his lands. His surprise and indignation at the suggestion that he would speak in the manner alleged of his family members, I considered to be genuine. I accept his denials of the allegations of the defendant as to what transpired at the offices of Mr. Doodnath and in the defendant's car on the way back after the transfer.

18. My conclusions on this aspect of the evidence reflect my findings too on the credibility of the defendant in general. His statement in his witness statement that on his first visit to the claimant's home for a business meeting the latter told him that "he had sized him up and he did not think he was a smart man or a crook" was to my mind incredible and entirely self-serving. If this was meant to impress me as to his character I was not impressed. This gratuitous comment about a "smartman or crook" would be entirely out of

place in a meeting which had been planned to discuss the problems with the Town and Country Division so early in their relationship. I do not believe that on that occasion the claimant told him that his wife and children did not treat him well.

The "arrangement"/ effect on evidence of intention

19. In answer to me as to the reason for his signing the deed the claimant answered that he had an arrangement with the defendant. The defendant was to build some roads on the development and in exchange he would give him a few lots. He thought about five. He never intended to give the defendant half share in his lands. Here I think it necessary to say that although evidence of the alleged agreement was struck out from the claimant's witness statement as being irrelevant to the issues which had been identified for trial at that stage, I admitted the very answers on the issue of the claimant's intention. This, (i.e. the alleged agreement) in any case, was a matter which had been anticipated and addressed in the defendant's witness statement for the trial before the striking out of the claimant's evidence, so there was not and could not have been an objection on the ground of prejudice.

20. It has to be said that what emerged was evidence of an arrangement the terms of which were very vague. In essence it concerned the exchange of some lots of land (not precisely identified in terms of number and location), in return for the defendant putting down the roads and other infrastructure on the

lands. The terms were so vague that they would hardly be enforceable. But this is not a case to enforce this contract. This "arrangement" is only relevant in so far as it affects the issue of the claimant's intention when he signed the conveyance. If as I do, I accept that there was in the background some vague discussion as to this arrangement, then I am entitled to infer from this, as I do that the claimant in executing the transfer, had no intention as he said of giving the defendant a beneficial interest in a one half share of his lands.

21. It seems to me that by including the defendant's name on the deed he was simply securing the defendant's agreement to provide the services to build the roads. The claimant considered that about five lots would have been sufficient compensation. Given that in his original plans he had carved out over 100 lots, if he believed this was sufficient then there could be no question of him having an intention to transfer an interest that would give the defendant so much more. This would have been entirely disproportionate to what the claimant obviously considered to be a fair exchange. The claimant's answer to the court that he never considered what would happen if the defendant did not build the road was evidence from which I inferred further that he believed he had retained control over it, I expect he would certainly have addressed the issue.

22. The result of all of this is that the claimant raised in answer to a question on his intention, an arrangement, which if I accept as I have,

demonstrates what might have been the true purpose of the paper transfer, that is to secure the arrangement to put down roads on the parcel of land, for about five lots of land. Those lots obviously could not have been identified because part of the arrangement and what had prompted it, was advice and a suggestion to reconfigure the lots that the claimant had drawn in 1986 to larger lots for a more exclusive development. Indeed on my analysis, it would have made no difference if the claimant had in the circumstances transferred a lesser or greater share in the property. I infer from all the surrounding circumstances that the deed was only meant to seal the arrangement to provide the works. In coming to this conclusion I am looking behind the form and wording of the conveyance.

23. I have found support for this approach in the judgment of Lord Justice Rix VC in ***Ali v Khan and Ors [2002] EWCA Civ 974*** where he confirmed that the form of a transfer cannot estop the claimant from contending that a true construction, having regard to all the surrounding circumstances is otherwise than appears in the form and the transfers did not include the beneficial interest. I do not accept the submission that I am not entitled to look behind the form of the deed. In the words of Rix VC (para 20) in the **Ali** case indicate the relevant principle -

> ***"Further, the limitation on the use of extrinsic evidence in relation to deeds or other written contracts has never excluded evidence as to the true nature of the transaction, Chitty on Contracts 28th Ed. Vol. 1 para 12-111. Thus evidence is admissible to show that a written contract for sale was a loan on security, Mass v Pepper [1905] AC 102.***

> ***Likewise, and of more significance in relation to the facts of this case, extrinsic evidence may be relied on to show that a conveyance in form absolute was only for a limited purpose for which a transfer of the legal estate was both sufficient and all that was intended, see Haigh v Kaye (1872) LR 7 Ch. 469 and Re: Duke of Marlborough [1894] 2 Ch. 133.*** (emphasis mine)

The cases of ***Haigh v Kay 1872 LR 7 Ch. 469 AND Re: Duke of Malborough [1894] 2 Ch. 133*** *and* ***Rochefoucauld v Boustead [1897] 1 Ch 196, 207*** demonstrate how it has been applied.

24. In the Guyanese case of **Collymore v George 72 WIR 229 @ 243** Ramson JA delivering the decision of the majority of the Court of Appeal refered to **Rochefoucauld v Boustead** above as the locus classicus in the area of the law. He cited the following paragraph -

> Consequently, notwithstanding the statute, it is competent for a person claiming land conveyed to another to prove by parol evidence that it was so conveyed upon trust for the claimant and that the grantee, knowing the facts is denying the trust and relying upon the form of the conveyance and the statute in order to keep the land himself".

25. Two further passages are cited in the judgment which provide guidance -

> And in Equity and the Law of Trusts (5th edn) Phillip H. Pettit advances his view at Ch. 10, p. 154:
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> *'The justification is that in recent years in a number of cases, mainly arising out of informal arrangement in a family setting, the court has taken the view that justice demanded that the plaintiff should have a remedy in circumstances where it was at least*

> *doubtful whether he was entitled to one under existing rules as previously understood.'*
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> Further in Bannister v Bannister [1948] 2 All ER 133 @ 136
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> *'The fraud which brings the principle into play arises as soon as the absolute character of the conveyance is set up for the purpose of defeating the beneficial interest…'*

Applying the principle to the instant case I am satisfied that I am entitled to look behind the form deed and further, that the reliance by the defendant on the form of the deed amounts to fraud. This is not fraud which needed to be pleaded as such. It arises on the defence of the defendant and invokes certain equitable principles. At the heart of this case is a transaction that has disturbed the conscience of the court. An old gentleman in his very late eighties at the time, transferred for no valuable consideration a very valuable piece of real estate to the defendant, a person with whom he had no blood ties or toward whom he had no moral obligation. This was a person who was a complete stranger twelve months before the date of the deed. Justice required that the court scrutinize the transaction and to ensure that the fraud of the defendant in setting up the form of the conveyances did not prevail.

26. There is one outstanding matter which I must consider. The defendant relied on the fact that subsequent to the date of the execution of the deed, that is, on the 15th November 2005 the claimant and the defendant jointly executed a lease of the lands to the owners of a cell tower as further evidence then the intention of the claimant was to transfer the beneficial interest in the subject

lands. The fact that as a joint legal title holder, the defendant executed a lease as would have been necessary does not affect my finding that there was no transfer of the beneficial interest. Indeed what I find significant is that it was the claimant who made all arrangements with the prospective and who in the words of the defendant said "he wanted me (the defendant) to sign a document". The claimant appeared indeed to be directing the defendant to sign. This confirms that he was very much in control of the beneficial interest.

27. What is clear from the defendant's evidence is that the execution of the lease notwithstanding, the claimant has effectively retained the substantial rent monies. The reason for this as alleged by the defendant is immaterial. I am prepared to infer further that whatever he was told by the claimant as to the reason for not sharing it, it is sufficient evidence of the claimant's retention of the beneficial interest in it. In effect, since the execution of the transfer, the defendant has not enjoyed possession, nor has he received the rents and profits from the lands. This too supports an inference that the claimant had no intention of parting with the beneficial interest in the said lands. This lease and his alleged entitlement to rent formed the basis of the defendant's counterclaim. As a consequence of my findings above I dismiss same.

28. I therefore hold that the defendant holds the beneficial interest in the subject lands in trust for the claimant. Deed No. DE200501517344 made between Thomas Bleasdell and Aknath Singh and dated the 12th may 2005 is set aside. The Registrar General is directed to cancel and expunge this deed from the records. The defendant's counterclaim is dismissed. In so far as the unregistered lease between Site Acquisition Services Ltd and the parties to this action is concerned, I declare that the defendant has no right title or interest in rent moneys payable under it.

29. On the issue of costs, I make no order as to costs either on the claim or the counterclaim. As I have said before the claimant's pleadings left a lot to be desired. This in a large measure led to the allocation of court time and resources which would have been necessary had the matter been properly pleaded and indeed had witness statements been properly prepared in accordance with the issues identified by the court.

Dated this 26th day of March 2010

CAROL GOBIN

JUDGE

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