

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port-of-Spain

Claim No. CV2018-00875

Between

Neil Terry Ramsubagh

Claimant

And

Kamllawatti Rampersad

Defendant

Before the Honourable Madam Justice Eleanor J. Donaldson-Honeywell

Delivered on May 27th, 2019

Appearances

Mr Ravi Rajcoomar and Ms. Shivana Nath, Attorneys-at-Law for the Claimant

Mr. Dexter Bailey and Ms. Arnella V. Laloo, Attorneys-at-Law for the Defendant

RULING

A. Introduction

1. On 10 October, 2018 the Claimant filed a Notice of Application pursuant to Parts 26.2(c) and 15.2 of the Civil Proceedings Rules 1998 (as amended) (hereinafter referred to as the “CPR”) for the followings reliefs:
 - a. The Defence filed on 22 June 2018 be struck out;

- b. The Claimant be granted summary judgment on the whole of the Claim as follows:
- i. There be Specific Performance of the Agreement dated 1 February, 2018'
 - ii. The Defendant do convey that certain part or parcel of land situate at Otaheite in the Ward of Oropuche now Siparia and more particularly described in Deed of Conveyance dated 9 February, 1999 and registered as DE199908070063;
 - iii. The Conveyance to be executed within 14 days of the date of this Order and in default the Registrar of the Supreme Court do execute the Conveyance on behalf of the Defendant;
 - iv. The Defendant do pay the costs associated and/or related to the execution and registration of the Conveyance;
 - v. The Defendants do pay the Claimant's costs of the Application and the Claim.

2. The Defendant and the Claimant filed submissions in relation to this application.

B. Factual Background

3. The Claimant alleges that in or around July 2017, he and the Defendant entered into discussions regarding the sale/purchase of a piece or parcel of land and plantation ["the land"]. It is known as "Otaheite" and is situate formerly in the Ward of Oropouche now Siparia in the Island of Trinidad (being portion of a larger parcel of land described in the First Schedule hereto) comprising THIRTY EIGHT POINT ZERO THREE ONE HECTARES and bounded on the North partly by Lot Number 1 partly by lands of M. Maharaj, on the South by Lot Number 3, on the East partly by lands now or formerly of Ghany Holdings Limited and partly by lands of M. Maharaj and on the West partly by lands of A. Ahamad, Z. Mohammed and M. Jadoo. It is intersected by the proposed South Trunk Road and is shown as Lot Number 2 on the General Plan of the Deed dated 9 February 1999 and registered as Deed No. DE199908070063.

4. The Claimant's case is that the agreement was to purchase the land for the price of Five Hundred Thousand Dollars (\$500,000.00). This arrangement, according to the Claimant, was reduced into a written Agreement for Sale dated 1 February 2018 ["the Agreement for Sale"]. In furtherance of the Agreement for Sale, the Claimant avers that he paid the total purchase price of Five Hundred Thousand Dollars (\$500,000.00) to the Defendant and as such is entitled to specific performance of the said Agreement for Sale.
5. The Defendant, in her Pleadings, admits that there was an arrangement between the parties relative to the sale of land. However, by her Defence she has denied that the arrangement was in the terms pleaded by the Claimant. The Defendant's Defence is that she and the Claimant entered into negotiations only for the sale/purchase of part of the land, namely, a one (1) acre parcel for the price of Five Hundred Thousand Dollars (\$500,000.00).
6. The Defendant states that although she signed the Agreement for Sale she did not understand and/or appreciate the contents of the Agreement and was deprived of the opportunity to seek Counsel and obtain Independent Legal Advice in relation thereto. The Defendant raises the Defences of Undue Influence, Unconscionable Bargain and Unjust Enrichment.
7. The Defendant cites her age, immobility, poor health and financial vulnerability as factors that the Claimant took advantage of in getting her to sign the Agreement. Counsel for the Defendant submits that the transaction itself is suspicious. This is so, she says, due to the gross undervalue of 38.01 hectares of land alleged by the Claimant to be sold for \$500,000 when its real worth, according to the Defendant, is in the millions.

C. Issues

8. There are two issues for determination:
 - a) Whether or not the Defendant's Defence should be struck out on the basis that it discloses no ground for defending the Claimant's claim; and
 - b) Whether or not the Claimant should be granted summary judgment on the basis that the Defendant has no realistic prospect of success on his Defence to the claim.

D. Law and Analysis

STRIKING OUT

9. The Court's jurisdiction to strike out a statement of case where no ground for bringing the case is disclosed is provided for in the Civil Proceedings Rules, 1998, as amended ["CPR"] at **CPR 26.2(1)(c)**. This jurisdiction is explained in **Partco Group v Wagg [2002] EWCA Civ 594** as applicable in the following circumstances:
 - a) Where the statement of case raised an unwinnable case where continuing the proceedings is without any possible benefit to the Respondent and would waste resources on both sides; or
 - b) Where the statement of case does not raise a valid claim or defence as a matter of law.

10. The Claimant submits at para. 7 of submissions that the Defence raises no factual disputes. However, this is vigorously contested by the Defendant. At page 7 of the submissions of Counsel for the Defendant it is pointed out that there are factual disputes raised in the pleaded Defence. In particular the Defence denies several facts pleaded by the Claimant, namely (i) the manner of payment of the deposit; (ii) the preparation of the Agreement for Sale; (iii) the execution of the Agreement for Sale; and (v) legal advice. At the outset, it is my view that these are clearly disputes of fact which remain to be proven by evidence, tested and determined.

11. The Claimant's submission on striking out appear at 21(a) to be disputing facts pleaded in the Defendant's defence. Counsel for the Claimant submits that the Defendant is "far from ignorant" on the nature of property transactions as she has executed conveyances previously, that from those conveyances she would have been aware of the size, boundaries and configuration of her lands, that she voluntarily and independently provided copies of Land and Building tax receipts, District Revenue Reports and the Deed in preparation of the Agreement, and benefitted from the advice of her Pundit and her Attorneys generally during the transaction.
12. While there it may eventually be established that there is merit to these factual issues contended by the Claimant, the Court is mindful of its duty not to conduct a mini-trial by delving into a fact-finding exercise at this stage - **Western United Credit Union Co-operative Society v Ammon CA103/2006**. Furthermore, these disputed facts must be ventilated by consideration of evidence before a decision can be made.
13. The Claimant submits that the Defendant has failed to produce evidence of:
- (i) an existing relationship of trust and confidence between the parties;
 - (ii) any lesser intellectual capacity of the Defendant;
 - (iii) any advantageous bargaining power of the Claimant;
 - (iv) any medical condition that would affect the state of mind of the Defendant;
 - (v) any documentary evidence that the land was sold at a significant undervalue to warrant the transaction unjust.
14. The Claimant argues that in the absence of evidence on these factors the Agreement between the parties was a commercial transaction between parties of equal bargaining power. Therefore, undue influence/unjust enrichment does not arise in this matter. It is reiterated however, that each of these factors may eventually be proven or disproven in evidence.

15. In answer to the striking out application, the Defendant submits that she has adequately raised the defences of undue influence, unconscionable bargain and unjust enrichment, pleading all supporting facts to establish same. Counsel for the Defendant submits that the case is not one which amounts to a bare denial or which does not substantially challenge the Claimant's pleaded case. Considering the further evidence that may be adduced in this matter, particularly medical reports, valuation reports and other witness testimony, the Defendant submits that she has a chance of success in this matter.

SUMMARY JUDGMENT

16. The Court's summary judgment jurisdiction is set out at **CPR 15.2**. The case of **Western United Credit Union Co-operative Society v Ammon CA103/2006** cited in the submissions of both parties explains the principles relating to applications for summary judgment. These principles have been considered. The guidance of the UK House of Lords in **Three Rivers District Council v. Governor and Company and Bank of England No. 3 [2001] UKHL 16**, is also helpful. In that case it was observed that:

"The rule... is designed to deal with cases which are not fit for trial at all"; the test of 'no real prospect of succeeding' requires the judge to undertake an exercise of judgment; he must decide whether to exercise the power to decide the case without a trial and give summary judgment; it is a discretionary power; he must then carry out the necessary exercise of assessing the prospects of success of the relevant party; the judge is making an assessment not conducting a trial or a fact-finding exercise; it is the assessment of the case as a whole which must be looked at; accordingly, 'the criterion which the judge has to apply under CPR Pt 24 is not one of probability; it is the absence of reality.'

17. The Defendant submits that she has set out the elements of unconscionable bargain that she intends to rely upon sufficiently in her defence i.e. that she was an "ignorant" person;

that the land was sold at a considerable undervalue and that there was the absence of legal advice. She submits that these elements will be further proven through evidence in the course of proceedings.

18. As it relates to Undue Influence the Defendant submits that the factors required to prove the existence of a relationship of trust and a transaction which “calls for explanation” have been sufficiently set out in the Defence. She states that there was a pre-existing relationship established on the pleadings, wherein she owed the Claimant monies that were borrowed for medications. Regarding the transaction, she submits that it calls for explanation on the face of it given the size of the land in relation to the sum paid and the execution of the Agreement not being witnessed. She submits that the value of \$6,000 per acre is absurd in today’s real estate market.

19. The Defendant also submits that Unjust Enrichment factors are made out on her pleadings as the Claimant would have received a benefit at the expense of the Defendant, and for an alleged gross undervalue, rendering the transaction grossly unjust.

20. The main contentions of the Claimant are set out at paras. 21 and 27 of the submissions. These paragraphs make specific reference to *lack of evidence* of the factors to be proven under each of these heads. As set out by the Claimant at para. 11 of submissions, however, the Court must take into account not only the evidence placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial – **Royal Brompton Hospital NHS Trust v Hammond (No. 5) [2001] EWCA Civ 550**.

E. Conclusion

21. The Defendant has pleaded a Defence with sufficient particularity to show both an arguable defence and a realistic prospect of success. Evidence to prove the Defence may

be adduced through expert reports and witness testimony. As such, the Claimant's applications to strike out the Defence and for Summary Judgment will not be granted.

22. The applications are dismissed and the Claimant is to pay the costs of the Defendant in an amount to be assessed if not agreed.

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Eleanor Joye Donaldson-Honeywell

Judge

Assisted by: Christie Borely JRC 1