

THE REPUBLIC OF TRINIDAD AND TOBAGO:

**IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY, SAN FERNANDO**

No. CV 2016-04129

BETWEEN

SHARDA DUNCAN

Claimant

AND

SHARON BEHARRY

(Representative of the Estate of the late SIEW KOONGEBEHARRY

**Pursuant to the Order of the Honourable Madame Justice Margaret Y. Mohammed made
on the 7 October, 2019)**

Defendant

Date of Delivery December 3, 2019

Before the Honourable Madam Justice Margaret Y Mohammed

Appearances:

Mr Jeevan Rampersad Attorney at law for the Claimant.

Mr Haresh Ramnath Attorney at law for the Defendant.

JUDGMENT

1. The Claimant initiated proceedings in this matter by way of Fixed Claim Form and Statement of Case filed on the 11 November, 2016 where she has sought the following orders against Mr Siew Koongebharry ("the Deceased"):-
 - a) A declaration that she is entitled to possession of that piece of land situate at Lot No. 150 Picton Settlement, Diamond, San Fernando comprising one (1) lot more or less ("the said lands") by virtue of a promissory estoppel;
 - b) Specific Performance of an agreement between herself and the Defendant for the purchase of the said lands pursuant to the terms of the Sugar Industry

Labour Welfare Committee (“the SILWC”) letter dated the 25 day of January, 2013;

- c) Alternatively, damages for breach of contract;
 - d) An order for an injunction that the Deceased do take immediate steps to liaise and/or communicate with the Board of the SILWC to effect the transfer of the said lands to the Claimant absolutely with a life interest to the Deceased;
 - e) Interest;
 - f) Costs;
 - g) Such further and/or alternative reliefs as the Honourable Court deems fit.
2. The Defendant filed a Counterclaim on the 12 July, 2016 for the following reliefs:-
- a) A declaration that the agreement between the Claimant and the Deceased for the Defendant to convey his interest in the said lands is illegal and/or its enforcement is statute barred and/or unenforceable;
 - b) A declaration that the alleged agreement represent an unconscionable bargain;
 - c) Costs
 - d) Such further and/or other reliefs as the nature of the case may require.
3. It was not in dispute from the pleadings and the evidence that the Defendant was in occupation of the said lands as a statutory tenant and that as a statutory tenant the SILWC offered to sell him the said lands at half the market value in the sum of \$17,500.00 (“the purchase price”). It was also not in dispute that the Claimant paid the purchase price to the SILWC. The dispute surrounds the circumstances surrounding the payment of the purchase price.
4. The Claimant has grounded her claims in promissory estoppel and contract.
5. Her case and her evidence was that the SILWC offered to sell the Deceased the said lands for \$17,500.00 which was one half of the market value. The Deceased whom she knew when she was a child and with whom she shared a close relationship, indicated to her that he did not have any money and he asked her around July 2008 to pay the

SILWC the purchase price and in return he agreed to arrange to retain an Attorney-at-Law to prepare the necessary Deed of Conveyance in order to transfer the said lands to her.

6. She asserted that pursuant to this agreement the Deceased wrote to the SILWC to give effect to his wishes.
7. The Deceased position was that his agreement with the Claimant was for her to pay the SILWC the purchase price on his behalf as a loan and that he would pay her back. He asserted that he never agreed to transfer his interest in the lands to her. He did not obtain any legal advice before he entered into this arrangement with the Claimant and that he did not sign any of the letters addressed to the SILWC which the Claimant asserted he did.
8. The Claimant relied on the doctrine of promissory estoppel to obtain her reliefs. It is settled law that in order to succeed in a claim when relying on the doctrine of promissory estoppel the Claimant must prove the following three elements: a representation or assurance is made to the claimant; reliance on it by the claimant and detriment to the claimant in consequence of his (reasonable) reliance. In order for the Claimant to obtain the reliefs based on the agreement which she alleged she had with the Deceased she had to prove all there elements.
9. The Claimant also had to prove that if there was such an agreement that it was not illegal as being contrary to the provisions of the **Land Tenants (Security of Tenure) Act (1981) ("the 1981 Act")**; it was enforceable; it was not unconscionable and that she had brought her claim in contract within the appropriate limitation period.

Promissory Estoppel

10. It was not in dispute that the Claimant paid the purchase price so that she has satisfied the element of detriment. The determination of this issue turns on the alleged promise.

11. The Deceased case and his witness statement was that he did not make any promise to the Claimant that he would transfer the said lands to her if she paid the purchase price. His case was that he asked the Claimant to pay the purchase price as a loan and that he would pay her back. The Deceased's witness statement was tendered into evidence pursuant to Rule 29.9 and 29.11 Civil Proceedings Rules 1998 before the trial. Therefore, his evidence was not tested in cross-examination.
12. The Claimant's evidence was that there were at least two versions of the promise. According to the Claimant on or about July, 2008 the Deceased personally approached her and inquired whether she would be able to pay the purchase price to acquire the said lands from the SILWC. In response, she agreed to pay the full purchase price of \$17,500.00 for the said lands and the Defendant in return agreed that he would arrange to retain an Attorney-at-Law to prepare the necessary Deed of Conveyance in order to transfer the entirety of the said lands to her.
13. The Claimant also testified that on or about July 2008 she and the Deceased attended the SILWC offices at San Fernando and spoke to one Mr. Toolsie who advised the Deceased in her presence to write a letter to Mr. Carlton Mustapha to be approved by the SILWC Board. The Claimant stated that although the letters from the SILWC states that she was to be included as joint tenant of the said lands, the Deceased assured her on numerous occasions that he would fully transfer the said lands to her and he would be able to continue living on the said lands.
14. Based on the Claimant's own evidence the nature of the promise in 2008 was not consistent. First, it was that the Deceased would take steps to have the said lands transferred to her alone and then it changed to it being transferred to the Claimant with a life interest to the Deceased. In my opinion, this lack of clarity of the promise was important since this was before the Claimant made the full payment of the purchase price to the SILWC.

15. After the Claimant paid the full purchase price, the Claimant testified that the Deceased assured her that he would transfer the said lands to her with a life interest to him.
16. The Claimant stated that she relied on the correspondence between the Deceased and the SILWC to support her case. In particular the letters dated 25 January 2013 and the 16 April 2014. The Deceased's position was that he did not sign any letters sent on his behalf to the SILWC and there was no expert evidence adduced by the Claimant to prove that the Deceased had executed the letter of the 25 January 2013 which she relied.
17. As there was doubt cast on the letters sent on behalf of the Deceased in my opinion, the letters sent by the SILWC were instructive in settling its understanding of the transfer of the said lands. The SILWC sent 3 letters to the Deceased namely the letter of 5 May, 2010 the SILWC wrote to the Deceased confirming that the Defendant requested permission from the SILWC for the inclusion of his grand-daughter the Claimant; the letter dated 25 January, 2013, the SILWC wrote to Deceased stating that the freehold interest in the said lands would be conveyed to the Deceased and the Claimant as joint tenants and the letter dated 16 April, 2014, where the SILWC wrote to the Deceased enquiring whether he had made any progress in retaining the services of an Attorney-at-Law to prepare the Deed of Conveyance in favour of both the Deceased and the Claimant.
18. In my opinion the letters from the SILWC did not assist the Claimant's case that the Deceased promised or was in the process of having the said lands transferred to her *solely* after she paid the purchase price to the SILWC. At best the letters showed that the SILWC understood that the said lands were to be transferred to the Deceased and the Claimant as joint tenants but this was not the Claimant's case. Further even if the Claimant's case was that the promise was that the Deceased was to transfer the said land to her with him retaining a life interest, this too was not consistent with her case since the relief she sought when she filed the instant action was to obtain possession of the lands from the Deceased who was alive at the time.

19. Mr Roopnarine Toolsie who was the Claimant's witness did not assist her case. His evidence was that he recalled that the Deceased attended a meeting with the SILWC and at 1 meeting the Deceased requested the SILWC to transfer the said lands to hi and the Claimant as joint tenants. In my opinion, this was reflected in SILWC's letter 25 January 2013 but it was inconsistent with the Claimant's case that the Deceased promised that he would transfer the said lands to her solely.
20. Based on the aforesaid inconsistencies of the Claimant's case and evidence on the alleged promise, she has failed on a balance of probabilities to prove that the Deceased promised that he would transfer the said lands to her.

Limitation of Claim

21. In my opinion, the Claimant's claim in contract was brought within the appropriate limitation period. According to section 3 of the **Limitation of Certain Actions**¹ ("the Limitation Act") any claim in contract must be brought by the aggrieved person within 4 years from when the cause of action arose. It is settled law that the cause of action for a claim grounded in contract arises when the breach occurred.
22. According to the Claimant's evidence she made the last payment on the 21 August 2012. By letter dated the 25 January, 2013, the SILWC wrote to Deceased stating that the freehold interest in the said lands would be conveyed to the Deceased and her as joint tenants. The said letter also stated that the said lands were not to be conveyed to any other party within a period of five (5) years from the date of execution by the SILWC. The said letter also gave instructions for the Deceased to retain an Attorney-at-Law to prepare and submit the applicable Deed of Conveyance for vetting.
23. By letter dated the 16 April, 2014, the SILWC wrote to the Deceased enquiring as to whether any progress had been made by the Deceased in retaining the services of an Attorney-at-Law to prepare the Deed of Conveyance in favour of the Claimant and the Deceased.

¹ Chapter 7:09

24. Based on the Claimant's case, she was aware that since April 2014 of the alleged breach. Therefore, the cause of action arose in 2014 and at the time when the instant action was brought she was still within the limitation period.
25. Having crossed the limitation hurdle, the next stop is the legality of the alleged agreement which impacts on its enforceability.

Legality and validity of the alleged agreement

26. Section 5 (5) of the 1981 Act provides that the tenant has a right to purchase land at half the market value. Section 5 (7) of the 1981 Act states that the purchaser cannot sell to any persons other than the State at a price exceeding fifty percent (50%) of the open market value within five (5) years of purchase of the property. The scheme of the 1981 Act to provide a level of protection to landowner and tenants. The ability to purchase at half market value is a right afforded only to tenants. There are other provisions in the Act that even allows for payments by instalments.
27. It was not in dispute that the Deceased and not the Claimant was not the tenant of the said lands. Therefore any agreement which the Claimant alleged she had with the Deceased that he would transfer the said lands to her upon her payment of the full purchase price was illegal and unenforceable since section 5 of the 1981 Act expressly prohibited any tenant from transferring his rights in any lands to her until after 5 years have passed. The Claimant's evidence was that both she and the Deceased were aware of this restriction which was contained in the letter dated 25 January 2013 from the SILWC to the Deceased.
28. Therefore the alleged agreement is illegal and unenforceable as being contrary to the provisions of the 1981 Act.
29. Even if the alleged agreement was enforceable the next hurdle which the Claimant had to cross is to satisfy the Court on a balance of probabilities that as an oral agreement for the transfer of real property is valid and enforceable.

30. Section 4 (1) of the **Conveyancing and Law of Property Act**² states that no action may be brought upon any contract for the sale or other disposition of and/or any interest in land unless there is an agreement in writing. However subsection (2) states that this provision does not affect the law relating to part performance.
31. According to the Claimant's case and her evidence she had an initial oral agreement with the Deceased to pay the purchase price to the SILWC and in return he agreed to retain an Attorney at law to have the said lands transferred to her. She paid the purchase price by 4 instalments with the last instalment being on the 21 August 2012. Therefore, the only action that can be inferred as part performance is the payment of the monies.
32. However, according to the Claimant's evidence, these payments were made prior to another agreement between the Claimant and the Deceased to transfer the said lands to the Defendant for life with remainder to the Claimant and as a result, this past consideration is no consideration. This other agreement was referred to by the Claimant when she referred to a letter dated the 25 January, 2013, where the SILWC wrote to Defendant stating that the freehold interest in the said lands would be conveyed to the Deceased and the Claimant as joint tenants.
33. **Re McArdle (1951)** illustrates that past consideration amounts to no consideration. In the said case, the children of "T" were entitled under "T's" Will to a house. After "T" died (their mother) "X" who lived with "T" in the said house and made certain improvements to the building. Sometime later, all the children signed a document in which they promised to pay "X" a sum of money out of the estate in consideration of the improvements she made. It was held in the Court of Appeal that since all the work on the building had been completed before the document/promise was signed, the consideration was past consideration and the promise or agreement to pay contained in the document was not binding.

² Chapter 56:01

34. In the instant case, the alleged agreement to transfer the said lands to the Claimant with a life interest to the Deceased was based on the Claimant after payment of the money and this amounted to past consideration. The Claimant cannot now rely on the alleged earlier agreement for the said lands to be transferred to her as according to her, the agreement was varied to give the Defendant a life interest.

Unconscionable bargain

35. The Deceased asserted in his Defence and in his witness statement that he did not have the benefit of independent legal advice before he entered into any arrangement with the Claimant. While the Deceased's evidence was untested by cross-examination, the Claimant confirmed in cross-examination that as far as she was aware the Deceased did not obtain any independent legal advice before they entered into the agreement.

36. In the Court of Appeal decision of **Algoo v Algoo**³. Kangaloo JA stated at page 4 paragraph 8 of the judgement that a transaction can be vitiated as an unconscionable bargain where:-

- (a) There is poverty and ignorance of the party impugning;
- (b) Sale at an undervalue and
- (c) Lack of independent legal advice.

37. Based on the Claimant's own evidence the Deceased did not obtain independent legal advice before he entered into any agreement with her concerning the said lands. Further, the said lands were being sold to the Deceased at ½ of its market value and any transfer to her at that price was at an under value. In any event, the Claimant admitted in cross-examination that the Deceased was a labourer at CARONI Ltd. There is it reasonable to assume that he was poor and not well educated.

³ Civ Appeal No 48 of 2004

38. In my opinion, the weight of the evidence has established that all the criteria set out in **Algoo** have been established in this case and that any transaction the Claimant had with the Deceased must be vitiated on the basis that it was an unconscionable bargain.

Order

39. The Claim is dismissed.

40. Judgment for the Defendant on the counterclaim.

41. It is declared that the agreement between the Claimant and the Deceased for the Deceased to convey his interest in the said lands is illegal and/or its enforcement is statute barred and/or unenforceable.

42. It is declared that the alleged agreement represent an unconscionable bargain.

43. The Claimant to pay the costs of the claim and the counterclaim in the total sum of \$28,000.00.

Margaret Y Mohammed
Judge