

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

**HCA No. 184 of 1995
CV 2007-01703**

**Between
BASDAI RAMSERAN
And
VICTOR JATTAN**

CLAIMANTS

And

**OCCA H SEAPPAUL
And
APHZAL ALI
(THE LEGAL PERSONAL REPRESENTATIVE
OF TAHIR ALI)**

DEFENDANTS

Appearances:

Mr. J. Singh and Ms. N. Rampersad
instructed by Mr. A. Manwah for Claimants
Mr. D. Maharaj instructed by Mr. B. Hellpike
for the First Defendant
Mr. D. Persad for Second Defendant

REASONS

1. Introduction

1. The Claimant's claim against the Defendants, among other matters:
 1. Damages for fraud.
 2. Damages for conspiracy between the First and Second Defendants.
 3. Rescission and/or setting aside of Deed of Conveyance dated February 4, 1993 and registered as No. 8590 of 1993 and made between the First Claimant as Vendor and the First Defendant as Purchaser of ALL AND SINGULAR that

certain parcel of land situate at Southern Main Road, Mc Bean, Couva comprising 7,050 superficial feet (“the Couva property”).

4. Rescission and/or setting aside of a Deed of Conveyance dated October 31, 1994 registered as No. 18121 of 1994 and made between the First Defendant as Vendor and the Second Defendant as Purchaser whereby the First Defendant purported to convey the Couva property to the Second Defendant.

2. The issue

2. The essential issue arising for determination is whether, in the circumstances, the First Defendant was authorised to sell the Couva property, which was beneficially owned by the First Claimant, by private treaty to the Second Defendant as a result of the Second Claimant’s default in liquidating certain loans made to him by the First Defendant.

3. The parties

3. The First Claimant is the aunt of the Second Claimant and was, at the material time, by Deed of Conveyance dated March 2, 1961 and registered as No. 8922 of 1961 the fee simple owner of the Couva property.
4. The Second Claimant is the nephew of the First Claimant and was at all material times a businessman.
5. The First Defendant was at the material time an attorney-at-law and the Speaker of the House of Representatives of Trinidad and Tobago.
6. The Second Defendant, Tahir Ali, now deceased, was at the material time a businessman.

For the sake of convenience I shall continue to refer to the said Tahir Ali as the Second Defendant.

4. Overall assessment of the parties

7. It is fair to say that the evidence in this trial is, to some extent, confusing. Manifestly the Claimants and the First Defendant have not been as candid with the Court as they should have been although, I remind myself, that the obligation is on the Claimants throughout to establish their case. Impressions alone can lead a court to fall into error. In *Horace Reid v Charles and Bain* the Privy Council underscored the importance of, in an appropriate case, moving beyond impressions and considering the totality of the evidence:¹

Mr. James Guthrie, in his able submission on behalf of Mr. Reid, emphasised to their Lordship that where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of trial judges if he relies solely on the demeanour of witnesses it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an after-thought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.

¹ PC App No 36 of 1987 6 (PC).

8. With respect to the Second Claimant I am of the view that he is not a credible witness. It seems to me that he has not fully disclosed the true nature of the relationship between the First Defendant and himself. Moreover the First Claimant, notwithstanding the Second Defendant's dubious business track record, seemed to have reposed a great deal of trust and confidence in him. This may be attributed in part to the avuncular nature of their relationship. However she herself admitted in cross-examination that she had total confidence in the Second Claimant and that she would have done whatever he told her to do with her Couva property.

9. With respect to the First Defendant, I am of the view she has not been as candid as she should have been. However, in all the circumstances I accept her testimony to a substantial extent. In so doing I have factored in that there is some support from her witness and from the contemporaneous documents.

10. While the Claimants' pleadings portrayed the First Claimant as "an old woman unversed and unfamiliar with business transactions", she was quite the contrary. She was extremely knowledgeable in land transactions having sold approximately 20 to 30 lots of lands from her Santa Clara development. And she appeared quite proud of herself when the court observed that she was an intelligent woman. Further when asked in cross-examination to read part of the deed, she was able to do so with consummate ease. Additionally she composed the written instructions to Mrs. Seukeran-May which began with the words, "*Please be advised...*" I conclude that this was a deliberate attempt by the Claimants to mislead the court. Against that background when one considers that it is admitted that both Claimants, at all material times, had the benefit of independent legal advice through Mr. Rupert Frank, Attorney-at-law (see also paras 9 and 11 Witness Statement of Second Claimant), the inescapable conclusion is that they were fully aware of the nature of the commercial transaction/s entered or being entered into between the Second Claimant and the First Defendant and the risk/s that they carried. Moreover I hold that the First

Claimant actively encouraged the First Defendant to render financial assistance to the Second Claimant and expressly authorised the First Defendant to utilise the Couva property as security for any loans to be raised on the Second Claimant's behalf.

5. Analysis

11. The Second Claimant's father, the brother-in-law of the First Claimant, was the owner of the family property situate at Curepe ("the Curepe property"). Royal Merchant Bank had advertised the Curepe property for sale by public auction as the mortgage payments were in arrears.
12. At the public auction on November 19, 1992 Franklyn Seechan's (the Second Claimant's relative) bid in the sum of \$605,000 for the purchase of the Curepe property was accepted by the auctioneer.
13. It would seem that Royal Merchant Bank was prepared to accept the sum of \$605,000 from the Second Claimant or his nominee to settle the outstanding arrears on the Curepe property.
14. Unable to raise the outstanding sum and not wanting to lose the family property, the Second Claimant, in or about early 1993, began visiting the First Defendant's office from time to time, persistently relating the nature of his financial problems and seeking her financial assistance. It is apparent from the evidence that from this time onwards the Second Claimant and the First Defendant entered into a series of business transactions. The First Claimant had come to know the First Defendant after one of her tenants, Earl Ward, introduced him to her.

(a) The first transaction

15. The First transaction concerned the Curepe property. The Second Claimant informed the First Defendant that Royal Merchant Bank had put up the Curepe property for sale and that he was unable to pay off the outstanding sum. The Second Claimant explained that he was unable to raise money from the banks as he then had outstanding High Court judgments against him. Further the Second Claimant wanted the First Defendant to purchase the Curepe property on his behalf in her name and he would subsequently repurchase same from her. Accordingly I reject the Second Claimant's evidence to the contrary.
16. As a consequence the First Defendant made enquiries of Royal Merchant Bank. The said bank informed her that there was a bid at an auction by one Franky Seechan in the sum of \$605,000 for the Curepe property which never materialised.
17. While discussions were ongoing between the Second Claimant and First Defendant, the First Claimant attended the offices of the First Defendant with the Second Claimant. The First Claimant pleaded with the First Defendant for her to assist the Second Claimant with his financial difficulties. The proposal was for the First Defendant to secure a loan from Royal Merchant Bank to purchase the Curepe property. The parties further agreed that the First Defendant's fee for securing the loan of \$600,000 would be \$60,000.
18. However the Claimants were unable to raise the \$60,000 fee, in consequence whereof the parties agreed that:
 1. The First Claimant would transfer the Couva property to the First Defendant in lieu of receiving the said \$60,000.

2. The First Defendant would reconvey same to the First Claimant after the Second Claimant his servants and/or agents negotiated a loan with Workers' Bank, the proceeds of which were to be utilised to pay off the Royal Merchant Bank mortgage and her fee.

19. In pursuance of the said agreement the First Defendant instructed her attorney-at-law, Mrs. Ria Seukeran-May, to prepare the conveyance for the Couva property.

20. On February 4, 1993 the Claimants also attended Mrs. Seukeran-May's office and requested that she prepare the conveyance of the Couva property to the First Defendant.

21. In the course of taking instructions from the First Claimant (in the absence of the Second Claimant), Mrs. Seukeran-May enquired as to the consideration of \$120,000 suggested by the First Claimant. It was then that the First Claimant explained the true nature of the transaction, making it manifest that no money was passing. (The nature of the transaction was in all material respects the same as the agreement recited at para 18 above).

22. Mrs. Seukeran-May reduced the First Claimant's instructions to writing and prudently advised her to seek independent legal advice.

23. The Claimants on the very day were independently advised by attorney-at-law, Mr. Rupert Frank.

24. Mrs. Seukeran-May also telephoned the First Defendant. She suggested to the First Defendant that, as a measure of good faith, she would prepare a deed of conveyance

reconveying the Couva property to the First Claimant. Further she would hold this deed in escrow. The First Defendant agreed to that suggestion.

25. By reason of the foregoing Mrs. Seukeran-May on February 4, 1993 prepared:

- (i) The instructions from the First Claimant.
- (ii) The deed of conveyance of the Couva property from the First Claimant to the First Defendant.
- (iii) The deed of reconveyance of the Couva property from the First Defendant to the First Claimant.

26. It is to be noted that Mrs. Seukeran-May's testimony, which I accept, provides some support for the First Defendant's account of the nature of the transaction.

27. The First Defendant on the said February 4, 1993 signed the conveyance of the Couva property from the First Claimant to herself. However the deed of reconveyance was not yet ready for execution when the First Defendant showed up.

28. Mrs. Seukeran-May submitted the deed of conveyance to the stamp duty office for registration but it was refused and a valuation requested.

29. The stamping and registration of the said deed were not subsequently pursued as the bank informed the First Defendant that the loan could not be accessed due to a defect in the title to the Couva property.

30. The evidence reveals that by reason of the foregoing that particular business transaction between the Second Claimant and the First Defendant fell through. I shall revert to the business transactions after I have completed reviewing Mrs. Seukeran-May's testimony. However, having regard to my findings, the First Claimant clearly authorised the First Defendant to utilise the Couva property as security for any loans to be raised on the Second Claimant's behalf.

31. Thereafter Mrs. Seukeran-May held the said deed of conveyance for several months until June 9, 1993 when she received a document (dated April 8, 1993) from the First Claimant requesting her to:

- (i) register the said deed; and
- (ii) also to give the signed deed of reconveyance to the Second Claimant (document "C" of Agreed Bundle).

As a consequence on the very day she gave the Second Claimant:

- (1) The deed of conveyance of the Couva property from the First Claimant to the First Defendant (which was unstamped).
- (2) The deed of reconveyance of the Couva property from the First Defendant to the First Claimant (which at that time was unsigned).
- (3) A copy of her instructions from the First Claimant.

On that day she also advised that independent legal advice be sought and once again Mr. Frank provided same (see para.11 Witness Statement of Second Claimant).

32. Pausing there, it is clear that the First Defendant's Attorney advised the Claimants to have the benefit of independent advice and the Claimants availed themselves of same. In those circumstances the Claimants would be hard pressed to convince a court that the First Defendant was engaging in conduct which was unconscionable or even fraudulent.

A tortiori the evidence reveals that the First Defendant was at all material times willing to execute a deed of reconveyance.

33. The said deed of conveyance of the Couva property dated February 4, 1993 was duly registered (the evidence reveals not by Mrs. Seukeran –May) on June 15, 1993 as No. 8590 of 1993 (document “D” of Agreed Bundle).
34. After the said deed of conveyance was registered, the Second Claimant presented the First Defendant with the original of the deed of reconveyance. The First Defendant duly signed same and gave it back to the Second Claimant to take back to the attorney to be held in escrow.
35. Some time later in 1994 Mrs. Seukeran-May, on the First Claimant’s request, delivered all documents belonging to the First Claimant to her lawyer.

(b). Other transactions

36. It is now possible to revert to the business transactions entered into between the Second Claimant and the First Defendant and to the role played by the First Claimant. It is noteworthy that the Second Claimant himself admitted in cross-examination that the First Defendant extended financial assistance to him. This included the provision by the First Defendant to him of:
 - (1) Financial assistance with respect to the Trinfinance Ltd., the details of which I shall deal with momentarily.
 - (2) The sum of \$34,000 for the purchase of two damaged cars.
 - (3) The First Defendant also assisted him in securing the release of a truck seized by General Finance Corporation [see also para.7 (1) of Defence]. Although the Second Claimant contends the First

Claimant was unaware of any other business transactions, I reject his testimony in that regard. Similarly I reject the Second Claimant's testimony that the only occasion on which the First Claimant attended the First Defendant's office was on April 5, 1994. Even the First Claimant disputes this, contending that she had seen the First Defendant on three occasions.

37. From her first visit up until June 1993, the First Claimant visited the First Defendant on many occasions thanking her for her assistance in alleviating the financial plight of the Second Claimant. The First Claimant also requested that the First Defendant continue her financial assistance so that the Second Claimant could eventually pay off his debts and be placed on a sound financial footing. The First Claimant also indicated to the First Defendant that the Couva property was still available as security for any loans to be raised on the Second Claimant's behalf.

38. Pausing there, it is manifest that the First Claimant was aware as to the nature of the arrangement/s between the Second Claimant and the First Claimant and actively encouraged the First Defendant to continue providing financial assistance to the Second Claimant. Further, if necessary, the First Defendant was authorised to use the Couva property as security for any loans to be raised on the Second Claimant's behalf. **The clear implication of such an arrangement in all the circumstances was that if the Couva property was to be used as security for raising funds for the benefit of the Second Claimant then, if such funds were not repaid by him or the First Claimant, the property would be sold.**

(i) April 1993 transaction.

39. In the month of April 1993 the First Defendant negotiated a loan with Trinfinance Limited for the sum of \$200,000 for the purpose of purchasing used vehicles for repair and resale. The said repairs and resales were to be done by the Second Claimant.
40. The sum of \$103,625.36 out of the said \$200,000 was allocated for the repair of two tractors. This sum was based on quotations which the Second Claimant stated had been provided by Tracmac Engineering Ltd. The said quotations were thereafter submitted to Trinfinance Ltd.
41. As the First Defendant was expected to be abroad at the end of April, 1993, the Second Claimant undertook to begin the repairs to the two tractors during her absence. In an effort to expedite the repairs, the First Defendant instructed the Manager of Trinfinance Ltd to prepare a cheque for Tracmac Engineering Ltd. in the sum of \$103,652.36 and to hand over same to the Second Claimant for effecting the necessary repairs.
42. On her return to the country, one Mr. Ector informed the First Defendant that he had complied with her request and that a cheque dated April 27, 1993 in the sum of \$103,652.36 had been given to the Second Claimant to effect the repairs to the two tractors.
43. However upon her return the First Defendant discovered that the tractors were not repaired. The Second Claimant informed her that he had already bought the parts but, to date, he has been unable to provide the First Defendant with any evidence of such purchase despite her several requests. The said cheque had been cashed and the First Defendant suspected that the Second Claimant had fraudulently converted the said sum to his own use. Document "A" of the Agreed Bundle dated April 29, 1993 provides some support for the First Defendant's testimony. The said document sets out that the

sum of \$200,000 was approved by Trinfinance Ltd for financing. The said sum was disbursed as follows:

	\$
(1) Payment to Citizen Insurance Company Limited TAW5454	31,000.00
(2) Payment to Mahadeo Nagina PAS6395	30,000.00
(3) Payment to Tracmac Engineering Repairs	103,652.36
(4) Payment for N.P Register	222.00
(5) Interest for period 8.4.93 to 29.4.93	721.47
(6) Payment to Occah Seepaul	34,404.17

It is also worth noting that the First Defendant received the sum of \$34,404.17 from the financing arrangement.

44. It is also worth noting that the Fraud Squad charged the Second Claimant for fraud arising out of the Trinfinance loan. However he was acquitted of the criminal charge.

(ii) The Mexican transaction: Purchase of Mexican products.

45. In June 1993 the Second Claimant and one Ewart Hutchinson, a person known by the First Defendant to be the Second Claimant's friend, attended her office. They requested a loan from the First Defendant on the ground that it was urgently needed to purchase certain Mexican products. The First Defendant informed them that she did not have the money whereupon the Second Claimant suggested that same could be raised on a mortgage of the Couva property. She further indicated that the said deed would first have to be stamped and registered and that the Second Claimant needed the First Claimant's consent to do so.

46. The Second Claimant undertook to do this. He left and subsequently returned with a duly registered copy of the said deed of conveyance of the Couva property and the original of the deed of reconveyance. The First Defendant signed the latter and returned it to the Second Claimant to take back to the attorney to be held in escrow. **Accordingly the Couva property was to be reconveyed to the First Claimant on payment of the sum of \$100,000.**

47. It was agreed that the amount to be raised on the mortgage of the Couva property was the sum of \$150,000 which the Second Claimant assured would be liquidated within three (3) months from the profits of the Mexican transaction. It was further agreed that the First Defendant would retain the sum of \$60,000:

- (i) To pay the instalments to the bank in the event that the Second Claimant was unable to liquidate the loan within the said three (3) months;
- (ii) To pay the arrears on the instalments on the said loan which the First Defendant had procured for the Second Claimant from Trinfinance Company Ltd.;
- (iii) To pay the First Defendant's fee of \$15,000 for raising the mortgage in her name.

48. The mortgage on the Couva property was duly obtained (*document "E"*) in the sum of \$150,000 and disbursed as follows:

- (a) The First Defendant retained the sum of \$60,000 as agreed;
- (b) After payment of legal and other bank charges, the remainder was made payable to Ewart Hutchinson and given to him on the Second Claimant's request for their Mexican transaction.

49. The Second Claimant did not liquidate the said loan of \$150,000 within the three-month period as promised and did not made any payments to the bank on the said mortgage as had been agreed.

50. Consequently the First Defendant convened a meeting at her office with the Claimants. She informed the First Claimant of the Second Claimant's default in making the agreed payments to the bank and warned that, if the situation continued, the bank would put up the Couva property for sale to liquidate the said loan. The First Claimant asked the First Defendant to request an extension of time from the bank to allow her to raise the money through the sale of some lands from her Santa Clara estate. Pausing here, once again

the First Defendant's conduct in these circumstances in advising the Claimants of the consequences of default cannot be viewed as unconscionable or fraudulent.

51. As a consequence the First Defendant took the Claimants to the bank where the latter explained their position to the manager and promised to liquidate the arrears and to continue payments until the debt was liquidated. The First Defendant specifically denied that on April 6, 1994 the Second Claimant informed her of his intention to seek legal advice. However it would appear that, even though the First Claimant was in a financial position to liquidate the loan, the Second Claimant insisted on seeking legal advice. Having done so he, quite erroneously in my view, advised the First Claimant not to liquidate same. [See also para 14 of Statement of Claim].
52. The bank subsequently informed the First Defendant that the Claimants had not made any payments as promised despite several extensions and that she should seek to obtain a purchaser for sale of the Couva property by private treaty.
53. The First Defendant (I have already found that she had the authority to sell in the event that the Claimants defaulted in liquidating loans made to the Second Claimant) then contacted the Second Defendant who subsequently purchased the Couva property at and for the sum of \$150,000.00. The Claimants have not led any evidence to suggest that the property was bought at an undervalue. While the Claimants have alleged some sort of conspiracy between the First and Second Defendants the Claimants have adduced no evidence supporting such a conclusion. Taking all the circumstances into consideration I found that the sale of the Couva property to the Second Defendant was an arm's length commercial transaction, and that the Second Defendant was a bona fide purchaser of the legal estate in same without notice. Accordingly I rejected any contention of collusion between the First and Second Defendants.

5. Order

54. In the circumstances I dismissed the Claimants' claim against the Defendants. I further ordered costs of the action to be paid by the Claimants to the Defendants to be taxed by the Registrar in default of agreement.

Dated this 31st day of May, 2012.

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PRAKASH MOOSAI
JUDGE