

**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2015-02649**

BETWEEN

**CLYDE CHARLES GUPPY**

Claimant

AND

**ROY GUPPY**

Defendant

**Before the Honourable Madame Justice Quinlan-Williams**

Appearances: For Claimants - Phillip Hewlett-Lamont and Kofi Mc Intyre.  
For Defendant - Lauren Stacy Ramtahal and Sasha Paula Singh.

**JUDGMENT**

1. Clyde Charles Guppy, the claimant and Roy Guppy, the defendant are brothers. They are two of eleven children of Joseph Guppy (the deceased) who died on the 22<sup>nd</sup> of December 1974 and Hannah Guppy (departed). Their other siblings are Ronnie Guppy (departed), Jean Guppy, Sonny Guppy (departed), Lindsey Deo Guppy, Johnnie Ramlal Guppy, Joseph Guppy, Julia Guppy, David Guppy and Ruby Guppy (departed).
2. The Claim Form and Statement of Case were filed on the 3<sup>rd</sup> of August 2015. The Defence and Counterclaim was filed on the 12<sup>th</sup> of November 2015 and the Reply and Defence to Counterclaim were filed on the 29<sup>th</sup> of January 2016.
3. The defendant pleaded fraud in his defence. At paragraph.....he pleaded:

*The Defendant was misled into believing that he could not as Administrator transfer the property to himself as beneficiary. A power of Attorney was prepared by Karen Piper, Attorney at Law, in favour of David Guppy to provide him with the ability to then transfer the property to the Defendant which said Power of Attorney was misused fraudulently. This Defendant all material times*

*placed his reliance on the guidance of Karen Piper, Attorney at Law who at all times presented herself to be acting in the interest for all parties and David Guppy.*

4. The claimant's claim is for, firstly, specific performance of the sale agreement made on the 14<sup>th</sup> of June 2014 relative to the property at No. 73 Real Street San Juan (Real Street). Secondly, for an order that the defendant sign an instrument conveying his interest in the property to the claimant. Thirdly, that the appropriate inscription be made on the Certificate of Title, and for an order that the Registrar of the Supreme Court do sign such instrument in default of the defendant signing it and costs.
5. The defendant has counterclaimed that the sale agreement of the 14<sup>th</sup> of June 2014 be set aside, for a declaration that the sale agreement dated the 18<sup>th</sup> of October 2011 and the 22<sup>nd</sup> of November 2011 made between all the parties is legally binding. That the property be sold to the defendant for the agreed price of Five Hundred and Twenty Five Thousand Dollars \$525,000.00 as per the said sale agreement. Alternatively that the sale of the two properties situate at No 5 Picton Street, San Juan Parcels A and No. 5 Picton Street, San Juan Parcel B be set aside, and that all assets of Joseph Guppy, deceased, be sold at market value and the proceeds divided equally among the beneficiaries. He also counterclaimed for costs, interest and such further and or other relief as the Court may deem fit.
6. During the case management stage, the court ordered the claimant and defendant to file witness statements, and that those witness statements stand as the evidence in chief of the witnesses.

#### **CLAIMANT'S CASE**

7. The claimant called four witnesses (including the claimant himself).
8. The claimant resides in Ontario, Canada.

9. The claimant's evidence is that the deceased left a will in which he devised his properties to his wife and children as tenants in common. The will was later probated on the 25<sup>th</sup> of July 1976. There were three properties so bequeathed:
  - I. A freehold property at No. 5 Picton Street, San Juan (Picton Street);
  - II. A parcel of land at Picton Street, (Picton Land), abutting No. Picton; and
  - III. A property at No. 73 Real Street, San Juan (Real Street).
  
10. The deceased's estate remained undistributed with different siblings living at Real Street at different times. Around 2005, the claimant was interested in purchasing a home in Canada and became interested in having the deceased's estate distributed.
  
11. The siblings agreed in 2010, that the three properties would be valued, the valuation for the three properties totaled One Million Five Hundred Thousand Dollars (\$1,500,000.00). It was also agreed between the siblings that the properties would be offered for sale among the male siblings; the sons of the deceased.
  
12. The agreed sale prices were as follows: for Picton Street – Four Hundred and Seventy Five Thousand Dollars (\$475,000.00), for Picton Land – Two Hundred and Seventy Five Thousand Dollars (\$275,000.00) and for Real Street – Seven Hundred and Fifty Thousand Dollars (\$750,000.00). From the aggregate each beneficiary would receive their share in the sum of One Hundred and Twenty Five Thousand Dollars (\$125,000.00). The siblings agreed to appoint Johnny as the point man, to oversee the completion of the terms of the agreement.
  
13. The claimant agreed to purchase the Picton Land, David agreed to purchase Picton Street and the defendant agreed to purchase Real Street. The sales to the claimant and David were completed in mid 2012 and the proceeds distributed. The defendant as Legal Personal Representative, executed the Deeds of Conveyance from the estate of the deceased to the claimant and David.

14. In October, 2011 at the defendant's request, the siblings all executed a document indicating their consent to the sale of Real Street to the defendant. This agreement was for the sale of Real Street to the defendant, his daughter and son-in-law.
15. In 2012, the claimant visited Trinidad and stayed at Real Street. There were some issues regarding who could and could not stay at Real Street. During that visit in 2012, the siblings "discussed the delays by the defendant in purchasing 73 Real Street. They agreed that consequent the defendant's behaviour toward Johnny, the agreement of 21<sup>st</sup> March 2011 and his failure to answer the letter of 23<sup>rd</sup> March, 2011, that pending the sale of Real Street that the Defendant would distribute the estate by assenting Real Street into the names of the beneficiaries. They also agreed that David would be given a Power of Attorney by all the beneficiaries to execute the transfer of 73, Real Street<sup>1</sup>.
16. It was agreed that Johnny and the David were nominated as the persons to go to Ms. Piper and make the arrangements for the Memorandum of Assent and the Power of Attorney. The Power of Attorney was signed by all the siblings during the period 19<sup>th</sup> of October 2012 and November 2012. The Deed of Power of Attorney was registered on the 27<sup>th</sup> of November 2012 as Deed DE2012026545 17D001.
17. On the 31<sup>st</sup> of May 2013, there was a conference call among the claimant, Johnny and David, during the call they discussed the defendant's apparent inability to complete the purchase of Real Street and the resultant delay in completing the distribution of the deceased's estate.
18. David, as the person charged with the responsibility of completing the sale of Real Street, was nominated to communicate to the defendant that Real Street would not be sold to the defendant's daughter and her husband, to the exclusion of the defendant. Further, the defendant was to be told that he needed to complete the sale of Real Street as that sale had been pending for too long.

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<sup>1</sup> Paragraph 23 of witness statement of Clyde Charles Guppy.

19. In June of 2013, the Claimant offered to purchase Real Street.
20. On the 14<sup>th</sup> of June 2013, the Agreement for sale of 73 Real Street was signed between David as vendor, by virtue of the Power of Attorney and the claimant as purchaser.
21. The defendant executed a revocation of the power of attorney on the 17<sup>th</sup> of June 2013.
22. On the 2<sup>nd</sup> of July 2013, a Memorandum of Transfer for Real Street was executed by David, pursuant of the Power of Attorney. The claimant had previously made payments of One Hundred and Twenty Five Thousand Dollars (\$125,000.00) to Carol (Ronnie's widow), Jean, John Sonny, Joseph and Johnny. The claimant prepared a bank draft in the amount of One Hundred and Twenty Five Thousand Dollars (\$125,000.00) for the defendant.
23. The claimant is of the view that his purchasing of the property was fair as the defendant did have the opportunity to purchase the property.
24. By letter in June of 2014, the claimant's attorney wrote the defendant formally advising him that the claimant was the owner of 11/12 interest in Real Street and requesting possession of the two downstairs apartments. The said letter also gave the defendant notice of the termination of the licence to occupy. The defendant was given six months to vacate Real Street.
25. The claimant was cross-examined.
26. The claimant says the three siblings who were identified as purchasers were so identified because of their financial positions and also because no one else had any interest in the properties. The defendant is the eldest sibling.
27. The claimant said when the defendant agreed to purchase Real Street he was not aware that the defendant could not purchase it due to his financial position. He later became aware of this and that is why it was agreed that the defendant, his daughter and son in law would purchase Real Street.

28. The claimant says when they agreed to have the power of attorney done it was for the purpose of completing the transfer to the defendant. The claimant said that the defendant was always willing to sign any document for the purpose of distributing the deceased's estate. The defendant would do what Johnny asked of him within reason.
29. According to the claimant, the power of Attorney executed in 2012 was to give David the power to sell Real Street. The power of Attorney was signed around the 19th of October 2012. At this time it was still the agreement to sell to the defendant, it was in May of 2013 that the siblings decided not to sell to the defendant.
30. The claimant said the power of attorney was specific for the sale of Real Street. It was the intention at the time of the power of attorney for the property to be sold to the defendant and his daughter and son in law. The intention to sell to the defendant stopped in 2013. The claimant agreed that he did not tell the defendant when he signed the agreement for sale. The claimant did not agree that he acted to deprive the defendant of his right.

### **Johnny Guppy**

31. Johnny Guppy's evidence was that the defendant was the sole executor of the deceased's will. The deceased died in 1974. Nothing was done by the defendant towards probating the deceased's will until Johnny took action, including taking the will to the lawyer and paying the legal fees and estate duties. The Grant of probate was issued on the 23<sup>rd</sup> July 1976.
32. The Real Street property, comprise a two story dwelling. It was rented for some time and their mother used the rental income to run the family home; the Picton Property.
33. After a period of time the tenant moved and Johnny did extensive renovations to the upstairs of Real Street. By this time the defendant had been living in a downstairs apartment with his wife and children.

34. It was observed around 1992, that the defendant and his family started a day care business located downstairs Real Street. The defendant ran that business without giving any account of the profit therefrom.
35. Even after the defendant had exclusive possession of Real Street, Johnny paid the Land and Building taxes and the WASA bills.
36. Johnny corroborates the evidence of the claimant that in 2010, the siblings agreed to have a valuation done on the three properties and that they would be offered for sale to the male heirs of the deceased. Johnny was appointed by the siblings to oversee the completion of the agreements.
37. In September of 2010, Johnny agreed to the inclusion of the defendant's daughter as a joint purchaser of the property.
38. In November of 2010 all the siblings were in Trinidad at the same time. There was a family meeting at which the defendant explained his difficulty in raising or acquiring the finances to purchase Real Street. The siblings agreed, at that meeting, to sell Real Street to the defendant, his daughter and his son-in-law.
39. On the 16<sup>th</sup> of November 2010, Johnny attended the law office of Ms. Piper with the defendant, and a sister Ruby. At that meeting Conveyances were signed by the Defendant for Picton Street and Picton Lands on behalf of David and the claimant respectively.
40. The consent for the sale of Real Street had also been prepared and it was signed over a period of October and November 2011 by all the siblings.
41. In March of 2011, Johnny became concerned that the defendant was not progressing towards completing the sale agreement for Real Street. This was so much so that Johnny accompanied the defendant, his daughter and son-in-law on a visit to the Trinidad and Tobago Mortgage Finance Company.

42. Johnny formed the view that only the defendant's daughter and son-in-law would qualify for a mortgage. Johnny then agreed to prepare an agreement for the sale of Real Street to the defendant's daughter and son-in-law only, reminding them that the deceased's intention and the siblings expressed wish was that when even the property was transferred, the defendant's name would be on the deed. Johnny sought the defendant's promise that whenever the eventual conveyance was being done, the defendant would have at least, a life interest in Real Street.
43. This written agreement to sell the property to the defendant's daughter and son-in-law was made on the 21<sup>st</sup> of March 2011. To confirm the parties agreement, the attorney dispatched a letter, dated 23<sup>rd</sup> March 2011 to the defendant, his daughter and son-in-law requesting their confirmation of their instructions that the eventual conveyance would include the defendant and his wife having a life interest.
44. In September 2012, the entire family visited Trinidad again. On Johnny's arrival the defendant prohibited him from staying in his room upstairs of Real Street, even after Johnny informed and reminded the defendant that Real Street did not belong to him. Johnny eventually stayed in the apartment downstairs.
45. Following this incident between the defendant and Johnny, a family meeting was called. The defendant attended the meeting. One topic of discussion was the defendant's delay in purchasing Real Street. The family decided that there would be consequences resulting from the defendant's behaviour towards Johnny and his failure to complete the purchase of Real Street. It was decided that the defendant would, in his capacity as legal personal representative of their father's estate, execute a Memorandum of Assent transferring Real Street to the beneficiaries. It was also agreed that David would be appointed by Power of Attorney, to execute the sale of the property.
46. David was delegated to undertake and complete that assignment as well as to be the Power of Attorney. Johnny attended the attorney's office and both documents were executed and registered in November 2012.



47. In May 2013, Johnny was a participant in a conference call with David and the claimant. David reminded them about the existence of the March, 2011 agreement to sell the property to the defendant's daughter and son-in-law. They also discussed the defendant's apparent inability to complete the sale agreement and therefore the distribution of the deceased's estate.
48. It was agreed that David, as the person charged with completing the sale agreement, would have a discussion with the defendant. The defendant was to be reminded that the sale was not to be completed without the defendant having an interest in the property. Further he needed to get on with the purchase since the matter had gone on too long. The defendant was also to be told that if he was unable to purchase Real Street, it would be offered for sale to the other brothers.
49. Subsequently, on the 14<sup>th</sup> of June 2013, David executed an agreement to sell Real Street to the claimant. On the 2<sup>nd</sup> of July 2012, David executed a Memorandum of Transfer transferring all the interest of the beneficiaries, except the defendant's, to the claimant.
50. Johnny was cross-examined.
51. Johnny agreed that after a while he realized that the defendant had difficulty raising the finances. He also agreed that it was in those circumstances that the family agreed that they would sell to the defendant, his daughter and son-in-law. He also agreed that there was concern in the family about the property being sold to a non-family member.
52. He agreed that an agreement was signed for the sale of the property to the daughter and son-in-law only. But that the agreement was only to facilitate a mortgage.
53. He agreed that he wanted Real Street to be sold to a male sibling. Johnny agreed that the siblings decided a power of attorney should be done so that they could sell Real Street to the defendant. He also agreed that David was appointed to tell the defendant that Real Street would not be sold to him.

## **Karen Piper**

54. Attorney-at-law Karen Piper (Ms. Piper) was the next witness. Ms. Piper had a long history with the family, especially Ronnie, David and Johnny. Sometime in 2009 or 2010 Johnny attended at her chambers relative to the distribution of the deceased's estate. Ms. Piper realized that the beneficiaries of the deceased had obtained a Grant of Probate but that the estate had never been distributed. Based on her instructions Ms. Piper realized that certain of the beneficiaries were purchasing the properties. She later prepared Deeds of Conveyance and Memorandum of Transfer to those family members.
55. In October 2012, on instructions from the defendant and Johnny, Ms. Piper prepared a Deed of Power of Attorney by which the beneficiaries gave David their power to act to sell Real Street. Ms. Piper also prepared a Memorandum of Assent which the defendant transferred Real Street to the twelve (12) beneficiaries of the deceased's estate. Ms. Piper did not advise the parties on these documents. Instead she acted on their instructions and prepared the documents.
56. In June 2013, also acting on instructions from David, Ms. Piper prepared an agreement for the sale of Real Street to the Claimant.
57. On the 14<sup>th</sup> of June 2014, the defendant, his wife and daughter visited Ms. Piper and raised matters. Since she was acting as the family's attorney she advised the defendant to seek independent advice.
58. On the 20<sup>th</sup> of June 2014, Ms. Piper acting on advice from David, prepared a Memorandum of Transfer for the sale of Real Street to the claimant of all the beneficiaries' interest with the exception of the defendant's interest.
59. Ms. Piper was cross-examined. She testified that the family had made their agreement concerning who should purchase the three properties. She did not participate in any discussions on who should purchase what. She did understand that the defendant was to purchase Real Street.

60. In March 2011, Ms. Piper prepared an agreement for sale of Real Street to the defendant, his daughter and son-in-law. It was not a standard agreement of sale but rather a consent to sell Real Street to the defendant, his daughter and son-in-law. This was prepared because the beneficiary of the sale was the executor of the deceased's will. The consent was from all the beneficiaries to sell to the defendant who was himself a beneficiary.

61. Ms. Piper said that the Deed of Power of Attorney was specifically for the sale of Real Street. It was not specifically for the sale of Real Street to the defendant. If those were her instructions she would have included that in the Deed, just as the Deed was specific that it was for the sale of Real Street. Ms. Piper received instructions from David about the power of attorney. She prepared the Deed of Power of Attorney and it later was returned to her signed and notarized where necessary. Five of the beneficiaries signed the Deed of Power of Attorney in her office. Ms. Piper denied ever telling the defendant that the purpose of the power of the attorney was for him to sell it to himself.

62. Ms. Piper said when the Deed of Power of Attorney was prepared, the sale agreement for Real Street to the defendant had already expired. Ms. Piper testified that she was not aware of all the agreements among the family members for the sale of Real Street. What she is aware of is the agreements in writing that she prepared. She is also aware that after the sale agreement to the defendant had expired that she prepared, the Deed of Power of Attorney. Ms. Piper testified that she did not mislead the defendant about the Deed of Power of Attorney nor did she cause the Deed of Power of Attorney to be misused by the lawful attorney selling Real Street to the claimant.

63. The next witness was David Guppy.

64. When the family all met in November of 2010, the defendant spoke about his difficulty in sourcing funds to purchase Real Street. It was agreed that his daughter and son-in-law would join in as joint purchasers. They agreed for a consent to be prepared to reflect the new agreement. The consent was signed by all the beneficiaries during the months of October and November 2011.

65. There was a family meeting in September 2012, at which all the beneficiaries were present, including the defendant. As a result of what had happened, including the entering of an agreement between the defendant, his daughter and son-in-law, that the defendant would execute a Memorandum of Assent transferring Real Street to the beneficiaries and he, David would be appointed a lawful Power of Attorney to execute the sale of Real Street. Johnny the defendant were appointed the persons to go the Ms. Piper and relay the beneficiaries' instructions.

66. In May 2013, David voiced his objection to an agreement to sell the property to the defendant's daughter and son-in-law only as being inconsistent with what they had all agreed. He also had a conference call with Johnny and the Claimant about that issue as well as the defendant's delay to purchasing Real Street which meant that there were beneficiaries out of their share of the estate. It was agreed that he, as lawful power of attorney, would inform the defendant that Real Street would not be sold to his daughter and son-in-law and that if he could not complete the purchase it would be offered to another beneficiary. David also told the defendant that purchase had to take place within a short time, since the matter had gone on too long.

67. Thereafter, David informed his brothers that Real Street was for sale. On the 14<sup>th</sup> of June 2013, David executed an agreement for sale of Real Street with the claimant. He subsequently received a Deed of Revocation executed by the defendant. During the period 14<sup>th</sup> of June to 19<sup>th</sup> of June 2013, David spoke to all the beneficiaries about the sale to the claimant and were all desirous to have it completed. The Memorandum of Transfer was later completed.

68. David was cross-examined. He said there was a problem when they discovered that the defendant, as legal personal representative, was going to sell the property to his daughter and son-in-law. That is why they decided to do the deed of assent and to sign a consent to sell to the defendant, his daughter and son-in-law. At the time when the power of attorney was done, the agreement was to sell to the defendant. The Defendant was having trouble with the financing, he said his name cannot be on the sale agreement and he is no longer able to purchase the property because of that. David then informed the

family that Roy is unable or unwilling to purchase Real Street. David then informed the family that anyone who wants to purchase can purchase. He later entered an agreement to sell the property to the claimant.

69. The Power of Attorney does not restrict sale to the defendant. At the time of its execution it was expected that it would be sold to the defendant. The change and the later agreement to sell to the claimant was not done behind the defendant's back. Nor was the arrangement hidden from the defendant.

#### DEFENDANT'S CASE

70. The claimant closed his case. The defendant's first witness was Ann Marie Guppy, the defendant's daughter. The defendant's daughter spoke about her knowledge of a sale agreement dated the 21<sup>st</sup> of March 2011, between the defendant of the one part and herself and her husband of the other part, to sell Real Street. She also spoke about her knowledge of the consent agreement (which she had referred to in her statement as a sale agreement) in October and November 2011, to sell Real Street from the defendant as legal personal representative to the defendant, herself and her husband.

71. The defendant's daughter was cross-examined. In her evidence in chief, the daughter's opinion is that Ms. Piper acted dishonestly and with the attempt to defraud the defendant out of Real Street. Under cross-examination, however, she said there was no dishonesty to be attributed to Ms. Piper in any of the transactions surrounding the sale of Real Street. Her opinion is that Johnny Guppy wants to leave Real Street to his children.

72. Defendant, Roy Guppy was the next witness.

73. The defendant's position is that "The sole purpose of this exercise was to empower him to execute a Deed of Transfer to me"<sup>2</sup>. He said that at no time did he indicate that he was not financially able to proceed with the purchase. He claimed that Johnny had approached

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<sup>2</sup> Paragraph 9 of Defendant's witness statement

him to purchase the property for his two sons. The defendant says that the agreement of sale between himself and his daughter and son-in-law was for the purpose of obtaining a mortgage to purchase Real Street.

74. As it related to the Deed of Power of Attorney, the defendant says he was taken to Ms. Piper's office by his brother Johnny and given a document to sign. He did not read the document but that "I was led to believe by her [Ms. Piper] (and which said document I did not read) was a document for my benefit in acquiring No. 73 Real Street, San Juan and signed same. The document that I in fact signed and the only one bearing that date turns out to be a document in which I transfer as Executor benefit of No. 73 Real Street, San Juan to all of the siblings"<sup>3</sup>. The defendant says that he believes this was done to him as his siblings do not feel that his children are good enough to acquire Real Street.

75. The defendant was cross-examined. The defendant agrees that he has not paid any money towards the purchase of Real Street. The defendant agrees that the consent was for Real Street to be sold to him. He also agrees that for one year after that was signed he did nothing towards purchasing Real Street. The assent passing Real Street to the beneficiaries was done one year after the consent was signed.

76. Under cross-examination the defendant admitted that there was nothing unlawful in the Power of Attorney or how it was executed. He admitted that he, the defendant, gave the Power of Attorney the authority to sell to anyone, not just to him. He also admitted that he understand that the property would be sold to him if he paid for it and that there was no agreement that he would get Real Street without paying for it.

77. As far as the revocation of the Power of Attorney, the defendant said under cross-examination, that by his revocation he left everything done by David intact. The defendant agreed that what was done was the Agreement for Sale. He further stated he left the agreement of sale intact and that he did not want to undo what was done by David.

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<sup>3</sup> Paragraph 12 of Defendant's witness statement

78. The defendant said there was no fraud in the drawing up of the Power of Attorney nor the use of the Power of Attorney.

#### CHRONOLOGY OF EVENTS

79. The chronology of events surrounding the estate of the deceased is contained in Table 1 below:

Table 1 Chronology of events

Date of Agreements	Document	Parties
23 <sup>rd</sup> July 1976	Grant of Probate	Roy Guppy (Legal Personal Representative)
21 <sup>st</sup> March 2011	Sale agreement	Roy Guppy and Richi Cyrano Sonoo and Annamarie Guppy Sonoo
23 <sup>rd</sup> of March 2011	Letter	Ms. Piper to Roy Guppy, Mr. Sonoo and Mrs. Anna Marie Guppy-Sonoo (advising that last day for completion of sale agreement is 19 <sup>th</sup> September 2011). instructions that Mr. and Mrs. Roy Guppy are to be made life tenants.
October and November 2011	Consent	All the beneficiaries to Roy Guppy
23 <sup>rd</sup> of April 2012 Registered 10 <sup>th</sup> May 2012 DE 201201052255D001	Deed	Roy Guppy (as Legal Personal Representative) and David Guppy
7 <sup>th</sup> June 2012 Registered 04 <sup>th</sup> October 2012 DE 201202268396 D001	Deed	Roy Guppy (as Legal Personal Representative) and Clyde Charles Guppy
26 <sup>th</sup> of October 2012. Registered on 7 <sup>th</sup> of November 2012	Memorandum of Assent	Roy Guppy as (Legal Personal Representative) and all the beneficiaries
19 <sup>th</sup> and 22 <sup>nd</sup> October 2012 and 6 <sup>th</sup> and 9 <sup>th</sup> of November 2012. Registered on the 27 <sup>th</sup> November 2012	Deed of Power of Attorney	To David Guppy from all the beneficiaries
20 <sup>th</sup> May 2013	email	Ms. Piper to David Guppy (advising that the sale agreement from Roy to his daughter and son-in-law had expired and a new agreement was necessary for TTMF)
14 <sup>th</sup> June 2013	Sale agreement	David Guppy (lawful attorney) and Clyde Guppy
17 <sup>th</sup> June 2013 Registered on 18 <sup>th</sup> June 2013	Deed of Revocation of Deed of Power of Attorney	Roy Guppy and David Guppy (lawful attorney)
2 <sup>nd</sup> July 2013	Memorandum of Transfer	David Guppy (lawful attorney) and Clyde Guppy

## SUBMISSIONS AND LEGAL ISSUES

80. The duties of lawful attorney. Fiduciary duties. Informed consent.

81. The defendant submitted that the act done under the Power of Attorney was in excess of the authority conferred by the Deed of the Power of Attorney. The defendant also relied on the issue of breach of trust or breach of fiduciary duty to have the actions done under the power of attorney, David, set aside. The defendant argued that “Even if the Attorney i.e. David Guppy was authorized by the Power of Attorney to agree to convey the property the Defendant is entitled to repudiate the Deed and the Court may set it aside in these circumstances”<sup>4</sup>.

82. The claimant submitted that he is able to bind the defendant to the terms of the contract when David acted as lawful attorney for the defendant by virtue of the Deed of Power of Attorney. With respect to the allegations of fraud and misuse of the Power of Attorney, the claimant submits that there is no evidence of that and that even the defendant, in his evidence said there is not fraud or misuse of the Power of Attorney.

83. Finally, the claimant raises the issue of cost of the action and the counterclaim on an indemnity basis.

## ANALYSIS AND DECISION

84. On the first issue, the case of **Bryant Powis and Bryant v La Banque Du Peuple**<sup>5</sup> analysed how a court should construe a Power of Attorney. Lord Macnaghten said:

*powers of attorney are to be construed strictly - that is to say, that where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to shew that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication. (page 177)*

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<sup>4</sup> Paragraph 38 of Defendant’s closing submission

<sup>5</sup> [1893] AC 170



85. **Bryant Powis and Bryant v La Banque Du Peuple (supra)** was applied in **Bissondaye Samaroo and Azizool Mohammed and ors**<sup>6</sup>. There were two issues raised in **Bissondaye Samaroo and Azizool Mohammed and ors** (supra). One was whether the lawful attorney was authorized to perform the act and two was whether the transaction should be set aside for breach of trust or breach of fiduciary duty. In delivering the decision Narine JA relied on and applied Lord Nacnaghten’s exposition on how to strictly construe Powers of Attorney. On the first issue the court has to look within the four corners of the Deed to see if the deed authorized the transaction. To consider the true construction and effect of the Power of Attorney requires a consideration of the provisions of the Deed of Power of Attorney. The apparent authority of the Power of Attorney is the real if the provisions of the Power of Attorney, either expressly or by implication, authorize it.

86. Applying the law to the evidence presented in the matter would require a close examination of the provisions of the Deed of Power of Attorney registered on the 27<sup>th</sup> of November 2012. The relevant provisions are contained following:

1. Consideration of the first issue, whether the power of attorney, David, had the lawful power to sell the land to the claimant, requires a consideration of the Deed. All the beneficiaries of the deceased executed a deed whereby they “HEREBY NOMINATE CONSTITUTE and APPOINT DAVID GUPPY... to be our lawful Attorney...”. The relevant part of the Deed of Power of Attorney DE2012026545 17D001 filed on the 27th of November 2012, states as follows:

NOW THIS DEED WITNESSETH that it shall be lawful and our Attorney shall have power in our names to perform the following acts:

1. To sell and disperse of our property known and assessed a No. 73, Real Street, San Juan, Trinidad, which property is descried in the Certificate of Title in Volume 1883 Folio 227 as comprising SEVEN THOUSAND, FIVE HUNDRED AND SEVENTY SIX SQUARE FEET and bounded on the North by lands of A. Andrews and by lands of Modeste on the South by Real Street and by lands of Silva on the East by lands of A. Andrews and by lands of Silva and on the West by lands of Modeste and by Real Street and intersected by a Drain 4 feet wide (hereinafter called “our said Property”).
2. To sign on our behalf an Agreement for the sale of our said property and to receive and give property receipt for any deposit paid pursuant thereto.

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<sup>6</sup> Civil Appeal No: 164 of 2008

3. Upon receipt of the consideration or purchase money for our said property or an part thereof to give a good receipt therefore which receipt shall exonerate the person paying such money from seeing to the application thereof or being responsible for the loss or misapplication thereof.

4. To sign seal and deliver as our respective acts and deed any deed Memorandum of Transfer or instrument in writing and to do every other thing whatsoever which may be necessary or proper for carrying the or any agreement for the purchase of the property into complete effect and execution in such manner that all our estates rights titles an interests in or to our said property are properly transferred.

87. The Deed expressed in clear terms, that the lawful Attorney has the power to sell and to sign an Agreement for sale for Real Street. There is no need to have recourse to any implied meaning to the Power of Attorney. The express meaning is clear. The court is satisfied on a balance of probabilities that the only interpretation possible to the terms of the Deed of the Power of Attorney, is that the lawful Attorney had power to sell and to enter into an Agreement to sell Real street property. David, the lawful Power of Attorney, therefore had authority to enter into the sale agreement with the claimant dated the 14<sup>th</sup> June 2013.

88. The second issue is whether, David as the lawful Attorney, owed fiduciary duties to the beneficiaries and to the defendant specifically and if he did whether the agreement of the 14<sup>th</sup> of June 2013 was contrary to his fiduciary duties. In **Bristol and West Building Society v Mothew**<sup>7</sup> the court considered the meaning of fiduciary and particularly, whether the execution of a deed to himself was in breach of trust and/or fiduciary duty. In arriving at its decision, Millett L.J. said:

*A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary. As Dr. Finn pointed out in his classic work *Fiduciary Obligations* (1977), p. 2, he*

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<sup>7</sup> [1997] 2 WLR 436

*is not subject to fiduciary obligations because he is a fiduciary; it is because he is subject to them that he is a fiduciary. (page 449)*

89. Further

*A fiduciary who acts for two principals with potentially conflicting interests without the informed consent of both is in breach of the obligation of undivided loyalty; he puts himself in a position where his duty to one principal may conflict with his duty to the other: see Clark Boyce v. Mouat [1994] 1 A.C. 428 and the cases there cited. This is sometimes described as “the double employment rule.” Breach of the rule automatically constitutes a breach of fiduciary duty. (page 450)*

*Even if a fiduciary is properly acting for two principals with potentially conflicting interests he must act in good faith in the interests of each and must not act with the intention of furthering the interests of one principal to the prejudice of those of the other: see Finn, p. 48. I shall call this “the duty of good faith.” But it goes further than this. He must not allow the performance of his obligations to one principal to be influenced by his relationship with the other. He must serve each as faithfully and loyally as if he were his only principal.*

*Conduct which is in breach of this duty need not be dishonest but it must be intentional. An unconscious omission which happens to benefit one principal at the expense of the other does not constitute a breach of fiduciary duty, though it may constitute a breach of the duty of skill and care. This is because the principle which is in play is that the fiduciary must not be inhibited by the existence of his other employment from serving the interests of his principal as faithfully and effectively as if he were the only employer. I shall call this “the no inhibition principle.” Unless the fiduciary is inhibited or believes (whether rightly or wrongly) that he is inhibited in the performance of his duties to one principal by reason of his employment by the other his failure to act is not attributable to the double employment.*

*Finally, the fiduciary must take care not to find himself in a position where there is an actual conflict of duty so that he cannot fulfil his obligations to one principal without failing in his obligations to the other: see Moody v. Cox and Hatt [1917] 2 Ch. 71; Commonwealth Bank of Australia v. Smith (1991) 102 A.L.R. 453. If he does, he may have no alternative but to cease to act for at least one and preferably both. The fact that he cannot fulfil his obligations to one principal without being in breach of his obligations to the other will not absolve him from liability. I shall call this “the actual conflict rule.”*

*(pages 450 - 451)*

90. In **Bissondaye Samaroo and Azizool Mohammed and ors**, the lawful Attorney signed the conveyance to himself and published his last will, where he devised the property on the same day. The conveyance was for the benefit of the lawful Attorney and his family, not for the benefit of the beneficiaries. The court held that the duty he owed as having a fiduciary responsibility was a duty to obtain their informed consent and to make full

disclosure to them of all the material facts in relation to the transaction. The deed was set aside for breach of fiduciary duty.

91. In this matter there is no issue of setting aside the Memorandum of Transfer of the 2<sup>nd</sup> of July 2013. The principles, the beneficiaries other than the defendant, on whose behalf the lawful Attorney acted are not parties to this action. The issue here is whether the lawful Attorney breached trust or fiduciary duties when he acted for the defendant. If the lawful Attorney acted in good faith then he binds the defendant. If he did not act in good faith then he does not bind the defendant and he is entitled to retain his one twelfth share of Real Street.

92. In this matter the lawful Attorney's fiduciary duty was to all his principles. The circumstances here are that there was a family agreement to sell Real Street to the defendant. The beneficiaries did all they could to facilitate the defendant buying Real Street. This included changing the agreement from selling to the defendant alone, to selling to the defendant, his daughter and son-in-law. As time elapsed, it became more and more obvious that the defendant was not in a position to complete the agreement to purchase Real Street. The Power of Attorney was done, the court finds, to execute sale of Real Street. At the time the proposed sale was to the defendant. Even the defendant admits in this cross examination that the Power of Attorney did not limit the sale to him only.

93. In deciding whether the lawful Attorney breached his fiduciary duty to the defendant, the court has considered the circumstances to determine whether the fiduciary acted in good faith. These circumstances are as follows:

- a. The defendant's interests wasn't the only interest the lawful Attorney had to consider. If the defendant was unable to complete his purchase there were other principles who would be out of their share of the deceased's estate;
- b. the lawful Attorney had power to act since the Deed was signed and registered in October and November 2012 and did not act until June and July of 2013;
- c. The lawful Attorney did not benefit from the sale of Real Street;

- d. The claimant was not selected by the lawful Attorney to be the new buyer for Real Street. The offer was put out to the beneficiaries and the claimant was the only person who expressed interest in purchasing Real Street;
- e. The time that the defendant had to complete the purchase Real Street. He also provided no evidence to the court that at the time of the filing of his claim, he was and remains in a position to purchase Real Street;
- f. The court found the defendant to be a witness of no or little credibility on the issues that are essential in resolving the claim. These issues include:
  - i. The defendant made obviously false claims about the Attorney-at-Law's fraudulent behaviour towards him with respect to the Deed of the Power of Attorney.
  - ii. The defendant made false claims about Johnny's interest in buying the property for his sons.
  - iii. The defendant made false claims that the claimant and the other beneficiaries did not want him to buy the property because they were not good enough.
  - iv. The defendant made false claims that he never indicated he was not in a financial position to purchase Real Street, when the concessions made by the beneficiaries were in response to that admission and with the intention to accommodate the defendant.
  - v. That the defendant believed the Power of Attorney was to done only to allow him to transfer the property to him, when he admitted that the consent document was for the purpose of the beneficiaries approving the sale of Real Street to him as Legal Personal Representative of the deceased's estate.

94. The court was satisfied on a balance of probabilities that the defendant was told by the lawful Attorney that he had to complete the purchase of Real Street and that failure to complete would result in the property being offered for sale to the other beneficiaries.

The court holds that there was no conflict of interest between the lawful attorney and the defendant, among the beneficiaries or among the lawful Attorney, the defendant and any other beneficiary including the claimant. The lawful Attorney had a duty to act in good faith and that is what he did. He also had a duty not to be inhibited from acting because there was more than one principles and that is what he did. The lawful Attorney was able to fulfil his duties to all the principles without conflict to each principle, including the defendant and the claimant. The court was satisfied that the lawful Attorney fulfilled his fiduciary duties in accordance with the dictates of the law in **Bristol and West Building Society v Mothew (supra)**.

95. Having decided that the lawful Attorney performed his duties in good faith, the next issue is what effect, if any, does the Deed of Revocation of the Power of Attorney have on the actions taken by the lawful Attorney before the Deed of Revocation was filed and before the lawful Attorney had notice of the Deed of Revocation. The answer comes from the Deed of Revocation itself. The relevant part of the Deed of Revocation appears following:

NOW THIS DEED WITNESSETH that I HEREBY REVOKE the said Principal Deed and every power and authority thereby in the said DAVID GUPPY conferred PROVIDED THAT nothing herein contained shall affect the validity of any act or thing done by the said Attorney by virtue of the powers conferred on him by the said Principal Deed before he has received notice [of the Deed of Revocation]

96. This agreement was entered into before the lawful Attorney became aware of the Deed of Revocation. The Deed of Revocation of the Deed of Power of Attorney registered on the 20<sup>th</sup> of June 2013 as DE2013015293D001, could not have the effect of preventing anything lawfully done by David before that date. The Deed of Revocation cannot serve to stop the defendant, who is now acting on his own behalf, from completing the agreement entered into by the lawful Attorney when he acted on the defendant's behalf. The court is satisfied that the defendant must complete the sale agreement failing which he will be compelled to do so.

## COUNTERCLAIM

97. The defendant has filed a counterclaim seeking the following reliefs and orders, that:

- a. the sale agreement dated be set aside;
- b. a declaration that the Sale Agreement dated between the 18<sup>th</sup> October, 2011 and 22<sup>nd</sup> November 2011 is legally binding;
- c. the property Real Street be sold to him; and
- d. alternatively the sale of Picton Street and the lands at Real Street be set aside.

98. The court is satisfied that the sale agreement was lawfully entered into, for the reasons outlined earlier. Therefore the sale agreement is not set aside. The document dated between the 18<sup>th</sup> of October 2011 and the 22<sup>nd</sup> November 2011, even on its face, is not a Sale Agreement as alleged in the counterclaim. It is headed "CONSENT", it is a consent signed by the beneficiaries, other than the defendant, to the sale of Real Street to the defendant, his daughter and son-in-law. The consent was signed because one of the proposed buyers was a beneficiary himself and the Legal Personal Representative of the deceased's estate. That consent was only applicable if they did purchase Real Street. The defendant did not purchase in the context of that consent. The consent, is not enforceable as an agreement for sale of Real Street between all other beneficiaries, who are not parties to his action, and the defendant. The court must dismiss the relief sought to sell Real Street to the defendant. Even if the defendant was successful in his counterclaim, it would only be binding on the claimant, the other beneficiaries are not parties to the action. Nothing raised in this matter has satisfied the court on a balance of probabilities that the disposition of the two other properties, that formed part of the deceased's estate, Picton Street and the lands at Real Street, are impugned and should be set aside.

99. Therefore, the defendant's counterclaim is dismissed in its entirety.

100. The court considered the submission of the claimant to award indemnity costs. The court is mindful that in this matter the allegation of fraud may well have been factitious, the relative relationships between the parties, including the apparent, has caused the court not to exercise its discretion to award indemnity costs.

#### DISPOSITION

101. It is hereby ordered that:

- a. There be specific performance of the sale agreement of the 14<sup>th</sup> of June 2014;
- b. The defendant do, within two weeks of the judgment, sign an instrument conveying his interest in the property known as No. 73 Real Street, San Juan, in the Ward of St. Ann's, in the island of Trinidad, to the claimant herein, and that an appropriate inscription be made on the Certificate of Title; and
- c. An Order that the Registrar and Marshall of the Supreme Court do sign such instrument in default of the defendant doing so within two weeks of the judgment.

102. The defendant is to pay the claimant's costs of the claim and of defending the counterclaim. In default of agreement between the parties as to the quantum of costs payable to the claimant, the costs is to be assessed by a Master of the High Court.

Dated this 19<sup>th</sup> day of February 2018

**JUSTICE QUINLAN-WILLIAMS**  
**JUDGE**

(Leselli Simon-Dyette- Judicial Research Counsel)