

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2008 HCV 2650

BETWEEN DAVID CAMPBELL CLAIMANT
AND NORMA ANDERSON FIRST DEFENDANT
AND MARLENE CAMPBELL SECOND DEFENDANT
AND MICHELLE HYLTON-CHAMBERS THIRD DEFENDANT

Mr. Garth Lyttle instructed by Garth E. Lyttle & Co. for the Claimant.

Miss Khadine Colman instructed by Murray and Tucker for the 1st and 3rd Defendants.

2nd Defendant was not served with the claim form and is not appearing or represented

**Land – Joint Tenancy – Severance registered on Certificate of Title – One co-owner
dying subsequently – Deceased alleged to have secured the severance by fraud –
Nature of evidence required to prove fraud – Whether deceased secured possessory
title against other co-owner**

14th January 2010

BROOKS, J.

Mr. David Campbell was once married to Carmaleta Brown-Campbell. During the marriage they were registered as joint tenants in fee simple on the certificate of title to premises Lot 81, Hague, in the parish of Trelawny. They divorced in July 1993. Mrs. Brown-Campbell died in 2002. Mr. Campbell alleges that he discovered after the death, that his former wife had had registered on the certificate of title, in 1992, an instrument of transfer severing the joint tenancy. The result of this, if unchallenged, is that instead of the entire legal interest devolving to him by survivorship, Mrs. Brown-Campbell's interest would form part of her estate. He alleges that the instrument of severance is fraudulent as he did not sign it.

He asks the court to declare that he is solely entitled to the fee simple interest in the property. His application is resisted by Miss Norma Anderson and Mrs. Michelle Hylton-Chambers; Mrs. Brown-Campbell's executrix and sister/beneficiary respectively. Miss Anderson would have the court declare that Mrs. Brown-Campbell had excluded Mr. Campbell from the property for a period in excess of twelve years and thus had, during her lifetime, become solely entitled to the legal interest by way of a possessory title. She, however, did not file an Ancillary Claim.

The questions for the court are as follows:

- a. has Mr. Campbell established that the instrument of severance was fraudulent?
- b. has Miss Anderson established that Mrs. Brown-Campbell secured a possessory title to the property as against Mr. Campbell?

I shall answer each question in turn. The answer to the first depends heavily, however, on the evidence which is required for proof and the admissibility and credibility of what has been produced.

Has Mr. Campbell established that the instrument of severance was fraudulent?

Mr. Campbell exhibited a copy of the document he alleges to be fraudulent. Apart from bearing the year 1992, it is undated. There is no indication on the document that it has been produced to the Stamp Office or to the Registrar of Titles. It bears signatures purporting to be that of both parties. Mr. Campbell's signature is purportedly witnessed by a Notary Public in Philadelphia but there is no County Clerk's certificate appended to the document. He has not explained the source of the document.

When tackled on these details, counsel for Mr. Campbell, Mr. Lyttle, submitted that the tenancy transfer instrument that the Registrar would have acted on and should

have borne the evidence of the Registrar's official stamp would have been retained by the Registrar. Translated, this submission means that the transfer instrument which Mr. Campbell relies on as being fraudulent is not the document which was registered on the title. The substratum of Mr. Campbell's case is therefore swept from under it. In my view, it would not have been difficult for Mr. Campbell to secure a certified copy of that document, but he did not. Mr. Lyttle submitted that the Registrar may have destroyed the instrument after it was registered but he did not make the submission with any real confidence and I reject it. Mr. Campbell's claim fails on this basic element.

In the event that I am wrong on that aspect, I go further. Whereas I am not permitted to express any view as to whether I think his signature seems genuine or not, I am confident in my view that it cannot be sufficient for Mr. Campbell to merely say, "that is not my signature". In fact, when first shown the document in cross-examination he testified that the signature, "appears to be my signature". He later asserted having fully acquainted himself with the contents of the document, that it was, in fact, not his signature. He accepted, however, that "it appears in some form to be my signature". The Register Book of Titles shows him as being a tenant in common of the property. If he alleges otherwise he must demonstrate the contrary by convincing evidence. If he alleges that the endorsement was secured by fraud, the standard is raised. The standard is still a balance of probabilities, but as Lord Denning, M.R. said in *Associated Leisure Ltd. v Associated Newspapers* [1970] 2 All ER 754 at page 758, fraud should not be pleaded unless there is clear **and sufficient** evidence to support it. The emphasis is mine.

I find that Mr. Campbell's challenge to this document falls a long way short of being sufficient. On this basis also, his claim for sole ownership by way of survivorship must fail.

Has Miss Anderson established that Mrs. Brown-Campbell secured a possessory title to the property as against Mr. Campbell?

One of Mrs. Brown-Campbell's sisters and one of the beneficiaries named in her will to take her interest in the property is Mrs. Michelle Hylton-Chambers. Mrs. Hylton-Chambers is the third defendant to Mr. Campbell's claim. Both she and Miss Anderson gave affidavits. The affidavits were ordered, at the case management conference, to be treated as their witness statements.

Their counsel, Miss Colman submitted that the way in which the claim was begun, that is, by Fixed Date Claim Form, relieved them of the obligation to have filed an ancillary claim. It was therefore sufficient, submitted learned counsel, for them to have asked for the relief in their affidavits filed in opposition to the claim.

They exhibited a number of documents in an attempt to discredit Mr. Campbell's claims. Despite the fact that the documents were for the most part made by third parties, they were admitted into evidence by agreement.

Insofar as they sought to show that Mrs. Brown-Campbell had excluded Mr. Campbell from the property, Mrs. Hylton-Chambers deposed that she visited Mrs. Brown-Campbell daily between 1988 and 2000 and during that time Mr. Campbell never resided in or visited the property. She was not challenged on that evidence.

Mr. Aon Campbell also swore to an affidavit in this matter. He deposed that Mrs. Brown-Campbell is his mother and Mr. David Campbell, his adoptive father. Aon said that Mr. Campbell left the property "some time about 1984 or 1985" and went to the United States of America. According to Aon, Mr. Campbell returned to the island on several occasions but never stayed at the property until after Mrs. Brown-Campbell's

death. On that occasion, says Aon, Mr. Campbell declared that the house was Aon's as he was Mrs. Brown-Campbell's only child.

Aon's testimony was however severely discredited when he admitted in cross examination that no one was living at the house at the time of his mother's death and that Mr. Campbell gained access to the property by knocking off the locks to the house less than a week after his mother's death. In his affidavit, Aon gave a totally different picture. There, he said that Mr. Campbell was his guest at the house a week after his mother died. Aon's credibility, however, does not really affect the matter.

It is on this evidence that Miss Anderson and Mrs. Hylton-Chambers seek to say that Mr. Campbell had been dispossessed by Mrs. Brown-Campbell. Miss Coleman submitted that the situation is identical to that in *Wills v Wills* (2003) 64 WIR 176.

I find that I need not decide that issue. The fact is that these ladies assert the validity of a transfer endorsed on the certificate of title in 1992, effecting the severance of the joint tenancy. Miss Colman submitted that, on their behalf. She asserted that Mrs. Brown-Campbell had executed the transfer instrument exhibited in court. In the absence of any evidence to the contrary, the document and the registration would assert recognition by Mrs. Brown-Campbell of Mr. Campbell's legal interest in the property as at that date. It is from that date that time would begin to run against him, despite the fact that he may have left the property in 1988. I rely on section 16 of the Limitation of Actions Act for this point. The section states:

"When any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent, in writing signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same; and **the right of such last-mentioned**

person, or any person claiming through him to make an entry, or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given.”

On my application of the section to the instant case, I find that the transfer document would have been an acknowledgement of Mr. Campbell’s title as at March 12, 1992.

Miss Anderson and Mrs. Hylton-Chambers have therefore failed to show a possessory title in Mrs. Brown-Campbell for twelve years, she having died in 2002. The result is that Mr. Campbell remains the holder of a legal interest in the property along with Mrs. Brown-Campbell’s personal representative.

There is no evidence before me which would allow me to decide that the beneficial share that each holds in the property is other than in equal shares. The authorities establish that where the property is taken in joint names and forms the matrimonial home the presumption is that the beneficial interest is taken equally. The maxim is equality is equity. See also *Phipps v Phipps* SCCA 77 of 1999 (delivered 11/4/03) at page 7.

Mr. Lyttle sought to address me on the validity of a gift of the property as set out in the last will and testament of Mrs. Brown-Campbell. That however is not the concern of Mr. Campbell. The property, forming part of Mrs. Brown-Campbell’s estate, it is for her executor to deal with that issue, if there be an issue. I am not required to pronounce on the validity of Mrs. Brown-Campbell’s will or any gift therein. I understand that a grant of Probate of same has already been made.

Conclusion

For the reasons stated above it is ordered that:

1. The Claimant David Campbell and the Estate of Carmaleta Brown-Campbell, deceased, are the legal registered owners as tenants-in-

common of all that parcel of land with building thereon known as Lot No. 81 Hague Housing Scheme, Hague in the parish of Trelawny, being all that parcel of land comprised in certificate of title registered at Volume 1171 Folio 781 of the Register Book of Titles;

2. The property shall be sold and the net proceeds of sale divided equally between the Claimant and the Estate;
3. The Estate of Carmaleta Brown-Campbell, deceased, shall have the first option to purchase the interest of the Claimant;
4. The property shall be appraised by a valuer to be agreed on by the parties and failing agreement, by a valuer appointed by the Registrar of the Supreme Court. The cost of the valuation shall be paid by the Claimant, but shall be borne equally by the Claimant and the Estate;
5. The personal representative of the Estate shall advise the Claimant's attorneys-at-law, within ten days of the receipt of the valuation report, whether the Estate intends to exercise the option to purchase the Claimant's interest in the property;
6. If the Estate chooses to exercise the said option the personal representative or the nominee of the Estate shall sign the sale agreement and pay the usual deposit to the Claimant's attorneys-at-law within ten days of the agreement for sale being delivered to the personal representative or nominee for signing;
7. The Estate or nominee shall complete the purchase of the Claimant's interest within ninety days of the date of the Agreement for Sale being signed;
8. If the Estate or nominee should choose not to ^{and} exercise the option or fails to comply with the orders at paragraphs 6 ~~or~~ 7 hereof, or either of them, then:
 - a. the property shall be sold by private treaty or failing that, by public auction with the appraised forced sale value being the reserved price;
 - b. the Claimant's attorneys-at-law shall have carriage of the sale;
 - c. the personal representative shall deliver or cause to be delivered to the Claimant's attorneys-at-law, the duplicate Certificate of Title for the property in order to allow the completion of the sale;
9. The Registrar of this court shall be and is hereby authorised to sign any and all documents required to give effect to this order, should either

party fail or refuse to do so within ten days of being required in writing so to do;

(f) Both parties shall have liberty to apply;

(g) Costs to the 1st and 3rd Defendants to be taxed if not agreed.