IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.R.110/94

BETWEEN	DEITA RENNIE GOLDWIN MILLINGTON	PLAINTIFF
A N D	ERROL GEORGE RENNIE	DEFENDANT

Mr. Raphael Codlin Attorney-at-Law for the plaintiff instructed by Raphael Codlin and Company.

Mr. Sylvester Morris, Attorney-at-Law for the defendant.

HEARD: 27TH OCTOBER, 1998
30TH OCTOBER, 1998
16TH JANUARY, 2001
12TH FEBRUARY, 2001
14TH FEBRUARY, 2001
10TH APRIL, 2001

RECKORD, J.

This action was filed as far back as the 15th of June, 1994. On the endorsement on the writ, the plaintiffs claimed the following:-

A declaration that the defendant holds the property on resulting trust on behalf of the plaintiffs;

A claim against the defendant for fraudulently hindering the plaintiffs to execute a transfer in favour of the defendant.

An order that the defendant execute all documents necessary to vest the property in the plaintiffs.

The first named plaintiff is the mother of the second and the former wife of the defendant.

The first plaintiff who had just returned from England in 1981 borrowed money from Victoria Mutual Society and bought a house at 19 Repton Avenue, Meadowbrook Mews, Kingston 19, and registered at volume 1069 folio 325 of the register book of titles in the names of the first plaintiff, her son the second plaintiff and her two daughters Lorna Bent and Marie Bent.

Sometime after the first plaintiff meet and became acquainted with the defendant and formed a relationship with him. Her son Goldwin and his wife were living on the premises along with her. The defendant also came and lived with her.

In 1982, the 1st plaintiff was returning to England and decided to sell the property. She advertised it for sale in the Daily Gleaner asking a price of $90,000.00. On the advice of the defendant, the 1st plaintiff withdrew the sale and decided on defendant's suggestion, that when she retuned to London she would send money to the defendant to pay the mortgage. She

left the defendant in the premises. Up to 1985 she had sent over 10,000.00 pounds to the defendant to pay the mortgage.

In 1985 she received a letter from the defendant suggesting that she sign a document which would put his name on the title as the caretaker of the property. She did as her requested and returned the document to him. She did not sign the paper to sell the property to the defendant for $60,000.00.

After she signed this document, the defendant came to England twice – she paid his fare. They got married in London on his second visit in September, 1991. The defendant brought transfer to her and she signed it. "I was not selling him the land – it has been transferred to him." The transfer was identified by the 1st plaintiff and admitted in evidence is exhibit I. She gave the defendant Four Thousand Pounds and her rolex watch which he sold for One Thousand Pounds telling her he would be using these sum to erect a house on Lady Lane Avenue in the Red Hills area. She had send

enough money to the defendant which would discharge the mortgage by 1985.

The plaintiff under cross-examination of the defendant himself in absence of his attorney said she first met defendant at a garage and gave her

a lift home. A lawyer had paid down $5000.00 as a deposit on the house but defendant advised her not to sell and the defendant refunded the amount.

The plaintiff denied that the defendant told her he would buy the property. She denied selling it to the defendant for $60,000.00 plus expenses. She agreed transferring to property to the defendant. The defendant had requested that she and her three children were to sign the paper because he wanted to show the lawyer that he was taking care of the property while she was away in England. She signed the paper and sent it to her children. She did not understand it to mean that she was transferring the property to defendant. She had an lawyer in England before whom she signed. She gave instructions to her lawyers in England to write to lawyers in Jamaica to enter caveat on the land.

After a long delay the trial continued on the 16th of January, 2001; Mr. Goldwin Millington, the second plaintiff, testified that he was living at the property when he first met the defendant some three years after his mother had purchased same. The defendant was living on the premises when his mother left. About 2 months after, he left the house because the defendant wanted him to sign a document concerning the house which he refused to do.

About 4 O'clock one morning while in bed the defendant came into his room with some document and requested him to sign same immediately. The defendant had a gun in his waist and some rough looking friends of his armed with knives were out in the living room. He feared for his life as a result he signed the document present to him which he identified in court - an instrument of transfer dated the 4th of March, 1985.

He had no agreement with the defendant to sell him his interest in the property. He never received $60,000.00 or any money from the defendant. He never authorized anyone to received any money on his behalf.

When cross-examined by the defendant, the second plaintiff said he got no money from Attorney-at-law Mr. Charles. He was not aware that his mother was planning to sell the property. She had told him she was going back to England to work and pay off for the property. Miss Lorna Bent, a daughter of the first plaintiff, testified that she first met the defendant after her mother had bought the property. She had never seen the title but recognized her name on the title shown to her in court, and an endorsement showing a transfer of the property for $60,000.00. She had signed the document in the office of Attorney Mr. Charles. The defendant had asked her to go to Mr. Charles office along with her sister to sign a document. She was not aware what the document was about. The defendant had told her as

he was taking care of the property she was to sign for his name to be added on the title. This was what she signed for. Mr. Rennie had taken both herself and her sister to lawyer Charles. The lawyer had asked them how much we were getting from Mr. Rennie to get his name on the title. They both told him nothing at all. Where upon Mr. Charles said – "This is trouble, - I am leaving it alone." She never sold the property to the defendant for $60,000.00. When further questioned by the court, this witness said that Mr. Charles was not present when she and her sister signed neither was Mr. Rennie. She had signed to add his name not to remove theirs.

This was the case for the plaintiff.

CASE FOR DEFENDANT

He first met the plaintiff at the garage. He took her to her home after telling him she was offering her house for sale. He told her he would look at it and if the area suit him he would purchase it. He returned on a subsequent date. She showed him around. He looked over the property and decided to buy it. She was in great difficulties, that was why she selling the house to go back to England. She had an arrangement to sell to someone else, so that had to be straightened out. He gave the first plaintiff $5,000.00 to refund the gentleman and a further $4,000.00 at a later date. He gave her these money

on condition they were a deposit on the property. She had asked for $60,000.00 for the property which he had agreed to pay together with expenses. He purchased a ticket for her trip back to London as she had no money. It was agreed that the money for the ticket would go towards the purchase price.

The defendant said he retained Mr. Charles is his lawyer and paid him a total of $79,111.60 for him to pay to V.M.B.S. This sum included the lawyers fees, transfer tax and stamp duty and $1000.00 to be paid to the 2nd plaintiff.

When the 1st plaintiff returned to London they started speaking to each other on the telephone and "we developed a strong relationship on the phone". Mr. Charles prepared the transfer papers. He did not know when the son and the daughters went to signed the papers. His lawyer had to send it to London for the 1st plaintiff to sign. He never went to Mr. Charles office with the sisters.

Sometimes in 1990 the 1st plaintiff sent him at ticket and he went to London and they became intimate friends. In 1992 he returned to London and they got married. His father in Jamaica became ill and he had to return Within on month of returning his wife complained that he did not spend

enough time with her and threatened to divorce him. In 1993 he got a letter from a court in London informing him that she had divorced him.

Before the first plaintiff left for London he had spoken to her and the three children at the home concerning the sale "and all 3 agreed with their mother for me to purchase the property for $60,000.00 plus expenses." He was not present when they signed the sales agreement.

The defendant when cross-examined admitted he never paid any money to V.M.B.S. He only started occupying the premises in 1983 – 84 after the plaintiff went to London. Looking at the transfer document, he signed it on the 4th of May, 1985. He got married to the plaintiff on the 12th of September, 1992. The date of the transfer in the Titles Office was 25th July, 1985. He then owned houses in Red Hills, Bull Bay, Stony Hill and in St. Mary. He did not recall telling the 1st plaintiff he owned these 4 houses. He had paid the money for the purchase of the property to his attorney-at-law, Mr. Charles. He denied telling the plaintiff that he wanted his name on the property to show that he was the caretaker. The money he paid to Mr. Charles was not money the plaintiff sent to him from London. He got no money at all from the 1st plaintiff. He never sold her rolex watch for 1000.00 pound. The 1st plaintiff sent him the ticket for his first visit to

London. He denied he told the plaintiff to go to England and send money to him to pay mortgage.

The defendant denied going to the house at 4am armed with gun and forced the 2nd plaintiff to sign transfer. He had no gun at that time and only got a gun licence in 1992. He denied getting the parties to sign transfer document under treat and misrepresentation.

The hearing was adjourned until the 12th of February, 2001, when Mr. Morris for the defendant applied for amendment to the defence. He also intimidated that he needed Mr. Charles as a witness. The hearing was further adjourned to the 14th of February, 2001, when Mr. Codlin submitted that although the plaintiff had alleged fraud this had not attracted any response from the defendant. If fraud not traversed, it is deemed to be admitted. Once fraud was alleged, the Statute of Limitation cannot apply. The application for amendment was ill founded. Limitation period in matters concerning land is 12 years, not 6.

The defendant's applications to recall the defendant; to amend the defence and for further adjournment to call Mr. Charles, were all refused.

The defendant closed his case at this stage. Both attorneys agreed to submit final addresses in writing by the 16th of March, 2001.

Judgment reserved.

In his written closing submission Mr. Codlin stated that the defendant said he had purchased the property from the plaintiff, yet he did not produce any agreement of sale; nor any evidence of any payment, or any other evidence in support.

In support of their case the plaintiffs had filed the action within the time allowed under the Limitation Act. Under section 27 he submitted that if a person commits a fraud and that fraud is concealed as against the person who has a right to sue upon it, time does not begin to run until the person to bring the suit becomes aware of the fraud. In the instant case the 1st plaintiff did not become aware that the defendant had transferred the property to himself until sometime in the 1990's.

The defendant had committed a fraud upon the 1st plaintiff by deceiving her that he intended only to have his name put on the title as a caretaker. A similar deceit was carried out on her daughters while the 2nd defendant signed under threats. The transfer should be set aside and the defendant be ordered to pay mesne profits.

In his final written submissions, Mr. Morris for the defendant rejected the plaintiffs' claim. He asked that it should be noted that only 2 out of 4 registered owners have challenged the defendants' ownership.

Further the transfer took place in 1985, yet nearly seven years after in 1991, the 1st plaintiff and the defendant were married. Counsel also mentioned that the 1st plaintiff did not make any application under the Married Woman Property Act and failed to bring action within 6 years of the transfer. Counsel referred to paragraph 9 of the Statement of Claim which confirmed that with full agreement against everybody the transfer of the property was freely carried out without any fraud for a consideration of $60,000.00.

Counsel for the defendant found paragraph 10 of the Statement of Claim to be "strange". He spoke of what the plaintiff intended to do without knowing the intention of the defendant. Paragraph 10 was being used to contradict the transfer document which showed a transfer of the fee simple of 4 persons to the defendant alone and counsel submitted that external evidence cannot be adduced to vary a deed of transfer see Cheshire and Fisfoot on contract, 5th Edition, page 100.

With regard to paragraph 11 of the Statement of Claim, there was a mortgage owning by the 4 vendors on the property which the plaintiff's purchase money was used to pay off the mortgage by Mr. Charles. The plaintiffs have not sued Mr. Charles or made any complained against him. Defendant complained of the following:-

The plaintiffs who were the vendors had signed to transfer stating therein that they received $60,000.00 sale price. There was no evidence that the plaintiff have receive written consent from the Bank of Jamaica which the law required then where any of the parties lived abroad. The pleadings made no reference to the 2nd plaintiff being forced by the defendant to sign the transfer while he was armed with gun and accompanied by a gang of thugs. The plaintiffs had produced no document in support of their alleged payments.

Counsel asked the court to reject the plaintiffs claim and give judgment for the defendant with costs.

CONCLUSION:

The pleadings in this action and the evidence of the plaintiffs are in serious conflict. The evidence of the three witnesses who gave evidence on behalf of the plaintiffs was to the effect that they signed a document for the defendant's name to be included on the title as the caretaker of the property. They had no agreement for sale and definitely were not selling the property to him.

The first plaintiff had returned to London and sent enough money to the defendant to pay off the mortgage.

However, in paragraph 6 of the statement of claim, it was the plaintiffs' contention that the 1st plaintiff withdrew the property from the market "on the basis that the defendant would pay the mortgage installments until the first plaintiff returned to England and became financially able to assist in the payments". It was definitely not in the evidence of any of the witnesses for the plaintiffs that the defendant would pay mortgage installments before the 1st plaintiff left Jamaica and to do so until the she returned to England and assisted payments . Who was she assisting in the payment?_

In paragraph 8 of the statement of claim, it was the plaintiff's case that the defendant informed her that he was no longer going to assist in the mortgage payment and would allow the mortgagees to re-possess the house unless it was transferred to him solely.

This was never supported by the evidence for the plaintiff's. It was not part of the defendant's case and it was never put to him in cross-examination.

Further in paragraph 9 of the statement of claim, it is stated that as a result of the suggestions and continued insistence and aggression, "the plaintiff's transferred the property to the defendant for a consideration of $60,000.00." Again this was not confirmed by the evidence.

Paragraph 10 of the statement of claim is in conflict with itself. The first sentence is "that it was not the intention of the registered proprietors to transfer the beneficial ownership in the premises to the defendant." This is followed by the second sentence in the same paragraph which stated. "The intention was for him to be registered as one of the fee simple owners of the aforesaid property."

The words 'beneficial owner' means – an owner who is entitled to the possession and use of land or its income for his own benefit!

The words 'fee simple owner' means ownership a legal estate in land that is capable of being inherited. See the Oxford Concise Dictionary of Law – second edition.

The allegation of fraud in paragraph (A) in the statement of claim by the defendant induced the plaintiffs and others to execute a transfer in favour of defendant has not been proved. From the evidence the female plaintiff signed a transfer in the presence of English Solicitors in London. The male plaintiff claim he signed transfer under threat by the defendant armed with a gun. This was never alleged in the plaintiffs statement of claim. There is no evidence from the male plaintiff that he made any report to the police with a view to having this document retrieved and nullified.

The witness Lorna Bent, said the defendant took her and her sister to lawyer Charles who questioned them and then stated he was leaving it alone. Yet in cross-examination admitted that neither Mr. Charles nor the defendant was present when they signed the transfer in the office of Mr. Charles. This witness lacks credibility and her evidence cannot be relied upon.

The plaintiffs are contending that they never received the $60,000.00 or any part of the purchase price. The defendant has said in his evidence that he made payment to Mr. Charles who would make the payment to V.M.B.S. to clear off the mortgage. Since the plaintiff are claiming that they have received no part of the purchase price surely they could have enquired from V.M.B.S. and call them as witness to say what is the state of that account.

The plaintiffs are required to prove their case on a balance of probability. They have failed to do so.

Accordingly, there shall be judgment for the defendant with costs to be agreed or taxed.