

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No. 1073 of 2000

BETWEEN:

DESIREE PRESCOD

CLAIMANT

AND

MORRIS CARLISLE MAUGHAN

DEFENDANT

Before The Hon. Mr. Justice Randall Worrell, Judge of the High Court

Dates of Hearing 2012: May 23 & 24

Date of Decision 2015: July 13

Mr. Andrew Thornhill, Attorney-at-Law for the Claimant

Mr. Michael Koieman, Attorney-at-law for the Defendant

DECISION

BACKGROUND

[1] The parties to this action are siblings. The Claimant, Desiree Prescod is the sister of the Defendant Morris Carlisle Maughan. The dispute which has brought them before this court concerns a property at Carters in the parish of Saint John which is occupied by the Defendant. This property was purchased by the parties father, Mr. Alphonsa Maughan and prior to the purchase of the said land by Alphonsa Maughan, the Defendant resided on this property paying rent to the previous owner, Ms. Isill Massiah. The

Defendant claims that his father bought this property after it was offered to him (Morris Carlisle Maughan) by Ms. Massiah. The Defendant Maughan contends that he told his father about this property and his father purchased the property but that this was due to it being more convenient for his father's name to be placed on the conveyance as the purchaser.

[2] The Defendant further contends that his father's name was only placed on this conveyance for convenience and this was as a result of an agreement between himself and his father that he the Defendant would advance the moneys for the purchase of the property and he would live at the front of the property and his father would eventually reside at the rear of the property.

[3] The property was duly conveyed by Ms. Massiah to the Defendant's father and subsequent to this, the Defendant's father served him with a Notice to Quit alleging that he was a tenant at will in respect of the said property. The Defendant then sued his father to obtain what he says is his interest in the property, since he alleges the agreement with his father and also states that he contributed to the purchase of the property. That suit is yet to be determined for one reason or the other.

[4] Since that suit commenced, the Defendant's father conveyed the property to his daughter, who is the Claimant in these proceedings. She has instituted these proceedings in order to obtain possession of the portion of the land

which her brother, the Defendant, occupies. In a nutshell, this is the background to these proceedings now engaging this court's attention.

Issues for Determination

[5] By order of the Master of the Supreme Court, Mr. Keith Roberts, dated 11th July 2011, the parties agreed that there should be a trial in respect of two preliminary issues which were framed as follows:

- (a) whether a binding agreement was concluded between the Predecessor Alphonsa Maughan, and the Defendant in the terms as alleged in paragraphs 4 - 6 inclusive of the defence.
- (b) whether, if a binding agreement was concluded between the Predecessor and the Defendant in the terms alleged in paragraphs 4- 6 inclusive of the defence, is it enforceable against the Claimant.

Paragraphs 4 – 6 inclusive of the Defence in this matter are herein reproduced as follows:

- (4) The Plaintiff is the sister of the Defendant and the Defendant will contend at the trial that he entered into an agreement on or about the 27th Day of January 1989 with his father Alphonsa Maughan that he, the Defendant, would advance sums of money to his father the said

Alphonsa Maughan to purchase 714.27 square metres of land at Carters , St. John from Isill Messiah, for the sum of \$18,000.00. The Defendant occupies part of the land.

- (5) The Defendant will further contend that he entrusted approximately \$14,000.00 in addition to \$1,800.00 deposit on the purchase price for the land to his father the said Alphonsa Maughan for purchase of the land but it was agreed that notwithstanding the Defendant's contribution that the said land would be conveyed in the name of the Defendant's father.
- (6) It was further agreed between the Defendant and his father Alphonsa Maughan that the Defendant would take the portion of land on which his house stands with the curtilage comprising approximately 300 square metres.

Both the Claimant and the Defendant filed witness statements in this matter and also Ms. Isill Massiah and Ms. Judy Hurdle, the girlfriend/child mother of the Defendant Maughan. For the purpose of the determination of these preliminary issues, the parties and the two above named witnesses gave evidence on oath before this court.

DETERMINATION OF THE ISSUES

- [6] As this court has been asked to determine initially whether a binding agreement was concluded between the Claimants Predecessor in title (Alphonsa Maughan) and the Defendant, in the terms alleged in paragraphs 4 – 6 of the Defence, this court to my mind has to assess firstly, on the evidence before it, whether this court finds first that in FACT there was an agreement between the Defendant and Alphonsa Maughan. For there to be a binding agreement, this court first has to determine whether on the evidence there was an agreement in the first place.
- [7] An examination of the evidence of the Defendant is therefore crucial to the determination of the first question. Is there credible evidence from Mr. Maughan that such an agreement existed between himself and his father? Unfortunately this court does not have any input on this matter from Mr. Alphonsa Maughan in respect of whether such an agreement existed or not.
- [8] But what is the crux of Mr. Morris Maughan's evidence in respect of any such agreement. He states that "After he (his father) left Mr. Workman he then told me about the money he had to pay for the land. After all the papers were sorted. This agreement took place home at my father, the agreement between me and my father about me giving him money to pay for the land" This is what the Defendant said in court under oath.

[9] The Defendant continued “This was after the signing of the documents was completed. After the documents were sorted out”.

“The terms were that where I am renting now, where the chattel house is, would be mine, the land and the house. I agreed that I would pay him \$3,000.00 a \$2,000.00 and \$1,500.00 and this would be a deposit on the land. It was agreed that I would give him \$100.00 a week for the loan. The loan was at Nova Scotia. He went for this loan that was at Nova Scotia and he did not get it. I do not know if he ever got the loan or not. He said that he had to pay \$400.00 and something dollars every month towards the land. “These payments were made after all of the documents were signed up. Ever week I used to give \$100.00 to Judy. This was for over a year and six months before my father stopped it”.

[10] The Defendant however in his witness statement at paragraph 11 stated that inter alia. “I provided my father with cash toward the purchase when requested. I gave him \$3,000.00, then \$2,000.00 and then \$1,500.00. I believe these monies were paid in towards the deposit.

At paragraph 13 of the Witness Statement he states “My father arranged financing for the balance of the purchase price with the Bank of Nova Scotia. I then used to give my girlfriend Ms. Judy Hurdle \$100.00 per week to pay to my father towards the loan.

[11] The Defendant indicates that he would have paid his father the sum of approximately \$6,500.00 and that would be the deposit on the land. Yet in the Defence he is contending that \$1800.00 would be the deposit on the land. If I am in any way misinterpreting what he said in court in that he could be saying that it was the \$1500.00 that was the deposit for the land, this is what he also said in his evidence before this court and I quote “The same day I went by him to make the agreement, the same day the agreement was made, I paid my father \$3,000.00. I paid the \$2,000.00 the next week. This was between 1988 and 1989 that I paid this money. The \$1,500.00 was paid after the \$2,000.00 was paid, about three days after.”

[12] Again I must ask myself when was the \$1,800.00 deposit on the land as alleged by paragraph 5 of the Defence, a separate specified sum, I might add, paid to his father? This being part of the agreement as alleged by the Defendant at Paragraph 5 of this Statement of Claim. No mention is made of any \$1800.00 deposit before this court and if I am to accept that \$1800.00 was the deposit, would it not be logical to conclude that on a balance of probability the \$1800.00 deposit would have been the first sum to be paid? This court is left in a quandry over this and accordingly I do not find that the Defendant paid \$1800.00 or \$1500.00 as any deposit towards this land or

indeed that there was any such agreement to pay any deposit by him to his father.

[13] What is more disturbing to this court is the Defendant's evidence on the one hand in court here, that his father did not get the loan from Nova Scotia, then that he is unsure as to whether he got the loan from Nova Scotia or not, to purchase the land but yet in his Witness Statement he states "My father arranged financing for the balance of the purchase price with the Bank of Nova Scotia.

[14] I must ask myself, if this agreement between the Defendant and his father was made, as he says, at his father's home, after all the documents were signed then how could he have paid money to his father towards the purchase price? He says "After all the papers were sorted out this agreement took place home at my father, the agreement between me and my father about me giving him money to pay for the land. This was after all of the signing of the documents were sorted out."

[15] If all of this was done as he says after the documents were sorted out and the conveyance is dated 13th July 1989, would it not be open to this court to conclude that on a balance of probability that no such agreement was entered into on the 27th of January 1989 as pleaded by the Defendant? When did this agreement take place, if it did take place at all? After all the papers were

sorted out cannot be January 1989. After all the papers were sorted out would have to in my mind be after the conveyance and Deed of Mortgage were executed.

But if this finding of the court is to be queried what does the Defendant mean by saying on oath that the agreement between him and his father was to the effect that “ after these papers were all sorted out he agreed that “I would pay him \$3,000.00, a \$2,000.00 and \$1500.00 and this would be the deposit on the land.”

[16] If all of this did happen after the 12th of July, 1989, the date on the conveyance and the Deed of Charge, then the money advanced initially towards the purchase price could not in this court’s opinion have come from the Defendant. His evidence on oath both in his Witness Statement and via voice and the pleadings in his Defence do not bear any resemblance to evidence upon which this court can deem as credible and lead it to find that in fact any agreement was actually made between himself and Alphonsa Maughan as contended on behalf of the Defendant.

[17] Furthermore, this court finds it rather strange that if indeed there was such an agreement as pleaded why would Judy Hurdle come to this court and say that the \$100.00 per week, if indeed paid by the Defendant to his father, was in respect of and I quote “going towards the purchase of the chattel house we

are in and the land.” This to my mind adds to the cloud of uncertainty surrounding any such agreement. Why would there be \$100.00 being paid, part of which as she says is going towards the purchase of the chattel house?

[18] What this court also finds surprising is that this parcel of land, purchased for \$18,000.00 with in excess of \$15,800.00 of his money, as the Defendant states, he would be prepared to allow his sister to construct a property of not insubstantial value and be party to a mortgage but yet claim that in effect there was an understanding that the land or part thereof would be conveyed to him by his father. Even if it was part, that is 300 sq metres out of a total of 717 sq metres, that too seems strange to this court as the Defendant would have, if his evidence is accepted, paid in excess of 85% of the purchase price for a parcel of land for which he was prepared to obtain less than 50% of the total area of the said property. Such an agreement this court finds to be highly inconceivable.

[19] Then, where to my mind is the documentation from Mr. Thomas Grant (or his Secretary) as the Defendant contends, to at least show some semblance of a paper trail to at least substantiate these payments borrowed from Mr. Grant and paid to his father? The absence of this and any kind of evidence or Witness Statements from Mr. Grant or his secretary does not in any way assist the Defendant in forming at least the skeleton upon which he is

attempting to build this agreement, let alone the flesh. Again this court finds this totally lacking on the Defendants part and very unhelpful to his case.

[20] To my mind the evidence of the Defendant, Morris Carlisle Maughan clearly does not establish to this court that there was in fact any such agreement between himself and Alphonsa Maughan. Having concluded that I find that there was no such agreement, the answer to the 1st preliminary issue would therefore be that there was nothing which could be binding on the predecessor in the Alphonsa Maughan. This court finds that no such agreement existed and accordingly answers the first question of the preliminary issue.

Having determined that in fact no such agreement existed and therefore could not in any way be a binding agreement on the predecessor the court thinks it unnecessary to venture into the second issue as to whether any such agreement would be enforceable against the Claimant.

[21] The Claimant shall have her costs to be agreed or assessed.

RANDALL I. WORRELL
Judge of the High Court