

BARBADOS

Claim No. C.V. 603 of 2020

**IN THE SUPREME COURT OF BARBADOS
HIGH COURT
CIVIL DIVISION**

**IN THE MATTER OF SECTIONS 43, 46
AND 76 OF THE TRUSTEE ACT
CHAPTER 250 OF THE LAWS OF
BARBADOS.**

**AND IN THE MATTER OF PART 111
OF THE PROPERTY ACT CHAPTER
236 OF THE LAWS OF BARBADOS.**

**AND IN THE MATTER OF A TRUST
CREATED BY WAY OF INDENTURE
DATED 17TH JUNE 1976.**

MORTON SKEETE AND INA SKEETE

CLAIMANTS

also known as **INA ELAINE SKEETE**

by their duly constituted attorney on record

in this island.

Before the Honourable Mr. Justice William Chandler, Judge of the High Court

Appearance: Mr. Dwight Moseley, Attorney-at-Law for the Claimants

Dates of Hearing: 2020 July 7 and 28, October 14

Date of Decision: 2020 December 22

Conveyancing-Conveyance to Attorney-at-Law and his heirs unto and to the use of X and her heirs- construction of the grant.-whether trust created-Death of trustee- whether need to appoint new trustees under the Trustee Act- Application of the Statute of Uses 1535 UK- reception of English law in Barbados.

Decision

Introduction

[1] This matter involves the application of the **Statute of Uses 1535** (the **Statute**), a sixteenth century English Statute, received in Barbados on its settlement in 1627. This statute was repealed in England by the Law of Property Act 1925 and in Barbados by **section 215** of the **Property Act Cap 236** but its effect on the conveyancing law and practice in Barbados is still seen today.

Brief background

[2] By virtue of the indenture dated 17th day of June, 1976 (the indenture) and made between Ada Lavinia Griffith, as executrix and personal representative of the estate of Joseph Nathaniel Griffith, deceased of the First Part, Gwendolyn Greenidge and others (as Vendors therein) of the Second Part, Morton Skeete and Ina Skeete, his wife (as purchasers therein) of the Third Part and Peter Nigel Huan Johnson, Attorney-at-law (Mr. Johnson), (as Grantee to Uses) of the Fourth Part 12 roods and three perches of land at Checker Hall in the Parish of Saint Lucy in this Island (the property) was

conveyed to Mr. Johnson, as Grantee to Uses and his heirs to the use of the said Ina Skeete and Morton Skeete and their heirs and assigns as joint tenants.

- [3] The Claimants entered into an agreement for the sale of the property in consideration of the building of a road at Checker Hall also in the Parish of Saint Lucy in this Island. The Purchaser's Attorney-at-Law, in her requisition on title, required that an application be made appointing the Claimants in substitution for Mr. Johnson as Grantee to Uses since it appeared that Mr. Johnson's whereabouts were unknown and his heirs could not be ascertained.
- [4] This is the factual matrix in which the application was made.

The Claim

- [5] The Claimants filed a Fixed Date Claim Form on 30 June 2020 for the following relief:

1. That the claimants and/or their duly constituted attorney on record Franklin Griffith their heirs, successors and assigns be appointed in substitution for Peter Nigel Huan Johnson and his heirs in respect of the land conveyed by indenture dated 17 June 1976 pursuant to **Section 3 of the Trustee Act Cap 250 (Cap 250)**, and
2. Such further or other relief as this honorable court thinks fit.

The Affidavit in Support

- [6] The claim is supported by the affidavit of Franklin Griffith filed on even date with the Claim Form to which is attached a power of attorney dated 24 April 2019 by virtue of which the deponent was constituted and appointed the attorney on record of the Claimants for the purposes of completing the sale and purchase of the property. A copy of the indenture is also attached to the affidavit. The deponent is the brother of Ina Skeete.
- [7] The salient parts of the affidavit aver that the property was conveyed in the manner previously recited in this decision; that the Claimants had entered into the arrangement for the sale of the property for the reasons also previously outlined and that the Claimants had been advised by their attorney- at-law and verily believed that the conveyance to a grantee to uses was for the purposes of avoiding certain estate tax liability in the past. Further that the Claimants had also been advised that prior to 1980 Ina Skeete, one of the vendors in the indenture was precluded by the then applicable law from conveying or transferring land to herself and it therefore became necessary to appoint Mr. Johnson as grantee to uses in order to effect the said transfer.
- [8] It was further deposed that the Claimants were unaware of who Mr. Johnson was or who his heirs might be. In consequence, they were making this

application for the appointment of new trustees either in substitution for or in addition to any existing trustees.

The Issue

[9] The sole issue is whether there is a need to appoint a trustee or trustees in substitution for Mr. Johnson having regard to the applicable law at the time of the execution of the indenture.

[10] When this matter first came on for hearing on a certificate of urgency, the Court opined that the application may have been unnecessary having regard to the fact that the matter really touched and concerned the application of the **Statute** to the law of conveyancing in Barbados rather than **Cap 250**. The Court expressed its opinion on the application of the **Statute** in terms which are confirmed in this decision. Counsel took the Court's opinion on board and was able to resolve the issue arising under the requisition on title with counsel for the purchaser.

[11] It would appear that the Court's opinion was accepted by all sides, nevertheless, it was resolved that a fuller ventilation of the issue would follow. We now ventilate the matter in greater detail.

The Submissions

[12] Mr. Dwight Moseley, counsel for the Claimants, conceded that the provisions of **Cap 250** were inapplicable to the matter at hand having regard to the preliminary opinion expressed by the Court. He submitted that at the date of execution of the indenture the **Statute** had not been abolished and that the effect of the **Statute** was to convert the rights of Morton and Ina Skeete as the cestuis que use into a legal estate of the property. Accordingly, counsel conceded that there was no need for the application.

Brief Historical Overview

[13] Before embarking upon the discussion and analysis in this matter, we feel it necessary to put the issue in its historical context. In order to understand the effect of the **Statute** upon the conveyancing law of Barbados we must appreciate that the “Use” was the progenitor of the modern trust. The word “Use” is derived from the Latin word “Opus”. The phrase “ad Opus” means “on behalf of “see: *The Law of Real Property, 5th Edn. Sir Robert Megarry and H.W.R. Wade, Stevens & Sons Limited, London, 1984 (Megarry and Wade)* at page 1164.

[14] The Use enabled husbands to convey lands to their wives or to themselves and their wives and to avoid dower and tenancy by the curtesy. It was later

established that curtesy was allowed out of equitable interests. Feudal dues were payable on the conveyance of the legal estate (the indenture). Since the Use created an equitable interest in the fee simple on which no dues were payable, feudal dues, normally payable on the indenture, were avoided with a consequential loss to the treasury. It was principally for this reason that Parliament passed the **Statute** to shore up this loophole and end the loss of Royal revenue.

Reception of Law

[15] The **Statute** is a statute of general application in England and was accordingly received in Barbados on settlement under the doctrine of reception of law. See **Blades and Another v Jaggard and Others (1961) 4 WIR 207** and *Commonwealth Caribbean Land Law, Routledge-Cavendish, London and New York, 2007 Sampson Owusu, (Owusu)* at pg. 156.

The Applicable Law

[16] Applying the doctrine of reception of law, I consider that the **Statute** governs the situation with which we are dealing and not the **Trustee Act Cap 250**.

Section 1 of the **Statute** provides that:

“Where any person or persons are seized of any lands or other hereditaments to the use, confidence or trust of any other person or persons or any body politic, the latter person or

persons or body politic shall be deemed and adjudged in lawful seisin, estate and possession of the hereditaments for the like estates as they had in the use, confidence or trust.”

Discussion and Analysis

[17] In its proper application, **Section 1** of the **Statute** executed all uses to which it applied by taking the legal estate out of the feoffees to uses (the trustee) and converting the equitable interest of the cestui que use (the beneficiary) into a legal estate. In simple terms, where land was conveyed to X (the trustee) to the use of Y (the beneficiary), X held the land or the legal estate in that land on behalf of Y. Y was therefore, the beneficial owner of the equitable interest in that land and X his trustee.

[18] I find the example given by *Megarry and Wade* at pg. 1166 to be useful in explaining the operation of the Statute and I repeat it now:

“...if freehold land was conveyed "to A and his heirs to the use of B and his heirs," the Statute executed the use, with the result that A was divested of all interest in the land, and B's equitable fee simple became legal.”

[19] *Owusu* sums up the operation of **section 1** of the **Statute** as follows:

“By this provision the feoffee to uses was to disappear and his place as the title holder was to be taken by the cestui que use, who would then have both the title and the beneficiary interest. The seisin was therefore transferred by the operation of the Statute of Uses from the feoffee to uses, the trustee, to

the cestui que use, the beneficiary, who then became liable to perform the feudal services... Equitable ownership and common law ownership became vested in one and the same person, the cestui que use.”

Application to the factual matrix of this case

[20] We now proceed to apply those principles to the factual matrix of this case.

In the indenture or conveyance the property is conveyed and confirmed “...unto the said Peter Nigel Huan Johnson and his heirs” “TO HAVE AND TO HOLD ...” ...” ...” TO THE USE of the said Morton Skeete and Ina Skeete their heirs and assigns forever as joint tenants...” The reason proffered for the application being brought is that the Claimants were unaware of who Mr. Johnson was or who his heirs might be. Applying **Section 118(1) (a)** of the **Evidence Act Cap 121**, it is common knowledge in the legal profession and it is to my knowledge that Mr. Johnson, was a well-known Attorney-at-law and partner of Messrs. Yearwood and Boyce, a law firm in this Island, and passed away several years ago. He was the feoffee to uses of the property for the purposes of the **Statute** and Morton and Ina Skeete, the cestuis que uses.

[21] Applying the **Statute** to the indenture, the Use to Mr. Johnson was executed and the legal and equitable interests in the property vested in Morton Skeete

and Ina Skeete for an estate in fee simple absolute in possession subject only as appears in the conveyance.

Conclusion

[22] Having regard to the fact that the Use was statutorily executed and the fee simple vested in Morton and Ina Skeete, there is no need to appoint new trustees or trustees in substitution for Mr. Johnson under the provisions of **Cap 236**. Accordingly the application is unnecessary and without merit.

[23] Since Mr. Moseley has conceded that the application is unnecessary in the circumstances and indicated that he would no longer be pursuing it, I would allow him to discontinue the application rather than dismiss it.

Disposal

[24] In the premises, I make the following orders:

1. Leave is granted to the Claimants to discontinue the application.
2. The Claimants are to file a notice of discontinuance on or before the expiration of 14 days after this decision.

William J. Chandler
High Court Judge