

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY SIDE
2021/CLE/gen/FP/132**



IN THE MATTER of the Conveyance dated the 15th of March, 1982 made between Ishmael G. Bethel and Carolyn W. Bethel and Charles Darville and Cheryl Darville recorded in the Registry of Records of the Commonwealth of The Bahamas in Volume 3673 at pages 51 to 57

AND IN THE MATTER of an application on the part of Roselyn R. Darville owner of Lot Number 172 Scott Avenue, Freeport City Subdivision East Section 1, Freeport, Grand Bahama for a Deed of Confirmation and Rectification relating to the aforesaid Conveyance dated the 15th of March, 1982

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Miss Ntshonda Tynes for the Applicant

HEARING DATE: October 19, A. D. 2021

REASONS

(FOR RULING GIVEN ON OCTOBER 19, 2021)

Hanna-Adderley, J

Introduction

1. On October 19, 2021 the Court made an Order directing the Deputy Registrar of the Supreme Court to execute a Deed of Confirmation and Rectification for the purpose of rectifying a defect in the Conveyance dated March 15, 1882 ("**the said Conveyance**") made between Ishmael G. Bethel and Carolyn W. Bethel ("**the Bethels**") and Charles Darville and Cheryl Darville ("**the Darvilles**") and recorded in the Registry of Records of the Commonwealth of The Bahamas in Volume 3673 at pages 51 to 57. I indicated that my Reasons for doing so would be delivered at a later date. These are the said Reasons.
2. This is an application by the Plaintiff pursuant to the Court's inherent jurisdiction commenced by way of Originating Summons filed September 24, 2021 and supported by the Affidavits of the Applicant filed on September 24, 2021 and Mrs. Veronica D. Grant filed on October 12, 2021 for an Order that a Deed of Confirmation and Rectification in

connection with Lot Number 172 Scott Avenue, Freeport City Subdivision East Section 1, Freeport, Grand Bahama ("**the Property**") be executed by the Deputy Registrar of the Supreme Court for the purpose of rectifying a defect in the said Conveyance whereby the Habendum of the said Conveyance omitted the words "**and to the use of the Purchasers in fee simple as joint tenants SUBJECT TO**" and thereby failed to fix the quantum of the estate which the grantees were to have.

Statement of Facts

3. The Applicant states in her Affidavit that she is the owner of the Property by way a Conveyance dated December 30, 1999 and made between the Applicant and her late husband Lindy Lindberg Darville and the Darvilles recorded in Book 7909 at pages 281 to 293. That after entering into an agreement for sale for the Property with Laura Bethel it was brought to her attention by her attorney that the Habendum to the said Conveyance did not include the words "and to the use of the Purchasers in fee simple as joint tenants SUBJECT TO" and that it thereby failed to fix the quantum of the estate which the grantees were to have. That she was also told by her attorney that by a previous Conveyance dated March 30, 1976 made between Marine Construction and Engineering Company Limited and the Bethels recorded in Book 3673 at pages 29 to 35 the Bethels took title to the Property in fees simple as joint tenants. That her attorney had made a diligent search for the Bethels to no avail and that it was believed that they are deceased. She exhibited to her Affidavit a draft Deed of Confirmation and Rectification prepared for the purpose of correcting the said defect.
4. Mrs. Veronica Grant, Counsel for the Applicant in the sale of the Property to the Purchaser, states in her affidavit that by letter dated November 20, 2020 ("**the said letter**") that the Conveyance contained the said defect. That she had made a diligent search for the Bethels to no avail and that she believed them to be deceased.

Submissions

5. Miss Ntshonda Tynes, Counsel for the Applicant submitted that the Affidavits filed herein spoke to the situation and the application for a Deed of Confirmation and Rectification.
6. Mr. Wallace R. Allen Counsel for the Purchasers confirms that the Vendor and Purchasers are ad idem on this process and the law in this application.

Issues

7. The Court must determine:

- (1) Whether on a true construction of the said Conveyance it was the intension of the parties that the Darvilles take title to the Property as joint tenants.
- (2) Whether in the absence of express words of limitation the Darvilles took title as joint tenants.

Analysis and Conclusions

The Law

12. Section 7 (1) (a) of Part III of the Supreme Court Act entitled "Jurisdiction of the Court" provides:

"Subject to this or any other law, the Court shall have-

(a) Unlimited original jurisdiction in civil and criminal cases and matters; "

13. Section 4(1) of the Conveyancing and Law of Property Act provides as follows:

"A Vendor or purchaser of land in The Bahamas, or his representatives respectively, may at any time or times and from time to time apply in a summary way to the court, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract, (not being a question affecting the existence or validity of the contract) and the Court shall make such order upon the application as to it shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid."

14. The Habendum of a Deed of Conveyance shows that the Purchaser is to hold the land for his own benefit and not upon trust for a third party and it also contains the usual words of limitation, that is, the estate to be take. For example, to A and B in few simple as joint tenants" are the words of limitation for they measure out the quantity of estate that A and B are to have. Those words of limitation were omitted from the said Conveyance.

15. An inspection of the said Conveyance reveals that the Darvilles are described in the Parties clause and in the attestation clause as husband and wife; the consideration is stated to have been paid by the Darvilles from monies belonging to them on a joint account; in the Affidavit of Attesting Witness the affiant states that the Darvilles executed the said Conveyance on the same date before the same Witness, Juanita G. Burrows.

16. Mr. Robert E. Norton author of "**A Treatise on Deeds** ", Second Edition states on page

50 Chapter III under the rubric "Expressed Intention" as follows:

"To interpret a deed, the expressed intention of the parties must be discovered. The word "intention" may be understood in two senses, descriptive either (1) of that which the parties intended to do or (2) of the meaning of the words that they have employed..."

17. In the case **Evans v Vaughn**(1825) K. B. 213, where Chief Justice Abbott surmised that:

"It is a good rule of construction that deeds should be construed so as to give effect to the true intentions of the parties."

18. In **East Ham Corporation v Bernard Sunley & Sons, Ltd.** , 1 W.L.R. 30 at page 43 Salmon J. stated:

"We have been referred to a number of well-known rules of construction. Many of these rules are artificial, some are contradictory and none is more than a guide, sometimes an uncertain one, for ascertaining the true intention of the parties as expressed in the document under consideration. The principle however long ago laid down by Lord Ellenborough is of the greatest value. "The sense and meaning of the parties in any particular part of an instrument may be collected ex antecedentibus et consequentibus; every part of it may be brought into action in order to collect from the whole uniform and constant sense, if it may be done..."

19. Similarly, Lord Mansfield, Chief Justice in **Goodtitle d., Edwards v Bailey** (1777), 2 Cowp. 597 at page 600, stated the following:

"The Rules laid in respect of the construction of deeds are founded in law, reason, and common sense; that they shall operate according to the intention of the parties, if by law they may; and if they cannot operate in one form, they shall operate in that which by law will effectuate the intention of the parties."

20. The law as it presently stands permits co-owners of a shared property to be either joint tenants or tenants-in-common. A joint tenancy allows each Joint Tenant to own the total interest in the land. There are no shares, no partition of the land but a right of ownership of the whole of the land is enjoyed simultaneously with all of the other owners. Additionally, a joint tenancy can only exist where the four unities are present i.e. the unity of time-the interest of each tenant must arise at the same time; unity of title-the joint tenants will have to derive their title from the same documents; unity of

interest-their interests must be the same; and unity of possession-each tenant is able to go anywhere he or she wishes on the land and each has physical possession of the whole of the land ("**the test**"). (See **Modern Land Law**, 7th Edition, Martin Dixon, Chapter 4, 4.2.) Further, the right of survivorship i.e. jus accrescendi allows the survivor or survivors of one or more joint tenants to take the whole interest to the exclusion of the family of the deceased joint owners. It is against the said statutes and these legal principles that I made my determination.

Discussion

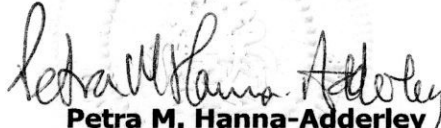
21. It is clear from the said Conveyance and from the evidence that the Darvilles executed the said Conveyance and thereby purchased the Property on the same date, before the same witness, at the same time. Thus, the unity of time exists, that is, the interest of each tenant arose at the same time. The said Conveyance is the only document by which the Darvilles derived their title to said Property. Thus, the unity of title exist, that is, the joint tenants derived their title from the same document. It is clear from a true construction of the said Conveyance as a whole, that it was the intention of the parties that the Darvilles were to hold title to the Property as Joint Tenants there being no evidence to the contrary. Thus, the unity of interest exists, that is, their interests are the same. Finally, the parties clause of the 1999 Conveyance from the Darvilles to the Applicant and her late husband refers to the Darvilles as husband and wife. The presumption is that they held the Property up to the time they sold it as joint tenants. Thus, the unity of possession exists, that is, that each tenant up to the time of the sale, had physical possession of the whole of the land.
22. Having considered the totality of the evidence, I accept that the four unities are present. If the four unities are present, we proceed to the next test. The Court must consider whether the grantor expressly stated that the co-owners were to hold as joint tenants. The Habendum is silent. From a reading of the Habendum it is clear that the words of limitation were omitted in error. But having considered the said Conveyance as a whole, it follows that the intention was for the co-owners to hold the beneficial interest of the Property as joint tenants. If the said Conveyance contains no such direction from the Grantor, the third test would be whether the Grantor used words of severance. The said Conveyance contains no reference to tenants-in-common or other words of severance. Further, if the Conveyance contained no words that would indicate a tenancy-in-common, we would proceed to the next test.

23. There are circumstances whereby equity presumes that the co-owners are to hold as tenants-in-common which are:
- (a) the purchase of land in unequal shares: where A and B contribute purchase money in unequal shares, then equity presumes that A and B hold as tenants in common. The presumption can be rebutted if there is evidence to the contrary: the said Conveyance expressly states that the purchase price was provided by the Davilles from monies held by them on a joint account. The purchase price was therefore provided in equal shares;
 - (b) partnership property where if A and B hold property as partners they are presumed to hold their beneficial interests as tenants in common: the Property was held by the Darvilles as husband and wife and not partners; and (c) Money lent on mortgage, if A and B lend money to a landowner R, and as security for the loan R mortgages the land to A and B, then A and B hold their interests in the mortgage as tenants in common: there is no evidence before the Court that the Property was mortgaged. If none of these presumptions arise then the final step is to say that the co-owners hold as **joint tenants**. (See **Introduction to Land Law**, 2nd Edition, J.G. Riddall, pg 132).

Conclusion

24. If is for the above reasons that the Court concluded that it was the intention of the parties to the said Conveyance that the Darvilles take title as joint tenants, that the four unities of a joint tenancy exist in favour of the Darvilles, that there is no evidence of the existence of a tenancy-in-common and that a diligent search for the Bethels having produced negative results, it was proper to direct the Deputy Registrar to execute a Deed of Confirmation and Rectification to correct the defect in the said Conveyance.

Dated this 25th day of October, A. D. 2021


Petra M. Hanna-Adderley
Justice

(Faint circular seal of the Supreme Court of Guyana is visible in the background)