

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2018/CLE/gen/00091

BETWEEN

LORETTA NATHAN

And

PHILIP NATHAN

Plaintiffs

AND

LESLIE STUBBS

And

LEVERNE PALACIOUS

Defendants

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Gavin Cassar for the Plaintiffs

Defendants pro se originally represented by Maria Daxon

11 February, 12 March and 14 April 2021; 24 August and 2 November 2022

JUDGMENT

WINDER, CJ

This is a dispute between family members as to the true nature of transactions entered into between them concerning property situated at 20 Smith Estate in the Western District of the Island of New Providence (the Smith Property).

1. The plaintiffs Loretta Nathan (Loretta) and Philip Nathan (Philip) are husband and wife. The first defendant (Leslie) is Loretta's sister. Leslie is the second defendant's (Leverne's) mother.

2. In or about 2010 the plaintiffs moved out of the Smith Property and the defendants entered into an arrangement to acquire the property. There is a disagreement between them as to the circumstances by which the arrangement came about. At that time the defendants resided at their property in Lewis Street.

3. In or about May 2010 the defendants entered into occupation of the Smith Property. At that time there was no monetary consideration associated with the occupation, as the defendants were seeking to secure a mortgage to purchase the Smith Property. The plaintiffs' case is that they permitted the defendants sufficient time to obtain the down payment for the purchase of the Smith Property.

4. On 7 October 2011 the plaintiffs and Leverne entered into an agreement for the purchase of the Smith Property in the amount of \$217,000. Notwithstanding the agreement spoke to the payment of a deposit in the amount of \$17,000 by Leverne, no deposit was in fact paid.

5. The transaction failed when it was determined that Leverne did not qualify for the purchase of the property. The agreement was drawn up by the attorneys for the defendants who purported to act for both sides of the transaction. In the course of the transaction a conveyance was executed by the plaintiffs and held by the attorneys. The plaintiffs say that the purchase price was never paid and that the conveyance was never delivered by them as it remained in escrow pending the completion of the transaction.

6. The defendants continued to occupy the Smith Property until November 2012 without having to compensate the plaintiffs for their occupation. The plaintiffs continue to cover the costs of paying any maintenance and insurance costs for the Smith Property inclusive of real property taxes. The defendants paid the utility expenses of telephone and electricity. The defendants say that they did make some contribution to the maintenance and upkeep of the property.

7. The plaintiffs say that after November 2012 the defendants agreed to pay monthly rental payments of \$800. They say that it was agreed that monthly payments of \$1,500 per month would be made and which would be accounted for as follows:-

(a) \$800 for rent of the Smith Property; and

(b) \$700 to be paid towards the conversion of Leslie's homestead in Lewis Street into rental units.

(Philip was a contractor and undertook the management of the remodel of the Lewis Street Property).

8. According to the plaintiffs, Laverne informed them that her bankers told her that the \$1500 payments would allow her to develop a credit history to support her re-application for a loan. They say that the payments continued into 2015 when Laverne missed about 6 payments and had to reduce the payments from \$1500 to \$800 monthly.

9. The defendants discontinued the monthly payments at the end of 2016 and as of January 2020 had accrued rental arrears in the amount of \$23,200. In 2017 the defendants indicated that they would seek financing of the Smith Property, however the plaintiffs had determined that they no longer wished to sell the property. The plaintiffs say that it was at this time the defendants indicated that they believed that they had entered into a rent-to-own arrangement.

10. The defendants say that it was Loretta that offered the rent-to-own suggestion. They say that the rent-to-own arrangement was verbally suggested by Loretta to Laverne

and they admit that there was never any formal agreement regarding the rent-to-own. According to the defendants, Loretta initially suggested a monthly payment of \$1,000 per month. Leverne says that she agreed to pay \$1,500 per month so that in the event she applied for another mortgage, the purchase price would be significantly lower.

11. The plaintiffs claim that the renovation of the Lewis Street Property was concluded at a cost of \$56,630, however, only \$21,700 was received towards the renovations as a result of the excess \$700 monthly payments. The defendants' case is that the plaintiffs were paid separately for repairs to the Lewis Street property and as such, the payments were not a part of the rent-to-own agreement. They also say that Philip took on the task of remodeling the Lewis Street property as his construction business was slow and they complain that only 75% of the work was completed and was of poor quality.

12. The defendants accept that they paid \$1,500 from November 2012 to January 2016 and that only two months payments were missing during this time period. They say that the amount that they were required to pay was only \$1,000 monthly and thus by January 2016, they were significantly ahead of their payment schedule by some \$18,000. They say that no payments were made in February 2016 and from June 2017 to December 2018. These payments were withheld as the plaintiffs attempted to renege on the rent-to-own agreement.

13. The Statement of Claim seeks the following relief:

1. An Order evicting the Defendants from the Rental house within 14 working days;

2. An Order confirming that the Indenture dated the 15th January 2012 between the Plaintiffs and the Second Defendant ("said Indenture") is cancelled and or void due to not being released from escrow per the condition of payment NOT being received for the same amount as contracted for the purchase of the Rental house or that; IN THE ALTERNATIVE that the Court orders that the Plaintiffs are entitled to full payment of B\$217,000 as set out in the said Indenture payable within 30 days of the judgment herein failure of which the deed be cancelled and deemed void and that the Defendants be made to forthwith vacate the Rental house and remit payment of rent for the time they remained in the Rental house.

3. Rental arrears in the sum of \$23,200.00 up to January 2020, plus any further arrears of rent owing up to the time the Defendants are Ordered to vacate the Rental house.
 4. An injunction restraining the Defendants from making any renovations to the Rental house not approved by the Plaintiffs alternatively, an order of mandamus directing that the defendants put the residence in the same physical state it was in prior to their unauthorized remodelling acceptable to the Plaintiffs;
 5. Moneys owing by the Defendants to the Plaintiffs on renovations to the Homestead \$34,130.00.
 6. Reimbursement of Moneys owed on Real Estate Taxes \$6,360.15 plus any further accrued Real Estate Tax costs.
14. The defendants' counterclaim seek relief as follows:
1. An Order that the rent-to-own agreement is enforced.
 2. An Order that the Defendants obtain a mortgage and continue with the purchase of the house. In addition, that monies already paid some, \$80,000.00, be deducted from the original sale price of \$200,000.00.
 3. That only \$12,400.00 is owed in outstanding arrears and that the Defendants retain ownership of the house.
 4. The Defendants have made renovations to the house in order to make it liveable and comfortable. In addition, that an Order be made for the Defendants to continue fixing the leaking roof before the rainy season sets in.
 5. The Defendants pay the Plaintiffs \$34,130.00 less monies paid to them for the Homestead renovations.
 6. The Defendants pay monies owed on Real Estate Taxes and accrued Real Estate Taxes if an Order is made for them to purchase the house.
 7. The Defendants claim costs and interest.
 8. Any other relief which the Court deems just.
15. At trial the plaintiffs gave evidence and called several of the workmen who were said to have provided services in the Lewis Street renovation. The defendants gave evidence in their case.

16. The principal issue for determination in this action is whether there was a rent-to-own arrangement. The determination of this issue is purely a question of fact. The plaintiffs say that there was no such arrangement and the defendants say that there was an arrangement albeit they admit that it was entirely verbal. Putting aside the Statute of Frauds, which requires agreements for the sale of land to be in writing, I have no hesitation in finding that I did not accept any evidence of such an agreement. There was no evidence as to:

- (i) what were the finer terms of such an agreement;
- (ii) whether any interest was to be paid on the balance owed;
- (iii) whether there was to be any compensation to the plaintiffs for occupying the property in the interim. If so, how much of the monthly payment went towards the rental and how much towards acquiring the interest in the property?

It is quite possible that the defendants believed such an agreement was being entered into, but it takes at least two parties to reach a binding agreement and I am satisfied that Philip and Loretta had no such understanding. The arrangements after November 2012 was for a rental arrangement in the amount of \$800. I also accept that the payment of \$1,500 was in support of building Leverne's credit and providing funds for the renovation of the Lewis Street property.

17. Notwithstanding the claim of the plaintiffs, I did not accept, on the evidence, that there was anything owing to them arising out of the renovation of the Lewis Street property, but that as funds came in with the rental payments they were placed towards the renovation. No proper accounting was given to the defendants, at the time of the expending of the funds for the renovation to suggest otherwise.

18. I did not accept that the home was conveyed to Leverne by the plaintiffs as argued by the defendants. The suggestion that the plaintiffs would convey their title to the home to Leverne, without receiving any of the purchase price is simply untenable. I accept the plaintiffs' proposition that the conveyance came about in the course of closing at a time when a mortgage was in the offing. The conveyance was delivered in escrow and as the transaction failed, the conveyance is void both for failure of delivery and consideration.

19. In all the circumstances, I make the following Order:

1. The defendants do vacate the Smith Property within 90 days of the date hereof:
2. The Indenture dated the 15th January 2012 purportedly made between the plaintiffs and Leverne is cancelled and or void and is of no effect.
3. The defendants do pay rental arrears in the sum of \$23,200 up to January 2020.
4. The counterclaim of the defendants is dismissed.

20. As costs ought to follow the event I order that the plaintiffs are entitled to their reasonable costs. I propose to summarily assess these costs and therefore invite the plaintiffs to provide any representations they wish as to the time that was reasonably spent in prosecuting the action. These representations, extending no more than 5 pages, must be submitted within the next 14 days.

Dated this 20th day of July 2023

A handwritten signature in black ink, appearing to be 'I. Winder', written in a cursive style.

Sir Ian Winder
Chief Justice