

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2020/CLE/gen/1364

IN THE MATTER OF THE ESTATE OF MYRTLENE CASH

AND

IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT,
(2002) Chapter 108 of The Statute Laws of The Bahamas.

AND

IN THE MATTER OF ALL THAT piece parcel or lot of land containing approximately situate ONE HUNDRED- AND FIFTY- FEET WEST OF Mackey Street in the Eastern District of the island of New Providence, Bounded 50 Feet North by land of the grantor, East by 100 feet by land of Levi Gibson, 50 feet South by a road reservation 14 feet wide leading in from Mackey Street West by 100 feet by land of the Grantor.

BETWEEN

LILLIAN FLOWERS

First Plaintiff

AND

THE ESTATE OF MYRTLENE CASH

Second Plaintiff

AND

VIRGINIA JONES

Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Darrell Taylor for the Plaintiffs
Norwood Rolle for the Defendant

Hearing Date(s) 22 January 2024, 14 March 2024 and 26 March 2024

JUDGMENT

WINDER, CJ

This is a dispute as to the title to property (the Property) situated at 10 Munnings Lane off Mackey Street, New Providence. The First Plaintiff (Lillian), as Executor of the estate of Myrtle Cash (Cash), claims that the Property was left in Cash's estate, while the Defendant (Jones) claims that Cash conveyed the Property to her during Cash's lifetime.

[1.] The claim was commenced by Originating Summons but subsequently continued as if began by Writ of Summons. Lillian's Statement of Claim seeks:

- (1) Sole possession of the Property;
- (2) A Declaration that the Quit Claim Deed recorded is void for non-conformity to the Execution of Documents (Handicapped Persons) Act; and
- (3) A Declaration that the Plaintiff as sole beneficiary of the Estate of Cash is the owner in fee simple of the property.

[2.] The Defence and Counterclaim filed on behalf of Jones denies the Lillian's claim and avers that Jones is the owner of the Property by virtue of a conveyance/quit claim deed dated 12 December 2002 (the Deed), recorded in the Registry of Records in Volume 9026 at pages 462-467. Jones claims in her Counterclaim for:

- (1) A Declaration that the plaintiff is not the owner of the property which is the subject of the action and referred to at paragraphs 3 and 4 of the statement of claim; and
- (2) An order that the plaintiff (sic) whether by herself or by her servants or agents or otherwise be restrained, and an injunction be granted restraining the plaintiff from doing the following acts or any of them, that is to say remaining on or building any structure on the subject property.

[3.] At trial Lillian was the only witness in her case. Jones gave evidence and called her son Paul Jones (Paul) as a witness in her case.

[4.] Lillian's affidavit and supplemental affidavit filed on 18 February 2021 and 17 June 2021 respectively were accepted as her examination in chief. She was subject to cross examination. She claimed that the property was bequeathed to her by her aunt, Cash, through a will executed in 2000, which named her as the executrix and beneficiary of the Property.

[5.] Lillian contended that the Deed, allegedly executed by the defendant Virginia Jones, was not valid under Bahamian law for transferring title and that the accompanying affidavit did not comply with the Execution of Documents Act, as Cash was blind at the time of execution.

[6.] Lillian testified about her long-term residence with Ms. Cash, stating that she moved in with her in 1992 with her three minor children and lived there continuously. She described her role as the primary caregiver for Ms. Cash, who was blind and diabetic, administering insulin and other

medications. Lillian also mentioned that she took Ms. Cash to medical appointments, including visits to an eye doctor, Dr. Robert Ramsingh.

[7.] During cross-examination, Lillian was questioned about the accuracy of her affidavit, her relationship with Ms. Cash, and the care she provided. She maintained that she was invited to live with Ms. Cash due to financial difficulties and that she contributed to household expenses. Lillian also asserted that she was promised the property in exchange for her caregiving, as reflected in the will.

[8.] Paul gave evidence that Cash was his grandaunt and testified that he frequently visited her, particularly in 2002. He described her as mentally sharp up until her hospitalization. He stated that he was responsible for recording the Deed, which was executed in favor of his mother, Jones. He did not assist in preparing the document but was involved in its stamping and recording.

[9.] Paul recounted an incident in November 2002 when Cash asked him to purchase a white dress for her burial, indicating her awareness of her mortality. Paul asserted that Cash was not blind and was capable of understanding her actions, including the execution of the Deed. During cross-examination, he was questioned about his visits to Cash and his knowledge of her condition. He maintained that he visited her regularly and that she was mobile and mentally competent. He denied any allegations of harassment towards Lillian and her children and stated that he acted within his legal rights concerning the property.

[10.] Jones gave evidence that she was close to her aunt, Cash, and denied using any influence or trickery to obtain the property. Jones stated that she was involved in the execution of the Deed, which she claimed was properly executed, and transferred the property to her in December 2002, shortly before Cash's death. She asserted that Cash was mentally competent at the time of the Deed's execution and was not blind, as claimed by Lillian.

[11.] Jones explained that she had a close relationship with Cash and frequently communicated with her by phone. She recounted an incident on February 3, 2003, when Ms. Cash called her for help, leading to her taking Ms. Cash to the hospital, where she was admitted. Jones clarified that she was not present when the Deed was executed by the attorney, Michael Kemp, but she did collect the deed from his office afterward. She also mentioned that she paid part of the fee for the Deed's preparation.

[12.] During cross-examination, Jones was questioned about her involvement in the property transaction and her relationship with Cash. She maintained that she did not use any undue influence and that the transaction was legitimate. Jones also addressed questions about her visits to Cash and her knowledge of the property's condition, asserting that she was aware of the property's state and had visited it.

[13.] Jones' evidence supported the validity of the Deed and counter Lillian's claims of Ms. Cash's incapacity and the alleged improper execution of the deed.

Issue

[14.] The simple issue for determination is whether Cash was blind at the time she is alleged to have executed the Deed.

Law and Analysis

[15.] This is not a pleaded case of undue influence or for the finding of some form of constructive trust. The case, as pleaded, is that the document was improperly executed and not in accordance with the Act on the basis that Cash was blind. The issue of mental capacity to understand what she was doing was not pleaded by anyone in this case.

[16.] Section 5 of the Execution of Documents (Handicapped Persons) Act provides:

5. (1) No document executed by a person who at the time when he signs it is a person to whom this Act applies, shall be of any force or validity whatsoever as against that person unless he shall have signed the document in the presence of an official attestor and the official attestor shall have attested his signature in accordance with the provisions of this section.

(2) Before attesting a signature on a document under this section the official attestor shall read over and explain the contents of the document to the person whose signature is to be attested and shall not attest the signature of that person unless he is satisfied that that person understands the nature and contents of the document.

(3) An attestation of a signature under this section shall be in the form set out in the Schedule.

...

[17.] It is accepted that the Deed is not executed in accordance with the Act and therefore if Cash was a person to whom the Act applied it would be invalid.

[18.] Section 3 of the Act provides that the Act applies to any person "*who is blind or does not know how to write his name*". The simple question for determination in this action is therefore whether Cash was blind at the time she is alleged to have executed the document, as alleged by Lillian. This is entirely a question of fact to be determined by whose evidence I accept.

[19.] Having heard the witnesses and observed their demeanor as they gave their evidence, I prefer the evidence of Jones and her witness. I have cautioned myself that both sides could be self-serving in their evidence as must be the case as the evidence is diametrically opposite in nature.

[20.] A brief time line of the events is as follows:

- 2000 Cash executed a will naming Lillian as the executrix and beneficiary of the house at number 10 Munnings Lane.
- 2002 (Nov) Paul visited Cash, who asked him to buy a white dress for her burial.
- 2002 (Dec 12) The Deed was allegedly executed by Cash in favor of Jones, transferring the property at number 10 Munnings Lane.
- 2003 (Feb 3) Jones took Cash to the hospital after receiving a call for help.
- 2003 (Feb 10) Cash passed away.

[21.] The evidence in support of the contention that Cash was blind is only the oral evidence of Lillian who says that Cash's diabetes caused her to lose her sight. Lillian sought to use a report of the late Dr Ramsingh who she says was Cash's eye doctor. Suffice it to say that the report did not say that Cash was blind. It is well known that ailments such as diabetes often affect a patients eyes from time to time, and may or may not be permanent. No medical practitioner was called by Lillian to explain any of the terms in the report and to be tested in cross examination. In the absence of someone with medical training interpreting the medical report and explaining all of the terms, I could not attribute any weight to the report. Lillian sought to provide hearsay testimony that Dr. Ramsingh told her that Cash was blind, I did not accept this evidence.

[22.] Further, Lillian's evidence did not convince me, to the requisite standard, that Cash was blind. Her evidence, at best was that she had challenges with her eyes. Lillian had the burden of proof.

[23.] Some of this evidence was as follows:

Q. Now, when you -- when was the first time you took her to see an eye doctor, as we call it?

A. The first time I took her was in December when I took her.

Q. Of what year?

A. 2002.

Q. And what was she suffering from when you took her to the doctor?

A. What you mean suffering from?

Q. What type of eye condition or eye malfunction or eye disease?

A. She couldn't see properly. I can't give a medical on it because I don't know the medical term. But she just had a problem with her eye.

...

Q. Is it -- and what problem she was having with her eyes?

A. Could you clarify it for me, please?

Q. I beg your pardon?

A. Could you clarify what you mean by what problems she was having with her eyes?

Q. You took her to the doctor. You said she was having issues with her eye.

A. It was blurry and she couldn't see properly. She was like blind.

...

Q. Describe it for us as best as you can.

A. As best as I can and what I say, it was red and she told me it was hurting and it had cold in it. So, I took her to the eye doctor.

[24.] Lillian claim that she began taking Cash to the eye doctor in December 2002, around the time of the making of the Deed. The doctor's report did indicate treatment of Cash since 2001 but there were no visits in December of 2002 at the time of the purported execution of the Deed. The visit which Lillian seek to rely on takes place a month later.

[25.] Coincidentally, it was Jones who made the initial appointment with Dr Ramsingh and would have taken Cash to the appointments. I therefore preferred the evidence of Jones and Paul who both indicated that while Cash was ailing from her diabetes, she was lucid and had her eyesight.

[26.] This position is supported by the 12th December 2002 affidavit of attorney Michael Kemp who prepared the Deed. In that affidavit, Michael Kemp attested to the following:

I examined the said Myrtle Cash Flowers and found her to be conscious of the execution and that she willingly and freely and without force, compulsion and dread execute and delivered the aforesaid Quit Claim Deed.

[27.] Jones' evidence was that she was close to her aunt and spoke regularly to her on the phone. She said that "*my aunt was not blind and she was able to go and pay her light bill and to go to the shop. She walked with a stick like myself.*" Jones queried how, if Cash was blind she could call her on the phone daily. Jones' connection with Cash and Cash's capacity to call her by phone was proven by the fact that it was Jones who was contacted by Cash when she fell ill for the final time on 3 February 2003, prior to her death. It was Jones who took Cash to the hospital.

[28.] Paul's evidence was that he visited his aunt regularly, almost every other day. He gave evidence that he would take breakfast to her on these visits. He said that his aunt was sharp, up to the point she left the house to go to the Hospital. In cross examination he stated:

Q. So, Mr. Jones, I'm going to put to you that you did not, in fact, visit your aunt, as you say, on a regular basis. I'm putting to you, that's not true.

A. I did, in fact, visit her. As a matter of fact, particularly during the year 2002 up to the time from the early parts, up to the time of her death, I made it my business to go there almost every day before I go to work. I worked three corners away at Chesapeake Road. And I made it my duty to go there to ensure that she was okay, that she had something to eat. And I checked on, even after work I went back to the yard on many occasions.

Q. So, during these visits, would you say that she was mobile, that she was able to walk and move and do for herself?

A. Yes. She was mobile. She didn't, I think she had a cane but she didn't have no special cane like what you see a blind person with. But she didn't have that type of cane but she was mobile.

...

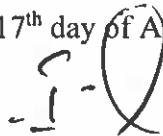
Q. I am going to suggest and put to you that the reason you do not, because you say in your affidavit that she was not blind, the reason you don't know that is because you were not there living with her and you do not know whether or not she was blind. You did not visit her.

A. I went to her almost every day during 2002. I'm saying, we had a concern about her. My mother asked me to please make sure check on her every day because they spoke. I wasn't present when they spoke. And so, I made it my job to go there and check on her particularly after her first live-in went to attack her, okay. And that's why I went there to make sure that nothing like that happen.

[29.] In all the circumstances, having considered the evidence of both parties and preferring the evidence of Lillian, her claim is hereby dismissed. Jones shall have the declaration prayed for in her Counterclaim. Lillian shall vacate the premises within 120 days of the date of this order.

[30.] Jones shall have her reasonable costs, such costs to summarily assessed if not agreed. Jones shall produce a pro forma bill of costs within 21 days hereof for the Court's consideration as to the appropriate amount of costs.

Dated the 17th day of April 2025



Sir Ian R. Winder
Chief Justice