

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E119 OF 1986

BETWEEN SYLVIA WRIGHT PLAINTIFF
AND MARSTON THOMAS DEFENDANT

Mr. M. Frankson for Plaintiff
Mr. C. Honeywell for Defendant

HEARD: 7TH, 8TH, 10TH MARCH, 1994, 16TH, 17TH, 29TH JANUARY, 1ST, 8TH AND
15TH FEBRUARY, 1996.

ORAL JUDGMENT

JAMES, GRANVILLE J.

The hearing of this action began on 7th March, 1994 and continued on numerous dates up to 8th February, 1996.

The Plaintiff seeks Specific Performance of a contract respecting the sale of premises situated at 42 Druesdaile Avenue, St. Andrew, alternatively, the Plaintiff claims damages for breach of contract.

This action was brought originally against Ivy Steele, the vendor but she died and her executor Marston Thomas was substituted as a Defendant.

In her evidence the Plaintiff said that Ivy Steele (deceased) asked her to sell the house at 42 Druesdaile Avenue because she needed money and had no one at the time. Deceased who appeared to be 60 - 65 years of age wanted \$15,000 for the house. Plaintiff said that she 'freelanced in real estate at the time' and she tried to get the asking price of \$15,000 but without success.

Plaintiff further said that it was agreed that deceased would sell the house to her for the price of \$80,000. In pursuance of this agreement both parties went to the Rent Board and afterwards to the offices of Messrs. Gaynair and Frazer Attorneys-at-Law. At the lawyer's office a Sale Agreement was prepared and duly signed by both parties. A deposit of \$5000 was paid.

On a later date both parties executed a Transfer at the lawyer's office.

The Plaintiff said in evidence that she made payments and incurred expenses on behalf of deceased from time to time, e.g.,

- (i) to restore electricity supply to the premises;
- (ii) loans to deceased to purchase groceries;
- (iii) payment of telephone bills;

- (iv) transportation to and from the doctor;
- (v) payment of doctor's fees;
- (vi) cost of effecting repairs to the house;
- (vii) payment of \$4000 to Pastor Glen Thompson as requested by deceased, this sum was subsequently returned by the Pastor.

According to the Plaintiff it was agreed that she would be repaid these sums after the house was sold.

Plaintiff said in evidence that she got a mortgage in respect of the premises, she believes the prospective mortgagee was the National Commercial Bank.

The Plaintiff said that deceased appeared to be in fairly good health and was in control of her mental facilities. She denied applying any form of pressure on deceased in order to secure purchase of the property, indeed she said that deceased begged her to buy the premises.

It was agreed between the parties that after the sale of the premises deceased would occupy the smaller side of the house, deceased would pay \$150 monthly for water, light etc. After the Transfer was signed deceased secured the services of an attorney, she was Mrs. Jennifer Messado. This attorney sent a cheque in the sum of \$14,759 to Messrs. Gaynair and Frazer in February 1986, this sum represented money that Plaintiff was supposed to be asking for as a refund of her expenses.

Two witnesses were called for the Defence, the Defendant (Marston Thomas) and a Chartered Valuation Surveyor.

The Defendant is an executor named in deceased's will, he said in evidence that he saw deceased regularly. According to this witness 'most times' deceased appeared to be drunk and 'her argument did not relate to what was current'. He said that deceased appeared to be frail. Mr. Thomas said that the Plaintiff informed him that there was an oral arrangement whereby deceased would be allowed to live on the premises for the rest of her life. He was concerned about deceased's position if the Plaintiff predeceased her.

Lloyd Davis, the Chartered Valuation Surveyor expressed an opinion that in September 1991 the premises in question was valued at \$750,000 - \$800,000 at that time. This witness said that assuming the property was in similar condition in 1985 to the condition when he saw it in 1991 he was of the view that the property would be valued at \$230,000 - \$250,000 in 1985.

I have carefully considered all the evidence in this case and the submissions made by both attorneys.

I find as follows:-

- (i) that the purported sale of the property was at a price considerably less than its true value. It is significant that the deceased originally asked a price of \$200,000 and later \$150,000. Why did she settle for a price of \$80,000, just over half the price she originally sought? The opinion of the chartered Valuation Surveyor although not conclusive, yet it provides some guide to the finding that the price of \$80,000 was less than the true value;
- (ii) the deceased ought to have had independent legal advice before she signed the Agreement for Sale.
- (iii) the deceased was physically frail and lacking in the means of support for herself.
- (iv) Plaintiff, a Freelance Real Estate Dealer had the means of assisting deceased and was thereby in a dominant position or a position of influence over the deceased.
- (v) the oral arrangement whereby deceased was allowed to live on the premises for as long as she wished was clearly to deceased's disadvantage. It was quite possible that Plaintiff could have predeceased Mrs. Steele.
- (vi) Undue influence was used in securing the sale of the property in question. Accordingly, I give Judgment for Defendant on the ground that the deceased consent to the purported Agreement for Sale dated 2nd July 1985 was procured by the Plaintiff's exercise of Undue Influence over the deceased.

The aforesaid purported Agreement for Sale is void and of no effect.

I give judgment for the Defendant on the Counter Claim.

I order that the sum of \$14,446.49 to be repaid to the Plaintiff with interest at 5% from 7th May 1986 out of deceased's estate.

This sum includes:

Deposit	\$5000.00
Expenditure as in Particulars	4446.49
Further payment	5000.00
	<u>\$14,446.49</u>

Costs to Defendant to be agreed or taxed.

Graves