

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. CL 2001/W-209

BETWEEN LOUISE WONG CHOY 1st PLAINTIFF
AND SHARON WONG CHOY 2nd PLAINTIFF
AND AUDREY SPENCER DEFENDANT

Alton Morgan instructed by Alton E. Morgan & Co. for the Plaintiff.

Debayo Adedipe for the Defendant.

Heard: 21st November 2002 and 1st July 2003

Campbell J.

On the 18th December 2001, the plaintiff filed a Writ of Summons with a Statement of Claim endorsed with claim against the defendant to recover possession of premises at Greenvale District.

On the 21st March 2002 a defence was filed, in which it was alleged inter alia;

- (3) The Defendant initially entered into possession of the premises prior to the year 1988 as tenant of the late Astley Wong Choy who was, prior to that, in sole occupation of same.
- (4) That shortly thereafter the said Astley Wong Choy offered to let the Defendant occupy the premises for as long as she wished if she would take care of him by preparing meals for him and providing domestic services because he was getting old and infirm and increasingly unable to take care of himself.

- (5) The Defendant thereupon agreed to take care of the said Astley Wong as requested and did so from that point in time without any charge or remuneration until his death on the strength of his offer/undertaking that in return she would be allowed to remain in occupation of the premises for as long as she wished to.

On the 30th August 2002 the plaintiff filed a Summons to Strike out Defence and Enter Judgement for an Order pursuant to S234 of the Judicature (Civil Procedure Code) Law that;

- (1) The defence filed herein be struck out as an abuse of the process of the court on the ground that it discloses no reasonable cause or answer or is frivolous, as the Defendant could not in consequence of the death of the Joint Tenant Astley Wong Choy, acquire any interest in or contractual right to the property comprised in Volume 1260 Folio 5 of the Register Book of Titles.
- (2) That judgment be entered for the Plaintiff against the Defendant for the recovery of possession of premises situated at Greenvale in the parish of Manchester comprised in Volume 1260 Folio 5 of the Register Book of Titles.

In the affidavit in support of the summons, the plaintiffs allege inter

alia

- (3) That we have been advised by our Attorneys-at-Law and do verily believe that Astley Wong Choy being a joint tenant of the property possessed no rights over the property that would survive his death.
- (4) That we have been advised by our Attorneys-at-Law and do verily believe that the defence raised by the Defendant alleges a promise made to her which could be of no legal effect as there is no documentary evidence of the claim of right or interest alleged by the Defendant and even if the promise alleged by the Defendant had been so stated in Mr. Astley Wong Choy's last

will and testament such a bequest would have been null and void against the surviving co-owners of the property.

- (5) That we have been advised by our Attorney-at-Law and do verily believe that the interest in the property that belonged to Astley Wong Choy passed automatically to us prior to his death and that he did not possess the right to independently give same to the Defendant.

It was undisputed that the plaintiff had brought two actions in the Court below to recover possession, the first was discontinued on the application of the plaintiff and the second was struck out with costs after the plaintiff failed to appear on at least five consecutive dates. Although these cases were alleged in the defence, no arguments were raised by either side as to the effect, if any, of these suits on the plaintiff's summons.

Counsel for the plaintiff identified the issue for determinations of the Court as follows;

What rights, if any, can be created by a joint tenant who holds his interest in property along with other joint tenants? To what extent, if any, can such an interest created by joint tenants survive his death?

It was argued for plaintiff that Astley Wong Choy's rights over the property died with him. Therefore, any third party whose rights accrued through the deceased joint tenant has suffered the extinguishment of those rights. Additionally, any such right created during the life of the joint tenant would have to be transferred within the ambit of the Registrar of Titles Act,

and the Statute of Frauds. That there is no sufficient memorandum or part performance evidenced by the defendant. There is no dispute, argued Counsel for the plaintiffs that the defendant's role during the lifetime of Astley Wong Choy was that of housekeeper, the plaintiff allowed her to remain over after his death as a tenant. If the defendant is denying that she is a tenant, then her position is that of a licensee and the dicta in Bruton vs. London and Quadrant Housing Trust [1999] 3 ALL ER 481 is apposite - the licensee can enjoy no benefit for which the grantor of the licence had no title to support that title.

It was further argued on behalf of the plaintiff that the defendant is a tenant and not a licensee, and even if the Court held that the defendant was a licensee, that licence would be subject to the rights of the plaintiff. To permit such a transfer would amount to a mockery of the Registrar of Titles Act and the century-old Statute of Frauds.

On the other hand, the defendant argued that the essential question for the Court's determination is whether there was a good defence on the pleadings.

Counsel argued that the Statement of Claim, alleges that the defendant is a tenant-at-will, and that "the defendant wrongly holds possession". This the defendant has denied.

Counsel for the defendant argues correctly in my view that a joint tenancy can be severed as between a joint tenant and his co-joint tenants by an inter vivos act of one of the joint-tenants. If the joint tenancy does not exist upon the death of the grantor, his death cannot revive the joint tenancy.

In the *Principles of the Law of Real Property*, by Joshua Williams it is stated thus at page 140;

“The incidents of a joint tenancy, last only so long as the joint tenancy exists. It is in the power of any one of the joint tenants to sever the tenancy for each joint tenants possess an absolute power to dispose, in his lifetime, of his own share of the lands, by which means, he destroys the joint tenancy”.

In Williams v Hensman 1 J & H 546, where at page 867 Vice Chancellor Sir W Page Wood said;

“A joint-tenancy may be severed in three ways; in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint tenant is a right of survivorship only in the event of no severance having taken place of the share, which is claimed under the *jus accrescendi*. Each owner is at liberty to dispose of his own interest in such a manner as to sever it from the joint-fund-losing, of course, at the same time his own right of survivorship....”

The defendant’s Counsel further argued that in circumstances where a plaintiff induces a defendant to act to his detriment and in reliance on that

promise the defendant so acts, something in the nature of a constructive trust would be created. He supports this proposition with a passage from Greasley v Cooke (1980) 3 All ER 710, where the Court found that assurances were given by the owners of a house that the defendant could remain in the house as long as she wished and as a result she cared for members of that family for decades without remuneration. Lord Denning at page 713 of the judgement said;

“That the assurances given by Kenneth and Hedley (the homeowners) to the defendant leading her to believe that she would be allowed to stay in the house as long as she wished, raised an equity in her favour. There was no need to prove that she acted on the faith of those assurances. It is to be presumed that she did so.....suffice that she stayed on in the house, looking after Kenneth and Clarice, when she could have left and got a job elsewhere. The equity having thus been raised in her favour, it is for the Courts of equity to decide in what way that equity should be satisfied....”

These authorities clearly demonstrate that the summary procedure is inapplicable to this case. The discretionary jurisdiction of the Court to strike out any pleading can only be adopted when a case falls into a category that may be described as being “unarguable” or “obviously unsustainable” or “clear beyond words”. None of these epithets appears applicable to the circumstances of this case.

In Dr. Dev Maragh vs Money Traders Investment Ltd. et al

(unreported) delivered on the 2nd October 1997, Wolfe C.J. said;

“In striking-out an action on the basis that it discloses no reasonable cause of action, the court must be guided by the following principle; so long as the Statement of Claim or the particulars disclose some cause of action or raise some question fit to be decided by a Judge or jury, the mere fact that the case is weak, and not likely to succeed is no ground for striking it out.”

The plaintiff's application is accordingly dismissed. Costs to the defendant to be agreed or taxed.