



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2022: No. 31

BETWEEN:

**GENA MAY GERTRUDE ROBINSON (1)
RICHARD DAVID ROBINSON (2)**

Plaintiffs

- and -

**MYRON EVERETT SIMMONS
Formerly trading as
LIGHTBOURNE & SIMMONS**

Defendant

JUDGMENT

Date of Judgment: 29 March 2022

Representation: Cox Hallett Wilkinson Limited for the Plaintiffs
Defendant in Person

Judgment of Mussenden J

Introduction

1. The Plaintiffs caused a Specially Indorsed Writ of Summons (the “**Writ**”) to be issued on 9 February 2022 claiming as against the Defendant that he be ordered to repay to the Plaintiffs the sum of \$52,000, interest on the sum of \$52,000 from 1 December 2011 until date of payment, costs and such further or other relief that this Honourable Court considers just.

Background

2. The Statement of Claim (the “**SOC**”) set out that in November 2011 the Plaintiffs engaged the professional services of the Defendant, formerly practicing with a law firm under the name and style of Lightbourne and Simmons, to attend to the conveyance and transfer of property situated at 2 Plaice’s Point Road, Pembroke (the “**Property**”) from the First Plaintiff’s mother to the Plaintiffs. The Defendant prepared the deed of Voluntary Conveyance and associated documents in order to give effect to the transaction. Stamp Duty was required to be paid to complete the transaction and the Defendant requested the amount of \$52,000 from the Plaintiffs after that amount had been adjudicated as being payable by the Office of the Tax Commissioner (the “**OTC**”).
3. The SOC set out that the Plaintiffs paid the \$52,000 (the “**Funds**”) to the Defendant for the express and limited purpose of paying over the Funds to the OTC as Stamp Duty and the Defendant agreed to do so forthwith. Further, the SOC stated that the Defendant was obliged to pay the Funds to the OTC on behalf of the Plaintiffs by reason of the express mandate given to him by the Plaintiffs or alternatively bore a legal duty to the Plaintiffs to only utilize the Funds for the stipulated purpose and not to misuse or divert the Funds elsewhere. The SOC sets out that in breach of the mandate, alternatively in breach of the duty of care owed to the Plaintiffs, the Defendant failed to pay over the Funds to the OTC and retained the full amount of the Funds for his own personal use.
4. The SOC claims that the duty of care arose by reason of the Defendant’s professional duties and obligations as an Attorney and Barrister of the Supreme Court of Bermuda and member of the Bermuda Bar Association at that time.

5. The SOC sets out that the Plaintiffs were completely unaware that the Defendant had not in fact paid over the Funds to the OTC during November 2011 or at all and only ascertained this fact during May 2019 when they found out from the Land Registry that the First Plaintiff's mother still retained title to the Property and that transfer into the names of the Plaintiffs had never in fact taken place, owing to the Defendant's failure to pay over the Funds as assessed Stamp Duty in 2011. Since May 2019 the Plaintiffs have made repeated demands to the Defendant both orally and by email. The SOC also sets out that the Defendant has admitted his liability to repay the Funds but has to date failed, refused and/or neglected to repay the Funds or any portion thereof to the Plaintiffs.
6. The SOC sets out that the Plaintiffs have suffered damages by reason of the Defendant's breach of mandate, alternatively by his breach of duty of care, or further in the alternative, the Defendant has become unduly enriched by his diverting of the Funds to his own purpose and the Plaintiffs have become impoverished to the same extent.

The Consent Judgment

7. The parties filed a Consent Judgment in the Court date stamped 22 March 2022 for my consideration and signature. It was signed by counsel for the Plaintiffs, Cox Hallett Wilkinson Limited, and the Defendant himself both stating that they "*agree to a Judgment in the above terms*". The terms of the Consent Judgment are as follows:

"The Plaintiffs and the Defendant having agreed the terms in which judgment should be given in the favour of the Plaintiffs and consenting that judgment be entered in such terms as provided below.

BY CONSENT it is ADJUDGED THAT the Defendant shall pay to the Plaintiffs the sum of \$52,000 in satisfaction of their claim together with interest of \$18,803.34 for the period 1 December 2011 until 31 March 2022 and accruing at the statutory rate of 3.5% of \$4.97 per day thereafter together with costs of \$3,500."

The Court's Judgment

8. I have considered the Consent Judgment as filed before the Court and the fact that the parties have agreed to it in the terms as set out.
9. I have also considered the Writ and the SOC. The SOC makes several very serious allegations against the Defendant in his capacity as the Attorney acting for the Plaintiffs in this matter and his conduct in respect of the Funds.
10. I have now considered that a Consent Judgment has been filed in which the parties have agreed the terms in which judgment should be given in the favour of the Plaintiffs in the amount of the Funds along with interest and costs. The Consent Judgment states that those terms are in "*satisfaction of their claim*", meaning as set out in the SOC. Now, over 10 years after the Plaintiffs paid the Funds to the Defendant, he has signed the Consent Judgment. I note that this does not repay the Funds to the Plaintiffs who may have to wait further for the full repayment of the Funds, either in one or more payments over a period of time. Thus, the saga does not come to an end just by the parties signing the Consent Judgment. Further, unless the Stamp Duty has been paid to the OTC by some other funds from the Plaintiffs, the transaction remains incomplete and the Plaintiffs may still not have title to the Property. That in itself can present problems to the Plaintiffs in dealing with the Property. In my view, it could be said that the Plaintiffs have been robbed of all the joys of homeownership, an emotional and factual experience that they thought they had since 2011.
11. In light of the Consent Judgment being filed in this Court that satisfies the Plaintiffs' claim against the Defendant along with interests and cost, I am satisfied that I should sign the Consent Judgment which is in favour of the Plaintiffs.
12. However, I note that the SOC asks the Court for such other further or other relief that this Honourable Court considers just.

13. In light of the serious allegations set out in the SOC which potentially breach the professional duties of the Defendant, I am satisfied that it is just that I should refer this matter to the chairman of the Bermuda Bar Association Professional Conduct Committee for any action as appropriate in all the circumstances.

14. Further, it appears to me that the facts set out in the SOC give rise to suspicious conduct by the Defendant in respect of his handling of client funds entrusted to him for onward payment to the OTC. Therefore, I am satisfied that it is just that I should refer this matter to the Commissioner of Police and the Director of Public Prosecutions for any action as appropriate in all the circumstances.

Conclusion

15. In summary:

- a. I will sign the Consent Judgment; and
- b. Further, my order is that a copy of this Judgment is to be sent forthwith by the Registrar to the chairman of the Bermuda Bar Association Professional Conduct Committee, the Commissioner of Police and the Director of Public Prosecutions for any action as appropriate in all the circumstances.

Dated 29 March 2022

**HON. MR. JUSTICE LARRY MUSSENDEN
PUISNE JUDGE OF THE SUPREME COURT**