

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 361 OF 1996

BETWEEN:

EDDIE WILSON

Administrator of the Estate of Elma Wilson a.k.a Elvis Wilson, deceased

Plaintiff

and

**JEMMA ALEXANDER and EZARD STEWART and SILVAN HUTCHINSON and
DEXTER ALEXANDER**

Defendants

Appearances:

Mr Samuel Commissiong for the Plaintiff

Mr Arthur Williams for the Defendant

2000: May 10,11, 31

JUDGMENT

[1] **MITCHELL, J:** This is a family dispute over a deceased's estate. It involves land and house at Union Island in the Grenadines.

[2] When Elma Wilson of Union Island died on 10 July 1971, she left no will. Surviving her were her husband, Russell Mathias Wilson (hereinafter "Russell Wilson") and their eight children. The Plaintiff is one of the eight children. Elma Wilson left an estate. It consisted of two parcels, of land, one parcel of two acres and the other parcel of half an acre, both at Campbell in Union Island. On 12 December 1972, her widower Russell Wilson, and Ruthford Cox were granted Letters of Administration to her estate. At this date, four of the eight children were

still minors. Two of them continued to be minors until the passage in 1987 of the **Age of Majority Act** through the House of Assembly of St Vincent and the Grenadines reduced the age of majority to eighteen years. That Act is now properly referred to as **The Age of Majority Act, Cap 164** of the 1991 Revised Edition of the Laws of St Vincent and the Grenadines. As of the year 1988 there were thus no minority interests in the estate of Elma Wilson. Prior to that date, some of the children were minors.

[3] At the date of the death of Elma Wilson, Russell Wilson was still a relatively young man of about 50 years. He soon began an intimate relationship with a young woman, Jemma Alexander, the 1st Defendant. A son, Dexter Alexander, the 4th Defendant was born of this relationship in the year 1976. Jemma Alexander emigrated from Union Island to the USA in the year 1984. The close relationship between Jemma Alexander and Russell Wilson did not end with her emigration. It continued, as she testified, until the death of Russell Wilson in the year 1994.

[4] The children of Elma Wilson were never given any part of the land at Campbell in Union island left by their mother. Russell Wilson and his co-Administrator Ruthford Cox sold or gave most if not all of it away. Until a survey is done, the court was told, it will not be known if any of the lands of Elma Wilson are left. The **first** deed relating to the lands of the estate was made on 1 March 1974. On that date, Russell Wilson acting alone executed a deed in favour of Winston London to a lot of land measuring 75' X 50'. Strangely, the co-Administrator did not join in the conveyance. Clearly, both administrators should have joined in this deed. The purchase price was stated in the deed to be \$600.00. The deed recites that the Administrator has paid all the debts, funeral expenses and liabilities of the estate to the best of his knowledge. One would not expect there to be any remaining debts, funeral expenses, or liabilities in the estate to remain after this date. The Schedule to the deed, which describes the parcel being sold, gives the south boundary as the "remaining lands of Russell Wilson." Russell Wilson had no land there. This must be a mistake of the drafting counsel. That phrase, "the

remaining lands of Russell Wilson" must be a reference to the remaining lands of the estate. Then, on 20 May 1975, Russell Wilson and his co-Administrator executed a **second** deed to lands of the estate. It was a deed of assent to Russell Wilson himself as an heir of Elma Wilson for a half acre parcel of land forming part of the estate. The deed recites that the Administrators has [sic] paid all debts, funeral expenses and liabilities of the estate of the deceased to the best of their knowledge. If this is inserted by conveyancing counsel who drafted the deed to justify the voluntary conveyance to the husband-Administrator, then counsel has forgotten that the debts, funeral expenses and liabilities of the estate were paid from the proceeds of the first conveyance out of the estate. The deed also recites that the Administrators have not at any time made any conveyance of any part of the estate. That statement, of course, was not true. Then, on 23 May 1975, Russell Wilson and his co-Administrator executed a **third** conveyance. This one was in favour of Dick Richards. It related to a parcel of two lots from the remaining part of the estate. The consideration was expressed to have been \$100.00 paid since 1970 by the purchaser to Elma Wilson. The Schedule to the deed which describes the parcel being sold gives the south boundary as the "remaining lands in the estate of Elma Wilson." Then, on 7 January 1981, Russell Wilson alone executed a **fourth** conveyance to 7,500 sq ft of the land remaining in the estate in favour of William Thomas. From one of the deeds, we learn that the co-Administrator had died previously on 4 April 1980. The consideration was expressed to be \$2,500.00. This amount is alleged to be still after 8 years owing for hospital expenses of the deceased. It is not conceivable that there were any hospital expenses owing at this date for the deceased. This parcel is bound, according to the Schedule, on the east, west and north by "lands of the Administrator." On 31 March 1987 Russell Wilson executed a **fifth** conveyance of a part of the estate. By this deed he conveyed half an acre of the estate to Jemma Alexander for her son, Dexter Alexander. This is the transaction that is in dispute. The deed, incredibly, recites that there are still outstanding debts for repairs, taxes and other liabilities of the estate. Russell Wilson states in this deed that he has repaired the buildings and houses of the estate of the deceased. He

claims that he sells the land of the estate to the purchaser for the price of \$8,000.00. In the deed he acknowledges having received this sum. The Schedule to this deed does not mention any remaining land of the estate as bordering the parcel being sold. On 28 April 1987 Russell Wilson executed a **sixth** conveyance in favour of Henry Thomas for a half lot of 1,820 sq ft. The deed recites that the Administrator had incurred expenses on repairs, maintaining [sic] and up-keeping the property of the estate of Elma Wilson. The purchase price of this half lot is stated to be \$1,300.00. The Schedule which describes the parcel being sold does not mention any remaining lands of the estate on the boundaries of the parcel being sold. Finally, on 22 August 1989 Russell Wilson executed a **seventh** conveyance from the estate in favour of Rodney Dennis Wilson to a half-acre of land in the estate. The consideration is expressed as having been \$3,000.00. The Schedule describes the boundaries to the north and west as "remaining land of the Estate."

- [5] The children of Elma had not appreciated the relationship that developed between their father and Jemma Alexander after the death of their mother. They considered that Jemma was to blame for the harsh way that their father treated them after he began his relationship with her. Relations with their father were not good. They all eventually emigrated to the USA when they grew up. They all live and work there now. Jemma herself, as we have seen, also emigrated to the USA to better herself.
- [6] In the year 1996, the Plaintiff was visiting St Vincent from his home in the USA. He carried out a search in the Registry of Deeds of his mother's land. He discovered that his father had conveyed the parcel of land containing the family house to Jemma in 1987. He discovered all the other deeds to parts of his mother's estate that his father had executed over the years. His father had not consulted with him or with any of the other children of Elma Wilson about these conveyances. He went to consult a lawyer. These proceedings are the result.

[7] This dispute centers on the half acre of land conveyed out of the estate by the **second** and **fifth** deeds. They are not different half acres. It is the same half acre. There are two different deeds relating to the same half acre. Though the boundaries as described in the Schedules to the two deeds vary from each other, both counsel agreed they are one and the same parcel of land. The family house is on this parcel of land. This was the land that Russell Wilson had first in 1975 vested in himself as an heir of Elma Wilson. He had then twelve years later, in 1987, conveyed it as Administrator out of the estate of Elma Wilson allegedly for a consideration of \$8,000.00 to Jemma Alexander who, in the same deed, had voluntarily conveyed it to trustees for her son Dexter. Jemma is the 1st Defendant in this case. The 2nd and 3rd Defendants are the two trustees for Dexter. They played no role in the trial of the case. Dexter is the 4th Defendant in this case. It is only these two deeds that are in dispute in this case. No further reference will be made to the other conveyances. The Plaintiff also testified that the co-Administrator had helped himself to another half-acre of the estate. That transaction, if it occurred, will also have to await any legal proceedings that may be brought specifically relating to it.

[8] Counsel for the Defendants defended the actions of Russell Wilson in conveying the land and house to Jemma Alexander in the **fifth** deed on the basis that she was a purchaser for value. He called in authority the provisions of the **Administration of Estates Act, Cap 377**. This Act was passed by the legislature in the year 1989. Prior to the coming into effect of that Act on 27 December 1989, the relevant law was the **Administration of Estates Act, No.24 of 1947**. This Act became known as Cap 1 of the 1966 Revised Edition of the laws of St Vincent. The commencement date of this Act was 16 December 1947. I find that the transaction of Russell Wilson in the **fifth** deed in this dispute was not governed by Cap 377, but by Cap 1, because he did it before 1989.

[9] Counsel for the Plaintiff asked the court to set aside the conveyance to Jemma Alexander and the trustees in the **fifth** conveyance dated 1987. He submitted that

there were two issues in the case. The first was, was Jemma Alexander a bona fide purchaser for value without notice. If she was not, the heirs could follow the land and obtain an order that it be returned to them. The second was, was Russell Wilson the Administrator of the estate of Elma Wilson in 1987 when he purported to sell her the disputed land.

[10] I am satisfied from the evidence that Russell Wilson acted in breach of his duties as Administrator of the estate of his late wife Elma Wilson when he attempted to transfer the house and land to himself by the **second** deed in 1975. Assuming, as both Counsel did, that that transaction was void, the half acre remained vested in the Administrators. Russell Wilson acted equally in breach of his duties as Administrator when he purported to transfer by the **fifth** deed the house and land to the Defendants in 1987.

[11] It is settled law that a sale by a fraudulent Administrator to a bona fide purchaser for value without notice of the fraud of the Administrator is unchallengeable. The remedy of the defrauded beneficiaries is not against the innocent purchaser, but against the fraudulent Administrator, the sureties to his bond of administration, or against their estates if they have in the meanwhile died. The powers and duties of an Administrator in St Vincent between 16 December 1947 and 27 December 1989 of the estate of a deceased person who died without having left a will are set out in Part III of the **Administration of Estates Act, Cap 1** of the 1966 Revised Edition of the Laws of St Vincent. Counsel for the Plaintiff relied on various sections of this Act. Section 7 provides simply:

Every person to whom administration of the estate of an intestate is granted, shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were an executor.

Section 8 deals with the duty of the Administrator to account when required to do so. Section 9 gives a power to distrain upon land for arrears of rent. Section 10 provides for the protection of persons dealing with an Administrator who had a defect in his appointment. Section 11 protects a purchaser for valuable consideration in a claim by a defrauded creditor. Section 12 provides that the estate of the Administrator is liable for waste or conversion. None of these sections provide real assistance in the circumstances of this case. Part IV of the Act bears the rubric "Revocation." It provides at section 14 some law that does bear on the circumstances in this case. The section reads where relevant:

- (1) A conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property to which the conveyance relates . . . into the hands of the person in whom it is vested by the conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested.

- (2) Notwithstanding any such conveyance the Court may, on the application of any creditor or other person interested:
 - (a) . . .
 - (b) declare that the person, not being a purchaser, in whom the property is vested is a trustee for those purposes;
 - (c) . . .
 - (d) . . .

Section 16 of the Act provides the rules of succession. In the case of a surviving spouse and children, the spouse is entitled to one-third of the estate and the issue take the remaining two-thirds of the estate in equal shares. So, in this case, the spouse Russell Wilson was entitled to one-third of the estate of his deceased wife, Elma Wilson.

[12] All the deeds produced in evidence in this case relating to this estate state that they have been prepared for the Administrators by solicitor Emmanuel F Adams. Emmanuel Adams has now died. It is acknowledged by both Counsel that Union Island is a tiny island. It had at the relevant time a population of only some several hundred souls. Emmanuel F Adams was a Union Island lawyer, practicing in Kingstown on the mainland of St Vincent. Russell Wilson used him for all of his transactions produced in evidence in this case. It would not be surprising if, as was suggested in submissions, most Union Islanders preferred to use Emmanuel F Adams, a local lawyer, to do their legal work. Jemma Alexander who was from Union Island testified that she used him as her solicitor in preparing the **fifth** deed described above and which is in dispute in this case. This is the deed in which she claims to have purchased the land and house out of the estate of Elma Wilson for \$8,000.00. She insisted in cross-examination that she had paid the \$8,000.00 mentioned in the deed. She said she paid that sum of money over a period of 2 years. I do not believe her. I do not believe she paid anything for the land. I believe that Russell Wilson wanted to leave the land and house that he now viewed as his own to his son Dexter. His son Dexter had no claim on any part of the estate of Elma Wilson. The evidence of the deeds suggests that he wanted to cut his wife's children out of the estate. His solicitor, Emmanuel F Adams, had assisted him previously in wasting his late wife's estate. This transaction with Jemma Alexander constituted by the **fifth** deed was another attempt to waste the estate. Even if Jemma Alexander sent money to Russell Wilson over the years, after she had left Union Island to improve her condition in the USA, that was because of the close relationship that continued between them.

[13] It was the submission of counsel for the Plaintiff that under common law an Administrator, like an Executor, has always had the right to sell the assets of the intestate for the payment of testamentary and administrative expenses in the course of administration. The **Administration of Estates Act, Cap 1**, he submitted, also gave him that right by statute. It was only in those prescribed circumstances, he submitted, that the Administrator could sell the real estate of the

intestate. An Administrator, he submitted, is never at liberty to sell willy-nilly as and when he pleases the assets of the intestate. Counsel submitted that the Administrator did not have the right under the **Administration of Estates Act, Cap 1** to sell the land to the 1st Defendant. The significant difference, he submitted, between the 1947 Act and the 1989 Act is that the 1989 Act created a trust for sale over the real property of the deceased. Under that concept, the interest of a beneficiary would be transferred to the money derived from the sale of the real estate and would not remain in the res of the estate. The consequence, Counsel for the Plaintiff submitted, is that commencing in 1989, the Administrator for the first time became free to sell the land of the beneficiaries. That was not so under the 1947 Act, he submitted. Prior to the 1989 Act, the Administrator was required to obtain the consent of the beneficiaries to any sale of the lands in the estate. Further, he submitted, the right of an Administrator to sell under section 10(1) of the 1947 Act had to be exercised in the course of administration, which, he contended, was within one year of the death of the deceased. Thus, even if the court found that the alleged sale to the 1st Defendant was within the meaning of section 14(1) quoted above, the transaction can be set aside under the provisions of section 14(2)(a) and (c) as it took place more than one year after the death of the deceased. Counsel relied on the cases of **Watkins v Cheek (1825) English Reports, Vol 57 p 321**. He also relied on **Attenborough v Solomon et al (1913) AC 85**.

[14] Jemma Alexander pleaded that she was a bona fide purchaser for value. I assume she meant to add "without notice of any fraud on the part Russell Wilson". First, I believe that she had actual notice, though she denied it in cross-examination. She had a long-standing relationship with Russell Wilson from shortly after the death of Elma Wilson until his death in 1994. By the time of her deed in 1985 she must have known that he had not up to that date given any part of Elma's estate to any of her children. She would have known that the children disapproved of her relationship with their father and that for many years they had not been on the best of terms with him. The whole purpose of the transaction was

to vest Elma's house and land in Russell's and her son Dexter. Secondly, even if she did not have actual notice, she had constructive notice. Notice to an agent is notice to the principal. The solicitor retained by Jemma Alexander to prepare her deed was the same Emanuel Adams who had prepared all the other deeds for the Administrators. He was clearly not advising the Administrators properly on the performance of their duties as Administrators. He recites in the disputed deed no explanation why the second deed was being ignored. As a lawyer, he would have known that the voluntary vesting by Russell in himself of the house and land could be set aside by the court on an application by the other heirs. He would have known that a sale for valuable consideration would have been unassailable. That may have been the reason why in assisting Russell Wilson to vest the property in Jemma and then in her son Dexter he ignored the earlier deed of 1975 and purported to have the property sold out of the estate. What he knew is assumed to have been known by Jemma for whom he was working. Jemma therefore had at least constructive notice of the fraud that Russell Wilson was perpetrating on the children of his late wife. I have already said that I do not believe, despite the receipt recited in the deed, that Jemma actually paid any money for this land. I believe that it was a mere device suggested by the lawyer in an attempt to make the transfer to Dexter unassailable. I am satisfied that the **fifth** deed, the one in dispute, should not be allowed to stand.

[15] Counsel for the Plaintiff has submitted that as a result of section 7 of the 1947 Act, the Administrators had the same rights and liabilities as executors. He further submitted that their right to sell the property must be exercised within one year of the death of the deceased. No law has been produced to substantiate this submission. Given the findings that I have made above, I do not consider it necessary to explore the implications of this submission.

[16] There will be judgment for the Plaintiff on his prayer as follows: the Plaintiff shall have an order that deed no 752 of 1987 be set aside. The property forming the subject matter of deed no 752 of 1987 is vested in the Plaintiff as the Administrator

of the estate of Elma Wilson deceased for distribution to the beneficiaries of the said estate.

[17] The Plaintiff is also entitled to his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge