Neutral Citation Number: [2020] EWHC 3015 (QB)

Case No: QA-2019-000096

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM THE SOUTHEND COUNTY COURT
MR RECORDER CATFORD QC

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/11/2020

Before :

THE HONOURABLE MR JUSTICE CALVER

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Between :

Daniel James Boddy	**Claimant**
- and -	
Ann Sinton	**Defendants**
Stephen Richardson	

- -
- -

Stephen Goodfellow (instructed by **under the Bar Direct Access Scheme**) for the **Claimant**
Marcus Croskell (instructed by **Cooper Lingard, Solicitors**) for the **Defendants**

Hearing dates: 9 November 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE CALVER :

1. In 2013 the Claimant carried out building work to a bungalow property at 69 Clarence Road North, Benfleet, Essex SS7 IHT ("the property"). This was the home of Eileen Richardson ("Eileen") and her husband Kenneth Richardson ("Kenneth"). Kenneth died on 11 August 2011. Eileen moved out of the property in around April 2011 to a care home where she resided until her death on 12 February 2017. Her daughter, Ann Sinton ("D1") was the sole beneficiary of her estate and at the date of the trial of this action the estate had not been distributed. Probate was granted on 21 June 2017 and the estate was distributed at some point in 2018.

2. The Claimant maintains that on 19 June 2013 he reached an oral agreement with Stephen Richardson ("D2") that the Claimant should carry out renovation works to the property. The Claimant says that it was agreed at a meeting on 19 June 2013 that he would be paid by D1/D2 for his renovation work at a later stage, once the sale and transfer of the property to D1's niece (and D2's daughter), Victoria Richardson ("Victoria") and her wife (and daughter of the Claimant), Rebecca Richardson ("Rebecca") took place, which could only take place upon the death of Eileen. D2 agreed to pay for the building materials. The Claimant maintains that he then carried out building work over a 4 month period between 26 June 2013 and 4 November 2013 and which he valued at £17,934, being the amount of his claim, together with interest.

3. From November 2013 the property was occupied by Victoria and Rebecca together with their young son, Barnaby. However, on 1 January 2016 Rebecca left the property after a violent row with D2 on New Year's Eve 2015. Rebecca and Victoria's separation was formalised in March 2016 although I was told that they in fact remain married as of today.

4. On 1 June 2016, more than 2 years after he completed the building work in the late 2013, the Claimant submitted an invoice to the Defendants in the sum to which he now claims to be legally entitled. The Respondent alleges that the submission of this invoice was prompted by the break-up of his daughter's relationship with Victoria.

5. The Defendants deny that any agreement to pay the Claimant for his building work was ever agreed by them. On the contrary, they both say that they understood that the Claimant was freely giving his labour for the renovation work on the bungalow out of the natural love and affection he had for his daughter. That is the nature of the dispute between the parties, which as can be seen falls within a narrow compass.

6. On 8th and 9th January 2018 Mr Recorder Catford QC gave his judgment in this action in the County Court at Southend. He found in favour of the two defendants. Unfortunately, the court recording of the trial was corrupted and a formal transcript could not therefore be obtained. As a result, the parties and the court have had to work from counsel's notes of the Judgment. It is agreed between counsel that the Judge found the following facts and matters which led him to the conclusion that an agreement for payment of the Claimant's labour was never reached:

   (1) The Claimant did not value his work for a number of years until the submission of his invoice in 2016; he did not discuss his rates in June 2013 or thereafter; and the subject of payment for the work was never raised.

(2) There was no meeting on 19 June 2013;

(3) D1 was a reliable witness of fact. If an agreement had been reached she would have been aware of it and she was not;

(4) The Judge accepted the evidence of D1 that she never asked Victoria to bill for the work;

(5) The Judge accepted that D2 never discussed with the Claimant payment for labour. Labour charges were never discussed;

(6) It was Victoria who asked the Claimant to do the work;

(7) The Claimant became involved to support his daughter for the best of possible motives and there was no discussion about payment.

(8) The Judge was not satisfied that there was an overall plan to deceive the Claimant or other members of his family or to gain some unfair advantage over his sister. The plans changed, as did D2's health.

7. The reference to the health of D2 was a reference to the fact that regrettably he contracted terminal cancer, although the precise date when he realised this fact is unclear. He says in his witness statement of 30 June 2017 that he became ill in 2010 "and I now have terminal cancer".

8. On 18 December 2019 Mrs Justice Foster granted the Claimant permission to appeal out of time against the Recorder's judgment, as a result of granting him permission to rely upon fresh evidence at pages 20-43 of the core appeal bundle, namely documents from the Land Registry, the District Probate Registry and the Will of Eileen Richardson, which documents I discuss below.

The grounds of appeal

9. In his attractive oral submissions before me, Mr. Stephen Goodfellow of counsel submitted that the Claimant's Grounds of Appeal – which are somewhat vague and imprecise – in fact contain essentially three complaints as follows:

(1) The Defendants misled the Court as to the true ownership of the property and therefore their liability for payment of the renovation works carried out on their behalf;

(2) D2 denied having any interest in the property other than that it had belonged to his parents and he denied being the beneficial owner of the property. That was false;

(3) Subsequent to the completion of the trial, the defendants have registered title to the property in the name of D2 and he has relied upon that to raise a mortgage on the property which is stated to have increased in value from £250,000 to £550,000.

The new documents

10. There were, Mr. Goodfellow contended, two pieces of documentation which were not before the Recorder which had come to light after the trial, which support these Grounds of Appeal and which, had they been before the Recorder, might have led him to a different conclusion.

The planning documentation

11. The *first* consisted of planning documentation. There is a planning application for an extension to and conversion of the existing detached garage on the property into an accommodation annex by a firm of architects known as A9 Architecture, which was submitted on behalf of Eileen and dated 29 April 2014. That includes plans received on 7 May 2014 by Castle Point Borough Council, Essex. It is said by the Claimant that this fundamentally contradicts the evidence of Victoria at trial that 7 or 8 months after she had been living at the property, namely June or July 2014, she approached her father with the idea of converting the garage to an annex and that subsequently he sought planning permission. D2 must, it is said, have instructed A9 Architecture to produce the plans for the annex in March or April 2014 at the latest.

12. However, Mr. Croskell, counsel for the defendants submitted that the two dates are not, in view of the imprecision of memory, materially inconsistent and there is no reason to believe that Victoria was not simply doing her best to recollect the timing of events some 4 years after these events had occurred. I accept that this is not a sufficient basis for rejecting her evidence as being dishonest, as opposed to marginally mistaken (if it be so) in this respect.

13. But more importantly, even assuming that the idea for D2 to occupy the annex did not come from Victoria but rather came from D2, I do not consider that that fact affords any sufficient basis for impugning the Recorder's decision that there was no binding agreement for the payment of the labour costs incurred by the Claimant on renovating the main house at the property, upon the Recorder's evaluation of all the documentary evidence and the factual witnesses which I have described.

14. The second submission advanced by Mr. Goodfellow on the planning documentation is twofold. First, he highlights that the Planning Officer's Report of 22 July 2014 for the application to convert the garage into an accommodation annex, refers to the fact that (i) permission was sought for the annex to be occupied by Eileen and her husband on a permanent basis and (ii) a letter was submitted from the husband's doctor supporting the provision of an annex on medical grounds. Mr. Goodfellow argued that as to (i) this was misleading "and the court is asked to make the appropriate inference" and as to (ii) whilst the Defendants' witness statements state that this must have been an error on the part of the Planning Officer, when the Claimant requested a copy of the doctor's letter the Defendants' solicitor refused to provide it on grounds of proportionality.

15. Mr. Croskell for the Claimant pointed out that it is likely that this is simply a mistake on the part of the Planning Officer as the applicant's husband had died 3 years earlier in 2011 and the reference to the husband's doctor must be a reference to D2's doctor in respect of his cancer condition. Indeed, it is not known who provided the information upon which the Planning Officer's report is based. Whilst I see the force

of Mr. Goodfellow's submission that it would have been helpful had the Defendants' solicitors simply produced, as they had been requested to do, the doctor's report in order to put this point to bed, the Claimant in fact requested in his letter of 5 March 2020 that the Defendants should provide a wide variety of documentation, not limited to the doctor's report, and so they took the position in their letter of response dated 10 March 2020 that they were not willing to put their clients to the time trouble and expense of obtaining these documents. Thereafter, the matter was apparently not pursued by the Claimant.

16. Second, in paragraph 25 of his skeleton argument on this appeal, Mr. Goodfellow referred to an earlier planning application dated 12 July 2011 in the name of Kenneth Richardson, D2's father, for conversion of the bungalow into a two storey dwelling and the construction of a double garage. He argues that this further contradicts D2's evidence at trial that both of the Defendants' parents moved out of the property into a care home in April 2011 and following that he personally applied for permission to add an extra storey in 2012.

17. Whilst further court time and costs could be incurred in investigating the circumstances in which (i) the planning officer came to compile his report more than 6 years ago and (ii) the earlier planning application for the conversion of the bungalow and construction of the garage some 9 years ago, with an uncertain result, in respect of each of these matters the difficulty for the Claimant is that *even if* they are well founded, once again they are very unlikely in my judgment to afford any sufficient basis for impugning the Recorder's decision that there was no binding agreement for the payment of the labour costs incurred by the Claimant on renovating the main house at the property, upon his evaluation of the totality of the documentary evidence and the factual witnesses.

18. Indeed, the most that can be said, as Mr. Goodfellow fairly recognised, is that they might possibly (depending upon the outcome of any investigation into these circumstances) reflect adversely upon the credibility of D1 and D2 as witnesses. However, none of these points amount to a decisive factor or a "smoking gun" which might have caused the Recorder to take an entirely different view of the Defendants' evidence, and that is especially true on the central question as to whether a binding agreement was reached in June 2013.

The Deed of Variation of 8 March 2018

19. The second item of fresh evidence relied upon by the Claimant is the Deed of Variation dated 8 March 2018, which was created two months after the trial which took place on 8 January 2018. The relevance of this document is said to be as follows.

20. At trial, the Recorder had before him an undated document which came into existence in early 2013 and which evidenced an arrangement between the children and grandchildren of Eileen ("the family arrangement"). This was said to be a document which was "internal" to her family. This document was in two parts. The first part was said to apply "*During Eileen Richardson's lifetime*" and that provided as follows:

"*Victoria Richardson & family will reside in the property rent free until*

- *The end of Eileen's life …*

While Victoria Richardson & family resides in the property

- *Victoria Richardson will be responsible for household bills…"*

21. The second part of the document was said to apply "*Upon Eileen Richardson's Death*" and provided as follows:

> "*At this time the beneficiary of Eileen's estate, namely Ann Sinton, will forgo her inheritance of the Property named above in favour of James Sinton (25%), Jenny Sinton (25%) and Victoria Richardson (50%).*
>
> *For the purpose of this split, the value of the bungalow is to be set at £250,000 and Victoria Richardson will have the opportunity to own the property outright by raising £125,000 to buy out the other beneficiaries …*
>
> *Ann Sinton will divide any cash inheritance between herself and Stephen Richardson …"*

22. In paragraph 4 of her witness statement of 30 June 2017, D1 stated as follows:

> "*It has always been my intention to forgo by Deed of Variation a one half share in the property to my brother [D2] and the remaining half share to my own children. I understand that my brother was going to then gift his half share to his daughter Victoria Richardson and she would then buy out my children's half share at market value."*

23. Mr. Goodfellow argued that despite this, within 2 months of the trial, on 8 March 2018, D1 had varied Eileen's Will by executing a Deed of Variation which gave the property to D2 subject to him paying £125,000 to her two children. Thereafter, on 29 August 2018 D2 transferred the property jointly into his and his wife's name and the property was registered at the land Registry with a value of £550,000. D2 obtained a mortgage offer on the property on 27 June 2018.

24. D1 and D2 have served witness statements in response to this allegation in which they state that they have done nothing wrong; that D1 was free to do as she wished with the property; and D1 was free to change the Will as she saw fit.

25. Mr. Goodfellow disputes this. He says that these statements of the Defendants run counter to paragraph 4 of D1's statement at trial (set out above) and to her evidence at trial that she intended to give 50% of the property to Victoria, honouring the family arrangement, and that because D2 had no interest in the property, the work that he did on it he was doing out of love and affection for the family, and the Claimant did the same.

26. In my judgment it is necessary to approach this issue with care. The family arrangement is in two parts. The first part refers to Victoria and her family residing in the property whilst Eileen is alive (with Victoria paying the household bills). Victoria and her family did indeed reside at the property from November 2013.

27. The second part of the family arrangement refers to the fact that "at this time" D1will forgo her inheritance of the property in favour of her two children as to 50% and in favour of Victoria as to the remaining 50%. "*For the purposes of this split*" the bungalow was valued at £250,000 and Victoria had the "*opportunity*" to own the property outright by raising £125,000 and buying out D1's two children. There is no reference in this second part of the document to any intention to forgo any part of D1's inheritance in favour of Rebecca.

28. In finding that there was no agreement that the Claimant should be paid for his labour on the property, the Recorder relied upon a whole series of factors as I have described (set out in paragraph 6 above), one of which was that the Claimant became involved in the renovation work to support his daughter for the best of possible motives and there was no discussion about payment. It would be consistent with the first part of the family arrangement that the Claimant knew that his daughter would be living in the property with Victoria and their son, Barnaby and so he wanted to renovate that property for them free of charge, with the ownership of the property not being something which would necessarily have concerned him at the time. Indeed, had Rebecca and Victoria not split, Rebecca would still be enjoying the benefits of the renovated property today.

29. In any event, as the Recorder himself found, "the plans in my view changed as did [D2's] health". The health of D2 plainly worsened over time (with terminal cancer) and, importantly, the relationship between Rebecca and Victoria broke down at the beginning of 2016, although they attempted counselling and reconciliation thereafter. There had clearly significant changes in everybody's life plans between 2013 and 2018. In these circumstances, D1's intention at that time, in 2013, which she set down in the family arrangement document, would not necessarily remain her fixed intention by March 2018.

30. That stated, in March 2018 D1 *did* effectively bring about the same or a similar arrangement to that to which she referred to in the second sentence of paragraph 4 her witness statement of 30 June 2017, which is that she transferred half of her share in the property to her children and half to her brother, D2, but the mechanism was slightly different in that he took 100% of the interest subject to paying £125,000 to her two children (D2's evidence in paragraph 17 of his witness statement of 3 March 2020 is that completion of his lifetime mortgage enabled him to pay the two children the £125,000).

31. It is true that D1's "understanding", initially formed in 2013, that D2 would then gift his half share to Victoria has not eventuated (at least thus far) but in my judgment this comes nowhere near being sufficient fresh evidence such as might lead to the overturning of the factual finding of the Recorder, based as it was on a host of different factors. I should add that the fact that the valuation of the property increased from £250,000 (which was an informal valuation in 2013) to £550,00 in 2018 does not in any way undermine the Recorder's central finding that there was no agreement to pay for the Claimant's labour costs.

32. Moreover, whilst it is correct for Mr. Goodfellow to point out that there was an inconsistency at trial in the evidence between the Defendants and Victoria in that D1 maintained during her evidence that at no stage did Victoria have an interest in the property (which is the position she maintains on this appeal) whereas Victoria said

that she thought she was paying rent that would be applied to materials or set off against the value of the property, this is not *new* evidence: it was a factor which was before the Recorder and indeed which he took into account in reciting the evidence of Victoria:

> "*When [Rebecca] left, I asked my aunt [D1] to stop paying due to debts accumulated and was not sure what was going to happen as thought it might go to father first*." (emphasis added)

33. Finally, this is a claim for a little over £17,000. It arises out of work which was carried out during 2013; in respect of which the Claimant first rendered an invoice in June 2016; and in respect of which there was a trial over the course of 2 days in January 2018. It is now November 2020, being 7 years after the work took place. The fresh evidence would require to be particularly compelling in this case for the Court to order that the parties should have to go through yet another trial in these circumstances. In my judgment it is not. As Hale LJ (as she was) stated in *Hertfordshire Investments Ltd v Bubb* [2000] 1 WLR 2318 at 2324C:

> *"…It is in the interests of every litigant and the system as a whole that there should be an end to litigation. People should put their full case before the court at trial and should not be allowed to have a second bite at the cherry without a very good reason indeed."*

34. There is no good reason, let alone a very good reason, to allow the Claimant a further bite of the cherry based upon the fresh evidence. The fresh evidence does not, in my judgment, support the Grounds of Appeal whether taken individually or cumulatively. In all the circumstances I dismiss this appeal.

35. I finish by recording the fact that I am grateful for the succinct and skilful way in which this appeal was presented by the parties' counsel.