



[2023] JMSC Civ 144

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2020CV02036

BETWEEN	ADMINISTRATOR GENERAL	CLAIMANT
AND	ANGELA VIOLA BENNETT	DEFENDANT

Ms. Sheika Lawrence instructed by the Director of State Proceedings for the Claimant

Ms. Oraina Lawrence instructed by the Administrator General's Department.

Obika Gordon instructed by Carolyn C. Hays for the defendant.

Fraudulent Misrepresentation: Fraud must be specifically pleaded and specifically proven – Whether representations made were false – whether claimant knew representations were false or reckless as to whether the representations were fraudulent- Definition of spouse under the Intestates Estates and Property Charges Act.

Heard: March 7, 2023, and April 4, 2023

O. SMITH, J (AG)

INTRODUCTION

[1] The Administrator General for Jamaica is the Administrator for the Estate of Eric George Gooden also known as Eric Gooden. She filed this Claim on June 17, 2020, against Ms. Angela Bennett, spouse of the deceased Eric Gooden.

[2] She is seeking the following declarations:

“1. A declaration that the Order of the Honourable Mrs. Justice M. McIntosh in Suit No. E288 of 1999 made on the 7th day of November 2000 declaring Angela Viola Bennett lawful common law spouse of Eric Gooden deceased, is null and void having been obtained by fraud, fraudulent conduct and/or fraudulent misrepresentation made by the said Angela Viola Bennett.

2. A declaration that Angela Viola Bennett also known as Angela Bennett holds on trust for the estate of Eric Gooden also known as Eric George Gooden her one undivided one half share contained in ALL THAT parcel of land located at 12B Palm Close, Lot 465B, Manley Meadows, Kingston 2, in the parish of Kingston registered at Volume 1317 Folio 56 in the Registered Book of Titles absolutely.

3. An Order that the said one undivided one half share endorsed in the name of Angela Viola Bennett also known as Angela Bennett contained in ALL THAT parcel of land located at 12B Palm Close, Lot 465B, Manley Meadows, Kingston 2, in the parish of Kingston registered at Volume 1317 Folio 56 in the Registered Book of Titles being held in trust for the estate of Eric Gooden also known as Eric George Gooden be transferred to Dorothy Gooden and Rashani Gooden, the beneficiaries of his estate.

4. An Order that Angela Viola Bennett account and repay all moneys paid to her as a beneficiary of the deceased's estate.

5. Further or in the alternative, an Order that the Registrar of Titles be directed to cancel the Duplicate Certificate of Title registered at Volume 1317 Folio 56 in the Registered Book of Titles and that a new Duplicate Certificate of Title be issued in the names of Dorothy Gooden and Rashani Gooden as tenants-in-common, if the Defendant refuse and/or neglects to hand over the said Duplicate Certificate of Title registered at Volume 1317 Folio 56 in the Registered Book of Titles within 14 days of the date of the Orders herein.

6. An Order directing the Registrar of the Supreme Court to sign (if any) all documents and/or transfer instrument (s) on behalf of the Defendant in order to facilitate the transfer of the said one undivided one half share contained in the said Certificate of Title registered at Volume 1317 Folio 56 to Dorothy Gooden and Rashani Gooden as tenants in common.

7. An Order that all Transfer Tax and/or Stamp Duty (if any) associated with the transfer in accordance with paragraph 4 above herein be waived.

8. An Order for the immediate recovery of ALL THAT parcel of land located at 12B Palm Close, Lot 465B Manley Meadows, Kingston 2, in the parish of Kingston registered at Volume 1317 Folio 56 in the Registered Book of Titles.

9. An Order that the Defendant is to pay to the Claimants forthwith, Mesne Profit and/or occupational rent for her wrongful and/or unlawful occupation of 12B Palm Close, Lot 465B, Manley Meadows, Kingston 2, in the parish of Kingston

registered at Volume 1317 Folio 56 from on or about December 1998 until she vacates the said premises.

10. Costs to be costs in the claim to be agreed or taxed...”

BACKGROUND

- [3]** Eric Gooden died on December 21, 1998. He died leaving two children Dorothy Gooden, born in 1992 and Rashani Gooden born on August 9, 1993.
- [4]** At the time of his death, he was in a relationship with the defendant. She reported his death to the Administrator General's Department by way of 'Particulars Required for Administrator General' on January 21, 1999. (Exhibit 1). The mother of Rashani Gooden, Yvette Betty, also reported his death on January 28, 1999, by way of 'Particulars Required for Administrator General'. (Exhibit 2) On July 8, 1999, Ms. Bennett filed an Originating Summons by which she sought a declaration that she be declared his spouse. The Administrator General's Department did not respond to the Summons and the matter was disposed of in their absence and without their participation.
- [5]** On November 7, 2000, the Honourable Mrs. Justice M. McIntosh made an order that the defendant is the lawful common law spouse of Eric Gooden pursuant to the Intestate Estates and Property Charges Act. The Formal Order was served on the Administrator General's Department on November 9, 2000.
- [6]** Letters of Administration was granted to the Administrator General of Jamaica on June 1, 2001. On August 24, 2006 the property located at 12B Palm Close, Lot 465B, Manley Meadows, Kingston 2, in the parish of Kingston registered at Volume 1317 Folio 56, (the subject property) was transferred to the deceased then to the defendant, Dorothy Gooden and Rashani Gooden as tenants in common with one undivided half share to the defendant and the remaining one half to his children on May 11, 2015.

THE CURRENT CASE

- [7] Also on June 17, 2020, the Claimants filed a Particulars of Claim in which they set out the Particulars of Fraud as follows:

“The Defendant gave fraudulently/false evidence and swore to same in Affidavit intending for said evidence to be relied on by the court in the granting of the Order for the declaration of common law spouse in Suit No. 288 of 1999.

Procuring and causing fraudulent/false evidence to be filed in two (2) supporting Affidavits intending for said evidence to be relied on by the court in the granting of the Order for declaration of common law spouse In Suit No. 288 of 1999.

Fraudulently and/or falsely causing Affidavits evidence to be filed in this court, purporting to state facts knowing same not to be true and relying on said fraudulent facts to obtain a judgement in the estate of the deceased.

Fraudulently and falsely causing state property/assets to be transferred to her knowing that the said transfer of assets was being done on the basis of the said Order obtained by her fraudulent/false representations.

Fraudulently and /or falsely representing to this court as living with the deceased as man and wife for five (5) consecutive years immediately before his death.”

ISSUES

1. **Whether respondent guilty of fraudulent misrepresentation.**
2. **Whether representation made by the respondent was false to her knowledge or that she did not believe it to be true, or that she was reckless in making the alleged representations.**

- [8] Section 2(d) of the **Intestates Estates Property Charges Act** provides the relevant definition of spouse in matters where a party was in a relationship, other than a marriage, has died

“(d) “spouse” includes-

(i) a single woman who has lived and cohabited with a single man as if she were in law his wife for a period of not less than five years immediately preceding the date of his death, and

(ii) a single man who has lived and cohabited with a single woman as if he were in law her husband for a period of not less than five years immediately preceding the date of her death;”

Section 70 of the **Registration of Titles Act**

Section 70 “Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be specified in the certificate, and to such incumbrances as may be notified on the folium of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser.”

Section 71 *“Except in the case of Fraud, no person contracting or dealing with, or taking or proposing to take a transfer, from the proprietor of any registered land, lease, mortgage or charge, shall be required or in any manner concerned to enquire or ascertain the circumstances under, or the consideration for, which such proprietor or any previous proprietor thereof was registered, or to see the application of any purchase or consideration money, or shall be affected by notice, actual or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.”*

- [9] The standard of proof in civil fraud claims is the same as in all other civil claims: the claimant must show that it is more likely than not that the defendant committed a fraud (**Re B (Children) UKHL 35**). Paired with this is the requirement that there must be specific proof of fraud.
- [10] The locus classicus on the issue of Fraudulent Misrepresentation is the case of **William Derry, J.C. Wakefield, M.M. Moore, J. Pethick, and S.J. Wide v Sir Henry Peek** (1889) 14 App. Cas. 337. (**Derry v Peek**). In that case Lord Herschell examined a number of first instance judgments in which the learned judges had to consider the issue of honest belief, knowledge and reasonable grounds for belief in the context of fraud. At the end of his deliberations Lord Herschell found at page 374:

“First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief. Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.”

[11] Both parties relied on the pronouncements of Lord Herschell in support of their case. However, there is wisdom in the requirement that the page or paragraph number should be stated when a particular quotation is being relied on, especially in circumstances where different parts of a judgment are being put together as a cohesive statement.

[12] Harris, JA, in my view, offered up a clear distillation of the principles stated by Lord Herschell in **Derry v Peek**, in **Bevad Limited v Omad Limited** SCCA No 133/05. Having discussed **Derry v Peek** on page 8 of the judgment she succinctly states the “four principal elements of the tort...” that must be established in order to prove fraudulent misrepresentation:

“(1) There must be a false representation of fact. This may be by word or conduct.

*(2) The representation must be made with the knowledge that it is false, that is, it must be wilfully false or made in the absence of belief in its truth. **Derry v Peek (supra); Nocton v Lord Ashborne [1914-1915] All E. R. 45.***

(3) The false statement must be made with the intention that the claimant should act upon it causing him damage.

*(4) However, it must be shown that the claimant acted upon the false statement and sustained damage in so doing. **Derry v Peek (supra.); Clarke v Dickson [1858] 6 C.B.N.S. 453; 35 Digest 18,100.***

[13] In **Harley Corporation Guarantee Investment Co Ltd v Estate Rudolph Daley et al** [2010] JMCA CIV 46 Harris, JA had to consider the consolidated appeals of **Harley Corporation** and **RBTT Bank** in which it was alleged that Harley Corporation purchased the property from RBTT under fraudulent circumstances. The matter in that case concerned the transfer of land to Harley who became the registered proprietor of the subject property. She not only discussed what was required to establish fraud in general but also what was required when the fraud involved the transfer of property. In relation to the latter, she stated that proof of fraud under these circumstances requires an even stricter proof. At paragraph 30 she stated:

“...sections 70 and 71 of the Act afford a defensible armour and protection to a party in whom registered lands are vested. It is not without significance that, save and except in the case of fraud, the Act confers an indefeasible interest upon a registered proprietor of land.

She continued at paragraph 52:

*“[52] The true test of fraud within the context of the Act means actual fraud, dishonesty of some kind and not equitable or constructive fraud. This test has been laid down in **Waimiha Sawmilling Company Limited v Waione Timber Company Limited** [1926] AC 101 by Salmon LJ, when at page 106 he said:*

*Now fraud clearly implies some act of dishonesty. Lord Lindley in **Assets Co. v. Mere Roihi** (2) states that: ‘Fraud in these actions’ (i.e., actions seeking to affect a registered title) ‘means actual fraud, dishonesty of some sort, not what is called constructive or equitable fraud— an unfortunate expression and one very apt to mislead, but often used, for want of a better term, to denote transactions having consequences in equity similar to those which flow from fraud.’”*

And at paragraph 53 referencing general fraud:

[53] In placing reliance on an allegation of fraud, a claimant is required to specifically state, in his particulars of claim, such allegations on which he

proposes to rely and prove and must distinctly state facts which disclose a charge or charges of fraud.

- [14] Harris, JA also examined the judgment of Thesinger LJ in **Davy v Garrett** [1878] 7 Ch D 473, where at page 489 he stated the settled law:

“In the Common Law Courts no rule was more clearly settled than that fraud must be distinctly alleged and as distinctly proved, and that it was not allowable to leave fraud to be inferred from the facts ... It may not be necessary in all cases to use the word “fraud” ... It appears to me that a Plaintiff is bound to shew distinctly that he means to allege fraud. In the present case facts are alleged from which fraud might be inferred, but they are consistent with innocence.”

- [15] **Linell Bent (Administrator of the estate of Ellen Bent, deceased), Linell Bent (Administrator of the estate of Elga Isaacs, deceased) v Eleanor Evans** Suit No. C.L. 1993/B 115, is another case concerning land. In this case there was an application to bring land under the **Registration of Titles Act** in which it was alleged the documents were obtained through fraud. After a detailed examination of a line of cases on the standard of proof required to prove fraud in civil cases, McDonald-Bishop, J at paragraph 88 also examined the dictum of Rowe, J in **Chin v Weston’s (Off Course Betting)** 1974 12 JLR 1535 on the evidence required to prove fraud in civil matters. She stated that Rowe, J made the point that fraud was not to be left to be inferred from the facts. Then she went on at paragraph 89 to express the following views;

‘It is clear to me that an allegation of fraud ought not to be taken lightly and the evidence to prove it must be as weighty as the allegation of it. I will venture to say therefore that fraud must not only be strictly pleaded but must be strictly proved by those who assert its existence, on the clearest, most cogent and indisputable evidence on a balance of probabilities.

- [16] If fraud is established this will serve to defeat a registered title. However, the party pleading fraud has the burden of bringing to the table specific evidence of fraud. It

is not enough for the alleging party to lead evidence and ask the court to draw inferences.

DISCUSSION AND ANALYSIS

- [17] Counsel on behalf of the Claimant has submitted that nothing presented by the Defendant satisfies the definition spouse under section 2 (d) (1) of the **Intestates Estates and Property Charges Act. (the Act)** In the absence of a definition of the word cohabit under “the Act”, counsel looked to the definition given under the **Property (Rights of Spouses) Act, (PROSA)**. Section 2(1) of PROSA defines cohabit as:

“to live together in a conjugal relationship outside of marriage...”

- [18] To assist with defining cohabitation reliance was placed on the pronouncements of Marva McDonald-Bishop, J in the well-known case of **Millicent Bowes v Keith Alexander Taylor and Ivan Williams v Yvonne Thompson** [2006] HCV 05107 where at paragraph 63, the learned Justice set out the ‘signposts’ of cohabitation identified by Tyler, J in **Kimber v Kimber** [2000] 1 FLR 384:

1. *Living together in the same household*
2. *A sharing of daily life*
3. *Stability and a degree of permanence in the relationship; that is not a temporary infatuation or passing relationship such as a holiday romance*
4. *Finances, that is to say, is the way in which financial matters are being handled an indication of relationship?*
5. *A sexual relationship*
6. *Children*
7. *Intention and motivation*
8. *The ‘opinion of the reasonable person with normal perceptions.’*

- [19] The listed ‘signposts’ counsel submitted, are also to be considered in the light of the degree of permanent commitment in the relationship. I do not share the view that proving herself to be the spouse of the deceased was a burden the respondent had to bear in this case. A court of concurrent jurisdiction has already made an order that she is the spouse of Mr. Eric Gooden for the purposes of ‘the Act’. The

claim brought by the respondent alleges fraud and the Particulars of Fraud are what the respondent was required to respond to.

- [20] The Claimant has submitted that there is only one disputed fact to be addressed, that the deceased and Angela Bennett lived together as a single man and a single (woman) for a period of at least 5 years immediately preceding the deceased's death on December 21, 1998. This one disputed fact has been divided into five particulars of fraud by the claimant which are encapsulated in issues 1 and 2. I will examine each one of them to assist in the determination of this matter. I also recognise that credibility will play a major role in resolving case
- [21] **The defendant gave fraudulently/false evidence and swore to same in affidavit intending for evidence to be relied on by the court in the granting of the Order for the declaration of common law spouse in Suit No. 288 of 1999.**
- [22] Counsel for the claimant has submitted that in Suit No. 288 of 1999 the Defendant in her affidavit indicated that she and the deceased started living together at 1 ½ Roberts Crescent since October of 1993 while in her affidavit in response to this claim she indicated they started living together in March 1993. Counsel further submitted that in her oral evidence Ms. Bennett told the court that she does not recall when the deceased moved in with her but that it was sometime in 1993. I take note of the fact that any statement given by Ms. Bennett in Suit No 288 of 1999 was some twenty years ago and that the events on which she speaks are more than twenty-five years ago. I also bear in mind that giving evidence is not a test of memory; that with the passage of time memories fade and this is no indication of dishonesty.
- [23] The constant in her evidence was that he moved in, in 1993. That being said, the claimant called one witness, Mr. Noel Gooden, brother of the deceased. His affidavit evidence is that he and his brother were close and as such Eric would always update him as to his living arrangements. His affidavit evidence is that Eric left Merion Avenue in 1992, the year his daughter Dorothy was born. According

to him, Eric use to stay with Dorothy's mother in Barbican. His further affidavit evidence is that Eric's son, Rashani was born in 1993 and that Eric use to stay at her residence in St. Thomas. However, although he denied that Rashani ever lived with the defendant and his brother, under cross-examination he admitted that Rashani was born in 1993 and lived with his father for five years between 1993 and 1998.

[24] At first, under cross-examination Noel Gooden told the court that he could not recall where his brother was living when he died but he eventually capitulated and agreed that at the time of his death Eric was living with the defendant at 1 ½ Robert's Crescent. His evidence was further muddied when despite his affidavit evidence that Eric stayed in Barbican and St. Thomas after leaving Merion Avenue, under cross-examination he said that Eric alternated between Merion Avenue and Robert's Crescent after leaving Merion Avenue. This was compounded by his later evidence, where he agreed that Eric never lived with someone called Thyne at Merion Avenue. The significance of this bit of evidence is realized in his explanation, that Thyne lived at Merion Avenue in 1993 after Eric left and so it was not possible for Thyne and Eric to have lived together. This is in contradiction to his evidence that Eric alternated between Merion Avenue and Roberts Crescent after 1993, which in itself contradicts his evidence that after leaving Merion Avenue, Eric stayed in Barbican and St. Thomas.

[25] Noel Gooden's affidavit evidence is that Eric started a relationship with the defendant in 1994 subsequent to the birth of his children. However, under cross-examination he denied saying this and instead said that he knew of Ms. Bennett from after Gilbert. Gilbert being Hurricane Gilbert which he agreed was in 1988. His oral evidence is that he cannot definitively state when Eric and the defendant began their relationship but said it was up until Eric's death. I find that Noel Gooden's evidence is riddled with inconsistencies that were never resolved. The inconsistencies affect the very issue that counsel has sought to impugn Ms. Bennetts credit with. At the end of his evidence the court concluded that he was not as close to his brother as he has stated. His evidence has not

established that the defendant made a false representation of fact on this issue, particularly since he was unable to give any direct/specific evidence that could render Ms. Bennetts evidence false. I prefer the evidence of the defendant. It follows therefore, that if the specific fraud has remained elusive on the claimant's case or if the defendant's evidence is preferable to that of the claimant's witness, then they have failed in specifically proving this aspect of the Particulars of Fraud.

[26] It is agreed that the deceased's son, Rashani, was born in August 1993. Rashani's mother was one Yvette Betty. Rashani's birth certificate, Exhibit 5, indicates the deceased's address at the time of his birth as 16 Barbados Road, Hagley Park in the parish of St. Andrew. This Counsel contends supports the evidence of their sole witness that Eric Gooden maintained several addresses prior to his death. I disagree with counsel on this point. Noel Gooden's evidence is that Ms. Betty lived in St. Thomas. The Form of Particulars (Exhibit 2) submitted by Ms. Betty states Yallahs, St. Thomas as the address of the declarant. Noel Gooden did not at any time in his affidavit or oral evidence mention Hagley Park as an address his brother lived or even stayed at. It is my view that putting an address on a document is indicative of nothing if the reason for so doing is not known. In the face of evidence from Ms. Betty herself, that she lived in St. Thomas, I cannot without more accept an address on document as proof of residence in the circumstances of this case.

[27] Finally, the defendant gave evidence that Rashani lived with her and his father at 1 ½ Robert's Crescent since he was about three years old until the death of Eric Gooden. In response counsel submitted that this was proof that Ms. Bennett gave false evidence as Yvette Betty put Merion Avenue as the deceased address at the time of his death on the Form of Particulars submitted to the Administrator General. This she further argued was consistent with Noel Gooden's evidence that the deceased maintained several addresses. However, when the evidence is examined, the agreed evidence given by Noel Gooden is that his brother left Merion Avenue between 1992-1993. He was therefore not living there at the time of his death nor was he living there when Rashani was born. What is clear from Exhibit 2 is that Eric Gooden was not living with Ms. Betty at the time of his death.

As I see it, the information placed on the form by Yvette Betty is not capable of usurping the evidence of Ms. Bennett.

[28] Procuring and causing fraudulent/false evidence to be filed in two (2) supporting Affidavits intending for said evidence to be relied on by the court in the granting of the Order for declaration of common law spouse in Suit No. 288 of 1999.

[29] Counsel's complaint under this Particulars of Fraud is that Ms Bennett admitted that she did not ask Ronald Gooden, brother of the deceased to give an affidavit on her behalf in Suit No. 288 of 1999 because she did not know if he would turn and that she wanted someone who knew of them from the time when the relationship started. Counsel for the Claimant argued that because, in her opinion, greater weight could have been placed on the affidavit evidence from family members of both the deceased and the defendant which the defendant did not do and the fact that she sought evidence from persons who would support her case is grounds on which the court could conclude on a balance of probabilities that the affidavit evidence on which she relied was fraudulent. I cannot with the greatest of effort appreciate this reasoning by counsel. The matter was ventilated before a Judge of this court who considered the evidence before her. It was always within the authority of the judge to make an order for affidavit evidence from the family members of Ms. Bennett and the deceased to be filed and served. There is no indication that she did. In addition, a fact that seems to have escaped counsel, it is not the practice to call as a witness someone who does not support your case. What counsel is asking the court to do is to make an assumption based on Ms. Bennett's admissions that she asked persons who 'would stand firm' and 'who would know the relationship from when it started' to give affidavits that the evidence presented was fraudulent.

[30] She asked two persons, Mr. Donovan Moncrieffe and Ms. Rebecca Holness to give affidavits. Mr. Moncrieffe deposed that he was a friend of Eric Gooden for nine years and then a friend of Ms. Bennett for five years. He averred to when Ms.

Bennett and Mr. Eric Gooden started living together and where to his knowledge, they lived together until his death. Ms. Rebecca Holness averred that she knew Eric Gooden and Ms. Bennett for over five years. She also indicated in her Affidavit what she knew of their relationship. No evidence has been brought which establishes as a fact that their evidence is false. This is a very low bar. What the claimant has submitted does not even rise to the level of an inference which case law has made clear the court should not do when dealing with matters of fraud. In the circumstances the claimant has failed on a balance of probabilities to prove this Particulars of Fraud.

[31] Fraudulently and/or falsely causing Affidavits evidence to be filed in this court, purporting to state facts knowing same not to be true and relying on said fraudulent facts to obtain a judgement in the estate of the deceased.

[32] In this regard counsel argued that Ms. Bennett did not provide any evidence to suggest a degree or stability and/or permanence to support the defendant's assertion of cohabitation. As I indicated previously, it is the claimant who brought this claim. It is one based on fraud. A reading of this Particulars of Fraud would not make it clear to anyone what was specifically being pleaded. The fact that the deceased mother did not visit 1 ½ Roberts Crescent is not enough to undermine a common law union. Similarly, the fact that twenty years later she cannot not recall which brother visited 1 ½ Roberts Crescent is not significant enough to rise to the level of fraud. I note however, that the Defendant was sufficiently aware of the relationship between the deceased and his mother to tell counsel that they were close.

[33] Fraudulently and falsely causing state property/assets to be transferred to her knowing that the said transfer of assets was being done on the basis of the said Order obtained by her fraudulent/false representations.

[34] Counsel submitted that the defendant falsely represented herself to be the common law spouse of the deceased on the Form of Particulars submitted to the

Administrator General in circumstances where no order had as yet been made by the court. Counsel contends that Ms. Bennett made the false representation knowingly, or without, belief in its truth or recklessly, or careless whether it be true or false. The question is, what was Ms. Bennetts honest belief at the time she filled out the form? Should she be evaluated from a layman's position or from that of a legal person? Ms. Bennett is a Ward Assistant by occupation. It does not appear that she has any legal training. It is common knowledge in this country that persons routinely refer to their live in partners as common law spouse. When they do so, it is not taken as an indication of fraud. Was it Ms. Bennett's honest belief that she was his common law spouse? From her point of view, she had been living with him for several years, his son lived with them, they had intentions of living together in a new home and on her evidence had infact began to move into the new home. Did she state that she was his common law wife in order to gain the property? There is nothing on the evidence before me that would lead me to conclude that it was the statement of Ms. Bennett on the Form of Particulars that lead to the property being transferred to her. My examination of the evidence and exhibits indicate that the Form of Particulars signed by Ms. Bennett was served on the Administrator Generals Department in January 1999 as was the Form of Particulars signed by Yvette Betty in which she stated that Eric Gooden had never been married. The Originating Summons was served on the Administrator Generals Department in July 1999, Letters of Administration was granted to the Claimant on June 1, 2001, and the subject property was transferred on May 11, 2015. The Claimant had every opportunity to be a part of the proceedings and failed to put in an appearance. There is nothing presented by the Claimant which points to a deliberate intention to deceive. I cannot find any indication that she was careless or reckless as to whether the statement was true or false.

[35] Fraudulently and /or falsely representing to this court as living with the deceased as man and wife for five (5) consecutive years immediately before his death.

[36] Counsel for the claimant argued that the evidence of the Defendant at trial, that at the time of his death the deceased only had items of uniform and ammunition at 1 ½ Roberts Crescent was contradicted by her affidavit evidence that when he moved in with her, he took his bed, dresser, clothes, uniforms, pots, plates etc. The meagre belongings at 1 ½ Roberts Crescent was, she contended, not indicative of any degree of permanence. As such she misrepresented to the court that the deceased had his furniture at Roberts Crescent to mislead the court by making a false representation. However, Ms. Bennett also gave evidence that around the time of his death they were about to move. They had in fact moved most of his regular clothing down to Manley Meadows. What was left at Roberts Crescent were those things he decided to move last...for safety purposes. Nothing has been presented to contradict this. In fact, on the same Form of Particulars, she gave her address as Palm Close, Manley Meadows. This was mere months after his death. It could be argued that this supports her evidence that they had substantially moved to Manley Meadows prior to his death.

[37] In **Millicent Bowes** the court expressed the view that monogamy was necessary to establish a common law union. However, the learned judge recognised that infidelity, the fact that a party had other sexual partners or lovers, was not enough to undermine the union. There is no doubt in my mind that Eric Gooden was promiscuous. He had two children with two different women in consecutive years. He by his actions was not committed to either of them. He may have overnights at the homes of these other women, which would be in keeping with a promiscuous partner, however, by virtue of the birth date of Rashani and Dorothy Gooden they were both conceived before the date that Ms. Bennett says she moved in with Eric Gooden. What I accept, is that he moved in with only one woman, Ms. Bennett. I accept that Rashani lived with his father. I take note that Noel Gooden denied that Rashani lived with Ms. Bennett. He told this court in his oral evidence that Rashani lived with his mother. However, under further cross-examination he conceded that Rashani lived with his father for five years from 1993 until his death. He also gave evidence that Eric Gooden lived with Ms. Bennett at the time of death. I do not

accept that Eric Gooden had his son moving from different women's homes during the five years. This is the effect of Noel Gooden's evidence if accepted. This inconsistency was never resolved. I accept that Eric Gooden lived with the defendant. I accept that Rashani lived with them both and that she took care of him as her own until Eric Gooden died.

[38] The only witness for the Claimant has admitted that he is not aware of when the relationship began, as such he is not in a position to say how long it lasted for. On a totality of the evidence, the Claimant has failed on a balance of probabilities to prove that the Defendant, whether by her words or conduct, knowingly made a false representation of fact.

[39] I cannot end without highlighting that the Claimant has not established any evidence that they have suffered any damage as a result of the allegations that the defendant fraudulently and or falsely caused certain things to be done or represented certain things to the court.

[40] ORDERS

The orders sought in the Fixed Date Claim Form filed on June 17, 2020, are denied.

By trial Judgment for the Defendant.

Costs to the Defendant to be taxed if not agreed.

Claimants Attorney to prepare, file and serve the orders herein.

Ms. Justice O. Smith (Ag)