



[2022] JMSC Civ 178

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CIVIL DIVISION
SUIT NO. E- 87 of 1997**

**BETWEEN ERAL BARTON CLAIMANT
AND DESMOND GREENFIELD DEFENDANT**

IN OPEN COURT

**Mrs Marion Rose-Green instructed by Marion Rose-Green and Company
for the Claimant**

**Ms Althea McBean instructed by A. Mc Bean and Company for the
Defendant**

Heard: October 19, 20, 21, 2021 & October 12, 2022

**Land- Fraud – Fraud defeats indefeasibility of registered title – Equitable
interest – Actual notice – Registration of Titles Act**

WINT-BLAIR, J

[1] This matter concerns the property rights of the claimant, Mr. Eral Barton and the defendant, Mr. Desmond Greenfield.

- [2] Mr. Altamont Brown and Mrs. Rose Brown were the registered proprietors of land situate at Lot 63 Haughton Court, Lucea in the parish of Hanover being land then comprised in Certificate of Title registered at Volume 729 Folio 16 of the Register Book of Titles and now registered at Volume 1240 Folio 758 of the Register Book of Titles (“the subject property”).
- [3] On February 17, 1979, Mr. Barton paid a deposit and took possession of what will be called lot 5 representing a one-quarter parcel of land part of the subject property. On June 11, 1984, the subject property including lot 5 was transferred from Mr. Altamont Brown and Mrs. Rose Brown (“the Browns”), to Mr. Greenfield who is now the sole registered proprietor of the subject property¹.
- [4] This action was commenced by way of a Writ of Summons and Endorsement filed on March 11, 1997, subsequently, the claimant filed a statement of claim on January 22, 2002 setting out the claim and relying on the following particulars of fraud, deceit and/or misrepresentation:
- a. Causing himself to be registered as proprietor of the entire parcel of land known as No. 63 Haughton Court, Lucea in the parish of Hanover then comprised in Certificate of Title and registered at Volume 729 Folio 16 of the Register Book of Titles and now registered at Volume 1240 Folio 758 of the Register Book of Titles fraudulently (by trick and deception).

¹ By way of Transfer registered on June 11, 1984

- b. Causing himself to be registered as proprietor of the said entire parcel of land when he knew or ought to have known that Altamont Brown and Rose Brown were the owners of the said land in possession never having parted with possession of or abandoned the said land except for the sale to the Plaintiff of Lot numbered 5.
- c. Causing himself to be registered as the proprietor of the said land on a false and misleading application.
- d. Purporting to have obtained the fee simple estate or interest in the land under the Registration of Titles Act without ascertaining or caring that the transaction was bona fide.
- e. Submitting a false application to the Registration[sic] of Titles to have himself registered as proprietor of the said land.
- f. Forging or causing to be forged the signatures of Altamont Brown and Rose Brown.
- g. Causing himself to be registered as proprietor of the said entire parcel of land when he knew or ought to have known that the Plaintiff was the owner of Lot numbered 5 and had never disposed of his interest in the said Lot 5 of any part hereof.

[5] And the plaintiff seeks the following remedies:

- a. A declaration that the Plaintiff is the owner of part of that parcel of land known as Lot 63 Part of Haughton Court, Lucea, in the parish of Hanover formerly registered at Volume 729 Folio 16 and

now registered at Volume 1240 Folio 758 of the Register Book of Titles.

- b. A declaration that the registration of the Defendant as the owner of the said land was effected through fraud.
- c. An order for the Cancellation of the said Duplicate Certificate of Title.
- d. An order that the Defendant do forthwith transfer the said land to the Plaintiff free from all mortgages and other incumbrances.
- e. An injunction restraining the Defendant by himself, his servant and or agent from entering on, transferring the land, disposing of, or selling, or parting with the land registered at Volume 124 Folio 758, or registering any mortgage or any instrument which is inconsistent with the Plaintiff's interest in the aforesaid land.
- f. Damages for fraud for that on or about the 21st day of October 1991 the Defendant falsely and fraudulently caused to be transferred to him the Plaintiff's land registered at Volume 729 Folio 16 by cancellation of the said Certificate of Title and the issue of a new Title registered at Volume 1240 Folio 758.
- g. Such further or other relief as the Court deems just.
- h. Costs and Attorney's costs.

[6] By way of a Defence and Counterclaim filed on September 13, 2002, Mr Greenfield claims against Mr Barton:

- a. That he is the lawful owner of all the land comprised in Certificate of Title registered at Volume 1240 Folio 758 and being duly registered as such thereon.
- b. That the Plaintiff is trespasser on the said land, and has thereby caused the Defendant to put to loss and expense, and claims damages.
- c. That the Defendant claims delivery up possession, and removal of buildings constructed on the land by Lorraine Whittingham prior to the Court Order of 6th September, 1995 for her to quit, and since the in defiance of the Court Order.

[7] In the reply and defence to counterclaim, the claimant joins issue with the defendant on his defence and specifically denies that the proprietors offered to sell all of the land to the defendant, that the title was given to one Mr. Miller in order to transfer the land to the defendant and that the claimant was refunded the deposit sum of Four Thousand Dollars (\$4,000.00). The claimant denies being a trespasser and also that the defendant was the transferee and the Browns the transferor of the subject property. The statement of claim is relied on by the claimant in its entirety.

[8] Both sides admit that the subject property is known as No. 63 Haughton Court and consists of 4 acres 1 rood and 7.3 perches. Further, that Lorraine Whittingham occupied lot 5.

Issues

[9] The following issues arise for the court's determination:

- i. Does the claimant have an interest in lot 5;
- ii. If so, did the defendant purchase the subject property with notice of the claimant's interest in lot 5; and
- iii. Whether the defendant fraudulently caused himself to be registered as proprietor of the entire subject property or fraudulently procured the Certificate of Title for the subject property.

THE CLAIMANT'S SUBMISSIONS

- [10]** Mr. Barton submits that in or around 1979, he purchased one-quarter acre of the subject property ("lot 5") from Mr. Altamont Brown and Mrs. Rose Brown. He paid a deposit of Four Thousand Dollars (\$4,000.00) with the balance of Two Thousand Dollars (\$2,000.00) being payable on receipt of the Certificate of Title for lot 5.
- [11]** He contends that he has an equitable interest in lot 5. He acquired an equitable interest from the registered proprietors by way of the Agreement for Sale dated 16 February 1979. Neither Mr. Greenfield nor anyone else refunded Mr. Barton the money for lot 5. He is the owner of lot 5 having lawfully purchased it from the registered proprietors.
- [12]** In 1979, he stated that he took possession of lot 5. He erected a boundary fence, constructed a pit toilet and planted fruit trees and other crops on it. He also placed a caravan on lot 5 where he resided with his family for several years until 1982. Since 1982, he has leased lot 5 to Ms. Lorraine Whittingham who currently resides there.

- [13]** In or about 1984, Mr. Greenfield sought to purchase a portion of the subject property from the Browns for Sixty-five Thousand Dollars (\$65,000.00). He paid a deposit of Thirty-two Thousand Dollars (\$32,000.00) and took possession of a portion of the subject property. He made a further payment of Ten Thousand Dollars (\$10,000.00). The balance purchase price was never paid to the Browns.
- [14]** Mr Barton avers that the Duplicate Certificate of Title for the subject property was given to a Mr. Beresford Miller to obtain splinter titles as soon as Mr. Greenfield obtained subdivision approval. The registered proprietors did not transfer the subject property to Mr. Greenfield or to anyone else. Mr Greenfield failed to obtain the subdivision approval as promised. In or around 1984, the said Duplicate Certificate of Title was stolen from Mr. Miller's car. Mr. Greenfield signed and submitted an Application for Lost Title with supporting Statutory Declaration to the Office of the Registrar of Titles knowing full well that the documents contained falsehoods and untruths.
- [15]** Mr. Barton asserted his interest in the subject property by lodging a Caveat numbered 95596 against the registered title. Mr. Greenfield and/or his servant and/or agent fraudulently caused that caveat to be withdrawn.
- [16]** The fraudulent withdrawal of the caveat facilitated the transfer to Mr. Greenfield registered on the 11 June 1984. Mr. Greenfield fraudulently, by trick and deception, illegally caused himself to be registered as proprietor of the entire subject property including the portion belonging to Mr. Barton. The fraudulent withdrawal of the caveat facilitated the transfer to Mr. Greenfield. As a consequence, the transfer of the subject

property is clothed in fraud and the only person who had anything to gain from the transfer was Mr. Greenfield.

[17] In 1991, Mr. Greenfield applied for and obtained subdivision of five (5) lots, including Lot 5 which belonged to him (Mr. Barton). Lot 5 is clearly mentioned and referred to in the Agreement for Sale dated 16 February 1979. Lot 5 is also clearly identifiable and therefore, Mr. Greenfield is in a position to transfer Lot 5 to him.

[18] It is Mr Barton's contention that Mr. Greenfield is not a bona fide purchaser for value without notice. Mr. Greenfield had actual notice of his equitable interest in the subject property. Mr. Greenfield entered into a contract with the registered proprietors for the remaining portion of the subject property with the knowledge that Mr. Barton had an interest in and was in possession of Lot 5.

[19] Save for in or about 1991 when Mr. Greenfield tried to shift the boundary fence, Mr. Barton was never molested by anyone including Mr. Greenfield. Moreover, Mr. Greenfield's occupation of a portion of the subject property is not consistent with someone who has purchased the entire subject property.

[20] In all the circumstances, Mr. Barton submits that it would be unconscionable to allow Mr Greenfield to benefit from the subject property in its entirety.

THE DEFENDANT'S SUBMISSIONS

[21] Mr. Greenfield contends that Mr. Barton has failed to prove his allegations of fraud on a balance of probabilities. In the circumstances,

Mr. Barton has failed to discharge the burden placed on him to warrant the cancellation of the Certificate of Title on the basis of fraud.

[22] Mr. Greenfield denies Mr. Barton's assertion that he fraudulently, by trick or deception, caused himself to be registered as proprietor of the entire subject property by deceiving the Browns into believing that if the subject property was sold to him, he would be able to obtain approval for its subdivision and that he would provide Mr Barton with a registered title.

[23] He argues that based on the terms of Mr. Barton's Agreement for Sale, it was Mr. Barton's expectation that he would receive a splinter title from the vendors and not from him. If the vendors sold the subject property to him (Mr. Greenfield) because they were relying on him to obtain subdivision approval to provide Mr. Barton with a splinter title, they would be required to transfer the subject property to him. In those circumstances, there would be no need for him to forge the vendors' signatures. Furthermore, if the vendors had no intention of transferring the subject property to him then it is reasonable to infer, that they could not have been relying on him to obtain subdivision approval for the purpose of providing Mr. Barton with a splinter title. The vendors parted with possession of the subject property when they sold it to him. When they allowed him to take occupation of the subject property, they parted with the entire subject property.

[24] Mr. Greenfield submits that he conducted diligent checks to ensure that he was contracting with the registered proprietors and in so doing, he did not discover that anyone else had an interest in the subject property. During his enquiries, he became aware that the Vendors had applied to the Hanover Parish Council for subdivision approval which was denied.

- [25]** He posits that Mr. Barton could not or failed to provide reliable evidence to prove that he gave misleading or false information in his Application for Lost Title and his Statutory Declaration regarding the circumstances surrounding how the Duplicate Certificate of Title was stolen. Furthermore, even if the contents of his Application for Lost Title are false, Mr. Barton has not advanced any evidence that conclusively indicates that he did in fact lie out of actual dishonesty to cheat him out of any existing right that he knew he had in the subject property.
- [26]** Additionally, Mr. Barton has not provided sufficient evidence to prove his allegation that Mr. Greenfield fraudulently caused the property to be transferred to himself by submitting to the Office of Titles, an Instrument of Transfer document where the vendors' signatures appeared to be forged by him (Mr. Greenfield). He denies Mr Barton's contention that he forged Mr Barton's signature on a letter to the Register of Titles to have the Caveat against the subject property removed.
- [27]** Mr Barton has not provided any evidence to prove that Mr Greenfield had knowledge of his interest in Lot 5 before he purchased it. At all material time, Mr. Greenfield was contracting with the vendors who were the registered proprietors of the entire subject property, including Lot 5. The mere presence of a caravan and wire fencing on the subject property without more, does not constitute notice of Mr Barton's ownership of Lot 5 or prove that Mr. Greenfield committed fraud.
- [28]** He also argues that even if he had knowledge of Mr. Barton's interest in the subject property, actual knowledge of a prior interest without more does not amount to the type of dishonesty required.

[29] It is Mr. Greenfield's contention that he possesses a greater right to possession of the subject property and his rights have been wrongfully interfered with. He has been deprived of the use of the subject property since obtaining a Court Order on 6 September 1995 for Ms. Whittingham to cease occupation of Lot 5. Ms. Whittingham continues to occupy Lot 5 to this day despite being aware that an order was made for Mr Greenfield to recover possession of it. Finally, Mr. Greenfield submits that Ms. Whittingham is not a credible or reliable witness.

THE LAW

The concept of indefeasibility of title

[30] The Registration of Titles Act ("RTA") governs the proprietorship and transfer of registered land². Section 68 of the RTA provides that a certificate of title is conclusive evidence of title. Section 68 provides as follows:

"68. No certificate of title registered and granted under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person

² **Albert Smith v Hazel Steer**, Supreme Court Civil Appeal No 91/2008 , judgment delivered on May 8, 2009, at paragraph 15

named in such certificate as the proprietor of or having any estate or interest in, or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power.”

- [31]** The RTA confers an indefeasible interest upon a registered proprietor of land that can only be invalidated or vitiated by fraud. Sections 70 and 71 of the RTA state:

“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:

Provided always that the land which shall be included in any certificate of title or registered instrument shall be deemed to be

subject to the reservations, exceptions, conditions and powers (if any), contained in the patent thereof, and to any rights acquired over such land since the same was brought under the operation of this Act under any statute of limitations, and to any public rights of way, and to any easement acquired by enjoyment or user, or subsisting over or upon or affecting such land, and to any unpaid rates and assessments, quit rents or taxes, that have accrued due since the land was brought under the operation of this Act, and also to the interests of any tenant of the land for a term not exceeding three years, notwithstanding the same respectively may not be specially notified as incumbrances in such certificate or instrument.

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.”*

[32] The concept of the indefeasibility of title was explained by Harris, JA in **Harley Corporation Guarantee Investment Company Limited v Estate Rudolph Daley et al**³. At paragraphs 30 and 31 she stated:

“[30] Further, 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...”

“[31] The foregoing clearly demonstrates the conclusive character of ownership under the Act. In the absence of fraud, an absolute interest remains vested in a registered proprietor. All rights, estate and interest prevail in favour of the registered proprietor...”

What constitutes fraud under the RTA

[33] Section 70 of the RTA clearly stipulates that fraudulent conduct on the part of a registered proprietor defeats a registered title. This was stated by Morrison, P in **Thomas Anderson v Monica Wan**⁴ where at paragraph 37 he posited:

“[37] Section 70 makes it plain that fraud is the principal exception to the indefeasibility of title secured by section 68. Fraudulent conduct on the part of the registered proprietor therefore defeats a registered title.”

³ [2010] JMCA Civ 46

⁴ [2020] JMCA Civ 41

[34] While the RTA does not define fraud, Morrison, P provided a detailed definition of fraud in this context in **Thomas Anderson v Monica Wan**⁵. At paragraphs 38 and 39 he opined:

*“[38] In **Assets Company Limited v Mere Roihi and others**, a decision of the Privy Council on appeal from the Court of Appeal of New Zealand, in which the system of land registration was at the material time very similar to that established by the RTA, Lord Lindley explained the meaning of the word ‘fraud’ in this context:*

“... by fraud in these Acts is meant actual fraud, i.e., 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. Further, it appears to their Lordships that the fraud which must be proved in order to invalidate the title of a registered purchaser for value, whether he buys from a prior registered owner or from a person claiming under a title certified under the Native Land Acts, must be brought home to the person whose registered title is impeached or to his agents. Fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him or his agents. The mere fact that he might have found out fraud if he had been more vigilant, and had made further inquiries which

⁵ (supra)

he omitted to make, does not of itself prove fraud on his part. But if it be shewn that his suspicions were aroused, and that he abstained from making inquiries for fear of learning the truth, the case is very different, and fraud may be properly ascribed to him. A person who presents for registration a document which is forged or has been fraudulently or improperly obtained is not guilty of fraud if he honestly believes it to be a genuine document which can be properly acted upon.”

[39] *Fraud in this context therefore connotes dishonesty of some kind. Lord Buckmaster made the same point in **Waimiha Sawmilling Company Ltd (In Liquidation) v Waione Timber Co Ltd**, another decision of the Privy Council on appeal from New Zealand:*

“If the designed object of a transfer be to cheat a man of a known existing right, that is fraudulent, and so also fraud may be established by a deliberate and dishonest trick causing an interest not to be registered and thus fraudulently keeping the register clear ... each case must depend upon its own circumstances. The act must be dishonest ...”

[35] Furthermore, in **Harley Corporation Guarantee Investment Company Limited v Estate Rudolph Daley et al**⁶ Harris, JA stated that the test to

⁶ (supra)

determine fraud within the context of the RTA means actual fraud or dishonesty. She stated that:

“[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...”

[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.

[57] ...It follows that to raise fraud, the pleading must disclose averments of fraud or the facts or conduct alleged must be consistent with fraud. Not only should the requisite allegations be made but there ought to be adequate evidentiary material to establish that the interest of a defendant which a claimant seeks to defeat was created by actual fraud.

*[60] ...Fraud for the purposes of sections 70 and 71 of the Act must be born out of acts which are “designed to cheat a person of a known existing right” - see **Waimiha Sawmilling Company v Waione Timber Co; Bannister v Bannister** [1948] 2 All E.R 133 and **Binnons v Evans** [1972] Ch 359. It is clear that, as shown in **Asset Company Limited v Mere Roihi** (1905) AC 176, 210, acts founded on contrived ignorance or wilful blindness would be such acts arising out of constructive or equitable fraud.”*

[36] Finally, in **Leo Hugh Wollaston and Aubrey Clarence Wollaston and Another v Aubrey George Brown and Others**⁷, Sykes, J (as he then was) after examining a number of cases concluded that knowledge of persons occupying the property in question does not in and of itself prove fraud. Merely saying that persons were in open occupation and the purchaser had knowledge of this at the time of the purchase is not sufficient to establish a case of actual dishonesty under the RTA. It is not the mere notice of a prior equitable or legal interest.

[37] What can be gleaned from the authorities is that to establish fraud in the context of the RTA to invalidate a certificate of title, a claimant must prove actual fraud that is dishonesty of some sort on the part of the registered proprietor. The claimant must prove that the defendant's acts or conduct were designed to cheat him of a known existing right.

The burden and standard of proof

[38] Where a claimant alleges that a defendant fraudulently acquired a certificate of title, the legal burden of proof rests on him to prove his case and establish fraud on a balance of probabilities. The burden and standard of proof in claims where fraud is alleged was enunciated by McDonald-Bishop, J (as she then was) in **Linel Bent and Linel Bent v Eleanor Evans**⁸ when she stated:

“81. It is the claimant who asserts that fraud is involved in the acquisition by the defendant of the certificate of title. He asserts it

⁷ Claim No. 2003 HCV 01302, judgment delivered on 1 July 2008, at paras 78-81

⁸ Suit no. C.L. 1993/ B 115, Judgment delivered on February 27, 2009

and so, it follows in the ordinary source of things, that he must prove it. Therefore, the ultimate onus, that is to say, the legal burden rests squarely on the shoulders of the claimant.

*88. In order to appreciate the nature and quality of evidence required to prove fraud to the standard required, the dictum of Rowe, J (as he then was) in **Chin v Watson's (Off Course Betting)** 1974 12 JLR 1535 proves quite instructive. In that case, Rowe, J in dealing with the nature of evidence required to establish fraud in civil proceedings, made the point that fraudulent conduct must be distinctly proved and it is not allowable to leave it to be inferred from the facts (*Davy v Garret* cited). After following guidance given by Lord Westbury in **McCormick v. Grogan** (1869) L.R. 4 H.L. 82, the learned judge noted that while it is true that fraud can be proved from circumstantial evidence just as well as it can be established by direct evidence, that proof must be by the clearest and most indisputable evidence.*

89. It is clear to me that an allegation of fraud ought not to be taken lightly and so the evidence to prove it must be 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..."

The defence of bona fide purchaser for value without notice of equitable interests

- [39] Halsbury's Laws of England Volume 88 (2019))/12 at paragraph 571 provides a detailed analysis of the defence of bona fide purchaser for value without notice of equitable interests. It reads as follows:

“Equitable claims normally may be enforced against a purchaser of the legal title to property, if that person's conscience is affected by notice of the claimant's equitable interest. A defendant who can show that he is a purchaser of the legal title for value and that he had no notice of any equitable interest can rely on the defence of bona fide purchase.

If a defendant can rely on the defence, all persons claiming through him may also rely on the defence, even though they may have notice of the claimant's equitable interest.

Unlike change of position (which assists a defendant only to the extent that his position has changed), in a case of bona fide purchase no inquiry will (in most cases) be made into the adequacy of the consideration.”

- [40] Additionally, in **Harold Morrison v Frank Phipps et al**⁹ Sykes, J (as he then was) defined who is considered to be a bona fide purchaser. At paragraph 71 he opined.

⁹ [2015] JMSC Civ 219

“Therefore when the Privy Council in Half Moon said that under the Torrens system ‘everyone who acquires title bona fide and in good faith from a registered proprietor obtains an indefeasible title’ their Lordships were simply saying that unless there is actual dishonesty on the part of the new registered proprietor his title cannot be impeached. It would seem to this court that the bona fide and good faith in the context of the ROTA really means absence of actual dishonesty on the part of the registered proprietor. The fact that prior to registration the proprietor knew of some other interest that is registrable but unregistered and he proceeded with the transaction with that knowledge does not mean that he is dishonest.”

[41] Finally, Gilbert Kodilinye in his text, 3rd edition, **“Commonwealth Caribbean Property Law”**, in Chapter 1 dealing with legal and equitable estates and interests at page three stated:

“It is important to distinguish between legal and equitable interests because, whereas legal estates and interests are rights in rem, binding on the whole world, equitable interests suffer from the infirmity that they are not binding on a bona fide purchaser of a legal estate in the land who has no notice of the existence of the equitable interest. Such a purchaser will take the land free from the equitable interest, which, in effect, will be extinguished.

In this connection, equity recognises three types of notice: (a) actual notice, where the purchaser in fact knows of the existence of the equitable interest; (b) constructive notice, where the purchaser ought to and would have acquired notice if he had

made due inquires and investigated the land and the title; and (c) imputed notice, where the purchaser's legal adviser acquires actual or constructive notice. A purchaser who is affected by any of these three kinds of notice will be bound by existing equitable interests in the land. "

THE EVIDENCE

The Claimant's case

Witness statement of Eral Barton

- [42] Mr. Barton's witness statement and evidence in chief stated that he resides in Shropshire, England, United Kingdom and is a retired driver.
- [43] Mr. Barton stated that he is the owner of one quarter acre of a parcel of land being lot 5 of a proposed subdivision plan of the subject property. The subject property was owned by Mr. Altamont Brown and Mrs. Rose Brown ("the Browns"), both now deceased. He also said that he personally knew the Browns and he knew that they were the owners of the subject property. Mr. Brown's brother was married to one of his sisters.
- [44] Mr. Brown had divided his property into lots. While he was in England, Mr. Brown contacted him and offered to sell him one of his lots. Mr. Barton averred that he had a close relationship with the Browns. Mr. Brown caused a subdivision plan of the subject property into five (5) lots to be prepared and submitted it to the Hanover Parish Council for approval. This proposed subdivision included the lot to be sold to Mr. Barton's which was lot number 5.

- [45]** The witness went on to state that on February 16, 1979, he entered into an agreement with the Browns for the purchase of one-quarter acre, being lot 5, part of the proposed subdivision for the sum of Six Thousand Dollars (\$6,000.00). It was agreed that he would pay a deposit of Four Thousand Dollars (\$4,000.00) and thereafter, he would pay the balance of Two Thousand Dollars (\$2,000.00) when they obtained subdivision approval from the Hanover Parish Council for his quarter acre of land. The sale agreement was signed on February 17, 1979 and the deposit paid. Mr. Brown signed a receipt in his presence and Mr. Barton was let into possession of lot 5.
- [46]** By letter dated July 30, 1979, the Hanover Parish Council refused the application for the subdivision of the subject property, there was an objection from the Ministry of Health and Environmental Control (Environmental Control Division). Mr. Barton posited that although the application for the subdivision was refused, their agreement was still valid and he remained in possession of lot 5.
- [47]** He stated that it was his intention to return to Jamaica with his wife, who was born in England. He intended to purchase a piece of land that had all the necessary amenities such as water and light to make life easy for his wife who was accustomed to those amenities. When Mr. Barton took possession of lot 5, he erected a boundary fence and planted fruit trees, including coconut trees and other crops thereon. Sometime in or about 1979, he placed a caravan on the property and constructed a pit toilet. He resided on the property with his wife and son for several years until about 1982, when he returned to England. He leased the property to Miss Lorraine Whittingham and returned to England in 1982.

- [48]** Mr. Barton posited that since 1982 when he leased the property along with the caravan to Miss Whittingham, she has been in possession of it as a tenant to this very day. When he leased the property to Miss Whittingham it was fenced. She told him that the caravan was leaking and he later gave her permission to construct a house on the premises, which she did in or about 1987. From the discussions he had with Miss Whittingham, he understood and formed the view that she purchased building material from Mr. Greenfield who operated a hardware store next door.
- [49]** Sometime in or about 1984, over five (5) years after he had purchased lot 5, placed the caravan on it, constructed a pit toilet and fenced its boundaries; Mr. Greenfield, sought to purchase a portion of the land with the proposed subdivision from Mr. Brown. From Mr Barton's discussions with Mr. Brown, he understood and formed the view that at first, Mr. Brown refused to sell the remaining land to Mr Greenfield as he had not obtained subdivision approval. However, he was convinced to do so as Mr. Greenfield gave him the assurance he could get the approval and would provide with him (Mr. Barton) with a title. The view Mr Barton formed was also confirmed by Ms. Rose Brown.
- [50]** In relying on this assurance and encouraged by Mr. Greenfield, the Browns entered into an agreement to sell the remaining portion of land for Sixty-Five Thousand Dollars (\$65,000.00) to Mr. Greenfield. Pursuant to this agreement, Mr Greenfield paid the Browns a deposit of Thirty-Two Thousand Dollars (\$32,000.00) and took possession of the land. Mr. Greenfield made one further payment of Ten Thousand Dollars

(\$10,000.00) but refused and failed to pay the balance purchase price of Twenty-Three Thousand Dollars (\$23,000.00).

- [51]** The duplicate certificate of title registered at Volume 729 Folio 16 was given to one Mr. Beresford Miller, with Mr. Greenfield promising that he could obtain sub divisional approval for the subject property and agreeing to provide Mr. Barton with a title for his lot. Mr. Barton averred that the said duplicate certificate of Title was stolen from Mr. Miller's car, in or about 1984.
- [52]** Mr. Barton said that sometime in or about 1989, he received a call from Miss Whittingham. Mr. Greenfield had removed a part of the fence on the boundary of his property. Miss Whittingham spoke with Mr. Brown who came to the property and spoke to Mr. Greenfield, in her presence.
- [53]** Since that issue, Mr. Barton had constant communications with Miss Whittingham concerning his property. During their discussions, he informed Miss Whittingham that Mr. Greenfield had absolutely no right or reason to move the wire fencing on his property. He also said that he understood from Miss Whittingham that Mr. Greenfield refused to replace the fencing. Mr. Greenfield also approached Miss Whittingham one day and informed her that he had received the title for the subject property and that if Mr Barton came there and 'behaved anyway', he would not be giving him the title for his property.
- [54]** Mr. Barton averred that Mr. Greenfield applied to the Hanover Parish Council for subdivision approval of the subject property into five (5) lots and the application was approved on May 22, 1991.

- [55]** It is Mr Barton's evidence that in or about November 1992 when he was in Jamaica, he went to his property and attempted to pick fruits from his trees when Mr. Greenfield pointed a gun and threatened to shoot him. This took place in the presence of Miss Whittingham. Mr. Barton reported the matter to the Lucea Police Station and later filed an action for trespass in the then Resident Magistrate Court in Hanover, under Plaintiff number 6/93. Mr. Greenfield was served with a summons for the offence of assault at common law but the case was adjourned sine die as Mr. Barton had to return to England.
- [56]** Mr. Barton stated that the subject property was never transferred to Mr. Greenfield or to anyone by the registered proprietors Mr. and Mrs. Brown. Furthermore, that he never parted with or sold his interest in the subject property to Mr Greenfield or to anyone else.
- [57]** Mr. Barton retained the services of an attorney to protect his interest in the subject property. On April 21, 1983, he lodged a caveat numbered 95596 against the subject property. It is his evidence that Mr. Greenfield by himself, servant and/or agent fraudulently prepared and lodged a withdrawal of caveat by way of a letter dated '8/5/84' addressed to the "Registerer of Titles' with the name 'Errol Barton' and with a signature purporting to be his. He maintains that the signature purporting to be his is a forgery. He did not prepare, sign or give anyone permission to withdraw the caveat on his behalf. He had attorneys who were handling his matter at the time and any withdrawal would have been done by them. He did not give his attorneys instructions nor anyone permission to withdraw the caveat and in addition, he was not in Jamaica in 1984.

- [58]** Further, the letter stated that he had no further interest in the property but Mr. Barton stated that that could not be true as from the date he lodged the caveat, he had attorneys both in Jamaica and England dealing with his matter. He noted that by way of a letter dated August 21, 1984, his attorneys in England, Smith Dawson wrote to his attorneys in Jamaica, Murray and Tucker (who signed and lodged the caveat dated August 11, 1983) making reference to “caveat No. 95596 against land registered at Volume 729 Folio 16” and making enquiries into the progress of the property being sold to him.
- [59]** The witness maintained that he was always interested in his property. In 1993, long after he lodged a caveat against the subject property, he had attorneys dealing with his matter. Under Plaintiff number 6/93, he filed for recovery of possession, trespass, injunction and brought a counterclaim against Mr. Greenfield in the then Hanover Resident Magistrate's Court through his attorneys, E.H. Williams and Associates. He also caused his attorneys to write letters to the Hanover Parish Council making enquiries into the property. His then attorneys, E.H. Williams and Associates, received a response to his letter dated January 21, 1994 from the Hanover Parish Council under cover of their letter dated January 31, 1994 concerning the setback of the roadway.
- [60]** Mr Barton stated in his witness statement that Mr Greenfield knew that he was the owner of the property, having purchased it long before Mr. Greenfield acquired and/or entered into a contract with Mr. Brown for the remaining portion of land.
- [61]** It is Mr. Barton's evidence that Mr. Greenfield fraudulently caused his name to be registered as the proprietor of the entire parcel of land

including lot 5 which belonged to him. Mr. Barton averred that he was surprised to discover that Mr. Greenfield had obtained a title in his own name and had failed to transfer lot 5 to him.

[62] Mr. Greenfield both fraudulently and illegally caused the subject property to be registered in his name by an instrument of transfer¹⁰ lodged on June 11, 1984. Mr. Greenfield took further illegal steps and obtained a new title by making an application for the replacement of the Certificate of Title on the basis that the duplicate certificate of title was lost.

[63] He averred that he, Altamont Brown and Rose Brown all signed the Agreement for Sale in each other's presence and it was witnessed by Mr. Aston Dinham and Ms. Delsie Campbell. Mr. and Mrs Brown also signed the receipt for the Four Thousand Dollars (\$4,000.00) in his presence. From observing and merely comparing the signatures of Altamont Brown and Rose Brown on the Agreement for Sale dated February 16, 1979, the receipt dated February 17, 1979 and the Affidavit of Rose Brown sworn to on March 10, 1997, it is Mr. Barton's evidence that they are different from those on the instrument of transfer signed on June 11, 1984.

[64] Mr. Barton reiterated that he has been in possession of lot 5 since 1979 when he purchased it from the Browns and then by his tenant Miss Whittingham, who remains in possession of the property to this day. He enclosed lot 5 by fencing it. Therefore, anyone including Mr. Greenfield would have been aware that it was separated from the remaining parcel of land.

¹⁰ Number 427870

[65] Finally, Mr. Barton gave evidence that he obtained an injunction from this court preventing Mr. Greenfield and/or anyone on his behalf from entering and/or interfering with his property. However, less than a week after the date of the witness statement, October 1, 2021, Mr. Greenfield caused a surveyor to enter his property and to carry out a survey without any notice to him and/or his tenant, Miss Whittingham.

Cross examination

[66] During cross examination, Mr. Barton was asked how he acquired lot 5 and how, to his knowledge, Mr. Greenfield acquired the subject property.

“Q: in your witness statement you said the defendant entered into a contract to buy the remaining portion of 63 Haughton Court

A: yes

Q: when the defendant bought that land were there different titles for the property, did your piece of land have a different title from the rest of the land

A: I was to get my title from Altamont Brown but I didn't

Q: you paid \$4000 for that piece of land

A: yes

Q: was the arrangement with yourself and Altamont Brown ever cancelled

A: no

Q: were you ever offered a refund of your \$4,000

A: *no*

Q: *Agree you were offered a refund of your deposit that you paid to buy 63 Haughton Court*

A: *I didn't agree, no one offered me, I didn't agree after spending that much money, I don't recall who could offer me \$4,000 I don't recollect that*

Sugg: *reason you were offered refund was because your contract to buy lot 63 Haughton court was cancelled or withdrawn*

Q: *were you refunded your \$4,000*

A: *no, if it was cancelled I don't know about that and I never knew about it*

Q: *the total amount you were to pay for the land was \$6,000*

A: *yes*

Q: *did you ever finish paying for the land*

A: *no*

Q: *you never saw the agreement for sale between the defendant and Altamont Brown*

A: *yes I saw it*

Q: *when*

A: *I was there I came out and I was there before the defendant took possession of the land Altamont Brown showed it to me and explained it to me*

Q: *when you signed agreement for sale did you sign the transfer document at the same time in other words in the agreement between Altamont Brown and the defendant you saw it never said the defendant is to give you title*

A: *Altamont Brown was to cut me off, he was to come and give me my title and the defendant was to have 3 ¾ acre and 1 rood*

Q: *is that what the agreement said*

A: *I was not transferring anything to Altamont Brown he was transferring to me*

Q: *earlier you said you saw the agreement between the defendant and Altamont Brown, correct*

A: *yes*

Q: *you said the defendant or someone else, being an agent or servant of the defendant forged your signature on a withdrawal of caveat*

A: *I received a letter to titles office claiming it was I who wrote the letter*

Q: *is it correct to say you have no idea who wrote that letter*

A: *definitely not, I am only telling you what I see on the letter*

Sugg: *the defendant bought all of 63 Haughton court*

A: *I don't know how he could when I was there before him, if he did that means he bought me as well because I was there*

Q: *in your witness statement at para 34 you said the defendant fraudulently caused his name to be registered as the proprietor of the land, you didn't know how any such fraud was committed*

A: *this fraud about what*

Q: *the fraud you say the defendant did to put his name on the title,*

A: *I have a copy where Ms. Rose Brown*

Q: *you don't know personally if any fraud was committed do you*

A: *by law that would be a fraud*

Q: *do you know of a science called handwriting analysis*

A: *I have heard of it*

Q: *do you have qualifications in it*

A: *no, that's not my profession*

Sugg: *the defendant committed no fraud in relation to 63 Haughton Court*

A: *he committed a fraud by sending a letter to titles office claiming it was me*

Q: *didn't you say earlier, that you don't know who wrote the letter*

A: *I didn't say I don't know who wrote that letter*

Sugg: *the defendant at no time forged Altamont Brown's signature*

A: *I don't know what is going on but I've seen it on a document where it's been signed, the defendant said Altamont Brown and Ms. Brown was signed over to him and according to that*

document Ms. Brown can't spell her own name, because her name was spelt wrong.

Sugg: the defendant nor anyone instructed by him forged Rose Brown's signature

A: I am just telling you what I've seen

Q: are you saying you don't know for yourself

A: what I know is I read it on a document concerning lost title for 63 Haughton court

Sugg: the defendant never submitted a false application to have himself registered as the owner of 63 Haughton Court

A: I go back again to the affidavit of Rose Brown

Q: you don't know for yourself

A: I didn't take my 2 eyes and see when it's done but I read it on a document

Sugg: the defendant lawfully purchased 63 Haughton Court

A: what I can only tell you that Altamont Brown did own that piece of land and he sold the rest of it to the defendant, he sold me a piece and he sold the rest to the defendant

Q: you said no one spoke to you about refunding the money you had paid do you know whether they spoke to your lawyers

A: if they did my lawyers would get in touch with me and no one spoke to me concerning that"

Witness statement of Lorraine Whittingham

- [67]** Miss Lorraine Whittingham gave evidence on behalf of the claimant. An application was made and subsequently granted by this court for portions of her witness statement to be redacted. The remaining portions of her statement are outlined below.
- [68]** Miss Whittingham stated that she resided at Lot 5, Haughton Court, Lucea in the parish of Hanover and is a taxi operator. She has been a tenant of Mr. Barton since 1982 when she rented lot 5.
- [69]** She further stated that when she first became aware of the property it was owned and occupied by Mr. Barton. When she rented the property, it was fenced and had a caravan (mobile home) on it. The boundaries of the land were fenced. She first went to live on the property with her son and her brother. At that time, the area was not yet fully developed and there were not many houses located near to each other. She lived in the caravan that was on the land for a while. However, it started leaking and she received permission from Mr. Barton to build a house on his land.
- [70]** The witness stated that she continued living on the property for several years and she became acquainted with Mr. Brown who had cows that he tied on another parcel of his land, next to Mr. Barton's property. In addition to fencing his property, Mr. Barton planted flowers and trees on the property, with some of them located near to the property's boundary lines.
- [71]** Miss Whittingham averred that one day while she was at home, Mr. Brown came to the property and called her outside. He was with Mr.

Greenfield and a land surveyor, Mr. Hartley along with two of his workmen. Mr. Brown informed her in the presence and hearing of the other men that they were there to do some measurement on the property. Mr. Brown, in her, Mr Greenfield's and Mr. Hartley's presence advised her to watch what they were doing because the land belonged to Mr. Barton. Mr. Greenfield made no objections about the statement made by Mr. Brown and to the measurement being done. She watched what they were doing and no one made any fuss whatsoever.

[72] Mr. Greenfield came and took possession of the land that adjoined the land belonging to Mr. Barton, he constructed a dwelling house on it. Miss Whittingham and Mr Greenfield got along well at that time. Mr. Greenfield even asked her where was the best place on the land to build, since she had been on Mr. Barton's property for some time. She said that she pointed out to him where he should start building the house; he accepted her suggestion and built his house at the exact spot of the land that she suggested. She said that she was really happy to have Mr. Greenfield coming to live next door to her as there were not many houses in that area and she would have company. She had a good neighbourly relationship with Mr. Greenfield when he was building his house. She helped him to push wheelbarrow with material and also carried mortar. After building his house, Mr. Greenfield constructed a hardware store on the same property.

[73] The witness further stated that in 1987, she started building her house while Mr. Greenfield was still living next door to her. She purchased most of her building materials from Mr. Greenfield's hardware store to construct her house. After the house was completed, she said that Mr.

Greenfield commended her that the house looked good. Just about one (1) year after building the house on the property Hurricane Gilbert came.

[74] In 1989 the year after Hurricane Gilbert came, Miss Whittingham went to Canada to visit. Although her brother and her son were at the property, she asked Mr. Greenfield to give an eye on the property for her as that was the kind of friendship they had. While she was in Canada, she would call Mr. Greenfield just to check on what was going on at home, even though she would also call her brother, just to ensure everything was okay. Mr. Greenfield would assure her on every occasion that they spoke over the phone that things at home were okay.

[75] Sometime after she returned to Jamaica from Canada, she called Mr. Mr. Barton as Mr. Greenfield had moved the wire fence on his, (Mr. Barton's) property. She said that she went to Mr. Brown and had discussions with him and his wife as she knew that they had sold Mr. Barton the property. She had discussions with both of them about Mr. Greenfield's behaviour, and his reasons for removing the wire fence on Mr. Barton's property. The same day that she visited Mr. Brown about the issue, he and his wife came to Mr. Barton's property and spoke to Mr. Greenfield about the matter. In her presence and hearing, the Browns questioned Mr. Greenfield as to why he moved the wire fencing on Mr. Barton's property. They were both upset with him and in her presence, they told him he had no right to move the wire fence and that he should replace it.

[76] The issue about Mr. Greenfield moving the wire fencing and the property in general quieted down for some time. However, one day while she was at home, Mr. Greenfield came to Miss Whittingham boasting that he had

the title for the property, that he was supposed to “cut off” Mr. Barton's parcel of land but if Mr. Barton “gwaan with anything” he would not get the title for his portion of the property. She said that her response to Mr. Greenfield was that whatever the matter was about the land, he should take it up with Mr. Barton and not her as Mr. Barton is the owner and she was just renting the property from him as Mr. Greenfield knew.

- [77]** The witness went on to state that a couple months after having that conversation with Mr. Greenfield, he returned demanding that she should pay rent to him. She said that she was very surprised at Mr. Greenfield's demands as he knew for several years that Mr. Barton is the owner of the property she occupied. Mr. Barton had been in possession of lot 5 long before Mr. Greenfield was ready to build on the property next to it. She was not prepared to pay Mr. Greenfield any money to rent the property and flatly refused to pay. He left the property. She continued paying the rental sum for the property to the person whom Mr. Barton had authorised to collect it.
- [78]** Sometime after she refused to pay Mr. Greenfield rent for the property, she received a notice to quit within three (3) months served on her by one Mr. Reynolds. She sent a copy of the notice to Mr. Barton.
- [79]** In or about 1992, Mr. Barton returned to Jamaica and he examined the property. One day Mr. Barton was out in the yard picking fruits from the tree when Mr. Greenfield in her presence confronted Mr Barton, pointed a gun and threatened to shoot him.
- [80]** The witness stated that sometime in 1993, she received a Summons to attend court at Lucea in the parish of Hanover. Mr. Barton came to the

court the following day with his attorney, it was a Tuesday. The matter was called up on several occasions in the 'Lucea Parish Court'. On the first time that they went to the court, the matter was put off and Mr. Barton had to return to England to handle personal matters. Mr. Barton provided her with a copy of his Agreement with Mr. Brown for the property at Haughton Court, Lucea in the parish of Hanover, signed by Mr. and Mrs. Brown as vendors and he, Mr. Eral Barton, as purchaser, along with a copy receipt showing that he paid Four Thousand Dollars (\$4,000.00) for the property.

[81] The matter was called up and put off several times. During the time that Mr. Greenfield had her in court for the property, a summons was sent out for Mr. Brown to attend court but he was unwell and a letter was sent to the Court and to Mr Barton's attorneys from Mr. Brown's doctor. One day she went to court in Lucea and Mr. Greenfield was there but Mr. Barton's attorney was absent. A new judge took over the case and made an order that she should vacate the property. She stated that she did not understand what happened in court on that day. After she left court, she communicated to Mr. Barton what had happened. Mr. Barton assured her that he would sort everything out as he was the rightful owner of the property.

[82] In 1993 while she was at home Mr. Greenfield confronted her about picking mangoes from Mr. Barton's tree that he planted before she came onto the property. When Mr. Greenfield moved the wire fence he took in the mango tree but since Miss Whittingham knew that it was Mr. Barton's tree, she picked a few mangoes. When Mr. Greenfield attacked her, she had to defend herself. Mr. Greenfield took her to court claiming that she

assaulted him when he knew that it was he who first attacked her. The matter was adjourned sine a die, it came back up in court and she was found not guilty, the judge warned Mr. Greenfield about his behaviour.

Cross examination

[83] The following portions of evidence was elicited from Miss Whittingham during cross examination:

“Q: When the defendant first came onto property beside where your fence is was that in 1985/86

A: yes he came there, I don't recall the date but I know he came

Q: remember Gilbert

A: he live there before Gilbert, Gilbert blow 88 I build my house 87

...

Q: the defendant's house was built before yours

A: yes

Q: was it before 1987 then

A: yes. I was living in the caravan

Sugg: the defendant told you he was the new owner of the land

A: no sir

A: I was at home lying down in the caravan and I hear somebody call me and when I look outside I see Mr. Altamont Brown and I see Mr Hartley I know him as surveyor and Altamont Brown said that this man is the surveyor and this man is the defendant and he

came to survey the land, the defendant buy over there and he wants me to witness the surveyor and I witness it and see the 4 corner where they found the pegs

Q: at that same time, Altamont Brown told you that the defendant bought the rest of the land

A: he said he want to make me witness to cut off the claimant's part because the defendant buy over there so (points) so he want to find the peg

Sugg: you had dispute about fence that the defendant moved. Altamont Brown did not go with you to tell the defendant he had no right to move the wire fencing on the claimant's property

A: I go to Altamont Brown, I did not speak to the defendant, Altamont Brown and his wife drove his bus down there and told the defendant to put it back, yes I was there, a problem him a create and him must put back the man fence it was '91 I was there, when I came back from Canada all now him don't put it back it still dideh

Q: you said that the defendant deliberately deceived the office of titles when he made a lost title application

A: I said that

Q: you know how he deceived them

A: yes, Mr. Alti said it

Q: you don't know for yourself

A: no, is Mr. Alti say it to me

Q; from what you know who is the claimant to get his title from

A: *Mr. Greenfield must give it to him, he must cut it off and give him*

Q: *how did you know that*

A: *the defendant told me that*

Sugg: *the defendant never tell you that*

A: *he call me to the fence and tell me that he got the title to cut off and give the claimant and if the claimant come and gwaan with nutten he won't give him because him hear say he's a terrible man*

Q: *you and the defendant were good friends*

A: *yes i was glad for the Neighbour beside me*

Q: *you got vex with him when he tried to take you off the land*

A: *beg your pardon Sir, when I come and see the line fence move I don't talk to him again, when I come from Canada I don't talk to him until now*

Q: *so you malice him*

A: *I vex about it so I don't talk to him*

Sugg: *because you vex why you come to court and tell lies on him*

A: *beg your pardon Sir, I don't tell any lies on him, I am talking the truth, the whole truth and nothing but the truth*

Q: *asked whether you were asked to pay rent before she got the notice do you recall what year that was*

A: 1993”

THE DEFENDANT’S CASE

Witness statement of Desmond Greenfield

- [84] Mr. Desmond Greenfield resides in Lithonia, Georgia in the United States of America. He said that in or around March 1984, he learned that Altamont Brown and Rose Brown, now deceased were selling the subject property. Sometime in or around March 1984, he met with Mr. Brown in person to view the property. At the meeting, he asked about the size of the land and was advised that it was just over four (4) acres, closer to four (4) and a half (1/2) acres. He also enquired of Mr. Brown, what portion of the property was for sale and was advised that he was selling the entire property. They agreed on a purchase price of Sixty-Five Thousand Dollars (\$65,000.00) for the entire four (4) and a half (1/2) acres of land. They agreed that a deposit of Thirty-Two Thousand Five Hundred Dollars (\$32,500.00) was to be paid forthwith.
- [85] The witness said that throughout his negotiations with Mr. Brown, he became aware that Mr. Brown had originally intended to subdivide the property into several smaller parcels of land and sell them. It was brought to his attention that an application for subdivision was made twice to the Hanover Parish Council, however both applications were denied. Mr. Brown brought to his attention that other potential buyers had made deposits towards purchasing those individual parcels of the property represented in the proposed subdivision plan. However, he

was assured by Mr. Brown that it was a condition of the arrangements with the original intended purchasers of the lots in the proposed subdivision plan that should the application for subdivision be rejected, they would be refunded their deposits and their agreements would be cancelled.

[86] Mr. Greenfield averred that he enquired of Mr. Brown whether the deposits had been refunded to ensure that the entire property could be sold to him without any issues. He was made aware that only the Mr. Barton had not yet received his refund for his deposit because he refused to accept it, however all other proposed purchasers were refunded. He was later made to believe that Mr. Brown successfully refunded Mr. Barton his deposit by way of a cheque drawn from National Commercial Bank (NCB) for Four Thousand Dollars (\$4,000.00) payable to Mr. Barton.

[87] Having been made to believe that all the original intended purchasers including Mr. Barton, had received refunds of their deposits and their arrangements effectively cancelled, he entered into the transaction with Mr. Brown, to purchase the entire subject property. He was led to believe that there were no encumbrances affecting the title to the land. Therefore, he paid the sum of Thirty-Two Thousand Five Hundred Dollars (\$32,500.00) to Mr. Altamont Brown by way of a cheque from the Hanover Credit Union.

[88] Mr Greenfield stated that he travelled with the Browns to Montego Bay to pick up Mr. Astly Dixon (now deceased) to serve as a witness to the sale agreement. They all went then went to Mr. Beresford Miller's office to draft the sale agreement. The agreement was then signed by Mr.

Greenfield and the Browns in the presence of Mr. Dixon. Mr. Miller was responsible for transferring the title for the property into Mr. Greenfield's name.

[89] The witness gave evidence that a short while later, Mr. Brown came to his house and made him aware that he was experiencing financial difficulty. As a result of their discussions, it was agreed between them that a further payment of Five Thousand Dollars (\$5,000.00) would be made even though the title had not yet been transferred. Mr. Greenfield said that he however paid Mr. Brown a further Ten Thousand Dollars (\$10,000.00) instead of the agreed Five Thousand Dollars (\$5,000.00) as a further payment towards the purchase of the land by means of a manager's cheque from National Commercial Bank. It was then agreed between Mr. Greenfield and Mr. Brown that upon the transfer of the title for the land to Mr. Greenfield, he would pay the balance of Twenty Two Thousand Five Hundred Dollars (\$22,500.00).

[90] Mr Greenfield said that on or about June 11, 1984, the subject property was transferred to him and sometime thereafter, the Certificate of Title was handed to him by Mr. Brown. Approximately two (2) days after he had received the title, Mr Greenfield said he gave the title to Mr. Brown who had asked him to borrow it to take to Mr. Miller's office. Several months passed and Mr. Brown did not give him an update on the return of the title.

[91] In or around 1985, Mr Greenfield averred that he asked Mr. Brown for the Title and he decided that they should both go to Mr. Miller's office to enquire about it. They later went to Mr. Miller's office where he informed them that the title was at his personal residence. Approximately two (2)

weeks later, he went to see Mr. Miller where he once again requested the title, however at that time he was made aware that someone had broken into Mr. Miller's car and had stolen his briefcase which contained the title.

[92] He went on to say that in or around 1991, he eventually informed his bank manager, Mr. Stewart Reid at National Commercial Bank, Lucea Branch that the title had been stolen and he offered his assistance. He relied entirely on the assistance of Mr. Reid for the drafting and lodging of the Application for lost title. Mr. Greenfield stated that he gave Mr. Reid a description of the circumstances surrounding the loss of the Title however, Mr. Reid drafted the application as he saw appropriate. Mr. Greenfield only executed the document as he instructed him.

[93] The witness said that after he received the new title, he was ready to pay over the remainder of the agreed selling price to Mr. Brown and he indicated this to him. However, at that time, Mr. Brown attempted to renegotiate the terms of their agreement. Mr Greenfield said that he did not agree to the proposal because they had already agreed that the remainder of the selling price was Twenty-Two Thousand Five Hundred Dollars (\$22,500.00). This disagreement caused the breakdown of the relationship between them. As a result, the balance was not paid to Mr. Brown.

[94] Thereafter, Mr Greenfield stated that he served a Notice to the woman who was occupying the land and subsequently brought court proceedings against her in the then Hanover Resident Magistrate's Court at Lucea to recover possession of the premises. Mr. Brown and Mr. Eral

Barton accompanied the lady and gave evidence on her behalf, however she was ordered to vacate the premises.

[95] Moreover, Mr Greenfield stated that during the court proceedings in Lucea, he paid the balance of the initially agreed sale price of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) through his Attorney, Mr. Frater on or about the July 27, 1995. However, he is not aware if the balance was ever duly paid over by his then attorney as they were in the midst of the dispute over the land.

[96] Mr. Greenfield then made an application to the Hanover Parish Council to subdivide three (3) one acre lots from the subject property sometime after receiving the title. The Hanover Parish Council approved the subdivision. However, he did not request that the title be transferred into his name in order to use any influence he supposedly had to get the application approved. He made an application for subdivision on different proposed plans than that which was made by Mr. Brown as he decided to make the most of his investment and proposed to sell lots on his own terms to prospective purchasers.

[97] He maintained that at no point during his negotiations and/ or purchasing of the subject property did he ever meet or communicate with Mr. Barton. Furthermore, the previous proprietors, Mr. Altamont Brown and Mrs. Rose Brown were never deceived and therefore, the property was never fraudulently nor falsely transferred into his name.

Cross examination

[98] During cross examination, Mr Greenfield was asked whether he was aware that Mr. Barton was the owner of lot 5.

“Q: *are you still the registered proprietor of this property*

A: *yes*

Q: *when you came to property it was occupied*

A: *yes there was a caravan on it, somebody was living there I don't know the name of the person its after a while I know that her name was Whittingham*

Q: *parcel owned by the claimant*

A: *no, I wasn't told that*

Q: *told anything about the claimant and the land*

A: *yes, it was told after it was shown to me by Mr. Brown it was told to me that he had paid down some money on that particular parcel*

A: *I bought the entire property from Altamont Brown*

Q: *the claimant never told you it was his land*

A: *no*

Q: *throughout you didn't know about the claimant's claim*

A: *not until I took Ms. Whittingham to court to come off*

Q: *in 1991 the wire fence enclosing the claimant's property was shifted*

A: *I don't know about the claimant's property*

Q: *when he came and did the survey the fence was shifted*

A: *the broken fence was fixed because Ms. Whittingham was coming over my house “*

[99] Mr. Greenfield was questioned extensively about the instrument of transfer as well as the lost title application which the claimant alleges were used by Mr. Greenfield to fraudulently obtain the Certificate of Title for the entire subject property in his name.

“Q: *You and Altamont Brown went to Mr. Miller’s office in 1983*

A: *I went in 1984 for the first time with the Browns, Mr. Miller was there and Mr. Dixon*

Q: *did you sign any documents in his office*

A: *yes, a transfer of title*

Q: *in 1984*

A: *April of 1984 if I am not mistaken*

Q: *Mr. Dixon was present*

A: *yes*

Q: *when did you pay a deposit to Altamont Brown*

A: *before we went to Mr. Miller’s office*

Q: *you paid him \$32,500*

A: *I gave him a cheque for \$33,000 from Hanover Credit Union*

Q: *when was this*

A: *in April of 1984*

Q: *in that said month you went to Mr Miller's office*

A: *yes*

Q: *received title in 1984*

A: *yes*

Q: *who gave you your title*

A: *Altamont Brown gave it to me and I had it for about a week*

Q: *a portion of the purchase price was still owing*

A: *in 1984 I paid more money \$10,000, I paid \$43,000*

Q: *in 1985 you had title already*

A: *yes*

Q: *in 1986 you paid more money*

A: *we had an agreement Altamont Brown and I that I should pay \$33,000 as first payment and I should pay the rest when I obtained title, 2 weeks after we went to Mr. Miller and came back he came back to me and said he is in financial difficulty and asked if I could give him \$5000 I said I could give him more, he asked how much more I said I could give him \$10,000*

Q: *up to 1990 you had not completed payment*

A: *I was depending on what Altamont Brown said which is to pay when I get the title*

A: *so you didn't get title*

A: *yes, he took it back*

[Witness shown exhibit 1]

A: *I didn't have the title, he said it was lost, I didn't have it in my possession, I got the title in 1984, he came and took it back and I didn't see it again until 91 or 94. When I applied for the lost title I didn't see that title again*

Q: *they took the title and came back*

A: *they came back to say the title was lost, Mr. Brown and Mr. Miller*

Q: *who applied for the new title*

A: *I didn't do it personally, the manager at the bank promised to assist me*

Q: *did you make a report to the police that the title was missing*

A: *they told me the title was in my name and they could not do it, I did not make a report to the police I did not know I had to do that*

Q: *did you sign a declaration that you had left the title in your car and it was stolen from your briefcase - Exhibit 24 is that your signature*

A: *yes, it is my signature, I signed it without reading it or anybody reading it*

Q: *somebody witnessed it*

A: *no nobody witnessed it*

Q: *you didn't sign it before a JP*

A: *no"*

[100] Moreover, evidence pertaining to the application for the subdivision of the subject property was also elicited from Mr. Greenfield during cross examination.

“Q: you said you did a subdivision of the property

A: yes

Q: how many times did you apply

A: one time, for 5 lots

Q: you did not apply for 3 lots

A: that was an error in my witness statement when I said 3 lots

Q: you got an approval for 3 lots didn't you

A: no, I don't know about that

Q: in 2018, didn't you make an application for subdivision of 3 lots

A: I don't recall applying for 3, I think I made an application for 5 lots

Q: you said in your witness statement you said you subdivided into 3 lots (see para 24 of witness statement at page 129)

A: I am definitely confused between 5 lots and 3 lots

Q: wasn't it read over to you

A: I was concentrating on 5 lots, not on 3 lots

Q: when you say to subdivided 3 one-acre lots is that a mistake

A: yes and the rest would remain in my possession

Q: *you are now admitting you applied for subdivision of 3 one-acre lots*

A: *yes*

Q: *you are now admitting to doing 2 subdivisions*

A: *I don't recall, I am confused between 3 and 5 lots"*

[101] Mr. Greenfield also stated that lot 5, along with other portions of the subject property was enclosed. Furthermore, he admitted during cross examination that because of what Mr. Brown told him, he knew that Mr. Barton had an interest in the subject property. The defendant would have had no reason to fence any portion of the entire subject property. If there was such a reason it was not given in the evidence.

“Q: *you agree that when you first approached the land lot 5 was enclosed*

A: *not only that part but other parts was enclosed*

Q: *asked you about lot 5*

A: *it was*

Q: *Lorraine Whittingham occupied it*

A: *yes*

Q: *she was the claimant's tenant*

A: *yes*

Q: *so you would have known the claimant had an interest in that land*

A: *yes, because of what Altamont Brown told me*

Q: *good relationship with her*

A: *yes, very good*

Q: *she assisted you in construction of your house*

A: *she was around I don't remember if she assisted me*

Q: *a rift developed after the surveyor came on the land*

A: *no, it developed because of other things*

Q: *you had an altercation with the claimant*

A: *the claimant had an altercation with me*

Sugg: *you were taken to court in Hanover by the claimant for pulling your gun on him*

A: *that's what he alleged*

Q: *Altamont Brown gave evidence for him*

A: *yes*

Q: *that was in 199³/₄*

A: *don't recall the year*

Q: *up to that time you had not paid the balance*

A: *I offered him and he didn't want to take it*

Sugg: *making that up*

A: *no*

Q: *You know it was the claimant who had purchased that land*

A: *no, I was told he paid down \$4,000 with the agreement that if the subdivision turned down the claimant will accept back the money.”*

Discussion

DISCUSSION

Does the claimant have an interest in lot 5

[102] There is no dispute that the claimant and the Browns entered into a sale agreement for the purchase of lot 5 and Four Thousand Dollars (\$4,000) was paid as a deposit by the claimant. Further, there is no dispute that Altamont Brown wrote out a receipt in respect of this payment and gave it to the claimant. The balance purchase price of Two Thousand Dollars (\$2,000) was to be paid upon subdivision approval which then was further qualified by the receipt of the certificate of title when the defendant bought the land. A receipt for the deposit bearing the date February 17, 1979 issued by the Browns became Exhibit 2. The sale agreement became Exhibit 4.

[103] The payment of a deposit subsequent to an oral agreement for the purchase of land is sufficient as a memorandum in writing. The case of **Steadman v Steadman**¹¹ held that a receipt for the payment of money for land was an act of part performance sufficient to give rise to a valid and enforceable contract. The case at bar is one in which the contract was reduced to writing. This sale agreement constituted a binding

¹¹ [1976] A.C. 536

contract between the claimant and the Browns, the performance of which the vendors were bound to honour, the sale having been set in motion. The receipt standing alone would have been evidence of an enforceable agreement to enter into contractual relations.

[104] It is undisputed that the defendant was aware from the outset that a part of the land he intended to purchase from the Browns was occupied by Ms. Whittingham, the tenant of the claimant. This means that the defendant took the land with actual notice that lot 5 was in the possession of the claimant.

[105] I find that the claimant took possession of the land and has retained possession. He put a caravan on the land, occupied the land himself with his family and subsequently let the land to his tenant. He enclosed lot 5 with a fence, constructed a pit toilet and planted fruit trees. These acts of possession demonstrate both physical possession and the intention to possess the land. These acts constitute actual possession and the intent to possess lot 5.

[106] I find it curious that the defendant did not challenge the fact that the claimant had enclosed lot 5 with a fence or that lot 5 was occupied. The defendant admitted to repairing the fence when it broke down, he explained that it was to stop the tenant from coming onto his property before she was evicted. He does not deny that this dealing with the fence caused a problem with Ms. Whittingham, the Browns and the claimant. This is an admission by the defendant that he had actual notice of the claimant's interest in, occupation of and expenditure on the land.

Fraud

- [107] Rule 8.9 of the Civil Procedure Rules, 2002 prescribes that the facts upon which a claimant relies must be particularized. The Rules do not expressly state that fraud must be pleaded. The claimant has pleaded the particulars of the fraud he alleges. He relies on the evidence presented viva voce, the transfer deed before this court, the certificate of title for the subject property complete with the requisite statutory declarations to support his claim.
- [108] His evidence was that based on the contract with the Browns, the certificate of title for the subject property was given to one Beresford Miller.
- [109] When matters became contentious, the claimant lodged a caveat numbered 95596. It was withdrawn without his knowledge or consent. The letter addressed to the “*Registerer*” of Titles bore the name “*Errol Barton*” and a signature which was not his own. The subject property was transferred in its entirety to the defendant by means of forgery and the defendant was registered by way of lost title application as legal owner of the subject property. The deposit he paid was never refunded to him by the Browns. His tenant Ms. Whittingham has been living on lot 5 since 1982.

Was the defendant a bona fide purchaser

- [110] A defendant who can show that he is a purchaser of the legal title for value and that he had no notice of any equitable interest can rely on the defence of bona fide purchase.

[111] The claimant admits to seeing a sale agreement between the Browns and the defendant which was explained to him by Mr. Brown. It was the claimant's understanding that: *"Altamont Brown was to cut me off, he was to come and give me my title and the defendant was to have 3 ¾ acre and 1 rood."*

[112] First, Lorraine Whittingham made it plain that the defendant with whom she was good friends, knew that he was to obtain subdivision approval for the subject property and a certificate of title with a splinter title for the claimant. She said it was the defendant who told her this at the fence one day, "if the claimant gwaan with anything" then he won't get his title. This evidence which I accept is demonstrative of the defendant's intention to deprive the claimant of his land. This intention can be seen from the evidence of the defendant that he intended to sell the lots and to make a profit, therefore he did not follow the plan set out by the Browns.

[113] Lorraine Whittingham was not a witness who was readily controlled. Nevertheless, counsel put these questions to her:

Sugg: the defendant told you he was the new owner of the land

A: no sir

A: I was at home lying down in the caravan and I hear somebody call me and when I look outside I see Mr. Altamont Brown and I see Mr Hartley I know him as surveyor and Altamont Brown said that this man is the surveyor and this man is the defendant and he came to survey the land, the defendant buy over there and he

wants me to witness the surveyor and I witness it and see the 4 corner where they found the pegs.

Q: at that same time, Altamont Brown told you that the defendant bought the rest of the land

A: he said he want to make me witness to cut off the claimant's part because the defendant buy over there so (points) so he want to find the peg

[114] Here it was being suggested to Miss Whittingham that the defendant did not buy the subject property in its entirety. He was buying the balance of the land, the portion which did not belong to the claimant. She agreed that the defendant did not buy the claimant's part of the land and in fact, answered that that was the purpose of the survey that day. Counsel for the defendant while making this suggestion to an occupier, presented a case to the court in which the defendant said that he was the legal owner of all of the land.

[115] Second, the defendant had notice of the claimant's agreement with the Browns. He says so in his evidence from the witness box. He was asked whether he would have known of the claimant's interest in the land and he responded yes, because of what Altamont Brown told him. He does not deny attending the survey with Mr. Brown to ensure the boundaries were set.

[116] Third, the defendant did not produce a sale agreement to the court. There is no description of the land being purchased in any memorandum, and no purchase price in any receipt or other document. There is no contest that he did purchase land and that he made a

deposit of Thirty Two Thousand Five Hundred Dollars (\$32,500.00) to the Browns. There is nothing before this court to suggest that the deposit paid by the claimant was ever refunded to him, who says it was not. The defendant bases his statement that the refund was made to the claimant on hearsay which is not taken into account. The admissible evidence which remains is that the deposit was never refunded to the claimant. Therefore, the defendant bought the land subject to the claimant's contract with the Browns.

[117] Fourth, despite this knowledge, the defendant admits to applying for subdivision approval for three (3) lots only, he said he did so to make the most of his investment and proposed to sell the lots on his own terms.

[118] Fifth, despite this knowledge, and the application for three (3) lots which were to be sold (without reference to lot 5), the defendant says at no point in his negotiations and or purchase of the subject property had he ever met or communicated with the claimant. This is despite the evidence of court cases involving the both of them. The defendant acted without reference to the claimant's interest of which he had actual notice.

[119] I turn now to the documents tendered in evidence. First, the transfer deed. Section 20 of the Evidence Act provides for the comparison of handwriting:

“Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court

and jury as evidence of the genuineness or otherwise, of the writing in dispute.”

[120] Neither side called any expert or any witnesses as to the handwriting on the transfer document. This does not mean that the court is incapable of making its own comparison. The Evidence Act does not specify that the witness must be an expert in handwriting analysis, nor is the court bound by the opinion of any witness or expert called by either side. The differences in the writing were so obvious that the court felt no need to call its own expert witness to aid in attaching weight to this document.

[121] The purported instrument of transfer appears to be signed by Altamont Brown and there is no signature from Rose Brown at all, where there should be a signature, there is a printed name. This accords with the evidence of the claimant, upon examination by the court, there is a signature on the sale agreement by Rose Brown. This means that Rose Brown has a signature. Her signature is in cursive. While claiming no qualifications as an expert in handwriting, it is plain to see that the penmanship is different and that the lowly printed script is entirely dissimilar to the signature in cursive which is lofty and bold. The court bears in mind that what was being executed was a legal document.

[122] Altamont Brown also signed the sale agreement as well as the receipt for the deposit paid by the claimant, this is without challenge. The signature on the instrument of transfer purportedly by Altamont Brown misspells the surname Brown in one place and is illegible in the other, whereas on the sale agreement and receipt, the signature of Altamont Brown is perfectly legible. While the signature of any signatory may change over time the signatory is expected to remember the spelling of

his/her own names. Finally, in respect of the Justice of the Peace, that individual cannot be identified and he/she adds the letters J.P. before the signature and not after. There is no parish after the signature of the Justice of the Peace, which is highly irregular.

[123] The person who had written on the names of the Browns onto the instrument of transfer failed to capture all the subtle features or the fluency of execution which characterized their original signatures.

[124] The transfer sets out the sum for consideration as Five Thousand Dollars (\$5,000.00) and this was said to be a mistake by the defendant.

[125] Nonetheless, the instrument of transfer was executed on April 15, 1984 for the sum of Five Thousand Dollars (\$5,000.00) in respect of land part of Haughton Court in the parish of Hanover consisting of 4 acres 1 rood and 073 perches. The transferor purported to be the Browns, the transferee, the defendant. In the witness statement of the defendant he gives the date of registration of the instrument of transfer as June 11, 1984 and the consideration to that point would have been Forty Two Thousand Dollars (\$42,000.00). The evidence discloses that the transfer was entered in the Register Book on June 11, 1984 for consideration of Five Thousand Dollars (\$5,000.00). This discrepancy has not been explained by the defendant. It is another example of the misinformation supplied to the Registrar of Titles.

[126] The defendant obtained a certificate of title which was based on two statutory declarations from himself,¹² one from Corporal Cecil Clarke¹³

¹² Exhibit 24 - and Exhibit 27 - dated August 30, 1991

and the other from Leroy Harding, Bank Manager.¹⁴ The open undisturbed possession of the claimant on lot 5 was not made known to the Registrar of Titles in any of the defendant's statutory declarations.

[127] In Exhibit 24, the defendant states that he is the registered proprietor of No. 63 Haughton Court, registered at Volume 729 Folio 16 in the Register Book of Titles. He said that he had the duplicate certificate of title along with other documents in a brief case in his dwelling house at Haughton Court and on November 21, 1990, the brief case containing the title was stolen from his motor car while it was parked in front of his business place in Haughton court.

[128] In cross examination, the defendant said that he signed this statutory declaration in support of a lost title application which he did not read and admitted that it had not been sworn to in the presence of a Justice of the Peace. In fact, the document before me has no jurat, bears no signature from anyone and has no date.

[129] The defendant seemed to have forgotten when he inserted himself into the Exhibit 24 - his statutory declaration, that he had earlier said in evidence that the said same certificate of title had been in a briefcase stolen from Mr. Miller's car.

[130] Exhibit 27, dated August 30, 1991, states that no further charge is against the land registered at Volume 729 Folio 16 except caveat number 606761. The caveat lodged by the claimant bore number

¹³ Exhibit 25 - Dated March 7, 1991

¹⁴ Exhibit 26 - Dated May 23, 1991

95596, dated August 11, 1983. There was no indication either to the Registrar of Titles or to the court when this caveat given by the defendant was lodged. Further, that the land is land of which the defendant is the registered proprietor. On this occasion, the statutory declaration bears a jurat, has been sworn to and requests cancellation of the certificate of title. Again, there is no mention of the claimant being in occupation of any portion of the land.

[131] The statutory declaration of Corporal Cecil Clarke speaks to a report made to him on November 21, 1990, by the defendant:

- 3) *“That he reported the stealing of the duplicate certificate of title registered at Volume 729 Folio 16 on his business premises at Haughton Court aforesaid.*
- 4) *That the briefcase which contained the aforesaid title was found on the premises on the 22nd day of November, 1990 with the said title not therein.*
- 5) *That his report was taken and recorded.”*

[132] What is astounding is that despite relying on these documents in support of a lost title application in cross-examination, the defendant said:

- a. He did not have the title in his possession as it was lost after 1984 and he did not see it again until 1991 or 1994.
- b. He did not personally make a lost title application; it was the manager at the bank who promised to assist him.
- c. He did not make a report to the police and did not know he had to.

- d. He signed the statutory declaration about the title being stolen from his car without reading it although he signed it. No one read it for him, no one witnessed it for him and it was not signed before a Justice of the peace.
- e. He does not know Cecil Clarke, corporal of police, whose statutory declaration supported his lost title application, and the version that the title was stolen from the defendant is false, as he did not make a report to him about the lost title 'so Mr. Clarke is lying'.
- f. Moreover, there was no agreement to purchase land for Five Thousand Dollars (\$5,000.00) with the Browns. The agreement was to purchase the land for Sixty Five Thousand Dollars (\$65,000.00) not Five Thousand Dollars (\$5,000.00) and as for the transfer amount being wrong, he did not know if it was and would not answer yes or no lest it incriminate him. He nevertheless went on to agree that the transfer document should have read Sixty Five Thousand Dollars (\$65,000.00) and not Five Thousand Dollars (\$5,000.00) despite his fear of incrimination. He signed the transfer without looking at the numbers on it, he did not see the numbers Five Thousand Dollars (\$5,000.00) on that document.

[133] The defendant gave his evidence in a manner which did not lend itself to any positive assessment of his credit. He was shifty and evasive, seeking to distance himself from what were clearly acts for which he was solely responsible. It is not difficult to find that the defendant's audacity was only rivalled by his mendacity. I reject his evidence wholesale.

[134] It is clear that the statutory declarations that the defendant relies upon are false. They fail to set out all such matters as may be necessary to put the Registrar of Titles in a position to make an informed assessment of the true situation regarding the application for registration based on a lost title. The defendant has relied on outright falsehoods and ignored the interest of the claimant which has the effect of dishonestly misrepresenting the facts. The obvious denial of the claimant's interest could only have inured to the benefit of the defendant.

[135] Finally, the certificate of title issued in the name of the defendant has a plan attached which contains subdivision approval of three (3) lots. This is evidence of the defendant's declared intention to ensure that the claimant did not get his splinter title.

[136] The defendant could not be said to be a bona fide purchaser in these circumstances.

[137] For the foregoing reasons, this court holds that the certificate of title which is the subject of these proceedings was obtained by fraud. The court finds that the claim succeeds and that the counterclaim will be dismissed.

[138] Orders:

1. Judgment is entered for the claimant on the claim and on the counterclaim.
2. Costs awarded to the claimant to be agreed or taxed.

3. The court declares that Eral Barton is the owner of lot number 5 of all that parcel of land known as number 63 Haughton Court, Lucea, in the parish of Hanover then comprised in the Certificate of Title registered at Volume 729 Folio 16 of the Register Book of Titles and now registered at Volume 1240 Folio 758.
4. The Registrar of Titles is ordered to cancel the Certificate of Title registered at Volume 729 Folio 16 of the Register Book of Titles and now registered at Volume 1240 Folio 758.
5. The duplicate certificate of title is to be delivered up by the defendant to the Registrar of Titles for cancellation forthwith.
6. It is ordered that the defendant do forthwith transfer the said lot 5 to the claimant free from all mortgages and any incumbrances.
7. The defendant is restrained by himself, his servants and/or agents' heirs and assigns from entering or remaining on lot 5 or interfering with any person in possession with the consent or under the authority of the claimant. He is further restrained from transferring, disposing of, or selling, or parting with the land registered at Volume 1240 Folio 758, or registering any mortgage or any instrument which is inconsistent with the claimant's interest in the aforesaid lot 5.
8. Liberty to apply.

