



[2020] JMSC Civ 74

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2016HCV04403**

|                |                                 |                  |
|----------------|---------------------------------|------------------|
| <b>BETWEEN</b> | <b>ROBERT CARTY</b>             | <b>CLAIMANT</b>  |
| <b>AND</b>     | <b>MELVA PATRICIA MCPHERSON</b> | <b>DEFENDANT</b> |

**IN OPEN COURT**

**Mr Courtney Williams, Mr Jordan Chin and Mrs Trudy-Ann Dixon-Frith instructed by DunnCox for the Claimant**

**Ms Cavelle Johnston, Ms Kaysian Kennedy, Ms Shanice Nesbeth and Mr. Chadwick Berry instructed by Townsend Whyte & Porter for the Defendant**

**Heard:** January 29, 30 and 31, (February 26, March 19 and April 12, 2019) and May 15, 2020

**Land Dispute – Whether title obtained by fraud – Registration of Titles Act (RTA), ss. 70, 161(d) & 162 – Expert Evidence**

**LINDO, J.**

**[1]** The Claimant, Robert Carty, resides in the United States of America (USA) and is the brother of the Defendant Melva McPherson, who also resides in the USA. They are the nephew and niece, respectively, of Mrs. Sylvia Hunter, deceased, who died on December 22, 2015.

**[2]** The parties are now the registered proprietors, as joint tenants, of property known as All that parcel of land part of Greendale formerly part of Bretts Pen and Graham Pen in the parish of Saint Catherine known as Lot No. 240 on the plan of

Greendale comprised in Certificate of Title registered at Volume 1011 Folio 358 of the Register Book of Titles, (the property).

### **Background to Claim**

**[3]** On the Certificate of Title in respect of the property, the following transfers are recorded:

(a) Transfer No 731943 by way of gift registered on the 15<sup>th</sup> day of September 1992 to Sylvia Hunter for her natural life and thereafter to Melva Patricia McPherson of 61 Content Drive, Greendale, Spanish Town, St Catherine, Nurse;

(b) Transfer No. 1161986 by way of gift registered on the 28<sup>th</sup> day of September, 2001 to Sylvia Hunter for the term of her natural life and thereafter to Robert Carty of 1041 Nostrand Avenue, Brooklyn, New York, 1225, USA, Dry Cleaner;

(c) Transfer No. 1357519 by way of gift registered on the 24<sup>th</sup> day of May, 2005 to Sylvia Hunter of 61 Content Drive, Greendale, Spanish Town, St Catherine, Retired Clerk for the term of her natural life and thereafter to Robert Carty... and Melva Patricia McPherson of 13119 S.W 21<sup>st</sup> Street, Miramar S.W. Florida 33027, United States of America, Nurse Practitioner as Joint Tenants.

**[4]** Mr Carty is alleging that Ms McPherson became joint owner, with him, of the property upon the death of their aunt Ms Sylvia Hunter, who had a life interest in the said property. He claims that the residuary interest in the property was gifted to him by Sylvia Hunter in 2001 although, prior to that transfer, she had given herself a life interest and the residuary interest was given to the Defendant.

**[5]** He states further that he is not aware of Transfer No. 1357519 being registered on May 24, 2005 which gave Sylvia Hunter a life interest and the property thereafter passed to him and the Defendant as joint tenants.

## The Claim and Ancillary Claim

[6] By way of FDCF filed on October 24, 2016, supported by affidavit of the same date, Robert Carty sought the following reliefs:

*“1. Declaration that the Defendant Melva Patricia McPherson obtained the registration of certificate of title partly in her name for premises known as lot No 240 on the plan of Greendale ... by fraud.*

*2. A Declaration that the Claimant is the owner of 100% beneficial interest in the property...*

*3. A Declaration that the Claimant is entitled to have the Certificate of Title for the property cancelled and a new Certificate of Title issued in his sole name.*

*4. An Order directing the Registrar of Titles to cancel Certificate of Title registered at Volume 1011 Folio 358 of the Register Book of Titles and to issue a new certificate in the name of Robert Carty*

*5. Damages for fraud.*

*6. Attorneys costs and costs to the Claimant...”*

[7] By her ‘Counter Notice’ filed October 20, 2017, Ms McPherson seeks the following orders:

*A Declaration that “Transfer No 1357519... is valid. Alternatively, that Transfer No. 1161986 ...was obtained by fraud ... Alternatively, a Declaration that the property ... is to be apportioned in accordance with Transfer No 731943 ... , A Declaration that the property ... now passes to Melvia (sic) Patricia McPherson in accordance with the Transfer No 731943. A Declaration that the Defendant is entitled to have the Certificate of Title registered at Volume 1011 Folio 358 cancelled and a new Certificate of Title issued in her sole name ...”*

[8] By order of the court made at the Pre Trial Review on October 25, 2018, the matter was treated as if commenced by Claim Form. The Affidavit in Support was accepted as the Particulars of Claim and the Defendant’s ‘Counter Notice of Application...’ filed on July 21, 2017 and Affidavit filed on October 20, 2017 were allowed to stand as an Ancillary Claim. The Claimant’s Affidavit in Response to the Defendant’s ‘Counter Notice’ filed on March 13, 2018 was to stand as

Defence to Counterclaim, and all Affidavits to stand as Witness Statements. The matter was set for trial in open court.

- [9] The court on March 12, 2018 “approved as an expert for the Claimant”, Ms Beverly East whose report was filed on March 14, 2018 and on September 24, 2018 the court ordered that the Land Administration and Management Programme (LAMP) of the Ministry of Economic Growth and Job Creation disclose to the Claimant’s attorneys, documentation “including but not limited to the instructions received to prepare and lodge Instrument of Transfer No 1357519 at the Office of Titles”. The Claimant then filed a Claim Form on October 31, 2018 pursuant to an order of the court made on October 25, 2018.

### **The Trial**

- [10] The matter came on for trial on January 29, 2019, and the Claimant gave evidence on his own behalf and called one witness Dr Winston Dawes, in support of his case. The Defendant gave evidence on her own behalf and called no witness in support of her Defence.
- [11] Expert evidence came from Ms. Beverly Y. East, whose report, filed on March 14, 2018, was admitted in evidence as Exhibit 4 and she was subject to cross examination.
- [12] The Agreed Bundle of Documents filed on January 25, 2019, Letter to Sylvia Hunter from the Ministry of Land and Environment, dated June 30, 2015, and pages 131 -134 i.e. documents from LAMP were agreed and admitted in evidence as Exhibits 1, 2 and 3. Other documents admitted in evidence were the medical records of Sylvia Henry (Exhibit 5) and the Resume’ of Dr Dawes (Exhibit 6).

### **The Claimant’s Case**

- [13] The Affidavits of the Claimant filed on October 24, 2016 and March 13, 2018, respectively as well as his Witness Statement filed on November 14, 2018 were

admitted as his evidence in chief after her took the affirmation and identified the documents.

- [14]** His evidence is that the property, the subject of the claim was transferred to him on September 28, 2001 by way of Transfer No. 1161986 and by the said transfer, Sylvia Hunter retained a life interest. He states that prior to this, Sylvia Hunter had transferred the property to the Defendant by way of gift and had retained a life interest in the property.
- [15]** He asserts that the said property was fraudulently transferred by way of gift in the joint names of himself and the Defendant by Transfer No. 1357519 on May 25, 2005 and that Sylvia Hunter retained a life interest in the land. He contends that this later transfer was done without his knowledge or consent and without the knowledge or consent of Sylvia Hunter and that his signature and that of Sylvia Hunter were forged.
- [16]** He adds that in 2001 Sylvia Hunter suffered a stroke which caused her to be unable to write “as well as not being able to speak clearly” and that she never recovered from the effects of the stroke and up to the time of her death was under the care of doctors and that she had limited mobility. He also states that due to the debilitating condition of Ms Hunter she was provided with caregivers and in 2015 she went to reside with her adopted daughter.
- [17]** When cross examined, the Claimant indicated that Ms McPherson was his sister by the same mother, Theodora Price who resides in New York. He admitted to signing Transfer in 2001 and stated that he was at 51 Content Drive, Greendale, Spanish Town when he signed it. He maintained that he did not sign the Transfer in 2005 and stated that if Ms McPherson did not sign the 2001 Transfer “it would be a valid document”.
- [18]** He agreed that the contents of the letter from Townsend Whyte and Porter dated May 19, 2016 were very clear. He also agreed that having read the letter, he made contact with Attorney C. Jacas-Mccarthy, spoke to her himself and

instructed her to prepare a response on his behalf. After stating that no response was prepared, on being pressed, the Claimant admitted that she prepared a response "June 2016, thereabout". He also agreed that the response indicated that he was minded to purchase the share owned by Ms McPherson and that he requested a sale price.

- [19]** He admitted that his Passport, issued 2011, and his Driver's License, issued 2014, bear his signatures but they appear to be different. He said the driver's license is more condensed "so you have to put it all together" and said that depending on the document, he signs in a different manner.
- [20]** When shown Item 11, page 23, of Exhibit 1, he agreed to signing it but said he could not recall when. He agreed that his signature looks different from his known signature as in his passport and also from his known signature as in his 2014 driver's licence. After much pressing, he agreed that the transfer dated 2001 which has his signature, would have been closer in time to 2005. He denied knowing he would have had a third writing sample which he would have had on the 2001 transfer, and said "I gave her my correct signature and my current documents..."
- [21]** He admitted he was not present when Transfer 1357519 (para 18 of aff. Oct 24) was presented to the Registrar of Titles, that he had no knowledge who presented it or caused it to be presented and agreed that he had no basis for indicating that he believed the Defendant forged his signature or that of Ms Hunter. He also admitted to having no basis for saying he believes "the Defendant forged or caused to be forged [his] signature on the said instrument of transfer, along with the signature of Mrs Hunter."
- [22]** Mr Carty denied meeting Mr A Shirley when he lived with Ms Hunter and indicated that it was when he went to reside overseas. He also denied being aware that Mr Shirley is from St Catherine but admitted to filing a lawsuit against him in New York in connection with the same 2005 transfer, the subject of this

case. He said he was not aware that Mr Shirley is saying that he, Mr Carty, went to his office and personally signed the transfer dated 2005.

**[23]** He admitted that when he told the court that he was not aware that Ms Tulsie was taking care of Ms Hunter's needs, that was not true and also admitted that Ms Tulsie would be around Ms Hunter on a daily basis and would be in a better position to say if she could see clearly. He then disagreed that Ms Tulsie would be better able to speak of how Ms Hunter would best function.

**[24]** Mr Carty said he had no personal knowledge if Ms Hunter could perform basic daily tasks or could write properly and agreed to having no person knowing of Ms Hunter not being able to speak clearly or care for herself, and did not know of her not physically able to sign documents.

**[25]** He agreed that it was a clear statement to say "[he] didn't sign...or any other document in relation to the property...", but said he did not mean exactly that. He then said that the only document in question to his mind was the transfer dated 2005, and that when he went on to say he signed no other document, he was referring to 2005.

**[26]** Dr Winston Dawes gave evidence that he examined the medical records of Sylvia Hunter which were prepared by Dr Donald Shakespeare, now deceased. He states among other things, that the records show that Ms Hunter had surgery in March 2002, suffered a stroke during a further surgery in 2002 which left her with a residual speech deficit, and that in May 2003 her "muscle power was significantly reduced in the right upper limb ..."

**[27]** When cross examined, he said that he had never met Sylvia Hunter and had never spoken to Dr Shakespeare about her. He said he could not be 100% sure if he saw the original records and admitted that on inspection of the notes while giving evidence, it states "muscle power slightly reduced". He indicated that there is a big difference between 'slightly' and 'significantly' reduced and that his reference to 'significantly' may have been an overstatement. He said that the

records show that Sylvia Hunter was able to move around and walk in 2003, and that he did not see any medical records for 2005.

**[28]** Ms Beverley East was called as an expert witness. Her evidence is that on September 19, 2017 she received certain documents from the offices of DunnCox, to examine and identify whether the signatures on the Instrument of Transfer #1357519 are authentic signatures of Robert Carty and Sylvia Hunter. These documents are:

“ 1. Report for Registered Instrument #1357519 dated 10<sup>th</sup> January 2001 (date changed by hand to 2005)

2. Jamaican Passport #1367911 of Sylvia E. Hunter issue date 21<sup>st</sup> November 1990

3. Elector Registration Identification Card of Sylvia Hunter issued 2008

4. Jamaican passport #A3285871 of Robert Carty issue date 1<sup>st</sup> September 2011

5. Jamaican Driver's License of Robert Carty issue date 02-03-2014”

**[29]** Her report indicates *inter alia*, that:

*“there are specific characteristics evident in Sylvia Hunter's signature that is not evident in the questioned signature ... Graphics 7 & 8 demonstrates the uncharacteristic movement of the questioned signature of Robert Carty. Showing pen lifts throughout the signature. The signature also has a vertical slant and there is no evidence of any of the letters in the questioned signature showing resemblance to the known signatures of Robert Carty.”*

**[30]** Her opinion and conclusion are as follows:

*“... it is my professional opinion that the questioned document ... Instrument of Transfer does not bear the authentic signatures of either Sylvia Hunter or Robert Carty. The disparities are too numerous to be taken by chance.”*

**[31]** When cross examined, Ms East indicated that some persons' handwriting change over time and that persons can change the way they write, over time. She said she was not told that Mrs Hunter had a defect in her writing hand and



that any defect could affect how she writes and she disagreed that if she had been advised that would have affected her findings and result.

[32] Ms East indicated that a definite finding of authenticity of a signature is possible from a photo-copy document and agreed that her report did not indicate whether the documents were original or copy. She said the Passport and Electoral Identification were copies and that the Passport and Driver's Licence were scanned copies.

[33] She agreed that only two signature samples for Mr Carty were supplied to her which she identified as K3 which would be a sample for 2011 and K4, a sample for 2014. She stated that they are both illegible signature strokes and that the signature of Robert Carty on the transfer in issue consists of legible letters and admitted to being asked to compare two illegible signatures with two legible signatures on the transfer but disagreed that it made it difficult to assess.

[34] She said she was not supplied with Transfer No 1161486 for examination but it would have made no difference, had she been supplied with it. She agreed that to a lay person the signatures of Robert Carty on Transfer No 1161486 and on Transfer No. 1357519 appear to be different, but disagreed that the signature of Robert Carty on 1161486 appear different from the known signature of Robert Carty on K3 and K4. She denied knowing that Robert Carty had said that depending on the document, he may sign in a different manner, but said that would not have affected her deliberation.

### **The Defendant's Case**

[35] The evidence in chief of the Defendant is contained in her Affidavits filed June 23, 2017 and October 20, 2017, respectively. Both documents were identified by her after she was sworn.

[36] Ms McPherson states that her aunt Sylvia Hunter had her permanent home in Greendale, Spanish Town and up to 2012 when she saw her, 'physically' she

was still able to move around her home, speak clearly enough and even prepare meals even though she had a caregiver. She adds that her brother who resides in Jamaica ensured that the helper was paid and that Ms Hunter was taken care of at her own home and this was until 2015 when her aunt was taken away by another family member to an undisclosed location.

**[37]** She denies the allegations of fraud and states that she signed in the presence of Isabel Feurtado. She states also that the title was sent to her via her mother and on receipt of the title, after the passing of her aunt, she took it to her Attorneys-at-Law and instructed them to write to Robert Carty offering to have him purchase her half share. She also admits to recognising her signature and that of 'I. Feurtado' on Transfer # 1357419.

**[38]** In cross examination, she agreed that she was saying she does not know when her name came off the title as appears from Transfer No. 1161986. She said she could not recall when she went to Isabel Feurtado's house, maintained that she signed the document before Ms Feurtado who witnessed her signature and insisted that when she signed she was in Jamaica.

### **The Submissions**

**[39]** At the end of the trial which lasted three days, the Attorneys-at-Law for the parties were requested to file closing submissions by February 26 and March 19, respectively, and any response in relation to authorities cited by each party, were to be filed by April 12, 2019.

**[40]** The court records reveal that on February 26, 2019 and September 18, 2019 submissions were filed on behalf of the Claimant and Defendant, respectively. There is no indication that any responses in relation to any authorities cited has been filed.

## The Issue

[41] The issue to be resolved is whether the Defendant became registered as joint proprietor with the Claimant on the title by means of fraud. The case therefore falls to be determined on the evidence presented in relation to the signing and the presentation of the Instrument of Transfer registered on the title to the property on May 24, 2005.

## The Law

[42] The consequences of being registered on a Certificate of Title is that it affords the title holder an absolute title incapable of being challenged by a third party claiming legal interest in the property except on the grounds of fraud, prior registration, or, mistake, error and/or mis-description of parcel or boundary (see the dictum of Lord Brown-Wilkinson in the Privy Council case of **Gardener and Others v Edward Lewis** [1998] UKPC 26).

[43] **Sections 68 and 70 of the Registration of Titles Act** (the Act) set out the indefeasible nature of a Certificate of Title and **Section 71** of the Act states:

*“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 to 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”.*

[44] In **Gardener & Ors v Lewis**, *supra*, the court in referring to the effect of Sections 68, 70 and 71 of the RTA states, *inter alia*:

*“... The appellants’ legal title can only be challenged on the ground of fraud or prior registered title or, in certain circumstances, on the grounds that land has been included in the title because of ‘wrong description of parcels or boundaries’”*

- [45] **Section 161** of the Act also makes it clear that fraud, as used in the context of the Act defeats the indefeasible nature of a registered proprietor's title.
- [46] Both the Claimant and the Defendant are joint title holders and the challenge is by one joint proprietor against the other. The Certificate of Title having been registered in the names of both parties by transfer, is therefore unassailable unless the Claimant can show on a balance of probabilities that it was so registered through fraud.
- [47] The authorities show that fraud must be distinctly pleaded and proved on a balance of probabilities and that where the allegation is serious as in the case of forgery, the Claimant needs to present convincing evidence to discharge that burden of proof. According to the learned author of **Murphy on Evidence**, 12<sup>th</sup> Ed., at page 108:

*...the tribunal of fact must be able to say, on the whole of the evidence, that the case for the asserting party has been shown to be more probable than not. If the probabilities are equal, i.e. the tribunal of fact is wholly undecided, the party bearing the burden of proof will fail"*

- [48] Thesiger, L J. in **Davy v Garrett**. (1877) 7 Ch. D. 473 at 489 said as follows:

*"In the Common Law Courts no rule was more clearly settled than that fraud must be distinctly alleged and as distinctly proved, and that it was not allowable to leave fraud to be inferred from the facts".*

- [49] The word "fraud" as used in the context of the RTA has not been defined but guidance may be found in decided cases, a number of which I have considered.
- [50] In the Jamaica Court of Appeal case of **Harley Corporation Guarantee Investment Company Limited v Estate Rudolph Daley, Walters & RBTT Bank Jamaica Limited** [2010] JMCA Civ. 46, Harris JA at paragraph [52] states:

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

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

[51] At paragraph [60] of the said judgment, Harris JA says:

*"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".*

[52] In **Stuart v Kingston** (1923) 32 CLR 309, Starke J, at page 359, stated that:

*"No definition of fraud can be attempted, so various are its forms and methods...But we must say this: fraud will no longer be imputed to a proprietor registered under the Act unless some consciously dishonest act can be brought home to him. The imputation of fraud based upon the refinements of the doctrine of notice has gone. But the title of the person who acquires it by dishonesty, by fraud (sec 69), by acting fraudulently (sec. 187), or by being a "party to fraud" (sec. 187), in the plain ordinary and popular meaning of those words is not protected by reason of registration under the Act."*

[53] The kind of conduct that would amount to fraud, was described as "personal dishonesty", "moral turpitude", by Knox CJ in **Stuart v Kingston**, *supra*.

[54] The court in **John Chin v Watson's (Off Course Betting)** (1974) 12 JLR 1431 had to deal with the nature of the evidence required to establish fraud in civil proceedings. Rowe J (as he then was) pointed out the principle as stated in **Davy v Garrett**, *supra*, and noted that although fraud can be proved from circumstantial evidence, just as it can be proved from direct evidence, that proof must be by the clearest and most indisputable evidence.

[55] The Privy Council, in **Pottinger v Raffone** [2007] UKPC 22, indicates that to show that a party was registered through fraud, must, in turn, depend on what was told the Registrar when the application to be registered as proprietors was made.

- [56] In view of the authorities, I have examined the evidence against the background of the particulars of fraud pleaded. Based on the gravity of the issue, I must now determine if the Claimant has satisfied the requirements in relation to his statements of case and has provided sufficient cogent and compelling evidence for the court to find that he has discharged his burden of proof. Ultimately, the court needs to determine whether the Claimant has proved that there was “actual dishonesty; moral turpitude” on the part of the Defendant with the intention to deprive him of his interest in the property.
- [57] In his first Affidavit, the Claimant states that “the Defendant obtained the registration of the Certificate of Title to the said property fraudulently...In addition I do verily believe that the Defendant deceived the Registrar of Titles and fraudulently presented or caused to be presented false documents, including the said Instrument of Transfer, to ground her claim to alleged ownership of the said property...I do verily believe that the Defendant forged or caused to be forged my signature on the said Instrument of Transfer, along with the signature of Mrs Hunter ...”
- [58] Fraud must be precisely alleged and strictly proved. (See **Donovan Crawford and Others v Financial institutions Services Ltd.**, [2005] UKPC 40)
- [59] The fraud alleged should have been specifically pleaded and there should be a statement which sets out the full particulars of the allegations. However, the allegations of fraud as set out by the Claimant are very general in nature. The court notes that there were no specific pleadings or particulars in relation to the fraud alleged against the Defendant.
- [60] Lord Selbourne in **John Wallingford v Mutual Society and the Official Liquidator** (1880) 5 App. Cases 685 at 697 said:

*“With regard to fraud, if there be any principle which is perfectly well settled it is that general allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any Court ought to take notice.”*

[61] Harris JA in the **Harley Corporation case**, at paragraph [57] said:

*“The Civil Procedure Rules however do not expressly provide that fraud must be expressly pleaded. However, rule 8.9 (1) prescribes that the facts upon which a Claimant relies must be particularized. It follows that to raise fraud, the pleadings 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.”*

[62] The Claimant has not in my view provided any adequate evidentiary material from which this court can find that the Defendant conduct is consistent with fraud.

[63] I examined the Expert’s report against the background of the Civil Procedure Rules which provide that the expert has a duty to help the court impartially on matters relevant to his/her expertise and that duty overrides any obligation to the Claimant by whom he/she was instructed and paid.

[64] The expert witness, Ms Beverly East, concluded that the Instrument of Transfer No. 1357519 *“does not bear the authentic signatures of either Sylvia Hunter or Robert Carty”*. Her opinion that the signatures of the transferors on the Transfer No 1357519 were forged, would point to a finding that fraud has been committed.

[65] Having considered the totality of the evidence of the expert witness and bearing in mind her answers to questions in cross examination, and to the court, I find her evidence to be unhelpful .in determining the issues before it.

[66] I have also critically examined Ex 3, (Copy of LAMP’s Questionnaire #2). I note that it indicates that the Defendant, Melva Patricia McPherson, *“to be added ... ”*. It is dated May 21, 2004, and in the section marked *“comments”* it states that documents are to be sent to Ms T. Pryce, Brooklyn, New York. I therefore find as a fact that the Transfer No. 1357519 being impugned by the Claimant, emanated from documentation from LAMP. I bear in mind that neither party had any issue with the authenticity of that exhibit. I bear in mind also that on the evidence, Ms

Theodora Pryce is the mother of both the Claimant and the Defendant and there is evidence that she lived in New York.

**[67]** Mr Carty was far from generous with the truth and I did not find him to be a credible witness. Additionally, he was evasive and defensive and his answers to a number of questions in cross examination highlighted the inconsistencies in his evidence. On the other hand, I find that Ms McPherson was honest and straightforward and at no time during her evidence did the court come to the conclusion that she was being anything but forthright. I was impressed by the evidence given by her as well as her candour.

**[68]** It is not sufficient for the Claimant to merely say “the Defendant has obtained ... by fraud ... ” He has not provided any credible or reliable evidence in support of his contention. It was incumbent on Mr Carty to specifically lead evidence of the nature of the fraud alleged against the Defendant and he has failed to meet the standard required to establish any fraud on her part.

**[69]** The weight of the documentary evidence, and even the opinion evidence of the expert, are also far from sufficient to satisfy the court on a balance of probabilities that Ms McPherson obtained the title by fraud.

## **Conclusion**

**[70]** Having given serious and deliberate consideration to the lucid submissions of learned counsel for both parties and having paid regard to the evidence adduced in support of their respective contentions, I find that allegations of fraud as claimed have not been substantiated by the Claimant. I am not able to rely on the findings and opinion of the expert and the Claimant has not provided evidence on which the court can find on a balance of probabilities, that the Defendant has been registered on title by fraud. There is no evidence presented which can satisfy the court that there was any conduct on the part of the Defendant that could establish fraud on her part.



**Disposition**

[71] The claim is therefore dismissed. There will be judgment for the Defendant on the claim and, in part, on her counterclaim. It is hereby declared that transfer number 1357519 entered on Certificate of Title registered at Volume 1011 Folio 358 of the Register Book of Titles in the names of Sylvia Hunter, for her natural life, and thereafter to Robert Carty and Melva Patricia McPherson as joint tenants, is valid. Costs of the proceedings are awarded to the Defendant which costs are to be agreed or taxed.