JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 81/89

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE WOLFE, J.A. (AG.)

BETWEEN	JULIET GENTLES	PLAINTIFF/APPELLANT
AND	LENVILLE MARTIN	DEFENDANT/RESPONDENT

Hector Robinson for Appellant

No appearance by Respondent

May 18 & June 15, 1992

WOLFE, J.A. (AG.)

By writ of summons dated the 8th day of February, 1988 the appellant commenced proceedings against the respondent in the Supreme Court seeking a declaration that she is the bona fide owner of a parcel of land. The following indorsement appears on the Writ of Summons:

> "The Plaintiff has been in a open and undisturbed possession of all that piece or parcel of land part of Wentworth Estate in the parish of Saint Mary containing 3 acres 3 roods and 5 perches and being the lands comprised in Certificate of Title registered at Volume 518 Folio 39 from the year 1968.
> The Plaintiff claims to be the owner of the said land by virtue of adverse possession.
> The Defendant has unlawfully and fraudulently procured the registration of the said land in his name at Certificate of Title registered at Volume 1198 Folio 210.
> The Plaintiff claims a declaration that she is the bona fide owner of the said land and all consequential orders deemed fit by the Honourable Court."

On the 9th day of May, 1989 the respondent's attorneys-at-law addressed the undermentioned letter to the appellant's attorneys-at-law.

> "Gentlemen,
>
> Re: Suit No. E 34 of 1988 - Juliet Gentles vs. Lenville Martin
>
> We now represent the Defendant and have served Notice of Change of Attorneys-at-law on you.
>
> Pursuant to Section 171A of the Judicature (Civil Procedure Code) Act we ask that you kindly supply us within seven (7) days after the date hereof with full particulars of the facts, matters and circumstances relied upon to show that the Defendant 'fraudulently procured registration of the said land in his name at certificate of title registered at volume 1198 Folio 210' as set out in the Statement of Claim.
>
> We should add that we find it impossible to prepare the defence without these particulars.
>
> Please also let us know within the said period of seven (7) days whether you are prepared to consent to the defence being filed out of time."

The attorneys-at-law for the appellant did not comply with the request. On the 1st day of August 1989 the respondent's attorneys-at-law caused a summons to be issued seeking an order that "the plaintiff within fourteen days after the date of the said order supply the defendant with full particulars of the facts, matters and circumstances relied upon to show that the defendant fraudulently procured registration of the said land in his name at certificate of title registered at volume 1198 folio 210 as set out in the statement of claim. The summons came on for hearing before Edwards, J on the 26th day of September 1989, when he ordered:

> "1. That the Plaintiff/Appellant do within fourteen days supply the Defendant/Respondent with full particulars of the facts, matters and circumstances relied upon to show that the Defendant fraudulently procured registration of the said lands in his name at Certificate of Title registered at Volume 1198 Folio 210 as set out in the Statement of Claim."

This appeal seeks to set aside that order on five grounds of appeal, the gist of which is that the trial judge erred in ordering the supply of particulars since up to the time of making the order no pleadings had been filed. In effect the order was for the supply of further and better particulars of the writ of summons.

Section 171 of the Judicature (Civil Procedure Code) Law enacts the following:

> "A further and better Statement of the nature of the claim or defence or further and better particulars of any matter stated in any pleadings, notice or written proceeding, requiring particulars may in all cases be ordered, upon such terms, as to costs, and otherwise, as may be just." [Emphasis added]

The question to be resolved is:

> Does the indorsement on the Writ of Summons constitute a pleading, to wit a Statement of Claim?

Section 6 of the Judicature (Civil Procedure Code) Law requires:

> "Every action in the High Court shall be commenced by filing a writ of summons in the office of the Registrar.
> Every such writ shall, except in the case in which any 'different form is hereinafter or otherwise provided, be in one of the Forms 1 and 2 given in the Schedule I Part I hereto, with such variations as circumstances may require; and every such writ shall, before it is filed, be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action."

It is clear, therefore, that to indorse the writ of summons as required by section 6 (supra) does not elevate such an indorsement into a statement of claim. Such an indorsement is known as a general indorsement.

Section 14 (1) of the Judicature (Civil Procedure Code) Law permits a writ of summons to be specially indorsed:

"14. (1) In any action other than one which includes -

(a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or

(b) a claim by the plaintiff based on an allegation of fraud; or

(c) a Probate action,

the writ of summons may, at the option of the plaintiff, be specially indorsed with or accompanied by a statement of his claim."

The indorsement on the writ of summons in the instant case alleges fraud on the part of the defendant. Section 14 (1) (b) precludes such a writ of summons from being "specially indorsed with or accompanied by a statement of claim." It therefore follows that the indorsement on the writ of summons could not properly be designated a statement of claim. The above conclusion leads inevitably to the view that there was no pleading upon which the learned judge could have ordered the appellant to supply further and better particulars. He therefore fell into error in making the order which he did.

For these reasons we allowed the appeal and set aside the order of the Court below with costs to the appellant to be taxed if not agreed.