



[2017] JMSC. Civ. 18

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

CLAIM NO. 2014 HCV 02675

BETWEEN	SEAN GREAVES	FIRST CLAIMANT
AND	SEAN GREAVES (Administrator with all Annexed of the estate of Janneth Chung, deceased)	SECOND CLAIMANT
AND	CALVIN CHUNG	DEFENDANT

Jalil Dabdoub and Karen Dabdoub instructed by Dabdoub, Dabdoub & Co. for the claimants.

Mr. C. Cameron instructed by Carolyn C. Reid & Co. for the defendant.

Heard February 6, 2017

Whether the transfer document marked 'A' for identification ought to be admitted into evidence

Thompson-James, J

[1] The law relating to admissibility is governed by the Evidence Act, The Civil Procedure Rules and Common Law.

[2] **Halsbury Laws of England, 4th Ed.** re issue at paragraph 409 points out that the prime requirement of anything sought to be admitted in evidence is that of sufficient relevance. Admissible evidence is that which is:

(1) relevant

(2) not excluded by any law or procedure

- [3] The text went on to outline that it may be that an item of evidence is admissible on one point and inadmissible on others. If so, it will be admitted. Of course, it is settled that the court has a final discretionary power to control evidence and this includes the power to exclude the evidence even if it is admissible. Support for this is found in **Finz v Mahoe Bay Co. Ltd. And Anor** 2016 JMCA Civ 34, McDonald Bishop para 77 and 113.
- [4] In relation to the document marked 'A' for identity, Professor David Rowe testified that he received this document via e-mail. It was a transfer and in this document was a signature line for Janet Chung. He told us about Janet Chung signing the document and Danielle Shelley signing this document as well in his presence. Image of the document was sent via WhatsApp to Professor Rowe. His evidence is that he was able to identify the document by his signature. He identified his signature and indicated that there were two signatures and markings on the document that were not there before
- [5] Witness, Danielle Shelley's testimony supports that of Professor Rowe in relation to her signing this document.
- [6] Attorney-at-Law, Mr. A. Dabdoub, gave a history of the preparation of the document, the conversation with Professor Rowe, the return of the document among other things which I do not find necessary to explore at this time.
- [7] Suffice to say that it cannot, in my opinion, be gainsaid that this document is relevant to the matter at bar.
- [8] Section **31L of the Evidence Act of Jamaica** provides the court with the general discretion to exclude evidence in any proceedings if, in the court's opinion, the prejudicial effect of the evidence outweighs its probative value.

CPR 29.1 further provides:

1. The court may control the evidence to be given at any trial or hearing by appropriate directions as to:
 - a) the issues on which it requires evidence;
 - b) the nature of the evidence which it requires to decide those issues;
 - c) the way in which the evidence is to be placed before the court, at a case management conference or by other means.
2. The court may use its power under this rule to exclude evidence that would otherwise be admissible.
3.

[9] Generally speaking, the question of admissibility of evidence is a question of law to be decided by the tribunal of law prior to the end of trial based on the rules of evidence. At this point, it is not an exercise in determining which facts are to be believed by the tribunal, and so the mere admission of material into evidence is not to be taken as such. At this stage the court is simply deciding firstly, whether the particular material is relevant; secondly, whether there are any exclusionary bars in law that preclude the material from being admitted into evidence such as hearsay, and thirdly, whether there are any reasons why the court ought to exercise its general discretion to exclude the evidence notwithstanding its admissibility.

[10] In that regard, I find it necessary to distinguish the issue of admissibility from the issue of what weight is to be attributed to a piece of evidence once it has been admitted. The latter is a question of fact for the tribunal of fact to determine at the conclusion of trial after having considered the totality of evidence led by all parties. [See **Halsbury** supra, para. 417; para 56 & 57, per McDonald Bishop J in **Linel Bent & anor v Eleanor Evans** C. L 1993/B115, delivered February 27, 2009].

[11] There are some circumstances in which the question of admissibility involves both questions of law and fact, and in such cases, both would need to be

determined prior to the admission of the relevant item. However, I do not find the case at bar to be such a case.

- [12]** The transfer document in this case is clearly relevant as it relates to the gravamen of the case and may be useful in determining the facts in issue. The primary question for the court to determine is: Who is the true owner of the relevant property? A document purported to be a transfer of the relevant property by one of the original owners to a new owner is, in my view, undoubtedly relevant to the question of who now owns the property. The document is also relevant to the question of whether the joint tenancy between the defendant and the deceased was severed, which would also have bearing on who now owns the property.
- [13]** It must be borne in mind that allegations of fraud must be specially pleaded and strictly proved. In my view, where a document is legitimate on its face and sufficient foundation has been laid for it to be tendered, the document ought to be admitted, and the party challenging its validity would bear the burden of adducing sufficient evidence to prove that the document is fraudulent as alleged.
- [14]** Further, at this point in time, the court can see no exclusionary rule preventing the document's admissibility, or any other basis in law for the court to exercise its general discretion to exclude it.
- [15]** I therefore agree with the submissions of Mr. Jalil Dabdoub that there is no basis in law on which the document ought to be excluded. It is therefore the ruling of this court, the requisite foundation having been laid, that is, the identification of the document by both Professor Rowe and Ms. Shelley, that the document marked A for identification be tendered into evidence.
- [16]** Document marked 'A' for identity, tendered and admitted into evidence as Exh. "4".