



[2017] JMSC Civ 228

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2005HCV02508

BETWEEN	GEORGE SIMS	1ST CLAIMANT
AND	IONE SIMS	2ND CLAIMANT
AND	PAUL REID	DEFENDANT

Fraud – allegation of forged signature on transfer document – Handwriting expert evidence – Registration of Titles Act sections 68, 70, 71 and 161 – indefeasibility of registered title

Ayana Thomas instructed by Nune Scholfield & Deleon for the Claimants

Ruel Woolcock instructed by Ruel Woolcock & Co. for the Defendant

Heard on April 26 & 27, 2017 and May 17, 2017

PALMER, J

The Claim

[1] By Claim Form filed on August 23, 2005 the Claimants sought the following orders:

- 1. A declaration that Joseph Sims' estate is entitled to all the lands formerly comprised in Certificate of Title registered Volume 1161 Folio 228 and now comprised in Certificate of Title registered at Volume 1225 Folio 885 of the Register Book of Titles;*
- 2. Rescission of Certificate of Title registered at Volume 1125 Folio 885 ... on the grounds of the fraudulent transfer of lands comprised in the said Certificate of Title to the Defendant;*

3. *An Order directing the Registrar of Titles to cancel Certificate of Titles registered at Volume 1225 Folio 885 and issue a new Certificate of Title in the name of the deceased Joseph Sims;*
4. *Costs*

[2] The Claimants allege that the Defendant acquired Joseph Sims' property by fraud in particular the Particulars of Fraud alleged against the Defendant are as follows:

1. *The Defendant fraudulently prepared Transfer Instrument and forged Joseph Sims' signature thereon transferring all of Joseph Sims' interest in the property registered at Volume 1161 Folio 228 to Joseph Sims and Paul Reid as joint tenants.*
2. *The Defendant falsely made an application to the Registrar of Titles to note the death of Joseph Sims the alleged joint tenant and fraudulently deponed that during Joseph Sims' lifetime the Duplicate Certificate of Title was given as security for loan to Lorna Hall and the Title could not be found when he knew this to be untrue*
3. *Fraudulently procuring Certificate of Title registered at Volume 1225 Folio 885 in his own name*

[3] The claim concerns ten (10) acres of land at 17 Sunnyside Avenue, May Pen in the parish of Clarendon. The Claimants are the Administrators of the Estate of Joseph Sims who died intestate on January 3, 1988 and assert that they are his only beneficiaries. George Sims is the only son of the deceased and Ione Sims was the deceased man's wife. At the time of his death, the registered owners of the property were Joseph Sims and Paul Reid. Paul Reid is the sole registered proprietor upon the death of Joseph Sims. Prior to Joseph Sims' death, an instrument of transfer had been executed to transfer an interest in the property to Paul Reid, for love and affection, making him a joint tenant with Joseph Sims.

[4] The Claimants seek a declaration that the land registered at Volume 1225 Folio 885 ("the property") is a part of Joseph Sim's estate, as Paul Reid became the registered owner by forging the signature of Joseph Sims on the instrument of transfer. They also allege that Mr. Reid falsely claimed that the original certificate of title was lost to facilitate

the issuance of a new certificate of title in his name. George Sims and Paul Reid are first cousins, as their parents are siblings. Mr. Sims also contended that due to a disagreement between Joseph Sims and Mr. Reid's family, he would never have transferred the property to Paul Reid.

[5] Mr. Reid in his defence, said that his uncle was never married to the 2nd Claimant, Iona Sims and he had no children. He also stated that Joseph Sims had used the Certificate of Title in or about 1980 to obtain financial assistance from Lorna Hall in relation to a debt owed to his Attorney-at-law, Ram Pershadsingh. The mortgage was later transferred to Joel Duke who loaned Joseph Sims the balance owed to Lorna Hall and used the land as security. The mortgage in favour of Joel Duke was discharged in 1987 but was not noted on the Duplicate Certificate of Title and the title remained in the possession of Mr. Duke. Joseph Sims instructed his then Attorney-at-law, Mrs. Malcolm, to file a lost title application with the Register of Titles in respect of the Title that had been in the possession of Mr. Duke, after failed attempts to recover it.

[6] Mr. Reid said he was solely responsible for taking Joseph Sims to the doctor since 1984 until his death in 1988. He stated that after the Claimants emigrated in the 1970s, they played no role in his uncle's life. Contrary to the claim of enmity between the families, he says that he and his mother were integral to his uncle's care up to the time of his death and that his uncle transferred the property to their joint names voluntarily. He claims that the Claimants, and in particular George Sims, know nothing about his father's affairs after he left in the 1970s and that this claim is born out of the malice at the fact that the property was left to him (Paul Reid).

Claimants' case

Resilda Smith

[7] On the Claimants' case, three (3) witnesses were called: George Sims and Resilda Smith as ordinary witnesses and Beverley East, the appointed handwriting expert. Resilda Smith stated that she had known Joseph Sims since her childhood from her community and knew of his relationship with Iona Sims. Her father and Joseph Sims were

first cousins and were good friends. She visited the Sunnyside Drive property regularly up to 1954 and was quite familiar with it. Mr. Simms farmed assorted crops on his farm and operated a shop. Ms. Smith said that knew when George Sims was born and attended the wedding of George Sims and Ione Sims in 1958.

[8] According to Ms. Smith, Joseph Sims had a nervous breakdown in 1954 that rendered him unable to work or manage his affairs adequately. She gave some insight into the severity of the nervous shaking:

Q: As far as you remember his hand used to shake?

A: Yes. As far as I remember his hands used to shake. He can't even hold hot water to drink his tea. If you have to give him breakfast you have to feed him

[9] While he recovered, he asked Paul Reid's parents to run his shop, but they so mismanaged the shop that it suffered financial loss; a factor she said that caused a rift between the Joseph Sims and Paul Reid's parents. She recounted that the nervous breakdown caused his hands and body to shake, a condition she stated confidently, stayed with him until his death. She later stated in cross-examination that she could not recall if he recovered from the nervous shaking. She initially testified that she knew that this condition lasted until Joseph Sims' death because her father cared for him from 1987 when he became ill until his death in 1988.

[10] At times in her evidence, Ms. Smith admitted to being a bit confused about dates such as how old she was when Joseph Sims got married and the date of his nervous breakdown which she explained could be due to a prior head injury. She initially stated that she was ten (10) in 1954 when Mr. Sims had his nervous breakdown but in cross-examination, when it became clear that with a birth year 1935 she would have been about nineteen (19) years old at that time, she rejected the suggestion. She could not recall if Joseph Sims ever recovered from nervous shaking but explained that when she spoke of his hands shaking, she was referring to the early stages of his illness. On the issue of whether her father cared for Joseph Sims, she admitted in cross-examination that though it was in her witness statement, this claim was untrue. This affected her reliability on the

issue of how long the nervous shaking continued, as she initially said that she knew that it lasted until his death because her father cared for Joseph Sims from 1987 until his death. She stated that she had requested of the Claimants' former Counsel that this false assertion be removed from her witness statement, but that it was not removed though that did not prevent her signing the witness statement.

[11] Contrary to the suggestion of having personal knowledge of the issues between Joseph Sims and Paul Reid's parents, she admitted that she had never actually witnessed any of the alleged acrimony between them as initially suggested. Ms. Smith recounted that the Claimants migrated in the 1970s and Lonie Sims left some years before her son. While Lonie Sims returned to Jamaica after emigrating, she could not recall whether George Sims ever did.

Beverley East

[12] The Claimants' handwriting expert, Beverley East, gave evidence that in 2010 she received a number of documents for analysis to include:

- i. K1 & K2 - Certified Copy Marriage (Duplicate) Register No. 21 Registered No, 468 showing marriage between Joseph Sims and lone Russel dated 1958*
- ii. Q1 - Certificate of Enumeration No. 484009 dated 25.1.75;*
- iii. Q2 - Letter to Mr. Vincent Knight dated April 1976;*
- iv. Q3 - Agreement for sale dated October 25, 1983 between Joseph Sims and Stanley Brown;*
- v. Q4 - Copy of lease agreement dated May 1984 between Joseph Sims and Christopher Murray and Aston Richardson;*
- vi. Q5 - Handwritten notice to quit dated November 1, 1984;*
- vii. Q6 - Instrument of Transfer dated June 18, 1986;*
- viii. Q7 - Statutory Declaration dated June 18, 1986;*

- ix. Q8a - Declaration of Value Transfer of Land dated May 6, 1987;
- x. Q8 - Declaration of Value dated May 6, 1987 (second page)
- xi. Q9 - Power of Attorney dated September 5, 1987

[13] Ms. East's report indicated that a person's signature may change between the ages of 12-20, during a period of self-expression and self-discovery, but once one attains "graphic maturity" and one's writing movement develops "habituated neuromuscular patterns" and a basic style is adopted that generally continues throughout a person's life. For someone of sound mind with an active lifestyle, their handwriting remains substantially unchanged although various factors, to include illness, traumatic head injury, mental illness and emotional stress could continue to alter and modify handwriting. She noted:

"Tremor in handwriting comes from medication, illicit drugs or aging. As we age our bodies and minds slow down and so does the spatial formation of letters. Therefore, the writing of an individual remains the same or becomes slower. It does not reverse and become faster."

[14] In her report, Ms. East's stated that while it is normal for there to be changes in handwriting as one ages due to less muscular control or shakiness, one's signature generally doesn't deteriorate as quickly as other handwriting as it is a stronger habit than other forms of handwriting. Many persons retain their ability to write their signature while they lose the ability to write anything else. About thirty-eight (38) years had passed between the making of the K1 and K2 documents and Q1 - Q8; the latter being very swift, fluid and more sophisticated than the former. Ms. East opined that the writer of Q9 was not the writer of K1 and K2. However, when comparing K1 and K2 with Q1 - Q8, she identified differences between the two (2) sets of documents.

[15] When asked in cross-examination about the certificate of enumeration (Q1), she stated that she doubted its authenticity due to a misspelling of Mr. Sims' name on the document and the difference of the signature when compared the marriage register

documents (K1 and K2). She was unable, however, to determine whether the document was an authentic government document due to the cost of travelling to Jamaica to visit the relevant government office. She noted however, that this constraint had no impact on her ability to check the authenticity of the enumeration certificate, as she had eight (8) other documents with which to make her comparisons.

[16] Ms. East gave evidence that she determined what was a 'known signature' as one on a document signed or witnessed in a government office, such as a passport, driver's license or marriage certificate. She maintained throughout that the only documents that she regarded as known signatures of Joseph Sims, were the marriage register documents, as she had the opportunity to inspect the original documents. She stated that she did not regard the signature on the certificate of enumeration as known handwriting due to the inability to so authenticate.

[17] Counsel for the Defendant cross-examined Ms. East on her ability to determine which of the government-issued documents (i.e. the certificate of enumeration or the marriage register documents) bore an authentic signature and against which to make comparisons. She stated that at the time of her engagement she was only provided with documents Q1 – Q9 but no known signature against which to compare them. Upon making enquiries, George Sims told her of the marriage register documents. Ms. East maintained that even after receiving the enumeration certificate, she formed the view that the signature attached was not consistent with that of a person of the age that Joseph Sims would have been at the time the certificate was purportedly signed; between 70 and 75 years old. Furthermore, that handwriting was not consistent with the writing system that Joseph Sims would have learned at the time when he attended school. Her evidence is that at the time of his likely education in Jamaica, the prevalent writing system would have been the Vere Foster system, while the American or Palmer system did not come until some time later; the suggestion being that the signatures on Q1 – Q8A were likely for someone educated under the later American system.

[18] In reference to the marriage register, Ms. East agreed that though illness such as a stroke could affect the fluidity of someone's signature, Mr. Sims would have to have

achieved full recovery for such a dramatic change between the signatures in K1 and K2 and those in Q1 - Q8. The signatures on K1 and K2 appeared, in her opinion, to be from a person using the simpler system. She also doubted the authenticity of the enumeration certificate, which appeared newer and in better condition than one would expect for a document prepared thirty (30) years prior. Ms. East also took the view that the picture on the identification card appeared younger than Joseph Sims would have been in 1984, a conclusion she said she arrived at by using sophisticated aging software. While she had not made checks with the Electoral Office in Jamaica to determine the authenticity of the document, Ms. East said that her conversations with an official of the Jamaican Embassy in Washington satisfied her that it was not authentic.

[19] In her report, Ms. East stated that in her professional opinion, neither Q1 - Q8A nor Q9 were signed by the same person who signed K1 and K2. Neither did the person who signed Q9, sign Q1 – Q8A. She stated that with approximately thirty-eight (38) years between two (2) main sets of documents, that Q1 – Q8A were very swift and fluid and more sophisticated in formation than in K1 and K2.

George Sims

[20] George Sims is the son of Joseph Sims and one of the administrators of his estate. He gave evidence that he is sole child of the union between his father and mother, and at about ten (10) years of age, was present at their wedding in 1958. He stated that though never attaining education beyond May Pen All Age School, his father had a thriving business from the produce on his farm, several rental properties and two grocery stores.

[21] In 1954 when he was about seven (7) years old, he remembered his father suffering a nervous breakdown from which he eventually recovered. A residual effect of the illness however was shaking hands. This condition, together with his father's primary level education, according to Mr. Sims, accounted for his father's poor handwriting.

[22] After his nervous breakdown, he left Paul Reid's parents in care of a shop he owned but that it suffered financial loses under their mismanagement, a fact that he said resulted in a rift between Joseph Sims and the Reids. As a result, Mr. Sims said, neither

Paul Reid nor his family ever came back to the house. Mr. Sims claimed that his father would involve him in his business and that he attended with him on visits to his Attorney-at-law, Winston Young, when he had to attend on matters concerning his tenants.

[23] He disparaged the assertion in Mr. Reid's witness statement that Joseph Sims ever lived with him and his family, or cared for him when he became ill up to his death. According to Mr. Sims, his father had a substantial four-bedroom house while Paul Reid's family had a two-bedroom house in which Mr. Reid, his siblings and his parents lived, leaving no room to accommodate his father.

[24] Mr. Sims stated that his father did not trust the Reids and that as a result, up to the time he migrated in 1979, they never came by the house. He insisted that Paul Reid was not the one to take his father to the doctor nor pay for his medication when he was ill. When asked as to how he knew what was happening with his father while he was abroad, Mr. Sims said that his father would communicate with him by letters and, to his certain knowledge, had "man servants and lady servants" to assist him. He was also pressed at trial to produce any of these letters, but stated that he did not keep the letters due to the poor penmanship, as they were written in 'crab toe'.

[25] As to whether the relationship between his mother and his father ended in the 1950s, Mr Sims stated that his mother continued to live with his father at the subject premises and they never divorced after he left in 1979 but lived together up to Joseph Sims' death. His mother however visited him (George Sims) abroad and would update him as to what was happening with his father. This ran contrary to the evidence of Ms. Smith that his mother migrated and returned periodically to Jamaica. Mr. Sims claimed that it was during one of these visits to him in the United States that he and his mother learned of his father's death and both returned to Jamaica together to make funeral arrangements. When pressed regarding the making of the funeral arrangements Mr. Sims could not recall any detail about the funeral other than it was at 19 Miles in Clarendon and that he attended to do a remembrance. He remained strident however that he buried his father.

[26] It was revealed in cross-examination that in 2011 Mr. Sims filed a Fixed Date Claim Form in which he sought orders relating to his mother's care after she was diagnosed Alzheimer's disease. Mr. Sims did not deny that the affidavit was his but that it was an error where it indicated that his mother migrated and lived with his sister since the 1970s.

[27] Mr. Sims claimed that after the death of his father in January 1988 he returned to the offices of Mr. Winston Young, his father's former Attorney-at-law, to collect the registered title left there for safekeeping by his father in August 1978. He insisted that Mr. Young told him that Mr. Reid came and "bad-man him up" for the title and he handed it to him. Mr. Sims denied the possibility that his father would have taken a loan from Joel Duke and did not have a lien on the said title.

[28] Mr. Sims' view was that the signatures on the marriage register (K1 and K2) were that of his father but that the transfer documents (Q6) was not, and one had to have a PhD to write like what he observed on those documents. Mr. Sims denied that the signature on the certificate of enumeration was his father's, as he was never enumerated and never voted. If his father was enumerated in 1975 as suggested by the application, Mr. Sims contended, he would have transported his father there and he never did.

[29] Mr. Sims was not in Jamaica when the documents were purportedly executed but insisted that the signature on the application could not be that of his father and that even his father's height stated on the document was incorrect. He said that he took his father to the office of Mr. Winston Young and was present when the title was handed over to him. Mr. Young was known to him as his father's Attorney-at-law, and handled tenant related issues for him.

[30] Mr. Sims stated that he learned of the alleged fraudulent transfer to Paul Reid after the death of his father in 1988, yet no claim was brought until 2005. His former Attorneys-at-law, he said, were to be blamed for the delay as though he instructed his lawyers, they failed to act. He denied being motivated by malice in filing the claim when Counsel suggested: *"You are upset that Paul Reid is now the owner of the property. You think it*

should be yours”, to which he replied, “If you have an only child and you die, should what you have be theirs?”.

Defendant’s case

Winston Young

[31] In addition to giving evidence himself, the Defendant called Mr. Winston Young, Attorney-at-law, as his witness. Mr. Young gave evidence that Joseph Sims was his client for whom he had conducted several transactions, to include the lease and sale of property in May Pen, Clarendon. Mr. Young confirmed his familiarity with the signature of Joseph Sims through his association with it over the years and from conducting transactions for him. He identified the signature on Q3 (Agreement for sale) as that of Joseph Sims and also identified his own signature as witness. Mr. Young also identified the signature of Joseph Sims on Q4 (Lease agreement) that he prepared for the deceased, leasing the subject premises to Christopher Murray and Aston Richardson.

[32] Mr. Young gave evidence that he never met George Sims nor had he ever seen or been in possession of Joseph Sims’ registered title for the property, prior to his participation in this matter. He was shown the national identification for Joseph Sims and was absolutely sure it was a picture of his former client. Despite appearing pale, the signature also appeared be that of his said client, he said. Mr. Young was shown the signature on K1 and commented that while the signature could be that of a ‘young Joseph Sims’ it did not look like the signature of the Joseph Sims he had become familiar with.

[33] Mr. Young stated that he initially met Joseph Sims through a co-worker that worked with Mr. Sims at Jamalco. Mr. Sims had visited his offices on a few occasions between 1978 and 1985 or 1986 with his co-worker and by the time Joseph Sims retained him, he become quite familiar with him. Mr. Young rejected the notion that he would ever allow clients to pre-sign documents without witnessing them sign, then signing the documents afterwards to say that he had. While he stated that he was not present when the transfer document was signed and was admittedly not a handwriting expert, Mr. Young maintained that the signature looked like that of Joseph Sims on the transfer.

[34] Mr. Young stated in cross-examination that in his many years of practice he had witnessed the signature of hundreds and perhaps thousands of clients over the years. He could not remember the signature of all his clients off-hand but explained that in this instance, he was aided in his memory by seeing the transfer document. He denied that despite not having seen Joseph Sims' signature for over Thirty (30) years, his memory of the signature had not faded considerably over the years and he was certain that the signature was that of 'old man Joe'.

[35] Mr. Young remained adamant in cross-examination that he had never seen George Sims before his involvement in this matter and that he had never attended his office with Joseph Sims or on any other occasion. He maintained that he had never kept or even seen Joseph Sims' registered title and denied telling George Sims that he had handed the title Paul Reid after he 'bad him up'.

[36] Mr. Young stated in cross-examination that on a few occasions when he saw Joseph Sims he seemed to be aging considerably and was almost deaf. It was for that reason that when Joseph Sims attended on those occasions that Paul Reid attended with him to interpret. Despite this state of affairs, Mr. Young insisted that the signature of Joseph Sims was still pretty steady. He said that Joseph Sims was a little shaky and in his view, he tried to sign quickly, as the slower he went the more problem he had. Mr. Young was asked whether, as a result of Joseph Sims' declining health, he would sometimes send documents with Paul Reid for Joseph Sims to sign, which he rejected outright. This practice had nothing to do with a distrust Mr. Reid, he continued, but based simply on his professional ethics. He was therefore relying in part on his memory but also on the fact of seeing his witnessing signature on the document as an aid to identifying the signature of the deceased.

Paul Reid

[37] Paul Reid's witness statement, with necessary redactions based on objections, was admitted as his evidence in chief. In it he stated that to his knowledge his uncle had no children nor ever married, but he later conceded that these events would have taken

place before he was born and impliedly, could be true. He stated that in 1980 his uncle needed funds and used the subject title to secure a loan from Lorna Hall. Eventually the mortgage was transferred to Joel Duke, with whom the title was deposited in security for the loan.

[38] Mr. Reid said that the decision to add his name to the title as a joint tenant was carried out in or about 1986. The instrument of transfer was prepared by Mrs. Malcolm, Counsel situated in Kingston, and witnessed by Arthur Sherlock, Justice of the Peace, of Sunnyside Avenue, May Pen in Clarendon. The consideration in the Instrument of Transfer was for love and affection and no monetary sums were paid by Paul Reid for the transfer. After lodging the application for the transfer, Joseph Sims died and his death was later noted on the title. His attempts to recover the title from Mr. Duke were unsuccessful and after failed attempts to contact him, a lost title application was made, with the result that a new title was issued.

[39] Mr. Reid said that he shared a good relationship with his uncle and was responsible for his uncle's upkeep and maintenance in the final years of his life. Between 1984 and 1988 when his uncle died, he took him to the doctor for monthly checkups and paid for his medication. When he passed, he also took care of his uncle's funeral expenses, a contention vigorously disputed by George Sims. Mr. Reid denied that the Claimants played any role in the funeral plans for Joseph Sims and was resolute that George Sims did not attend the funeral. According to Mr. Reid, neither of the Claimants visited his uncle after they migrated.

[40] In cross-examination, Mr. Reid confirmed what he had stated in his witness statement that his uncle had lived with his family in the mid-1970s after the death of his uncle's brother. He elaborated that Joseph Reid became ill in the 1980s, was hospitalised and upon his discharge from hospital once again spent time with his (Reid's) family where Mr. Reid's mother cared for him.

[41] Mr. Reid said that while he did know when George Sims left Jamaica, he did not know of him living with Joseph Sims in the 1970s or at all from he (Mr. Reid) was a five-

year-old in the 1960s. He was aware that his uncle owned land in the community which he farmed but was unaware of him operating a shop there. He stated that he never saw evidence of a rift between his parents and his uncle, and he, his grandmother and siblings regularly visited his uncle at his home. Mr. Reid maintained that he saw his uncle sign the transfer document but admitted that he had not made mention of this in his witness statement.

[42] Mr. Reid said that his uncle had a lung problem that affected his heart, and he would regularly take his uncle to get his asthma medication. He did not know of his uncle's hands shaking when he wrote and said Joseph Sims would regularly ride his bicycle to town to do business because of his independent nature. He had fluctuating health that was affected by bad weather or temperature changes but he would still make his way around to do his business.

[43] Mr. Reid agreed that the transfer that is the subject of this trial did not bear the seal of the Justice of the Peace who witnessed it and denied he had signed it for Joseph Sims. He admitted that the effect of the transfer document was that he was the sole registered owner in light of the death of Joseph Sims but maintained that he neither signed for his uncle nor forged his uncle's signature. He admitted that apart from the transfer document that he witnessed, he had not witnessed his uncle sign any of the other documents he had purported were signed by him.

[44] Mr. Reid insisted that his uncle had lived with his parents and enjoyed a good relationship with them. He maintained that George Sims did not live with Joseph Sims up to 1979 when he migrated. Mr. Sims afterwards had no contact with his father, played no role in his care or maintenance, and even after his death, neither assisted with funeral expenses nor even attended the funeral.

Submissions

Claimants submissions

[45] Counsel for the Claimants submitted that the following facts were disputed:

- i. Joseph Sims was born in 1913 and was an elderly man in or around 1987 (approximately 74 years old) when the Instrument of Transfer purporting to transfer 17 Sunnyside Drive to Paul Reid for love and affection. No monetary compensation/ value was paid for the transfer;
- ii. George Sims gave evidence that his father was not educated beyond May Pen All Age and therefore had basic education;
- iii. Joseph Sims was a farmer in Clarendon and farmed vegetables and other crops;
- iv. He suffered a nervous breakdown in 1954;
- v. Paul Reid was not born at the time Joseph Sims had a nervous breakdown as he was born in 1964;
- vi. George Sims said that his father Joseph Sims shook when he wrote after his nervous breakdown;
- vii. The Marriage Duplicate Register evidencing the marriage between Joseph Sims and lone Russel was signed by Joseph Sims on May 25, 1958;
- viii. Beverly East gave evidence that she visited the Registrar General's Department and physically examined the original marriage certificate and that this was an authentic document;
- ix. Joseph Sims was born in 1913 and would have been approximately 45/46 years of age at the time of his marriage. At that time his handwriting would have been well established as he was well into his adult years approaching mid life;
- x. His marriage took place in 1958, approximately four (4) years after his nervous breakdown in 1954. His handwriting at that age showed basic crude formation and slow motion even at the time of his marriage;
- xi. It is the undisputed evidence of Beverly East that handwriting does not speed up with age but slows down as a person ages. It would naturally be expected that Joseph Sims handwriting would be slower with age.

[46] The undisputed evidence of Beverly East, was that "Tremor in handwriting comes from medication, illicit drugs and aging. As we age our bodies and minds slow down and

so does the spatial formation of our letters. Therefore, the writing of any individual remains the same or becomes slower. It does not reverse and become faster." [See Addendum Report]. It was submitted that it is more likely that Joseph Sims' handwriting would have deteriorated more almost 30 years after he got married or at the very least remain the same. At the time of the alleged transfer was signed Joseph Sims would have been approximately 74 years of age.

[47] Paul Reid's evidence in cross-examination, she reminded the Court, was that Joseph Sims was troubled with lung problems which affected his heart as well as asthma. Having regard to these ailments, Counsel argued, in Joseph Sim's older years it is more likely that his handwriting would have showed slower motions and not faster or more fluid motion as evidenced on the Transfer Document allegedly executed in 1987.

[48] The person who allegedly witnessed Joseph Sims' signature on the Transfer Instrument allegedly executed by Joseph Sims, Arthur Sherlock, was not a witness before the Court. There is therefore no evidence before the Court from a witness who could attest positively to seeing Joseph Sims sign the said transfer or Declaration of Value. Winston Young was not present when Joseph Sims allegedly signed the transfe and even he when asked if the signature on the Transfer looked like Joseph Sims signature said it looked like it but the 'j' was differen, Counsel argued.

[49] Counsel noted that Paul Reid's evidence was devoid of any details on how the Transfer was signed by Joseph Sims or an explanation of what led Joseph Sims to transfer the property to him, she contended. With absolutely no details before the Court of the circumstances of the transfer, this ought Counsel argued, to cast serious doubt on the veracity and authenticity of the transfer itself. The authenticity of the transfer having been questioned, it was submitted that having regard to the handwriting expert's expert opinion as well as the evidence of George Sims that the signature on the Transfer Instrument was not the signature of Joseph Sims, it was submitted that the Court should hold that the transfer was fraudulent.

[50] After a discussion of the relevant sections of the Registration of Titles Act (RTA), Counsel cited the authority of **Gardener and Others v Lewis** (Jamaica) [1998] UKPC 26 (22nd June, 1998), where their Lordships, speaking to the effect of sections 68, 70 and 71 of the Act, had this to say at paragraph 7:

"70. From these provisions it is clear that as to the legal estate the Certificate of Registration gives to the appellants an absolute title incapable of being challenged on the grounds that someone else has a title paramount to their registered title. The appellants' legal title can only be challenged on the grounds of fraud or prior registered title or, in certain circumstances, on the grounds that land has been included in the title because of a 'wrong description of parcels or boundaries':

[51] It is abundantly clear that based on the provisions of the RTA, land may be recovered against a registered proprietor where fraud is alleged. On a balance of probabilities, it was submitted, it is open to the Court to find Paul Reid was complicit in the fraud. Paul Reid did not purchase the property from Joseph Sims for valuable monetary consideration. The consideration for the transfer was love and affection and he was the only person who stood to benefit from the transfer. If the Court accepts the evidence of the expert witness Beverly East that the signature on the Transfer was forged, the belated evidence of Paul Reid that he was present when Joseph Sims signed must, Counsel contended, be rejected. The clear inference from his evidence that he was present when the fraudulent transfer was signed is that he was complicit in the forgery of the signature. As the transfer was for love and affection to Paul Reid, no one else would have had an interest to gain by that forgery. The Court was therefore asked to make the orders as sought by the Claimants.

Defendant's submissions

[52] As with Counsel for the Claimants, Counsel for the Defendant noted the import of sections 68 - 71 and 161 of the Registration of Titles Act. Counsel referred to the authority of **Rudolph Bancroft and Davis Parchment v Leaford Cookhorne and others** SCCA No. 15 of 2008 where Morrison JA (as he then was) stated that such fraud must be

pleaded with the utmost of particularity and strictly proven. Similarly, in ***Linel Bent v Eleanor Evans*** Suit no. CL 1993/B115, per McDonald-Bishop, J (as she then was), also relied upon by Counsel, that given the weighty nature of an allegation of fraud, it ought to be strictly plead and proven with the most cogent and indisputable evidence.

[53] The term fraud is not defined in the RTA, but Counsel submitted, relying on the interpretation of the term in ***Willocks v Wilson and Wilson*** (1993) 30 JLR at page 300 per the dicta of Carey P (Ag.) that it meant “dishonesty as distinct from equitable or constructive fraud”. In ***Lynch and Lynch v Ennevor and Jackson*** (1982) 19 JLR 161, per Wright J at page 174, it was stated that “such fraud must be brought home to the person who registered title is impeached or his agents”.

[54] Counsel submitted that there is no evidence that Paul Reid was involved in the preparation of the instrument of transfer (Q6), and that the evidence pointed to being prepared by Ms. Audrey Allen. He therefore submitted that no fraud had been proven by the Claimants in so far as the allegation that he had prepared the instrument of transfer. He agreed that the truly contested issue was as to whether or not the Claimants had proven that the signature did not belong to Joseph Sims. While the expert concluded that the signature was not the same as Joseph Sims’ based on the known signatures in K1 and K2, and there was a suggestion throughout the trial that Paul Reid may have signed the papers, no comparison was done of known signatures of Paul Reid.

[55] Also, the evidence of Winston Young, senior legal practitioner who prepared and witnessed the lease and sale agreements at Q3 and Q4, was compelling, Counsel submitted. It also refutes the contention that the instrument of Transfer at Q6 was signed by Mr. Reid. He submitted that there was never any serious challenge to Mr. Young’s identification of Joseph Sims’ signature, especially where he saw his signature witnessing it.

[56] Counsel submitted that George Sims was lacking in credit, especially in regards to his evidence regarding leaving his mother at the premises when he left, knowing that in proceedings in which he petitioned the Court to be appointed his mother’s guardian, that

he had said the opposite. Also Mr. Young denied ever meeting Mr. Sims before these proceedings and rejected the visit in which he claims he attended with his father to deposit the title and when he returned with his mother to collect it.

[57] Counsel submitted that to find that Mr. Reid or someone else had signed the instrument of transfer would be to find that this same person had contrived from as far back as about ten (10) years when the certificate of enumeration (Q1) was signed, to create a trail of documents with the same signature. Furthermore, Counsel submitted, the Court would have to conclude that this is a conspiracy that would have begun from he was a child in the 70s to acquire this Voter's identification card with his image as well, in anticipation that some forty (40) years later he would need them to disprove any allegation of fraud.

[58] As regards the authenticity of the certificate of enumeration, Counsel submitted that though there was a vague hint that the document was not authentic, that rule 29.19 of the Civil Procedure Rule (2002) provides that a party shall be deemed to admit the authenticity of any document disclosed to that party unless that party served a notice that the document is to be proved at trial. No such notice having been served, it was submitted that the document has been accepted as authentic.

[59] Counsel submitted that both Ms. Smith and George Sims speak to the severity of the shaking after the nervous breakdown but neither could speak to his state of recovery in the 1980s. It was submitted that the anomaly between the signatures in the 1950s and those that followed, as exhibited in evidence, was that Joseph Sims had recovered.

[60] Counsel argued that however the Court were to resolve that issue of who signed Q6, the absence of any evidence pointing to the Defendant himself having forged the signature of Joseph Sims on the Instrument of Transfer, as particularized in the Claimants' particulars of claim, meant that their claim must fail. Relying in the respective dicta in *Bent v Evans* and *Lynch v Ennevor*, for the strict proof of fraud, there can be no doubt that the standard of proof required to prove fraud, has not been met.

Issues

[61] The issues for determination by the Court at trial are as follows:

- Whether the Defendant, Paul Reid fraudulently prepared Transfer Instrument and forged Joseph Sims' signature thereby effecting a transfer of Joseph Sims' interest in the property registered at Volume 1161 Folio 228 to Joseph Sims and Paul Reid as joint tenants.
- Whether the Defendant fraudulently procured Certificate of Title registered at Volume 1225 Folio 885 in his own name.

Law and Analysis

[62] A useful starting point is a review of sections 68, 70, 71 and 161 (d) of the Registration of Titles Act (RTA). Section 68 provides:

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 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.

Section 68 speaks to the unimpeachable and indefeasible nature of a Certificate of Title registered under the RTA, save instances of fraud as outlined in section 70. A person named on a certificate of title as the proprietor of property can rely on it as conclusive evidence of any estate or interest in the said property, subject to the operation of any statute of limitations, as for example in the case of adverse possession.

[63] Section 70 of the RTA provides:

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;

...

[64] Essentially under section 70, except in cases of fraud, the registered proprietor of an estate or interest in land holds same notwithstanding the existence of any other person of any estate or interest which, but for the RTA, might be held to be paramount or to have priority. A number of other qualifications and exceptions are mentioned in the section, none of which are relevant to the circumstances of this case as none have been raised. The sole issue is that the Claimants say that Mr. Reid ought to be dispossessed of the land due to fraud in acquiring it.

[65] Section 71 provides:

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 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.

[66] Under Section 161 (d) actions of ejectment or other action, suit or proceedings are prohibited against the registered proprietor except for fraud among other factors. It reads:

161. No action of ejectment or other action, suit or proceeding, for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act, except in any of the following cases, that is to say-

(a) ...

(b) ...

(c) ...

(d) the case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;

(e) ...

(f) ...

and in any other case than as aforesaid the production of the certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in such document as the proprietor or lessee of the land therein described, any rule of law or equity to the contrary notwithstanding.

[67] As submitted by Counsel for the Claimant, were the Claimants successful in proving fraud, section 158 outlines the Court's power to rectify the matter:

(1) Upon the recovery of any land, estate or interest, by any proceeding at law or equity, from the person registered as proprietor thereof, it shall be lawful for the court or a Judge to direct the Registrar-

(a) to cancel or correct any certificate of title or instrument or any entry or memorandum in the Register Book relating to such land, estate or interest; and

(b) to issue, make or substitute such certificate of title, instrument, entry or memorandum or do such other act, as the circumstances of the case may require, and the Registrar shall give effect to that direction.

(2) In any proceeding at law or equity in relation to land under the operation of this Act the court or a Judge may, upon such notice, if any, as the circumstances of the case may require, make an order directing the Registrar-

(a) to cancel the certificate of title to the land and to issue a new certificate of title and the duplicate thereof in the name of the person specified for the purpose in the order; or

(b) to amend or cancel any instrument, memorandum or entry relating to the land in such manner as appears proper to the court or a Judge.

[68] The RTA therefore confers upon the registered proprietor an indefeasible title in favour of the persons endorsed as registered proprietors, assailable only in instances of fraud. (See **Gardener and Others v Lewis**). The leading case of **Frazer v Walker** [1967] 1 AC 569 postulated that fraud “has been limited by judicial decision to actual fraud by the registered proprietor or his agent”. Morrison, JA (as he then was) in **Bancroft** referring to **Willocks v Wilson and Wilson**, noted that fraud for the purposes of the RTA means actual fraud or dishonesty, as distinct from constructive or equitable fraud. Referring to the decision of Wright J in **Lynch v Lynch** it was noted with approval that fraud under the RTA meant more than fraud simpliciter but that the “fraud must be brought home to the person whose registered title is impeached or his agents”.

[69] Morrison JA cautioned that in the civil process, the allegation of fraud must be pleaded with the utmost particularity and strictly proved. Lord Hatherley in **Wallingford v Directors of the Mutual Society et al (1870-80)** LR 5 App CAs 685 puts this standard as follows:

“Now I take it to be as settled as anything well can be by repeated decisions, that the mere averment of fraud, in general terms, is not sufficient for any practical purpose in [a pleading]. Fraud may be alleged in the largest and most sweeping terms imaginable. What you have to do is, if it be matter of account, to point out a specific error, and bring evidence of that error, and establish it by that evidence. Nobody can be expected to meet a case, and still less to dispose of a case, summarily upon mere allegations of fraud without any definite character being given to those charges by stating the facts upon which they rest.”

[70] The dicta of McDonald-Bishop, J (as she then was) outlines the standard of proof expected in cases of fraud in civil proceedings:

“...fraud ought not to be taken lightly and so evidence to prove it must be as weighty as the allegation of it.

... 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.”

[71] The question is as to whether the Claimants have met the high standard set out in the authorities. The Claimants’ primary basis for the claim of fraud is that the instrument of transfer (Q6) that granted the interest to Mr. Reid was forged by Paul Reid or that he perhaps otherwise facilitated and executed this fraud. The Claimants present three (3) evidential underpinnings on which they submit that the Court should find in their favour. They are as follows:

- i. Joseph Sims’ known handwriting in 1958 was compared to the instrument of transfer, as well as other documents and the instrument was determined to be a forgery;
- ii. Joseph Sims had a nervous shaking in 1958 when the known handwriting document was signed by him, and with the shaking, he could not have signed the instrument of transfer in the 1980s with the same speed and fluidity;

- iii. The Joseph Sims had a dispute with Paul Reid's family or otherwise did not get along with them and would not have transferred an interest in the property to Paul Reid as he did not trust his family.

[72] On the first evidential underpinning, the submission of the Claimants Counsel is that the evidence of the handwriting expert remains unchallenged and should be accepted out-of-hand. While no opposing expert was called, the findings of the expert were in fact challenged by the Defendant on the basis that there were facts she did not consider. In an article in the Irish Judicial Studies Journal titled, ***Judicial Assessment of Expert Evidence*** (2010) 10(2) JSIJ 55, the author, Evan Bell, states at page 55:

"Expert evidence, like all other evidence, must be given only appropriate weight. It must be influential in the overall decision-making process as it deserves: no more, no less.

[73] The author goes on to outline in the article the criteria that a judicial officer should consider in assessing the evidence of an expert, and he notes that no single criterion is determinative, and some issues relate to the assessment of the expert evidence alone while others are used to assess the weight of all the witness testimony. Among the criteria he delineates, the issue of the correctness of factual premises and underlying assumptions is the one that I will focus on.

[74] The primary challenge that has been made to the expert's report is that there are important factual assumptions made that have resulted in her conclusions being faulty. The main ones are that the sole known handwriting of Joseph Sims that were accepted by the expert were the documents at K1 and K2 though another may have existed, and secondly that the findings rely on an assumption that Joseph Sims never recovered from the illness that afflicted him at the time of the signing of the 1958 document. At page 63 Evan Bell writes:

It is a trite principle of evidence that the opinion of an expert, whatever the field of expertise, is worthless unless founded upon a sub-stratum of facts which are proved, exclusive of the evidence of the expert, to the satisfaction of the court according to the

appropriate standard of proof. Whether or not the expert believes in that sub-stratum of facts or knows them to be true or is satisfied that they are true, is completely beside the point.

[75] He refers to the case of ***Makita (Australia) Pty. Ltd. v. Sprowles*** [2001] N.S.W.C.A. 305, at para. 64, for the principle “that what an expert gives is an opinion based on facts”. The suggestion of the Defendant’s Counsel is that not all the facts were considered in arriving at her expert opinion.

[76] Ms. East said that the basis on which she accepted K1 and K2 as the known handwriting of Joseph Sims was that it was part of her methodology to rely to make comparisons with government issued documents. However the certificate of enumeration and the National IDs are government issued documents, or certainly purport to be. She however dismissed their validity without checking with the relevant agencies to inspect the originals. Had her findings not concluded that the certificate of enumeration and the disputed instrument of transfer were written by the same individual this may well have been of no moment, but having arrived at the finding, it would seem to have been prudent to take the additional step of making contact with the relevant government agency. While the costs associated with travelling to Jamaica to take this additional step is appreciated, the absence of this verification weakened the reliability of her finding on that point.

[77] K1 and K2 were indeed different from Q1 to Q8 but if the veracity of her finding is increased by the used of government issued sources of documentation then a failure to verify the authenticity of a document that she examined and gave a finding on, affects the reliance that can be placed on that finding.

[78] When one considers this fact in the context of the second of the above evidential underpinnings, the failure appears more glaring. I refer to the fact that it was known that at the time of the signing of the 1958 document that Joseph Sims suffered from a nervous condition that caused his body and hands to shake. This was not merely the signature of a younger Joseph Sims but a Joseph Sims who was still suffering the effects of a nervous illness. The evidence of Ms. Smith is that the shaking was so bad that he had trouble holding a hot cup of tea. There was no examination of any documents signed before his

nervous breakdown in 1954, but it was universally accepted during the case that the condition altered his writing ability for the worse. Even Mr. Sims said he recovered from his illness though it was not clear if he was saying that after his recovery the nervous shaking abated. If during the three (3) decades that followed before the signing of the instrument of transfer he recovered, it is entirely conceivable that his handwriting could have been altered as a result of his recovery; very likely for the better.

[79] It is clear that Ms. East based her findings on a unverified assumption that he never recovered from his illness and if he did, his nervous shaking didn't improve. In fact she unwittingly acknowledged this fallacy in her evidence where she admitted that the signatures in Q1 to Q8 were possible if he had completely recovered. No suggestion is being made that investigating his medical history after the 1958 was a part of her remit as an expert, but as she said that illness was a factor that could have affected the signature, she ought to have conducted her examination of the documents with that factor in mind.

[80] Though Ms. East mentions the different systems of writing, she seems to place more reliance on the fact that one's signature generally slows down as one gets older, rather than speeds up. That conclusion appears to be reasonable if one is assessing a normal, healthy, forty-five year old man, but the 1958 sample signature was for a very ill man whose condition specifically affected his ability to hold things, and inferentially, his speed and ability to write and sign. Paul Reid's evidence is that despite his fluctuating health, Joseph Sims did not have shaking in the mid-1980s when he used to assist him to the doctor. He was stubbornly independent, it seems, and would insist on riding his bicycle; a suggestion that the man whose hands were too shaky to hold a tea cup of hot tea in the 1950s, may well have improved in terms of the nervous shaking.

[81] It is evident that George Sims is not a witness on whose evidence I can rely regarding his knowledge of his father's health condition. There were glaring issues concerning his credibility during the trial that left the Court unsure as to whether much reliance could be placed on his testimony on disputed facts. He was clearly not being truthful at trial regarding his mother remaining with his father after he migrated. He stated

that his mother remained with his father after he emigrated in 1979 and they remained together up to his death in 1988. Given the fact that he was abroad for much of the time during this period, were it to be true, it would bolster his evidence that he knew the health and living circumstances of his father or certainly, that this was knowledge within the purview of the Claimants.

[82] Firstly, that account regarding his mother, contradicted the evidence of his witness Ms. Smith, who said both George and Ione Sims emigrated, but she only recalled seeing Ione Sims return. Even more devastating to his credibility was the fact that Mr. Sims swore to an affidavit in 2011 in which he stated that his mother emigrated, lived with and was cared for by him and his sister up until 2011 when he was making an application to the Court concerning her. Therefore, he either potentially perjured himself in those prior proceedings and is speaking the truth in this matter or he is not speaking the truth on the issue in this matter. In either event, it affected his credibility on that point and as a whole.

[83] Further, a part of the Claimants' case to bolster the findings of the handwriting expert, was George Sims' testimony that he was familiar with his father's handwriting and that even after he emigrated, he kept in regular contact with him through letters his father would write to him. This evidence was also presented to strengthen this claim that he knew what was happening with his father regarding his health, maintenance and accommodation, because he regularly wrote to him. It is apparent that either his father never wrote to him as he claims or the letters do not support his contention about the handwriting, as it defies any commonsense that he would destroy the letters of his father, with whom he claimed to have a close relationship, because the handwriting was 'crab toe'.

[84] I did not find George Sims to be a credible or reliable witness on those critical points of the quality of Joseph Sims handwriting and his true knowledge of his affairs up to his death. It is evident that after leaving Jamaica he knew little about his father's affairs, and Paul Reid's mother and her family had to assist with caring for him. The Claimants are unable to show that Joseph Sims had not recovered from the nervous shaking that so devastatingly affected his handwriting. George Sims insists that the signature on the

instrument of transfer could only belong to someone with tertiary level education, but this is not supported by the evidence of the handwriting expert. His statement that the signature had to be written by someone possessed of tertiary learning was clearly a jab at Mr. Reid who is well educated, being an Engineer by profession, and an attempt to show that perhaps he had prepared the 'forgery'. There is no evidence by the expert to support a conclusion that because Joseph Sims only attended All-Age school he could not have good handwriting. He, after all, was a business man who farmed, operated his shop and had tenanted properties and there is no evidence that he was not able to write well prior to his nervous breakdown. It was clear the handwriting seen in the marriage register in the 1950s was a distortion of his true handwriting caused by his nervous illness.

[85] Ms. East mentioned that Joseph Sims likely learned handwriting under an older writing system but does not have any sample of his handwriting prior to the nervous breakdown to state conclusively that his handwriting belonged to that older style. She did not make efforts to verify the authenticity of the enumeration document that she claims bears this newer writing style, though she gives evidence that government documents such as this one are among the type that she uses as known handwriting. She offers instead, speculation as to why she surmises that the enumeration certificate was inauthentic. She also gave evidence that illness can affect handwriting and it is undisputed that his nervous breakdown would have affected his handwriting, at least up to the time he got married, yet this is the only document she was prepared to accept as known handwriting to make a comparison.

[86] I accept the evidence of the expert that the documents at K1 and K2 are different from Q1 – Q8, but do not find on a balance of probabilities that it is for the reason she asserts; that is, that the latter ones do not belong to Joseph Sims. Rather than that they were signed by different persons, I find that they were signed by Joseph Sims 'pre-recovery' from his nervous shaking and Joseph Sims 'post-recovery'. What the Claimants cannot say is whether Joseph Sims recovered from the nervous shaking and have not presented any evidence to show that his handwriting did not return to the quality seen in the Q1 – Q8 documents. Ms. East confirmed in cross-examination that had he fully recovered from his nervous condition, the handwriting in K1 and K2 could have improved

to be like those in Q1 to Q8. According Paul Reid, Joseph Sims did not display the nervous shaking characteristics that are described by the witnesses for the Claimants. Ms. Smith cannot say whether he recovered from the shaking and even George Sims said he eventually recovered from the illness, though unsure about the shaking.

[87] As shown in the stated authorities, given the weighty nature of a fraud and the need to specifically prove the allegations, I find on a balance of probabilities that the Claimants have failed to establish the case against the Defendant. I do not find the allegations of fraud proven on a balance of probabilities or at all.

[88] It is entirely moot at this stage, but the final evidential underpinning related to the assertion that the distrust of the Reid family by Joseph Sims would have excluded Paul Reid as a person he would ever transfer property to. That premise fails for the following reasons:

- The events George Sims alleged, would have taken place long before Paul Reid was born and if it occurred, involved his parents. It is not inconceivable that he could hold a grudge against the parents and not their children;
- A lot can happen in thirty (30) years and the parties could have reconciled;
- Ms. Smith who spoke of it, later admitted that she had no personal knowledge of the events she spoke of nor did she witness the effects of this distrust;
- George Sims who claimed to have been about seven (7) when these events occurred has been proven to be unreliable on these disputed facts.

[89] Based on the foregoing, judgment is given for the Defendant. The Claimants claim is dismissed, judgment given for the Defendant, with costs awarded to the Defendant to be taxed if not agreed.