

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

CLAIM NO. 2007/HCV00364

IN CHAMBERS

*IN THE MATTER OF THE REGISTRATION
OF TITLES ACT, SECTION 158*

A N D

*IN THE MATTER OF LAND PART OF 10
WEST STREET, KINGSTON*

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*IN THE MATTER OF DENNIS SINGH AND
JOSEPHINE SINGH*

Adley Duncan instructed by Alton E. Morgan & Co. for applicants
Alton Morgan Present.

Ms. Keisha McDonald and Ms. Luciana Ramsay for Tax Administration Services
Department.

Mr. Ainsley Powell and Ms. Esther Mclean Commissioner and Assistant Commissioner
for Taxpayer Audit and Assessment Department.

**Application for Order to Amend Title under Section 158 of the REGISTRATION of
TITLES ACT**

Heard: February 18th, 2008

Daye, J.

Mr. Dennis Alexander Singh name was entered on Certificate of Title registered at Volume 1189, Folio 989 as the sole transferee. This was effected on the 5th January, 2005. He therefore was the sole owner of this property.

Mr. Dennis Singh desires to hold the title in the name of himself and his wife Josephine Singh as joint tenants. Therefore he seeks an order from the Court to achieve this end. The Tax Administration Services Department whose responsibility is to protect the revenue of the state takes issue with the applications. They contend that the applicant is attempting to make a transfer from himself Dennis Singh to Dennis Singh and Josephine Singh. Such a transfer attracts transfer tax separate and apart from what was paid for the property. A transfer Tax Certificate discloses that Transfer Tax amounting to \$60,000 representing 7.5% of the consideration of \$800,000 was paid for this property on the 24th September, 2002. If the Court grants Dennis Singh's application it means he would by pass the process of transfer and would not be liable for transfer tax.

Discretion to Amend

Mr. Dennis Singh applied for an order under Section 158 (2) (b) of the **Registration of Titles Act which reads:**“(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 –

(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.

Procedure to Apply to Court

Mr. Dennis Singh instituted his application by a Fixed Date Claim Form dated, 19th January 2007 under the Civil Procedure rules, 2002 (C.P.R) in common law. He has commenced therefore proceedings at law and specifically to secure a court's order. Mr. Dennis Singh's application can only be directed to amend the entry of Transfer on Certificate of Title Volume 1189 Folio 989.

Mr. Dennis Singh is really requesting two things.

1. That his wife Josephine Singh be added to the title and
2. That there be any entry Dennis Singh and Josephine Singh shall hold as joint tenants.

This is not a request for a simple amendment to an entry on the Title. It is more than an amendment. To that extent the Singh's would be applying for something beyond the scope of section 158(2) (b). By way of comparison Section 158(1) (a) empowers a Judge to direct the Registrar of Title to cancel or correct, among other things, an entry relating to land. Then sub-section (b) empowers the Judge again to direct the Registrar of Title, among other things to substitute an entry in a Certificate after a decision on recovery of land. So, in my view Section 158 (2) (b) does not embrace an action of adding and then inserting names as a means of amending or correcting a Certificate of Title or any entry on that title.

Interpretation of Provision

In my view in order to determine what Section 158(2) (b) means or embraces, it is helpful to look at the context it is found in the Act. Section 158 (2) (b) is found under the Marginal Note: **Procedure in cases of error or misdescription**. The Registrar of Titles

is given a summary power under Section 153, the first section under this subhead to call in by writing a person to whom a certificate of title, or instrument was issued in error or where any entry or endorsement was made on such title or instrument in error to deliver same. If this is not done the Registrar can then cancel or correct the title. There are additional provision for the Registrar of Titles to invoke the powers of the Court to enforce this function. But essentially the provision does not allow the Registrar to alter substantive rights. It enables the Registrar to correct errors to ensure the substantive rights are realized. It is intended to correct mistakes. I am also of the view that the discretion that is given under Section 158(2) (b) to amend a title or entry on a title is to correct any error or mistake to the registration of a title or entry on a title. It is intended to empower the Court to act in a way that the true owner obtains what he ought to have.

Questions will certainly arise as to who is in error or how did this error or mistake came about. The answers to these questions will depend on what turns on the factual positions.

Mr. Dennis Singh claims and depones there was an error in registering his name on the title as sole transferee. The version he gives is that:

Affidavit Evidence Applicant

- (a) The Agreement of Sale he signed on the 16th of September 2002 contains a completion clause “a registrable Transfer in favour of the Purchaser or his Nominees”.
- (b) He elected his option to choose a nominee, by choosing his wife Josephine Singh. This was communicated to the Vendor’s Attorney by letter dated December 2, 2002.

- (c) The instrument of transfer was prepared by the vendor after this letter and it only had the Purchaser Dennis Singh as transferee and not also his wife Josephine Singh.
- (d) He only became aware of this when he received the duplicate Certificate of Title (See Affidavit, dated 11th April 2006)
- (e) It was his original intention to have his wife's name as joint tenant on the Title as the deposit paid under the agreement of sale was debited from a joint account held in the names of his wife and himself. (He exhibits cheque and bank statement of joint bank accounts. Though cheque has wife's name crossed out).

Mrs. Josephine Singh and Attorney-at-law Alton Morgan who acted on behalf of Mr. Singh supported Mr. Singh in their respective affidavits.

Affidavit Evidence of Respondent

Mr. Ainsley Powell in his affidavit in response explained the system of stamping and assessing an Agreement of Sale with or without a nominee clause as also an Instrument of Transfer. He said Mr. Singh's Instrument of Transfer submitted to the Stamp Duty and Transfer Tax Division did not show any election of a nominee (see also Esther McLean's Affidavit in response). Mr. Alton Morgan says this was the error or fault of the Vendor's Attorney. No evidence was forth coming from the Vendor's Attorney supporting or confirming this claim. So in the end I cannot find that there was any error on the part of Tax Administration Services Department. Any error would be between the attorneys for the vendor and the purchaser. An error of that nature is not one that I believe was contemplated as an amendment by Section 158(2) (b) of the Act. It is a

costly error, but it is one that has to be borne where the fault lies-either the attorney for the purchaser or the attorney for the vendor not the state.

Submission by the Applicant

Mr. Duncan submitted that under Section 10(2)(3) of the Transfer Tax Act a transfer to a nominee is not deemed to be a transfer for which tax is chargeable. So the purchaser Mr. Dennis Singh would not be avoiding any tax liability.

Ms. Luciana Ramsay submitted that Section 10(2)(3) of the Transfer Tax act speaks to some one who is already named as the Nominee in the agreement.

Section 10 of the Transfer Tax Act is dealing with when there is an original contract for sale of land and the purchase under that contract or his nominee assign or contract to assign rights under the contracts. In such cases the contract of transfer is the second contract and the parties are the original vendor and assignee to the contract. The consideration would be the amount stamped on the assignment or the contract. It is this latter contract or assignment that would be assessed and charge for tax and not the original contract of transfer. The rational is that the law would not permit a charge on the same property twice for tax. In short this section does not regard the election of a wife under a nominee clause in an agreement for sale an assignment or contract to transfer rights of contract to bring into operations the exemption provision on charges of tax on a property transferred.

At a later stage Mr. Duncan submitted additionally that a transfer between husband and wife under **The Property (Rights of Spouses) Act 2004** is not liable to transfer tax. Therefore he contends an order by the court to amend the entry in the

Certificate of Title to include Mr. Dennis Singh and Mrs. Josephine Singh transfer jointly would not be sanctioning any evasion of Transfer Tax.

Ms. Luciana Ramsay rebutted this by showing that the **Property (Rights of Spouses) Act 2004** only exempted Transfer Tax on transfers between spouses when the property is the family home (sec. 9 of Transfer Tax Act) There was no evidence the property was the family home. The evidence of the applicant Mr. Singh suggests the property was intended for business. So yet again, there is no authority to support Mr. Duncan that by granting the order of amendment Mr. and Mrs. Singh would not have to pay Transfer to secure Mrs. Singh's name on the Title, which would not have to be paid in any event.

Submission by Tax Administration Services Department

Apart from contending Mr. Duncan's submission outlined, Ms. Luciana Ramsay argued there was no error on the Tax Department part or even the applicant or his attorney's part. She referred to the fact that Instrument of Transfer was signed by Dennis Singh solely as transferee. It was also witnessed by his Attorney 9th April 2003. It is not an error and the Court should not exercise its discretion to amend any entry of the Title. She also said letter of 2nd December 2002 was questionable. It referred to documents including an Instrument of Transfer that was sent in April 2003. It was speaking of events after 2002. This she says shows the applicant was not genuine about his claim that his original intention was to put his wife's name jointly on the title. So the Court should not in equity exercise its discretion to someone who has not come with clean hands. Mr. Duncan retorted the proceeding is not in equity but in law. I need only say the conduct or the good faith of the applicant is a relevant factor to consider when a court is exercising

its discretion to grant or refuse an application. This is so whether the application is in equity or law.

The discrepancy pointed out in the letter is not satisfactorily explained and this failure plus signing the Instrument of Transfer does not convince the Court that there was any mistake or error of the nature that bring into operation the power to amend an entry on a certificate of Title within sec. 158 (2)(b) of the **Registration of Title Act**.

An order to amend this entry would amount to transfer of interest. The provision of the Act did not intend a Court to exercise such a power.

There is another feature of this application that arises which I must comment on. The Registrar of Titles was not made a party to this proceeding. It is the Registrar that has the statutory responsibility to register titles, make entries on Certificate of titles and deal with documents such as Instruments of Transfer.

All documents relating to a transfer of a property after they are stamped and certified for payment of tax and duties, are transmitted to the Office of Titles for registration. So while I appreciate that an error can occur at the Tax Department, which did not exist, it is the Office of Title that has the ultimate responsibility for registration of interest in property and entries on Certificate of titles.

No error was alleged against the Registrar of Titles about this entry. The documents that the Stamp Duty and Transfer Tax Division value, assess and stamp would be the same that the Office of Titles would receive for registration. Therefore, an applicant seeking an amendment on the grounds of error in these circumstances would be obliged to show the error was that of the Registrar though caused by another person or body.

The fact that the Registrar was not joined as a party but only the Tax Administration Services Department appear to suggest the principal motivation for the application to amend was consideration of tax liability. Though a court is not unmindful that parties to a contract for transfer of property have real and genuine anxiety about tax liability, this is not a factor that governs the exercise of the Court's discretion to amend an entry on a title under section 158(2) (b) of the Registration of Title Act.

Therefore having considered the several relevant issues raised the application to amend or rectify the entry relating to Dennis Singh on Certificate of Title Registration at Volume 1189 Folio 989 is dismissed.

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Deputy Judge
June 20, 2010

