



[2022] JMSC Civ 209

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2016 HCV 01515

BETWEEN	MILFORD SMITH	CLAIMANT
AND	DELORES SMITH	DEFENDANT

Mr. Anwar Wright instructed by Wright Legal for the claimant.

Mr Ruel Woolcock and Mr Richard Goulbourne instructed by Ruel Woolcock & Co. for the defendant.

Heard November 16, and 17th 2022

ORAL DECISION ON NO CASE SUBMISSION

Allegations of fraud in obtaining certificate of title – no case submission at the end of the claimant’s case - whether evidence cogent enough to establish fraud

CORAM: JARRETT, J (Ag)

Introduction

[1] The trial of this matter commenced with the claimant giving evidence and calling no witnesses. At the close of his case, his counsel, Mr Anwar Wright, objected to the defendant relying on her witness statement filed out of time on March 17, 2022, and without having applied for relief from sanctions as required by the CPR. A case management order made on October 25, 2018, stipulated that witness statements were to be filed and exchanged on or before March 10, 2022. Counsel for the defendant Mr Ruel Woolcock, conceded that his client had filed her witness

statement late and had not sought relief from sanctions. In the result, he made a no case submission. These are the reasons for my decision.

[2] I will first address an issue raised by Mr Wright during his response to the no case submissions of Mr Woolcock. Mr Wright argued that he does not believe that this is an appropriate case for a no case submission, since the defendant is unable to rely on any evidence as a matter of law. There can therefore be no question of an election on the defendant's part not to call any evidence, as is the usual case in civil matters where a no case submission is made by a defendant. In this case, counsel argues, the no case submission is an attempt by the defendant to circumvent making full submissions on the claimant's case.

[3] I cannot agree with Mr Wright. In civil claims, the rationale generally for requiring a defendant seeking to make a no case submission to first elect not to call any evidence, is to prevent a trial judge from prematurely making a determination on the strength of a claimant's case when the evidence is incomplete.¹ In this case there is no such concern as the defendant had filed only one witness statement , it was filed out of time, and with no relief from sanctions being sought, she is unable to rely on it. This has been conceded by her counsel. Simply put, there is no evidence on which the defendant can rely. There is no election that she can make. I am therefore of the view that the test to be applied in such a case is this, is the same as where the defendant has made an election not to call any evidence. That test is whether on the evidence of the claimant, he has established a prima facie case. Put another way, is there enough evidence to entitle a judge to find in his favour if there is no further evidence?

[4] I now turn to the evidence of the claimant. The claimant and the defendant are brother and sister. He claims against the her for:

¹ For an exception see the decision in **Mullan v Birmingham City Council, The Times Law Reports, July 29, 1999 at 573.**

- a) a declaration that he is the sole beneficial owner of lands comprised in certificates of title registered at volume 1151 folio 348 and volume 1148 folio 610 of the Register Book of Titles;
- b) an order directing the Registrar of Titles to cancel the aforesaid certificates of title and to issue new Certificates of Titles and Duplicates in relation to those lands in his name and;
- c) an order that the Land Valuation Department and the Collector of Taxes be directed to remove from their records all reference to valuation number 205-04-009-076, citing the defendant as being the person in possession of the relevant land

All these remedies are sought on the basis of what the claimant alleges is the defendant's fraud.

- [5]** In his opening statement, counsel for the claimant, Mr Anwar Wright submitted that there were two factual issues I had to determine: a) was a fraud perpetrated and b) was the fraud perpetrated or caused by the defendant. As to the legal issue, he said it is whether the defendant is liable to the claimant in deceit or fraud. He concluded by saying that the claimant desires that I find a fraud was committed and that it was perpetrated by the defendant.
- [6]** The claimant's witness statement filed on March 10, 2022 as amended and redacted, stood as his evidence in chief, and he was extensively cross examined.
- [7]** His evidence in summary is as follows:
- a) His mother Ethel Palmer died on August 22, 2003 and prior to her death she held lands registered at volume 1148 Folio 610 and

volume 1151 folio 349 of the Register Book of Titles jointly with him as joint tenants. At the time of her death, the defendant resided with their mother, was her caretaker and the person who looked after her papers. He looked after her financial needs.

- b) Around 2005 or 2006 he asked the defendant for the certificates of title for the said lands and she gave them to him. On cross examination he said the defendant handed over the titles without resistance. Shortly after receiving the titles, he observed with surprise that his mother's name was endorsed as the only registered proprietor of the lands. When he enquired of the defendant about this, she blamed his mother, and later on, their sister Koralee Palmer of committing fraud.
- c) With the assistance of his attorney-at-law, he was able to obtain certified copies of the original titles from the National Land Agency and discovered certain discrepancies between those certified copies and the duplicate tiles he received from the defendant. In relation to certificate of title registered at volume 1151 folio 349, the discrepancies are: i) differences in the hand writing; ii) differences in the signature of the registrar; and iii) differences in the registrar's seal. In relation to certificate of title registered at volume 1148 folio 610 the discrepancies are: i) differences in the transfer number; ii) differences in the handwriting; iii) differences in the signature of the registrar and the seal.

- [8]** Two letters from the Registrar of Titles in response to letters from the claimant's attorney dated October 29, 2015, and December 22, 2015, formed part of Exhibit 1, which is the bundle of agreed documents. In the first letter, the Titles Operations Manager advised that their investigations revealed that transfer number 473023 was erroneously recorded on certificate of title registered at volume 1143 folio 610 and that the record will be amended to delete that information. This was in response to the claimant's counsel's observation in letter dated July 31, 2015, (also part of Exhibit 1) that transfer number 473023 is the number on the certified copy of the title, but number 475023 appears on the duplicate title. The Titles Operations Manager goes on to say that there is no evidence of transfer number 475023 being recorded in their system and that further research would be done to determine the authenticity of that endorsement. The letter concludes by saying that a handwriting expert is best suited to attest to the difference in signature on the duplicate title and the original title and that the seal on the certified copy of the original title is different because the National Land Agency now use an electronic seal as against a manual seal which was previously used.
- [9]** In the second letter, the deputy registrar, writing for the registrar said that their investigations reveal that the transfer numbers 473023 and 475023 endorsed on the certificates of title in issue cannot be located in their records and that they are conducting investigations and will advise further. She also said that the registrar cannot de- register the transfers without being directed to do so by a court order. In the interim, she said a registrar's caveat would be placed on both titles.
- [10]** The claimant's evidence is that he did not sign a transfer transferring his interest to his mother and that the transfers were done fraudulently. He said that the defendant caused the Land Valuation Department and the Collector of Taxes to place her name on their records as the person in possession of lands registered at volume 1148 folio 610. Since he was not responsible for causing such a thing, the defendant must have done so fraudulently and dishonestly. The claimant also said that the defendant found a way to continue to deceive by ascribing valuation number 205-04-009-076 to a portion of the land measuring a quarter acre. He said

that she showed him what purports to be the will of their deceased mother, but it was invalid as it was witnessed by only one witness. He said that the defendant claimed to be entitled to an interest in their deceased mother's estate and that is because of the fraud. According to the claimant, due to the close relationship he had with his mother, she would not have transferred his name from the title, and would never have deceived him by committing fraud or in any other way. He accepted on cross examination however that his mother could have said and done things that he would not know about.

[11] In cross examination the claimant said that his mother died leaving other children besides himself and the defendant. He admitted to those siblings having a close relationship with the deceased and all having access to her whenever they wanted to. He further admitted that he has not seen anything with his own eyes to lead him to know that the defendant committed fraud. He also conceded that he does not know if the defendant worked along with anyone to commit fraud. When asked if he knows if the defendant made any representations to the titles office that would result in the two titles in issue being registered into his mother's name alone, his answer was "no".

[12] When items, 6, 7, 8, 9, 15 and 16 of Exhibit 1 (which are copies of property tax receipts) were shown to the claimant, he admitted seeing that the documents reflect his mother, Ethel Palmer as the owner of lands registered at vol 1151 folio 349 and that the taxes were being paid for the relevant periods reflected in those documents by the defendant who is said to be in possession of the land. He insisted however that there is a document which shows the defendant paying property taxes in the capacity as owner. No such document was however tendered into evidence by the claimant. He insisted that he did not give the defendant permission to pay the taxes. When it was suggested that all he has is "a feeling" that the defendant did what he alleges, the claimant's answer was:

"I think is she, because she wants to get hold of the property she lives on.

That's why she transfers my name from the title" [Emphasis added]

- [13] According to the claimant, the defendant had the titles all along and she was the one who did the transfer. He said in his witness statement at paragraph 17 that the defendant's name appears on the property tax receipts as being in possession and since he did not authorize the authorities to make these entries, the defendant must have done so fraudulently and dishonestly. But when it was suggested to him that he does not know how the defendant's name appears on the property tax receipts as the person in possession he admitted that he does not know but that the defendant would know. When asked if he knows if the defendant did anything to "cause" her name to be on the tax roll, his answer yet again was that he did not know.
- [14] When paragraph 18 of his witness statement was read to him where he says that the defendant's deceit is also to be found by her ascribing valuation number 205-04-009-076 to a portion of the land measuring a quarter acre, the claimant said he would not know if the defendant deceived anybody as those things were done "behind his back".
- [15] Mr Woolcock's position was clear and simple. In summary he argued that there was no cogent evidence establishing the alleged fraud. The authorities he says, establish that there must be actual fraud and evidence of dishonesty. Counsel said that the claimant's evidence was based on speculation. He relied on the decisions in **Paul Griffith v Claude Griffith [2017] JMSC Civ 136**; **Ervin McLeggan v Daphne Scarlett and the Registrar of Titles [2017] JMSC Civ 115**; and **Elaine Arem v Vivienne Ancilin Myrie [2018] JMSC Civ 49**. Counsel also argued that the wrong party is before the court. The true defendant he contends, ought to have been the representative of the estate of the deceased Ethel Palmer.
- [16] Mr Wright in response argued that in addition to the claimant's own evidence, I should have regard to the letters from the National Land Agency written on behalf of the registrar of titles; the fact that those letters demonstrate that the registrar has lodged a registrar's caveat on the lands in issue and that the transfers were effected at a time when the titles were in the possession of the defendant. He

submitted that the claimant's evidence establishes that the defendant did perpetrate the fraud alleged, and that she did so for her own benefit. He urged me to utilise the powers given under section 48 (f) and (g) of the **Judicature (Supreme Court) Act** and grant the remedies sought by the claimant as the evidence disclose on its face that there has been fraud.

Analysis and discussion

[17] The remedies being sought against the defendant are undergirded by allegations of fraud. It was submitted on the claimant's behalf by Mr Wright, that the claimant desires that I find the defendant committed fraud. The claimant's pleaded allegations of fraud in paragraph 17 of his particulars of claim are:

- a) Presenting to the National Land Agency for registration a forged or fraudulent instrument of transfer on the said Certificates of Title.
- b) Fraudulently conspiring with persons unknown to effect and /or effecting the said fraudulent registration at the National Land Agency.
- c) Fraudulently conspiring with persons known and/or causing the claimant's name to be removed as registered proprietor of the said land contained in the said certificates of title.
- d) Fraudulently conspiring with persons unknown and /or effecting the removal of the said fraudulent instrument of transfer from the records of the National Land Agency.
- e) Making false representations to the National Land Agency by words and /or conduct that the claimant had gifted his interest

in the lands contained in the said certificate of title to the late Ethel Palmer.

- f) Deceiving the National Land Agency that Ethel Palmer deceased had acquired the sole beneficial interest in the said lands.
- g) Causing the said lands to be registered or transferred into the sole name of the late Ethel Palmer knowing that the Claimant had not made a gift of his interest to her.
- h) Fraudulently and dishonestly effecting the said transfers on the certificates of title as part of a design to inherit a part of the land as a devisee or beneficiary in the estate of the late Ethel Palmer.
- i) Fraudulently and dishonestly causing the land valuation department and the tax collectorate to place her name in their office records as the person in possession of $\frac{1}{4}$ acres of the land contained in certificate of title registered at volume 1148 folio 610 in the register book of titles and to ascribe valuation no. 205-04-009-076 to the said part of land.

[18] The authorities make it clear that to prove fraud, the bar is a very high one for a claimant to meet. But particularly in this case, where the allegation of fraud is made within the context of the existence of a certificate of title registered under the provisions of the Registration of Titles Act and the concept of indefeasibility of that title. Mr Woolcock brought to my attention the decision of Lawrence Beswick J in

Elain Arem v Vivienne Ancilin Myrie, in which the learned judge said in relation to fraud under the **Registration of Titles Act** at paragraphs 46 and 47 that:

“[46] The Act does not define” fraud”. It is accepted that the forms and methods of fraud are so varied that no definition of it can be attempted. However, the authorities show a common thread of requiring evidence of a consciously dishonest act in the plain ordinary meaning of those words, some type of moral turpitude to prove fraud.

[47] It was Lord Lindley who, in the House of Lords said,

“...by fraud in these acts is meant actual fraud that is dishonesty of some sort.”

[19] I am also mindful of the decision of Thompson James J in **Paul Griffith v Claude Griffith**, which was also relied upon by Mr Woolcock. Dealing with the standard of proof in cases of fraud in civil matters, Thompson James J reminds us at paragraph 40 that the more serious the allegations the more cogent the evidence must be. The allegations in the case before me are serious, the evidence to support them must therefore be cogent.

[20] I cannot agree with Mr Wright that the evidence has established that a fraud has been committed and that it was committed by the defendant. There is simply not enough evidence before me to make any such findings. There is no cogent evidence bearing out the pleaded allegations of fraud of the defendant. The letters from the registrar of titles clearly demonstrate that there is an issue requiring an investigation, but there is no evidence before me of the outcome of that investigation. The lodging of a registrar’s caveat is certainly not indicative of the

registrar determining that there has been fraud and a *fortiori* that it has been committed by the defendant.

[21] The claimant has not, on a balance of probabilities, established that there was any moral turpitude or dishonesty on the part of the defendant. To say that the titles were in the defendant's possession when the transfers were effected does not establish that the defendant has committed fraud or for that matter that she was involved in obtaining the transfers by fraud. The claimant said he did not transfer his interest in the lands to his mother, but agreed on cross examination that his other siblings had liberal access to her during the relevant period. He also agreed that he did not know all that his mother could have done or said during that time. I have no hesitation in finding that the claimant has not made out a prima facie case of fraud against the defendant or for that matter that a fraud has been committed by anyone. His allegations are based on speculation, suspicion and conjecture. It lacks the cogency that is required for me to make the findings that he desires.

[22] In the result I accept the defendant's no case submission and make the following orders: -

- a) The claimant's claim is dismissed
- b) Costs to the defendant to be agreed or taxed.
- c) The claimant's application for leave to appeal is granted.