



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2018CD00453

**In the Estate Neville Sue, Retiree of
17005 NW 38th Court, Miami Gardens,
Florida, USA 33055; deceased,
intestate**

AND

**In the matter of All that parcel of land
known as Lot 406 Titchfield Trust
Lands situate at Port Antonio,
Portland registered at Volume 1052
Folio 946 now registered at Volume
1504 Folio 812.**

BETWEEN

**SHARON DENISE SUE
(Personal Representative of Estate
Neville Sue, deceased intestate)**

CLAIMANT

AND

VERNON CLAUDE PEART

DEFENDANT

Fraud – Registration of Titles Act - Whether Title obtained by fraud – Whether land sold to Defendant prior to owner’s death - Whether fraudulent declarations made - Whether copy receipt authentic.

Stuart Stimpson & Tashawna Grannum instructed by Charmaine Smith-Bonia for the Claimant

Craig Neil & Kaysian Sherman instructed by Townsend, Whyte and Porter for the Defendant

Heard: 22nd, 23rd, 24th and 25th February, 2021

In Open Court

Cor: **BATTS J.**

[1] On the 25th day of February 2021, after having heard evidence and submissions, I gave judgment for the Claimant and made the following Declarations and Orders.

1. *“It is hereby declared that Vernon Peart fraudulently obtained Certificate of Title registered at Volume 1052 Folio 946 of the Register Book of Title for all that parcel of land known as Lot 406 Titchfield Trust lands situated at Port Antonio, Portland (hereinafter referred to as the said property).”*
2. *It is declared that the beneficiaries in Estate Neville Sue are solely entitled to the legal and beneficial interests in the said property.*
3. *The Registrar of Titles is directed to cancel Certificates of Title registered at Volume 1052 Folio 940 of the Register Book of Titles and restore and/or issue title to the deceased Neville Sue accordingly.*
4. *The Defendant Vernon Claude Peart is restrained whether by himself, his servants and/or agents or otherwise howsoever, from entering, remaining, taking steps to sell, charging, or otherwise disposing of the said property, and/or dealing in any way whatsoever which is prejudicial to the interest of the estate Neville Sue.*
5. *The said Vernon Claude Peart shall deliver to the Registrar of Titles Duplicate Certificate of Titles*

registered at Volume 1052 Folio 946 on or before the 5th day of March 2021.

6. Costs of this action to the Claimant to be taxed or agreed.”

On the 5th March 2021 I amended the order, pursuant to the slip rule, to insert the correct Volume and Folio numbers being Volume 1504 Folio 812. I promised when I announced my decision that I would put my reasons in writing at a later date. This judgment is the fulfilment of that promise.

[2] The Claimant is the legal personal representative of the estate Neville Sue, he being, her deceased husband. In his lifetime the Reverend Neville Sue (as the Defendant called him) owned certain land in Port Antonio Portland. It is the case for the Claimant that during his lifetime her husband sold one part of that land to the Defendant's parents. Another part was used for the construction of a church. The third portion, and the only one in issue in this case, was rented, by Reverend Neville Sue, to the Defendant.

[3] The Defendant asserts that that third portion now belongs to him because he purchased it. He says that the Reverend Sue, whilst on a visit to Jamaica, collected the full purchase price of US \$10,000 from him. He says Reverend Sue gave him a receipt for the purchase. The Claimant denies that any such transaction occurred.

[4] The issue for determination is therefore one of fact. The only witness, who gave evidence as to the payment of the purchase price and the tender of the receipt, was the Defendant himself. He did say his daughter had seen the transaction but has not called her to give evidence. This court can only give a decision based on the evidence presented and cannot come to a conclusion because of evidence not called. The Defendant has good reason to think calling his daughter was unnecessary. This is because there was no person alive who could directly contradict his testimony. The Claimant had not accompanied her husband to

Jamaica on the trip when it is alleged the sale occurred. Therefore, as she candidly admitted, she could not deny that US \$10,000 had been collected or, that a receipt had been tendered, by her husband. She expressed doubt that any such thing had transpired because (a) her husband had not told her about it and she expected he would have and, (b) there is no sign of US \$10,000 being lodged to their bank account. The fact is, however, there is no direct evidence to contradict the Defendant's account.

[5] This notwithstanding I had little difficulty rejecting the Defendant's evidence. I found that he was not a witness of truth. The deceased I am satisfied did not sell him the parcel of land for US \$10,000 or for any sum at all. My conclusion is based partly on my unfavourable impression of the Defendant in the witness box but, even more so, on the fact that the contemporaneous documentation and the mode of operation of the said Reverend. Neville Sue are inconsistent with any alleged decision to sell. Of critical importance, to my conclusion, was the evidence of Grace Richards. I accepted as truthful her account of an exchange she had had with the said Reverend. Neville Sue. In detailing the reasons for my decision I will not recount all the evidence lead in the court. That is a matter of record. I shall only outline that portion of evidence which caused me to doubt the Defendant's credibility and to reject his assertion of an alleged purchase of land from Reverend. Neville Sue.

[6] The Defendant, in the course of giving evidence, admitted making false declarations on oath not once but twice. One of those false declarations was inconsistent with the case he tries to make out in this court. The declarations were made because he twice applied to have the Registrar of Titles issue title in his name.

[7] The first declaration, dated 27th January 2016, is in support of an application to have title vested, see exhibit 2. This was on the basis that he had purchased the land from Reverend. Neville Sue, whom he swore, had then disappeared. He said in that application that the vendor had gone abroad and that he had heard he was

dead. He also stated he had made unsuccessful efforts to contact him, see paragraphs 9, 10 and 11, of exhibit 2. These statements are false as, during cross-examination, he admitted knowing that Reverend Sue had died. The Defendant, also during cross-examination, admitted calling Mrs Sue after finding out her husband died and that "*she said she was in mourning*". He also admitted that he knew the address of her deceased husband and herself and could have contacted her. The cruise ship on which he worked is based in Florida and he has to go there before and after each voyage. He admitted meeting with Reverend Sue in Florida on at least one previous occasion. The Defendant abandoned that first application after receiving requisitions from the Registrar of Titles, see exhibit 3. He said, in cross-examination, that he "*asked friends to assist me to get death certificate*" but it is instructive that he never asked the Claimant.

- [8] The second declaration containing falsehoods, is dated the 15th April 2016 see exhibit 1 page 109 and, is in support of an application for a possessory title, see exhibit 1 page 105. In the declaration the Defendant stated that he had been in "*open, sole, quiet, peaceful, continuous, undisturbed and unmolested possession of the said land*" since 1996 and that "*my ownership to the said land have never been disputed by anyone*". This is contrary to his earlier declaration that he was a tenant who purchased the land in 2014. It is also contrary to his evidence before this court see, paragraph 6 of his witness statement and evidence in cross-examination. The declaration is inconsistent with several documents, see letters, receipts and lease agreements at pages 78, 79,80,81,82,83,84,85,86,87,88,89 and 91 of exhibit 1, which establish that he was at all material times a tenant of Reverend Neville Sue. According to the Defendant this declaration had "*incorrect wording.*" His explanation is that the declaration was prepared by his lawyer and that he thought he was still applying for vesting. The effort to blame the attorney, who he has not joined as an ancillary Defendant in these proceedings, is pitiful. I observed the Defendant read carefully the documents put before him in the course of his evidence at this trial. I saw him make amendments to his own witness statements. He is a literate person and appears to be a careful man with words.

I reject the suggestion he was unaware of the content of the declaration he was signing. The title obtained in his name was the result of acceptance by the Registrar of Titles of the falsehoods to which he swore in the second declaration.

- [9] The assertion that the Reverend Neville Sue sold him the land in October 2014 is incredulous when other evidence in the case is considered. In the first place the deceased while alive appears to have been very careful when it came to documentary transactions. There are three written lease agreements in evidence which were prepared by Reverend Sue. All seem to be well thought through, see exhibit 1 pages 79 and 89 and, exhibit 4. It is therefore rather odd, and out of character, for a transaction as important as a sale to be handled by him in this informal way. Secondly, it does seem that the Defendant was on occasion late with rental payments, see exhibit 1 pages 86,87 and, 88. The Defendant admits he was often in arrears. In October 2014, when the alleged purchase occurred, the Defendant was seven months in arrears of rent. I know this because in January 2015 the bank lodgements showed rent payments were made, see exhibit 1 page 20. These, being made after the alleged purchase would, on the Defendant's case have had to be for rent owed prior to October 2014. When asked about it in cross-examination the Defendant could provide no explanation. It does seem to me odd that a landlord would pay, to the tenant, the full purchase price for premises at a time when the tenant owed him rent. The business-like thing to do would be to either, deduct the rent due or, collect it before paying the purchase price. Thirdly, the alleged receipt for purchase is on its face suspicious. The receipt nowhere says that the payment is for the purchase of the property. It could easily be a payment for rent. Ten thousand Jamaican dollars would be two months' rent at a time when more than that was owed. It is, in this regard, interesting to observe that on the receipt "US" is tacked on behind both the words and numerals for "\$10,000" see, exhibit 10. It is strange that the "US\$" sign was not put before the numerals and, the words "United States Dollars", were not written in after the words "*Ten Thousand*" on the receipt. The Defendant explains, the clear disparity in handwriting on the document and on known letters written by Reverend Sue, by

saying Reverend Sue told him someone else had written the receipt for him. Whether or not that is so, it is a further odd aspect of this scenario that, Reverend Sue should have chosen to enter into this transaction with the Defendant although only just a few months earlier he had an instructive exchange with Mrs. Grace Richards. To this I now turn.

[10] Mrs Grace Richards gave evidence on oath and in person. Her demeanour and mode of expression was direct and forthright. She impressed me as a witness of truth. She recalls that in March 2014, very early in the morning, her telephone rang. Upon answering the phone, the person on the other end hung up. So she called back the number. The person identified himself as Neville Sue. He asked if she was the owner of a funeral home and she confirmed that as well as the fact that herself and her husband were tenants of the Defendant. She says Mr. Sue explained that rent was owed to him from the Defendant. Further that both the Defendant and his wife were not answering the phone and seemed to be avoiding taking his calls. She says when she told him the amount of rent the Defendant was charging her he got upset. Mrs Richards, I should indicate, had until this exchange with Mr Sue thought the Defendant was the owner of the premises. She was not aware she was in fact a sub-tenant not a tenant. She says Mr Sue thereafter offered to rent the premises directly to her. One may well understand Reverend Sue's perspective because the Defendant was renting the premises for \$5000 per month from him but subletting it to the Richards for \$15,000 dollars per month. Even so they were not paying their rent on time and were in arrears. The Richard's account is corroborated by documentation being a handwritten lease agreement, a copy notice to quit addressed to the Defendant and the original envelope in which she says they were mailed to her by Reverend Sue, see exhibits 4,6 and 9. The envelope on its back bears the postal seals or stamps dated March 2014. They appear genuine and I accept them as such. The Defendant denies ever receiving a notice terminating his tenancy from Reverend Sue. I do not believe him. I accept Mrs. Richards' account and it explains why they stopped paying rent to the Defendant.

[11] The final reason, in this accumulation of causes, for rejecting the assertion of a purchase in October 2014 is the conduct of the Defendant after Reverend Sue's death. The Defendant says he called Mrs. Sue in early 2015, after hearing of Reverend Sue's death, to advise her he had purchased the property. She said in cross-examination that she may have received a call from him but that, and the Defendant admits this, she told him she was grieving and could not speak to him. Thereafter the Defendant did nothing in the way of advising Mrs. Sue of his purchase. One would have thought he would have put pen to paper or even physically visited her. He had in the past written several letters to Reverend Sue, see exhibit 1 pages 76,78,80,82,83,85,86,88 and 91. He could in that way advise her of the payment, his receipt in proof and, seek to persuade her to give effect to her husband's contract. He does no such thing. There is evidence, see para 35 of his witness statement, that he had an attorney commence proceedings in 2017 against the Richards. This is an odd delay given that the Richards had ceased paying rent to him since the year 2014. It is passing strange that neither he nor attorneys on his behalf ever wrote to Mrs. Sue in order to have the sale completed. Instead the Defendant applies to have the Registrar of Titles issue title to him on grounds which contained falsehoods now admitted by the Defendant. The conclusion can reasonably be drawn that the Defendant was intent on keeping the whereabouts of Mrs. Sue secret even from his own attorneys.

[12] I should mention that the Defendant's sole witness gave no evidence directly material to the facts in issue. Esmelyn Edwards, the Defendant's mother in law, deponed that she had loaned the Defendant Three Thousand United States dollars in October 2014. He told her that he needed the money to make up the purchase price for property he was buying from Reverend Sue. The witness appeared to be truthful and admitted that the money had never been repaid. However, save for the coincidence in time of the loan, her evidence proves nothing. The Defendant's statement gains no credibility because it was said then and is repeated now.

[13] In all the circumstances I rejected, on a balance of probabilities, the account of the Defendant. The evidence, as to the falsehoods stated is overwhelming. The

Defendant fraudulently declared that he had been in possession as owner since 1996, that he had had no idea where the vendor was to be found and, that there was no other interest existing or claimed in relation to the land for 12 years prior to his application. He was not a witness of truth. The alleged receipt for a purchase price does not on its face prove that the property was being sold. I doubt its authenticity and find on a balance of probabilities that it was tampered with or manufactured. I find as a fact that Reverend Sue did not enter into an agreement to sell or sell the Defendant any land. I find that the title obtained by the Defendant was obtained by means of fraudulent declarations made to the Registrar of Titles.

[14] In the result I therefore gave judgment for the Claimant and made the Orders at paragraph 1 above.

David Batts
Puisne Judge
9th March, 2021