



[2018] JMSC Civ. 83

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2015 HCV 06123

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|----------------|---|---------------------------------|
| BETWEEN | TANCOUR CONSTRUCTION JA LTD | 1ST CLAIMANT |
| | TYRONE SEAN LEWIS, ANNETTE JEAN BLOUNT, COURTNEY GEORGE LEWIS, TANYA RITCH (T/A LEWIS AND BLOUNT CONTSTRUCTION DEVELOPERS) | 2ND CLAIMANT |
| AND | REGISTRAR OF TITLES | 1ST DEFENDANT |
| AND | SOLID ENGINEERING LIMITED | 2ND DEFENDANT |
| AND | PAUL WITTER AND PERSONS UNKNOWN | 3RD DEFENDANT |
| AND | JAMAICA REDEVELOPMENT FOUNDATION INC | 4TH DEFENDANT |

IN CHAMBERS

Mr Courtney Lewis in person for the Claimants/Respondents

Ms Carla Thomas instructed by the Director of State Proceedings for the 1st Defendant/Applicant

Heard: 9 and 17 May 2018

Application to strike out claim against the 1st Defendant – CPR 26.3(1) – Registration of Titles Act

STRAW J

- [1] The applicant, the Registrar of Titles, by way of its Further Amended Notice of Application for Court Orders¹ is seeking an order to strike out the claimants' claim pursuant to **CPR** 26.3(1)(b) and (c). That is, on the bases that the claimants' statement of case is an abuse of process and/or that it discloses no reasonable grounds.
- [2] The claimants are alleging that the applicant failed to properly designate the outer boundaries of property on the title registered at Volume 1232 Folio 119 of the Register Book of Titles. They had purchased this property from the 2nd defendant, Solid Engineering Limited, who had purchased the same from the Director of Housing on the 4th of October 1991. The property itself was originally part of lands in Pembroke Hall registered at Volume 973 Folio 68. A perusal of the registered title at Volume 1232 Folio 119 reveals that the land at Pembroke Hall was subdivided and various portions were removed as noted by miscellaneous numbers assigned.
- [3] The 2nd defendant entered into a mortgage agreement in relation to the land registered at Volume 1232 Folio 119 with Corporate Merchant Bank Limited on the 27th of October 1999. This mortgage was never discharged, but was eventually transferred to the 4th defendant on the 28th of May 2004.
- [4] The claimants have not provided any evidence in relation to what they are alleging the 1st defendant/applicant ought to have done at the time of the registration of the transfer of the property from the Director of Housing to the 2nd defendant, but they have asserted that, although they are in possession of the land, they have been unable to determine the entirety of its length and breadth. In the Further and Better Amended Particulars of Claim², it is averred that the *'transfer of the title for the land...has become difficult because of error and or misdescription on the part of the applicant and the 2nd defendant not clearly expressing or stating the outer boundary measurements to the said land.'*

¹ Filed on 4 May 2018

² Filed on 26 March 2018

[5] Counsel for the applicant, Ms Thomas opted not to pursue two of the grounds contained in the application and has made her application on three grounds. For economy, I have set out these grounds as well as the response on behalf of the claimants:

(1) The applicant is immune from suit in respect of any act or matter bona fide done or omitted to be done in the exercise or supposed exercise of her powers under the **Registration of Titles Act** ('RTA'). She aptly submitted that this immunity is conferred pursuant to section 160 of the **RTA** and the claimants have failed to indicate or even allege that anything done by the applicant was done in bad faith.

In response Mr Lewis, for the claimants, stated that the applicant failed to exercise her duty to investigate. He referred to section 4 of the **RTA**, which speaks to the appointment of the Registrar of Titles by the Governor-General for '*investigating and dealing with applications for bringing land under the operation of this Act...*' Mr Lewis asserted that the description on the title ought to be clear and was not in accordance with the norm. He was however not able to provide any authorities for what the description ought to look like.

Ms Thomas countered that no duty could be inferred from section 4 and that even if the claimants were was alleging negligence on the part of the applicant, (and this was unclear based on the pleadings) it would still be insufficient. She submitted that nothing less than showing bad faith (malice or spite) would be sufficient and that the claimants have failed in this regard.

(2) The claimants have failed to establish that they have the standing to bring an action against the applicant. They have not demonstrated that they were registered proprietors of the land in question (Volume 1232 Folio 119) and were subsequently deprived thereof, per sections 162 and 164 of the **RTA**. Reference was made to the wording of section 162 which states that '*Any person deprived of land, or of any estate or interest...*' may in specified circumstances bring an action against the applicant as a nominal defendant. Ms Thomas submitted that the claimants have not crossed the first hurdle,

insofar that they have not credibly shown that they were deprived of the subject land. Reliance was placed on the dicta of Simmons J from **Leroy McGregor v Verda Francis**³, wherein “deprived” was interpreted to mean ‘*much more than “excluded from possession”. It means irrevocably deprived...*’

Ms Thomas submitted that in order to be deprived within the meaning of the **RTA**, the claimants would have to show that they could never have title to the subject land. Further, this would not be possible since the claimants were in receipt of a vesting instrument dated the 22nd of August 2017. This instrument was executed by the Registrar of Titles granting the registered title in the above mentioned land to the claimants (based on the evidence of the Agreement for Sale between the claimants and the 2nd defendant, as well as the payment of the purchase money to the 2nd defendant). Ms Thomas also noted the claimants, through Mr Courtney Lewis, acknowledged that they were in possession of part of the land.

Mr Lewis objected to the use of the word ‘deprive’ on the basis that it was a prejudicial word. Although he acknowledged the vesting order, he contends that the claimants were deprived until the applicant came to the decision to grant the vesting order.

- (3) Ms Thomas also submitted that the claimants have not satisfied the statutory preconditions to bring a claim against the applicant as a nominal defendant. By reference to sections 165 and 166 of the **RTA**, it was submitted that the claimants failed to duly (i) make an application in writing supported by an affidavit or statutory declaration; and (ii) serve a written notice of the action one month prior to commencing the claim. Reliance was placed on the decision of the Court of Appeal in **The Registrar of Titles v Melfitz Limited and Keith**

³ [2013] JMSC Civ. 172 at paragraph [19]

Donald Reid⁴, in which Smith JA opined⁵ that these statutory preconditions were mandatory and in circumstances where there was a failure to comply, the court would have no jurisdiction to entertain the action against the Registrar.

[6] Mr Lewis responded to grounds 2 and 3 by placing reliance on a letter dated the 3rd of January 2009, which he called a 'letter before action' which was addressed to the applicant and the 2nd defendant. He contended that this would have been sufficient to satisfy the requirements of the **RTA**. This letter was both the application and the one month's notice, notwithstanding that it was allegedly sent approximately six years before the claim was instituted and gave the applicant six months to respond. He stated also that a statutory declaration exhibited would satisfy the criteria required under section 165. Ms Thomas contends however that the said statutory declaration was invalid due to it being undated and failing to include a jurat. She also took issue with the fact that there was no proof of service of any of these documents. For instance, there was no stamp indicating that either the letter or the statutory declaration were ever received by the applicant.

Conclusion

[7] Having considered the submissions of Ms Thomas and the response by Mr Lewis, together with the provisions of the **RTA**, and the case law cited, I am minded to grant the application. It is quite clear that the applicant is generally immune from suit (per section 160 of the **RTA**). The claimants have not credibly demonstrated that: (1) the applicant acted *mala fides* (in bad faith); or (2) that the statutory process was properly engaged, which involves fulfilling the mandatory preconditions. The statutory declaration which is to accompany an application under section 165, is undated. There is nothing to prove that it was attached to the letter dated the 30th of January 2009. However, even if the statutory declaration could be accepted, the letter dated the 3rd of January 2009 could not serve the multiple purposes which Mr Lewis contends. At

⁴ (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 9/2003, judgment delivered 29 July 2005

⁵ *Ibid* at pages 12 -13

most, it would have been an application before commencing proceedings (as per section 165) insofar that there is a section which asks what compensation the applicant (and/or the 2nd defendant, Solid Engineering Ltd) was inclined to provide, but it would be by no means sufficient as one month's notice of an action for recovery of damages prior to the commencement of the claim in 2015 (as per section 166).

[8] It is also clear that the claimants cannot truly be said to be irrevocably deprived of the land in light of the vesting order which expressly recognises and gives effect to their interest (notwithstanding that it was done in 2017, since the filing of the claim). Although not evidence (on affidavit), the court does note that Mr Lewis acknowledged that the claimants are currently in occupation of a portion of the subject property. In fact, it has not been indicated that they were ever excluded from the land at any point in time, save and except for the complaint about squatters on certain portions. The claimants cannot therefore even contend that they are being excluded from possession.

[9] In the round, the claimants have not demonstrated that they have the requisite standing to bring the claim against the applicant.

Disposal

[10] It is hereby ordered that:

- 1) The claim is struck out against the 1st defendant on the basis that it discloses no reasonable grounds for bringing the claim; and
- 2) Costs awarded against the claimants to the 1st defendant to be agreed or taxed.