



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION**

CLAIM NO. 2015CD00106

BETWEEN	VENUS INVESTMENTS LTD. CHRISTOPHER JASON CHINN	1st CLAIMANT 2nd CLAIMANT
AND	PAULA RAMPASSARD BULIE SAMUEL RAMPASSARD	1st DEFENDANT 2nd DEFENDANT

Land – Sale of Land – Registration of Titles Act – Fraud – Summary Judgment – Whether real prospect of success – Agreement for Sale – Vendor registered on Title based on forged instrument – Purchaser unaware of Fraud – whether Purchaser entitled to be registered – Co-owner whose signature was forged to register vendor on Title seeking to reverse registration.

Dr. Lloyd Barnett and Weiden Daley instructed by Hart Muirhead and Fatta for Claimants.

Chukwuemeka Cameron instructed by Carolyn C. Reid & Company for 2nd Defendant.

In Chambers

Heard: 1st June 2016

CORAM: Batts J.

[1] On the 1st day of June 2016 after hearing submissions I made the following orders:

“a) Summary Judgment granted against the 2nd Defendant on the Claim and Counter Claim pursuant to CPR 15.2 (b) and CPR 15.2 (a).

b) It is hereby declared that the 1st Claimant and/or the 2nd Claimant are/is the beneficial owner and entitled to the beneficial and legal ownership of the estate in the fee simple, and are/is entitled to be registered as the proprietor(s) in fee simple of all the land registered at Volume 1123 Folio 151 of the Register Book of Titles (“the land”) pursuant to the Agreement for Sale dated the 19th day of July 2012 between the 1st Claimant Venus Investment Ltd and the 1st Defendant Paula Rampassard (“the Agreement of Sale”) and for the executed instrument of Transfer of the Land from the 1st Defendant to the 2nd Claimant.

c) It is hereby declared that the 1st Claimant and/or the 2nd Claimant are/is entitled to possession of the land pursuant to the Agreement for Sale.

d) The Defendants and each of them are hereby restrained and an injunction is hereby granted restraining them absolutely, whether by themselves or by their servants or agents or any of them or otherwise howsoever from dealing with any of the land including but not limited to restraining any registration of any person as transferee or proprietor of and of registering any instrument affecting the Claimant’s said estate in fee simple.

e) The 1st Defendant shall forthwith deliver up to the 2nd Claimant vacant possession of the land

(f) Damages against the 1st and 2nd Defendants.

(g) Case Management Conference in relation to damages fixed for the 12th July 2016 at 9:30 a.m.

h) Liberty to apply.

- i) Costs to the Claimants to be agreed or taxed.
- j) Leave to appeal granted, if necessary”

I promised then to put my reasons in writing. This judgment is the fulfilment of that promise.

[2] At the commencement of the hearing, there was no answer from the 1st Defendant, nor was she represented. The Claimants by reference to an affidavit of service satisfied me that the 1st Defendant had been duly served with a Notice of Adjourned hearing filed on the 1st April 2011.

[3] In this matter, there is not much dispute about the material facts. I summarize as follows:

- a) By an Agreement for Sale dated 19th July 2012 Paula Rampassard (the 1st Defendant) agreed to sell to Venus Investments Ltd. (the 1st Claimant) land registered at Volume 1123 Folio 1517 of the Register Book of Titles (more fully described in the said agreement) and hereafter referred to as the “said land” (Exhibit VIL 1 of Affidavit of Rory Chin dated 8 December 2015).
- b) The Certificate of Title to the said land has registered on it transfer #1701353 registered on the 18th day of April 2011 to Paula Rampassard. (Exhibit VIL 1 to the Affidavit of Rory Chin dated 8th December 2015).
- c) The consideration of 7 million has been paid to the 1st Defendant (Paula Rampassard). The payment of the balance of J\$1.8 million being evidenced by receipt dated 18th July 2011. (Affidavit of Rory Chin dated 8th December 2015 at paragraphs 9 and 10 and exhibit VI L 4).
- d) The 2nd Claimant was the 1st Claimant’s nominee for the transfer of the land. That transfer was executed by the 1st Defendant on the 18th July 2011. (Affidavit of Rory Chin dated 8th December 2015 at Paragraph 11 and exhibit VIL5).
- e) The 1st and 2nd Defendants are husband and wife however they are now estranged (Affidavit of 2nd Defendant dated 2nd February 2016 at para 2).

- f) The signature on the Transfer dated 18th April 2011 (from 2nd Defendant to 1st Defendant) was forged (Para 9 Affidavit of 2nd Defendant dated 2nd February 2016 and paras 6, and 7 and 8 of 2nd Defendants affidavit dated 28th April 2016).
- g) The 2nd Defendant confronted the 1st Defendant about the fraudulent transfer (Para 7) and she thereupon signed a transfer in his favour. However, when the 2nd Defendant attempted to lodge that transfer the Registrar of Titles, by letter dated 5th August 2014, informed him that a caveat had been lodged as the duplicate Certificate of Title lodged with that transfer was fraudulent (Paragraphs 11 and 12 of 2nd Defendant's Affidavit dated 2nd February 2016).

[4] On the 8th December 2015 the Claimant's filed on Application for Summary Judgment and to strike out the Defendant's Statement of Case. The Claimant's and the 2nd Defendant's Counsel each filed written submissions. Those written submissions were supplemented by detailed oral submissions before me.

[5] Dr. Barnett for the Claimant relied for the most part on Section 71 of the Registration of Titles Act,

“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 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.”

[6] Dr. Barnett's submissions referenced also Sections 59, 68, 69, 70 and 161 and 163 of the Registration of Titles Act. He relied on ***Fraser v Walker [1967] 1 All ER 649 and Shackleford v Mount Atlas Estate Ltd SCCA 148/2000*** unreported delivered on the 20th December 2001; and submitted that the principle of indefeasibility of title to land registered under the Act applied. The

Claimants as purchasers were entitled to rely on the Register and the statutory protection given to purchasers for value without notice.

- [7] Dr. Barnett submitted further that there was no evidence or indication of fraud on the part of the Claimants. The Registrar of Titles had only declined to Register the transfer because another instrument appearing to be a contending transfer had also been lodged. The Registrar is awaiting a decision from the court. In this regard, see letters dated 9th and 29th April 2015 National Land Agency to Hart Muirhead Fatta (Exhibits VIL 7 to the Affidavit of Rory Chin dated 8th December 2015).
- [8] In response the 2nd Defendant's counsel took no issue with the well-established principles of law relied upon by Dr. Barnett. He submitted that the Claimant's evidence failed to disclose consideration for the sale. Mr. Cameron submitted that the evidence before the court revealed past consideration and as such, there was no valid consideration for the agreement relied upon. He pointed, in this regard, to the receipt for \$1.8 million which bore a date of 19th July 2011 whereas the Agreement for Sale was dated 19th July 2012. There was he submitted no receipt presented for the remaining \$5.2 million. This he said required an explanation at a trial, if the Claimants were to prove they were purchasers for value. Mr. Cameron further asserted that "indefeasibility of title only arises if the Claimant's name is registered." He relied on the authorities of *Halsall et al v Marshall* (1994) 31 JLR 339; *Williams v Persaud* (Guyana) 2nd August 1968; and *Roscarla v Thomas* (1842) 3 QB232.
- [9] It was submitted that as these were important disputed facts summary judgment was inappropriate. Reliance was placed on *Home and Overseas Inc. V Mentor Ins [1989] 3 All ER 74* and *Lyle v Lyle (2005)* Supreme Court of Jamaica HCV02246/2004 per Sinclair Haynes J.
- [10] Having considered the evidence and the submissions I am satisfied that the Defendants have no real prospect of successfully defending the claim or of succeeding on their counterclaim within the meaning of CPR 15.2 (a) and (b).

[11] It is manifest that when treating with the 1st Defendant the Claimants were entitled to rely on that which was registered on the title. Their uncontradicted evidence is that they were unaware that the registered transfer to the 1st Defendant was based on an Instrument of transfer which had a forged signature on it. There is no evidence, or indeed suggestion, that the Claimants were aware or party to, the fraud committed by the 1st Defendant against the 2nd Defendant. The Claimants are therefore entitled to have their transfer registered. A court of equity will treat as done what ought to be done. Conversely, the 2nd Defendant's transfer was premised on a title, which was forged. That transfer, on which the 2nd Defendant relied, was in any event subsequent in time to the transfer to the Claimants.

[12] As regards, the issue raised with respect to the consideration for the sale agreement I find that it cannot succeed. In the first place, the Claimant's affidavit evidence is that the full purchase price has been paid and this is not challenged. More importantly however, the notion that prior consideration cannot support a later contract reflects in my respectful view a misunderstanding of the principle. The authorities relied upon are saying "spent" consideration cannot support a new agreement. That is the sense in which the word "past" is used. So that consideration for one agreement cannot be prayed in aid to support a second or later agreement or even an oral collateral agreement. The case before me is easily distinguished from the situations in the authorities cited. Here, it matters not when the \$7 million was paid so long as the payment was referable to an agreement to purchase the land. The formality of a written contract, quite often in business, follows a payment and a handshake. Businesspersons would be astonished to hear that because money was paid before the lawyers got around to preparing a contractual document, their deal was no good. That is with respect, not the law. There is therefore no important dispute of fact to be resolved.

[13] This case really is about which of two innocent parties is to bear the loss caused by the fraud of a third party. The Registration of Titles Act clearly protects that

person who has relied on the Register Book of Titles without notice of the fraud. The Claimants clearly did so and parted with their money and received physical custody of the title and a registrable transfer. They are in law entitled to the protection of the court. The 2nd Defendant on the other hand, and on his own admission, became aware that the 1st Defendant had forged his signature. He then had her sign a transfer in his favour. He did not it seems have her arrested or taken any other step to secure his interest. It appears that the title the 1st Defendant gave him was not genuine so when he attempted to register his transfer the Registrar of Titles brought that fact to his attention (Letter dated 5th August 2014 National Land Agency to Turnquest Wilson & Franklyn Exhibit BSR2 to the Affidavit of Bulie Rampassard dated 2nd February 2016). When looked at in this way it becomes clear, that in this scenario the Claimants are the least culpable. The 2nd Defendant must pursue his remedy against the 1st Defendant.

[14] For all the reasons stated above, I therefore, on the 1st June 2016. made the Orders at Para 1 of this Judgment

.....
David Batts
Puisne Judge
22nd July, 2016