

**Bodie v Sumner (No 727/1965)**

Supreme Court, Common Law Side  
James Smith J  
21 May 1966

*Agency—Power of attorney—Power voidable if executed when donor was drunk—Whether act of attorney was done qua attorney of donor.*

[On 13 July 1961 the defendant gave the plaintiff an irrevocable power of attorney to sell and transfer land, to enter into and take possession of his land, to receive and take in his name any and all rents, profits or issues of real estate belonging to the defendant and to renew all leases and mortgages.] Prior to obtaining the power of attorney from the defendant the plaintiff as agent had obtained several conveyances in the name of a company of which he was president from persons who claimed to have an interest in the land for which the defendant subsequently obtained a certificate of title under the Quieting Titles Act. The plaintiff did not get a conveyance of the defendant's interest in the land because it appeared that he had none, hence only a power of attorney was obtained. After securing the conveyances and the power of attorney the plaintiff applied for planning permission to subdivide the area into lots and this was granted provisionally. The evidence of the plaintiff was that at the time the defendant executed the power of attorney he knew that the plaintiff had other conveyances with respect to the land. [The defendant's evidence was that the plaintiff got him intoxicated in order to obtain his signature on the document.] After the defendant received a certificate of title to the land covered by the power of attorney, the plaintiff brought an action against him upon a quantum meruit for the value of the improvements made to the land as the development of the land was done with the knowledge and consent of the defendant. The defendant contended that although the signature on the power of attorney was his, he did not remember signing the document and counterclaimed for its revocation.

**Held** – dismissing the plaintiff's claim for quantum meruit:

(1) If the defendant proved that he was drunk and the plaintiff knew about this when the power of attorney was signed it would not have made the power of attorney null and void but only voidable.

(2) As the plaintiff was acting as an agent for the company of which he was the president in developing the land, it was not possible to construe either expressly or by implication from the general words of the power of attorney that the defendant had given the plaintiff the power he claimed and since there had been no exercise of the power of attorney by the plaintiff on behalf of the defendant it should be revoked.

**Writ**

By a writ dated 11 December 1965 the plaintiff, Ortlund Hexton Bodie, claimed by quantum meruit the sum of £8,500 for work performed by him on the defendant's land pursuant to a power of attorney given to him by the defendant. The defendant, Benjamin Sumner, denied the existence of the power of attorney and claimed that he was intoxicated when he signed it and counterclaimed that it should be revoked. The facts are set out in the judgment.

*Laurence Trenchard* for the plaintiff.  
*Patricia Cozzi* for the defendant.

21 May 1966. The following judgment was delivered.

**JAMES SMITH J.** The plaintiff, Mr O H Bodie claims upon a quantum meruit the value of improvements made to the land of the defendant, Mr Benjamin Sumner. The particulars of the claim are that the plaintiff entered upon the defendant's land situate south of Robinson Road in Southern District on behalf of the defendant and with his knowledge and consent acting by virtue of an irrevocable power of attorney dated 13 July 1961 given by the defendant to the plaintiff, paid for improvements thereon estimated at £8,500. In his statement of defence the defendant firstly denied that he knew or consented to the plaintiff putting in roads and clearing the land in question to which the defendant is entitled to a one-half interest in fee simple; secondly, the defendant denied that the alleged power of attorney was his deed averring that he signed it when in a drunken state and under a total mistake as to its nature and contents; thirdly, and in the alternative, that the plaintiff fraudulently induced the defendant to execute the said power of attorney as the plaintiff well knew that purported conveyances of the defendant's land to Mutual Development Ltd, a company of which the plaintiff was president and majority shareholder, had been executed by Victoria Montell and Alfred Munnings dated 7 April 1961 and by Frances Munnings dated 1 July 1961; fourthly that the defendant entered the land on behalf of Mutual Development Ltd by virtue of the said conveyances of 7 April and 1 July 1961 and a further conveyance from the said Victoria Montell dated 18 October 1962; fifthly, and in the alternative, that if the plaintiff entered upon the land by virtue of the power of attorney he remained on the land and carried out alleged improvements and purported to convey portions thereof for and on behalf of Mutual Development Ltd and thereby became a trespasser ab initio; sixthly, and in the alternative, that the acts alleged were not carried out by the plaintiff but by Mutual Development Ltd acting in their own interest without the knowledge or consent of the defendant; and lastly, that the defendant denies that the act amounted to improvements to the land having been carried out in contravention of the provisions of the Private Roads Subdivision Act and of the Town Planning Act. The defendant also counterclaimed for a declaration that the power of attorney is null and void and for the delivery up of the same and its cancellation; damages for trespass; and, in the alternative, an account of monies had and received to the defendant's use. In his reply and defence to counterclaim the plaintiff maintained that the power of attorney was still valid and subsisting; denied receiving any money to the use of the defendant; and in the alternative, pleaded the Statutes of Limitation: and joined issue on every paragraph of the defence and counterclaim.

The land in question belongs to the defendant and is described in the certificate of title dated 25 March 1965 which he obtained at the conclusion of the hearing of the petition to quiet title declaring that the defendant is the legal and beneficial owner in fee simple in possession of an undivided half interest in:

'All that piece parcel or tract of land containing 10.19 acres situate south of Robinson Road in the Southern District of the Island of New Providence aforesaid bounded on the North by a Road Reservation separating the said tract from Crown land and the Englerston Subdivision and running thereon 1,326.66 feet on the East by land of the Public Board of Works for New Providence and running thereon 315.05 feet on the South by a Road Reservation separating the said tract of land from land of the estate of Captain Arthur Coleman deceased and Lorenzo Carl Brice and running thereon 1,525.75 feet and on the West by a Road Reservation separating the said tract from land of the Hon. R. T. Symonette and running thereon 341.17 feet which said piece parcel or tract of land has such position shape boundaries marks and dimensions as are shown on the diagram or plan hereunto annexed . . . coloured pink . . .'

It is on this tract of land that the plaintiff says he has executed the improvements on behalf of the defendant by virtue of the power of attorney.

The power of attorney is dated 13 July 1961 and in order to get the circumstance leading up to the execution of this document in their true perspective I propose to deal first with the evidence which shows what was happening to the land about this time in 1961.

The plaintiff has said that around 1961 before the power of attorney there appeared to be a family dispute in the defendant's family over a will and the title to the Robinson Road land, that is to say the land in respect of which a certificate of title was in 1965 granted to the defendant. The plaintiff said that at that time in 1961 Mutual Development Ltd was buying the interest of the Munnings family in this land. The plaintiff was at all material times the president and majority shareholder in Mutual Development Ltd. He said he dealt with Victoria Munnings, now Montell, and Alfred Munnings; and Mutual Development Ltd purchased their interest in this land. The conveyance from Victoria Montell to Mutual Development Ltd is dated 7 April 1961 and she conveyed all her right title and interest in the same ten acres of land together with her interest and title in the adjoining 60 acres to Mutual Development Ltd in fee simple: later on 28 October 1962 she made a confirmatory conveyance to Mutual Development Ltd of the same land as beneficial owner. By an indenture of 17 April 1961 Alfred Munnings as personal representative of James Hardy Munnings deceased conveyed the same land to Mutual Development Ltd. in fee simple. By an indenture dated 22 November 1961 Mrs Frances Munnings as personal representative of Benjamin Munnings deceased conveyed to Mutual Development Ltd the same land in fee simple, having previously on 1 July 1961 conveyed her 'dower rights claim and title' in the same land to Mutual Development Ltd.

I pause here to observe that in this period April - July 1961 the plaintiff had negotiated with the members of the Munnings family and had obtained from three of them conveyances of their interest in this land to Mutual Development

Ltd in fee simple; and Mutual Development Ltd then in April proceeded to apply for planning permission to subdivide the area into lots and this was granted provisionally in June. It is obvious from the evidence that up to this point of time the plaintiff was acting as agent for Mutual Development Ltd; and he explained that he had seen the wills of Mustapha Munnings and Hardy Munnings and formed the opinion that the property did not belong to one person. The plaintiff said that he did not take a deed from the defendant because he (the defendant) would not identify himself with the family at all; and that the defendant claimed a possessory title of the house in which he lived and surrounding area. Elsewhere in his evidence the plaintiff said that the defendant wanted to sell his portion to Mutual Development Ltd but he (the plaintiff) could not accept as the defendant had no title deeds at the time. The plaintiff commented that he thought he was safe because he had the deeds and that at that time the defendant did not know he owned the land; and that he (the plaintiff) was shocked when the defendant brought the petition to quiet the title.

According to the plaintiff it was at the time that the defendant offered to sell his portion of the land to Mutual Development Ltd but the plaintiff could not accept because the defendant had no title deeds, that the defendant decided to give the plaintiff a power of attorney. The defendant has denied that he came to any agreement with the plaintiff about a power of attorney; or that the plaintiff ever mentioned a power of attorney to him. According to the defendant the only business discussion he ever had with the plaintiff concerned the building of a house for the plaintiff.

I now come to examine the circumstances in which the power of attorney came to be executed. The plaintiff explained, presumably as the reason for accepting the power of attorney, that the defendant was the first man who had a house on the land and the plaintiff knew he had been there for a number of years; that when the plaintiff started the work of putting in roads he got the defendant's consent and took the power of attorney to secure the money which was put into the roads, light and water by the plaintiff. The plaintiff admitted that there had been a discussion about building a house and said:

'At about the time we discussed building a house he [the defendant] came to my office at Mutual Development one morning. I can remember the occasion. We talked about the power of attorney. Defendant was being pushed by the Munnings family. Defendant thought at the time that Munnings owned the land. He knew Munnings had conveyed the land to Mutual Development.'

The plaintiff said he was not present when the power of attorney was executed by the defendant and denied giving the defendant strong drink at his (then plaintiff's) office. The defendant admitted that the signature on the power of attorney is his; but said he knew nothing about a power of attorney; and had no recollection of signing it. He explained the discussion about building a house in more detail than the plaintiff and said that about a week later:

'I met Mr. Bodie sitting on my porch around about this time. He told me he's ready to get started - I took it to be the buildings - and if I wouldn't mind going with him to his office. My reply to him; I had

come home for my lunch and I was hungry and I would go with him as soon as I get through . . . Mr. Bodie said it would not take a minute and Mr. Bodie asked me to go with him before lunch. When we got to Mr. Bodie's office in Wulff Road opposite the Mutual Development Bank he went down the passage way and on returning back to me said Mr. Farquharson is out. If I won't mind waiting a few minutes until he returns which I consented. He told me Mr. Farquharson had the papers and he (Mr. Bodie) told me would I mind waiting until he came with the papers. I figured that it was this building business that we were talking about the whole while. One o'clock came. Mr. Farquharson did not come. So I told Mr. Bodie, I'm hungry: I've got to get myself something to eat. He said that was alright and gave me a couple of pounds and a bottle of rum; and said catch one for your appetite and by that time Mr. Farquharson should be here and you can go and get your lunch . . . I started on the rum. One drink demands another with me and what happened after that I do not know. I did not know what was going ahead after I started drinking . . . After drinking the rum in Mr. Bodie's office I was sick for about three days. I don't remember seeing Farquharson at all on that day. I have seen I. B. Gibson. I saw him on that day. I believe he was standing in the passageway when Mr. Bodie and I arrived at the office. I do not know Reuben Storr. That was the beginning and the end. I cannot remember anything else I did with Mr. Bodie of any particular significance. After that we just passed the time of day. The question of the building of the house never came up any more.'

The plaintiff said he was not present when the defendant signed. The defendant did not know whether the plaintiff was there or not because the defendant had no recollection of signing the power of attorney. Mr Gibson witnessed the defendant's signature and Mr Storr saw them both sign. Mr Gibson said that the defendant appeared normal and did not look as if he had been drinking. Mr Farquharson was the other witness to the document but he has not given evidence. He might have been able to say who had prepared the document and who had given instructions for its preparation. However, once the defendant had admitted that the signature on the power of attorney was his, the defendant must prove not only that he was drunk when he signed but also that he was drunk to the plaintiff's knowledge. Assuming that had been proved it would not have made the power of attorney null and void but only voidable; and the defendant could have ratified or revoked it later. But he took no action because according to his story he did not recollect that he had signed and first knew of the existence of the power of attorney when it was produced at the investigation to quiet title. Even on the defendant's evidence I find that the power of attorney was binding as between the plaintiff and the defendant.

The next question is whether the power of attorney gave the plaintiff authority to develop the land by clearing it, dividing it into lots, and putting in roads and light and water with funds apparently advanced by the plaintiff personally. I think not. Powers of attorney are to be strictly construed as giving only such authority as they confer expressly and by necessary implication. General words do not confer general powers but are limited to the purpose for which the authority is

given and are construed as enlarging the special powers only when necessary for that purpose. In relation to land, the power of attorney in the present instance gave the agent, that is the plaintiff, power 'to sell transfer or do any other act concerning any and all my dower rights, claims and title which I may possess'. The defendant being a man had no dower rights but in any event this power does not include the development of land with money lent without the authority of the defendant; the next is a power 'to transfer the same in any manner required by any corporation, Company or law'; then there is a power 'to enter into or take possession of any and all lands etc'; next, 'to receive and take for me and in my name and to my use all or any rents profits or issues of real estate belonging to me'; next, 'to let the same in such manner as my attorney shall deem needful and proper'; and then 'to renew any and all leases and mortgages etc'. None of these powers include the development of the land in the manner described above.

But supposing that the power to develop the land had been given to the plaintiff in the deed then the further question would arise as to whether or not in making the development the plaintiff was acting as agent for the defendant; or as agent for Mutual Development Ltd or for both. On the evidence before me I have come to the conclusion that the plaintiff was acting as agent for Mutual Development Ltd throughout. Prior to the quieting of title investigation Mutual Development Ltd, as the plaintiff admitted, purchased the interests of the Munnings family; and on the plaintiff's own admission did not purchase the defendant's interest because he had no deeds. There is evidence that Mutual Development Ltd sold lots on this land and the plaintiff as president of that company signed the conveyances. If the plaintiff had been developing the land for the defendant those conveyances would have been from the plaintiff as attorney for the defendant.

The defendant, when he found that tractors were appearing on or around the land and roads being made up, took legal advice and was advised that the roads being made were not on his land. Then tractors came on to his land and he sued one Skeet who came right up to his house and closed in his well. Apart from this action the defendant said his lawyer found 'there was such a big mix up' that he advised the defendant to quiet the title. The defendant filed a petition in no 160 of 1964 and obtained a certificate of title on 25 March 1965. The petition was contested and Mutual Development Ltd filed an adverse claim on 29 May 1964 setting out a documentary title commencing in 1822, and ending with the conveyances from Victoria Montell, Alfred Munnings and Frances Munnings to Mutual Development Ltd. The plaintiff gave evidence for Mutual Development Ltd in that investigation. This further confirms that the plaintiff was representing the interest of Mutual Development Ltd.

I find that the plaintiff is not entitled to be paid anything by the defendant upon a quantum meruit by virtue of the power of attorney.

As to the counterclaim to have the power of attorney cancelled, learned counsel for the plaintiff has submitted that the power is expressed to be irrevocable and remains irrevocable until the plaintiff has been paid for the improvements on the land. On the conclusions that I have reached the plaintiff has throughout acted as agent for the interests of Mutual Development Ltd which have been in conflict with the interests of the defendant. I find there has been no exercise of the power of attorney by the plaintiff on behalf of the defendant and I order that the power of attorney be revoked.

As to the counterclaim for trespass learned counsel for the defendant has conceded that if the acts of the plaintiff were the acts of Mutual Development Ltd then any claim for damages may lie elsewhere. I have found that the plaintiff acted as agent for Mutual Development Ltd and thus any claim that might lie in trespass would be against the principal.

As to the counterclaim for an account, there is no proof that the plaintiff personally has received funds on behalf of the defendant for which he should be ordered to account.

There will be judgment for the defendant on the claim; and judgment for the defendant on the counterclaim revoking the power of attorney; with costs to the defendant on both the claim and counterclaim.

*Judgment for the defendant on the claim and the counterclaim.*

### Johnson v Exuma Estates Ltd (No 1) (No 101/1966)

Supreme Court, Equity Side  
James Smith J  
31 May 1966

*Practice and procedure – Setting aside a certificate of title – Whether proceedings for setting aside a certificate of title should be commenced by an originating summons or a writ – Quieting Titles Act 1959, s 27 – RSC (1965) Ord 2, r 1(3), Ord 5, rr 2 and 4.*

The plaintiffs by an originating summons commenced proceedings to set aside the defendants' certificate of title under s 27 of the Quieting Titles Act on the basis of fraud. The defendants contended that the action ought to have been commenced by writ and that the plaintiffs should now file a statement of claim to which a defence should be entered.

**Held** – That since the action is based upon fraud or deceit it must by virtue of RSC Ord 5, r 2 be commenced by writ but that the originating summons already issued would be saved and treated as if it were a writ.

#### **Originating summons**

By an originating summons dated 25 March 1966 the plaintiffs, Beatrice Alice Johnson, Lillian Gertrude Hamilton and Samuel Johnson, commenced an action against the defendants, Exuma Estates Ltd, and Jolly Hall Ltd to have their certificate of title set aside under s 27 of the Quieting Titles Act. The facts are set out in the judgment.

*Patricia Cozzi* for the plaintiffs.  
*Leonard Knowles* for the defendants.

31 May 1966. The following judgment was delivered.

**JAMES SMITH J.** In these proceedings which have been commenced by originating summons the plaintiff seeks an order setting aside two certificates of title under s 27 of the Quieting Titles Act 1959; and in the alternative a declaration that the defendants hold the lands described in the said certificate upon trust for the plaintiffs as to certain undivided shares therein.

Learned counsel for the defendants has submitted that these proceedings should have been commenced by writ and relies on RSC Ord 5, r 2. He concedes that by Ord 2, r 1(3) the originating summons is saved as an originating process and has submitted that the proceedings should continue as if they had been commenced by writ, that is to say that the plaintiffs should now file a statement of claim and the defendants a statement of defence.