

NMLS

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

SUIT NO: HCV 00326 OF 2005

BETWEEN	CYNTHIA BRAVO	CLAIMANT
AND	AVIS BAXTER	1st DEFENDANT
AND	VINCENT GRAHAM	2nd DEFENDANT

Consolidated with

SUIT NO: C.L. B 301 OF 1998

BETWEEN	AVIS BAXTER	1st CLAIMANT
AND	VINCENT GRAHAM	2nd CLAIMANT
AND	CYNTHIA BRAVO	DEFENDANT

Mr. Errol Gentles for Cynthia Bravo; Mr. Oswest Senior-Smith and Mrs. Denise Senior-Smith instructed by Oswest Senior-Smith and Co., for Baxter and Graham.

Heard October 11 and 12, 2006

Registration of Titles Act; whether title issued to Claimant thereunder is defeasible; whether claimant has right to recover possession from defendants who also occupy part of subject property; whether fraud committed by the registered proprietor.

CORAM: ANDERSON J.

This is yet another tale which exemplifies the spiritual attachment to, and the central role of, land in the Jamaican culture and how disputes over land can pitch family members against each other in costly legal battles over relatively small tracts of land. In this case, the plot of land at the heart of the drama, is a little over one (1) acre in the hills of rural St. Andrew, in a district, ironically named, "Mount Friendship".

Ms. Cynthia Bravo, to whom I shall refer hereinafter as the "Claimant" in this consolidated action, is the sister of Avis Baxter, (the 1st Defendant) and sister-in-law to her sister's husband, Vincent Graham, (the 2nd Defendant), (together, "the Defendants") Bravo and Baxter are both children of Imogene Baxter (nee Duncan) and Imogene was, in turn, one of the children of Maria and Prince Duncan, both now deceased.

By a Writ of Summons filed September 30, 1998, the Defendants had brought an action in which they sought certain remedies against the Claimant. These were

1. A declaration that until the estate of Maria and/or Prince Duncan is administered upon, no one is beneficially entitled to all those parcels of land part of Mount Friendship in the Parish of St. Andrew together containing by survey 1 Acre 2 roods 32 perches and one-tenth of a perch of the shape and dimensions and butting as appears by the Plan thereof hereunto annexed and being part of the land comprised in Certificate of title registered at Volume 963 and Folio 645 and now registered at Volume 1219 Folio 887.
2. An injunction restraining the defendant (i.e. Ms. Bravo) her servants and/or agents from taking possession of or entering unto the said land or from in any manner whatsoever interfering with the Plaintiffs' use, occupation or enjoyment of the said land or from in any manner whatsoever dealing with or disposing of the said land.
3. An order directing the Registrar of Titles to cancel the Certificate of Title registered at Volume 1219 Folio 887 of the Register Book of Titles.
4. Costs;
5. Interest.
6. Such further and other relief as may be just.

In around 1989, Cynthia Bravo secured a registered title for certain property at Mount Friendship on which generations of the Duncan Family have lived. That Title is registered in Volume 1219 Folio 887 of the Register Book of Titles and is the same land in respect of which the Defendants sought relief in their 1998 suit. The title was secured pursuant to the making of an application by Cynthia Bravo. This was supported by various voluntary declarations to bring the land in question under the Registration of Titles Act. Title having now being issued in

the name of Miss Bravo, she sought to have her sister and brother-in-law removed from the property on which there is no dispute, they have lived (and built a house) since the 1960's. In a Fixed Date Claim Form seeking recovery of possession filed in 2005, Ms. Bravo sought the following remedies:

1. A Declaration that the Claimant is the beneficial owner of the land contained in Certificate of Title registered at Volume 1219 Folio 887.
2. An injunction restraining the Defendants by themselves, their servants and/or agents from continuing to trespass on the said land.
3. An Order for possession of the said land.
4. Damages.
5. Costs.
6. Such further and other relief as may be just.

The suits were consolidated by an Order of this Court made at Case Management on the 16th day of December 2005 by the Honourable Justice Jones. In resisting this claim, Miss Baxter challenges the validity of the title now held by Miss Bravo as well as her right to hold such title.

It is trite law that under the Torrens System of land registration such as is reflected in the Registration of Titles Act here in Jamaica, a registered title confers on the proprietor of real estate, indefeasibility of title except where fraud is established. (See sections 68, 70, and 71 of the R.T.A set out below).

Section 68

"No certificate of title registered and granted under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application for same or in the proceedings previous to the registration of the certificate: and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in, or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power."

Section 70

Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be specified in the certificate, and to such incumbrances as may be notified on the folium of the register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards and portion of land what may be wrong description of parcels or boundaries be included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deserving from or through such a purchaser:..."

Section 71

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 in the consideration for, which such proprietor or any previous 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 or 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.

On the other hand, it is now well established that indefeasibility of the legal title does not mean that there can be no legitimate challenges to the legal owner in equity. The case of **Gardener and Anor v. Lewis, [1998] 53 WIR page 236**, a decision of the Privy Council, makes it clear that "indefeasibility" refers to legal ownership only and does not affect interests which exist in equity. As Lord Browne-Wilkinson said:

The case is in a very unsatisfactory state. This is primarily due to the fact that the Appellants have been maintaining an entirely erroneous view of the law applicable viz, that the registration of their title gives them an unchallengeable title to the whole of the eight acres not only at law but also in equity. They are mistaken".

Having reviewed the provisions in sections 68, 70 and 71 set out above, the learned law lord continued:

It is clear that these provisions relate solely to the legal title to the land. Although the owner of the fee simple in equity is authorized to apply for first registration of the land, apart from that all trust interests, whilst continuing to exist, are kept off the register: see section 60. The land certificate is conclusive as to the legal interests in the land. But that does not mean that the personal claims (e.g. for breach of contract to sell or to enforce trusts affecting the registered land against the trustee) cannot be enforced against the registered proprietor. In **Frazier v Walker [1967] A.C. 569 at 585**, Lord Wilberforce said:-

Their lordships have accepted the general principle that registration under the land Transfer Act, 1952, confers upon a registered proprietor a title to the interest in respect of which he is registered which is (under sections 62 and 63) immune from adverse claims, other than those specifically excepted. In doing so, they wish to make clear that this principle in no way denies the right of a plaintiff to bring against a registered proprietor a claim in personam, founded in law or in equity, for such relief as a court acting in personam may grant. That this is so has frequently, and rightly, been recognized in the courts of Australia and New Zealand: see for example, **Boyd v Mayor, etc., of Wellington [1924] N.Z.L.R. 1174, 1223**, and **Tataurangi Tairuakena v Mua Carr [1927] N.Z.L.R. 688, 702.**

Lord Browne-Wilkinson concluded that “those principle as equally applicable to the Torrens system of land title applicable in Jamaica”.

It is clear from the sections cited above that fraud can defeat registered “good” title but that fraud must be proven and must be (a) actual and not “constructive” or “equitable” fraud and (b) must be fraud committed by the registered proprietor himself, and not by some predecessor in title. The question then arises: what is needed to establish fraud? “Fraud” is not defined in the R.T.A. However, our courts have long accepted the statement of the law as set out in the case of **Assets Company Ltd. v Mere Roihi [1905] A.C. 176 at p 210** (per Lord Lindley)

“By fraud in these Acts is meant actual i.e dishonesty of some sort, not what is called constructive or equitable fraud – an unfortunate expression and one very apt to mislead, but often used for want of

a better term to denote transactions having consequences in equity similar to those which flow from fraud. Further, it appears to their Lordships that the fraud which must be proved in order to invalidate the title of a registered proprietor for value, whether he buys from a prior registered owner or from a person claiming under a title certified under the Native Land Acts must be brought home to the person whose registered title is impeached or to his agents. Fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him or his agents. The mere fact that he might have found fraud if he had been more vigilant and had made further inquiries which he omitted to make does not of itself prove fraud on his part. But if it be shown that his suspicions were aroused and that he abstained from making inquiries for fear of learning the truth, the case is very different and fraud may properly be ascribed to him. A person who presents for registration a document which is forged or has been fraudulent or improperly obtained is not guilty of fraud if he honestly believed it to be a genuine document which can be properly acted upon."

This statement of the law has long been accepted in Jamaica. Thus, in **Willocks v George Wilson and Doreen Wilson [1993] 30 J.L.R. 297**, Carey P. (Ag), as he then was, stated:

It is right to point out that fraud in this Act means actual fraud, i.e. dishonesty. **See Alele v Brown (unreported C.A. 111/89)** delivered 14th March 1991 citing with approval, **Assets Co. Ltd. v Roihi [1905] A.C. 179**

In the instant case the Claimant in her witness statement and again in oral evidence in Court said, she had purchased the land from the Administratrix of the estate of the original owner William Carpenter, the late Gloria Cumper, renowned sociologist and lawyer and the first black female law graduate of Girton College Cambridge. However, in her application for the Registered Title, the Claimant used, as supporting documents, voluntary declarations of her mother Imogene as well as Maud Duncan, the wife of Adolphus Duncan, her uncle and a brother of Imogene Duncan. A third voluntary declaration was also provided by the said Gloria Cumper. It may be instructive to note that the declaration of Mrs. Cumper was executed on her behalf by a Clement Thomas, acting under a Power of Attorney, and not by Mrs. Cumper herself. These declarations all alleged that in

1975, Miss Bravo had been gifted the "shares" in the said property which were owned by Imogene and Adolphus Duncan. In addition, the declaration of Imogene Duncan averred that she and Adolphus were the only two children of Prince and Maria Duncan, both now deceased. It was clear from the totality of the evidence that all persons, including Cynthia Bravo, were well aware that Prince and Maria Duncan had had six children, five of whom had pre-deceased the making of the application for registered title, and at least some of whom had left issue of their own. The Claimant herself acknowledged the fact that there were other children apart from Imogene and Adolphus. In her very application for registered title signed before a Justice of the Peace under the Voluntary Declarations Law, the Claimant had said that Prince Duncan had, in 1921, purchased the subject property from the father of Gloria Cumper. Yet, in her witness statement she said that she again purchased the same property from the Administratrix, sometime after 1969 when Mrs. Cumper threatened to throw her mother, Imogene, off the land. Her evidence in this regard also conflicted as to whether she had paid \$5,000.00 or \$2,000.00 for the property. In any event, the voluntary declarations all referred to the Claimant being given "their shares" by Imogene and Adolphus, two of the children of Prince and Maria. There was no claim and no evidence to indicate that there had been any application for letters of administration or probate of any will of Prince or Maria Duncan. In those circumstances, the property could never, in law, have been the entitlement of Imogene and Adolphus, as the Claimant is now claiming, in order to ground her right to the title. At the very best, they could have had some share thereof. Indeed, when asked by the court whether she had pointed out to Mrs. Cumper that her father had already bought the land and so this would be a double payment, she said it never came up. She also admitted that her alleged payment was not made to Mrs. Cumper herself, but to someone named "Andrew Kerr" as her agent.

When it was time for counsel on both sides to make their closing submissions, counsel for the Claimant, in a display of considerable maturity and candour which

is to be greatly commended, conceded that, having regard to the overwhelming evidence and the skeleton arguments with authorities previously exchanged with counsel for the Defendants, he would be unable to make any legal submissions in support of the Claimant's claim. It was unnecessary therefore to call upon the Defendants and I gave judgment for the Defendants. I make just a few observations.

It is quite clear that the Claimant was not telling the truth when she said she "bought" the land from Mrs. Cumper. It is also clear that the statement in the voluntary declarations about the number of children that Prince and Maria Duncan had and upon which Miss Bravo relied in her application were to the full knowledge of the Claimant "false" and indeed, to the extent they induced the Registrar to issue title in her name were fraudulent. I hold that these acts constitute "fraud" for the purpose of the Registration of Titles Act. They are acts which are the voluntary acts of the Claimant and can bear no other conclusion than that there was a carefully planned scheme to dupe the Registrar into granting the certificate. In those circumstances, to the extent that Ms. Bravo now holds a title for the land, it is held in trust for all those descendants of Prince Duncan who would be entitled under the Intestates Estates And Property Charges Act and she is prohibited from dealing with it in any way, whether by herself, her servants and/or agents or in any manner whatsoever. Miss Bravo is not entitled to hold a Registered Title in respect of the entire property and she must surrender it to the Registrar for cancellation.

I accordingly make the following orders:

Judgment for the Defendants in the following terms:

1. Cynthia Bravo, the Claimant/Defendant is not entitled to recovery of possession against the Defendants, in relation to the property, the subject of this action.

2. The Certificate of Title registered at Volume 1219 Folio 887 is to be taken back and cancelled by the Registrar of Titles, and a new Certificate of Title issued after the making of an application for, and the grant of Letters of Administration in the estate of Prince Duncan.
3. Until the issue of a new registered title for the subject property, Cynthia Bravo is prohibited, whether by herself her servants and/or agents, or otherwise howsoever, from dealing with the said title in any way inconsistent with the equitable interests residing in the said property.
4. For the purposes of the making of the application at (2) above, Ms. Avis Baxter and Ms. Cynthia Bravo shall be joint administratrices and the cost of the application shall be shared equally among all eligible beneficiaries identified pursuant to the making of the application.
5. It is hereby declared that all persons found to be the eligible legitimate beneficiaries of the estate of Prince Duncan shall have the beneficial interest in the said property as may be determined under the provisions of the Intestates Estate and Property Charges Act.
6. The Costs of this action to the Defendants, to be taxed if not agreed.