



[2023] JMSC Civ. 61

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

**CLAIM NO. SU2021 CV 00375**

<b>BETWEEN</b>	<b>CHILA EDMONDS</b>	<b>1<sup>ST</sup> CLAIMANT</b>
<b>A N D</b>	<b>DESMOND CAMPBELL</b>	<b>2<sup>ND</sup> CLAIMANT</b>
<b>A N D</b>	<b>MARK BERNETT SMALL</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>A N D</b>	<b>EARL MARINES PINTO</b>	<b>2<sup>ND</sup> DEFENDANT</b>
<b>A N D</b>	<b>KINGHORN &amp; KINGHORN</b>	<b>3<sup>RD</sup> DEFENDANT</b>

**IN CHAMBERS VIA ZOOM**

**Mr. Oraine Nelson and Ms. Racquel Willis for the Claimants**

**Ms. Zara Lewis instructed by Zara Lewis and Co. for the 1<sup>st</sup> Defendant.**

**2<sup>nd</sup> Defendant Unrepresented**

**Mr. Sean Kinghorn instructed by Kinghorn & Kinghorn for the 3<sup>rd</sup> Defendant.**

**Heard: June 7- 9, September 23, 2022 and February 10, 2023**

**The Registration of Titles Act – Transfer of Property by way of gift – Fraud -The Forgery Act – Whether the 1<sup>st</sup> Claimant’s mark was forged on the Instrument of Transfer – Whether the 2<sup>nd</sup> Defendant witnessed the Claimants’ execution of the instrument of Transfer – Whether the 3<sup>rd</sup> Defendant caused a fraudulent document to be lodged.**

**WONG-SMALL, J (Ag.)**

## **BACKGROUND**

- [1]** The Claimants became the registered owners in fee simple of ALL THAT parcel of land part of PENWOOD in the parish of SAINT ANDREW being the Lot numbered One HUNDRED AND THIRTEEN comprised in Certificate of Title registered at Volume 937 Folio 258 of the Register Book of Titles (hereinafter referred to as 'the disputed property') when it was transferred to them as Joint Tenants on November 16, 2000 for a purchase price of Eight Hundred Thousand Dollars.
- [2]** Subsequently, the Claimants lived together at the disputed property until sometime in 2011 when the 2<sup>nd</sup> Claimant moved out. Sometime in 2010, the 1<sup>st</sup> Defendant, the son of the 1<sup>st</sup> Claimant, was allegedly deported to Jamaica from England and thereafter he moved into the disputed property with his family. They also eventually moved out of the disputed property in or about December 2020.
- [3]** According to the 1<sup>st</sup> Claimant, since entering into possession of the disputed property, she kept the Duplicate Certificate of Title for same inside of a cabinet drawer in the residence. In December 2020, the 1<sup>st</sup> Defendant informed the 1<sup>st</sup> Claimant that the disputed property was being sold. As a consequence, the 1<sup>st</sup> Claimant attended the National Land Agency and a title search was conducted. It was then discovered that the disputed property had been transferred to the 1<sup>st</sup> Defendant by way of gift on November 28, 2011. That was when the 1<sup>st</sup> Claimant found out that the Duplicate Certificate of Title was no longer in the cabinet drawer where it was normally kept.
- [4]** The Claimants state that at no time did they hand over the said Duplicate Certificate of Title to the 1<sup>st</sup> Defendant or consent to the disputed property being transferred to him. The 1<sup>st</sup> Claimant who is illiterate, insists that at no time did she place her mark on the Instrument of Transfer dated October 28, 2011 which

effected the transfer of the disputed property to the 1<sup>st</sup> Defendant. She states that the norm is that whenever she is to sign a document, she would ensure that it is read over to her and that she understands it before placing her mark – the “X”.

- [5] The 2<sup>nd</sup> Claimant stated that in or about 2011, the 1<sup>st</sup> Defendant asked him to sign some documents in respect of the disputed property the purpose of which was to assist the 1<sup>st</sup> Defendant in obtaining a visa for Canada. Relying on what the 1<sup>st</sup> Defendant told him, the 2<sup>nd</sup> Claimant did not read through the documents before signing. He asserted that he signed the documents as he trusted the 1<sup>st</sup> Defendant.
- [6] The Claimants contended that they did not appear before the 2<sup>nd</sup> Defendant in his capacity as a Justice of the Peace as it concerns the execution of the said Instrument of Transfer. Furthermore, they state that they did not attend the office of the 3<sup>rd</sup> Defendant or consent to the preparation and lodgement of the aforesaid Instrument of Transfer at the National Land Agency. The Claimants lodged a caveat against the title for the disputed property on January 7, 2021.

## **THE CLAIM**

- [7] On February 2, 2021, the Claimants filed a Claim Form and Particulars of Claim in which they claim against the Defendants that they are the absolute legal owners of ALL THAT parcel of land part of PENWOOD in the parish of SAINT ANDREW being the Lot numbered One HUNDRED AND THIRTEEN comprised in Certificate of Title registered at Volume 937 Folio 258 of the Register Book of Titles as the 1<sup>st</sup> Defendant fraudulently transferred their legal interest held in the said property by way of gift to himself with the assistance of and or through the negligence of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

The Claimants are seeking the following orders:

- a. That this Honourable Court pronounces Transfer no. 1734395 registered on Volume 937 Folio 258 null and void;

- b. A declaration that CHILA EDMONDS and DESMOND CAMPBELL, the claimants herein are the absolute legal owners of ALL THAT parcel of land part of PENWOOD in the parish of SAINT ANDREW being the Lot numbered One HUNDRED AND THIRTEEN comprised in Certificate of Title registered at Volume 937 Folio 258 of the Register Book of Titles;
- c. Costs;
- d. Attorney's costs; and
- e. Such further and other relief as this Honourable Court deems just.

**[8]** In his Defence filed on March 4, 2021, the 1<sup>st</sup> Defendant denied all the allegations of fraud made against him by the Claimants. He stated that the disputed property was purchased by the 1<sup>st</sup> Claimant on his behalf and that he provided the 1<sup>st</sup> Claimant with all of the monies to pay for the deposit for the disputed property, the lawyer's fees and the balance of the purchase price for same. In addition, the understanding between himself and the Claimants was that the disputed property was to be held for his benefit. He claimed that when he commenced living in Jamaica on a permanent basis, the Claimants agreed to transfer the disputed property to him. Thereafter, the 1<sup>st</sup> Claimant voluntarily handed over the Duplicate Certificate of Title for same and that each Claimant provided him with their Photo Identification and Taxpayer Registration Number. These documents were taken to the office of the 3<sup>rd</sup> Defendant for the preparation of an Instrument of Transfer.

**[9]** The 1<sup>st</sup> Defendant also asserted that he accompanied the Claimants to see the 2<sup>nd</sup> Defendant to facilitate the execution and attestation of the Instrument of Transfer. The 1<sup>st</sup> Claimant made her mark and the 2<sup>nd</sup> Claimant signed the Instrument of Transfer. He denied the assertion that he informed the 2<sup>nd</sup> Claimant that the signing of the Instrument of Transfer was to assist him with obtaining a visa to Canada. The said document was then returned to the 3<sup>rd</sup> Defendant for the registration of same.

The 2<sup>nd</sup> Defendant filed no Defence to this claim.

- [10] On March 29, 2021 the 3<sup>rd</sup> Defendant filed their Defence in which all the allegations made against it in the Claimants' particulars of claim were denied. They asserted that neither the 3<sup>rd</sup> Defendant nor any of its agents or servants have ever met, instructed or represented the 1<sup>st</sup> Defendant or any of the parties named in the Claim. In addition, that the 3<sup>rd</sup> Defendant did not prepare or lodge the Instrument of Transfer in question in this matter.

## **SUBMISSIONS**

Submissions were filed on behalf of the parties to the instant claim, save for the 2<sup>nd</sup> Defendant.

## **THE CLAIMANTS' SUBMISSIONS**

- [11] Counsel on behalf of the Claimants submitted that the first issue is whether the 1<sup>st</sup> Claimant executed the Instrument of Transfer at all. Counsel asserted that up to December 2020 when the 1<sup>st</sup> Claimant was informed by the 1<sup>st</sup> Defendant that the disputed property was being sold, she believed that she was the legal owner of same. She therefore denied giving the 1<sup>st</sup> Defendant her Identification and Taxpayer Registration Number and that she accompanied him to see the 2<sup>nd</sup> Defendant and made her mark on the Instrument of Transfer.
- [12] It was submitted on behalf of the 1<sup>st</sup> Claimant that the evidence presented was sufficient to discharge the Claimant's burden of proof. In support of this submission, reliance was placed on **Rhesa Shipping Co. SA v Edmunds** [1985] 1 WLR 948. Counsel pointed to the evidence of the 1<sup>st</sup> Claimant that she did not discover that the disputed property had been transferred to the 1<sup>st</sup> Defendant until she attended the National Land Agency and a title search was conducted. This was supported by the 2<sup>nd</sup> Claimant who gave evidence that when the 1<sup>st</sup> Defendant asked the 1<sup>st</sup> Claimant to sign the said document, she refused to do so. In addition,

Counsel pointed out that the 2<sup>nd</sup> Defendant maintained under cross-examination that the 1<sup>st</sup> Claimant did not appear before him and make her mark on the said document.

- [13] Counsel asserted that the next question for consideration was whether the 2<sup>nd</sup> Claimant executed the Instrument of Transfer on the strength of a misrepresentation to him by the 1<sup>st</sup> Defendant that signing the document would assist the 1<sup>st</sup> Defendant with obtaining a visa to travel to Canada. As there was no evidence to corroborate the 2<sup>nd</sup> Claimant's testimony that he only executed the Instrument of Transfer due to the 1<sup>st</sup> Defendant's misrepresentation to him, it was submitted that the court will need to examine the evidence as a whole to determine whether the 2<sup>nd</sup> Claimant is credible. Reliance was placed on **Derry v Peek** (1889) 14 AC 337 in which it was stated that a fraudulent misrepresentation is made where the Defendant makes a representation knowing that it was false or makes it recklessly not caring whether it is true or false.
- [14] As to whether the Claimants executed the Instrument of Transfer in the presence of the 2<sup>nd</sup> Defendant, it was submitted that neither Claimant executed the Instrument of Transfer in the presence of the 2<sup>nd</sup> Defendant. Counsel argued that the most cogent evidence on this issue came from the 2<sup>nd</sup> Defendant who admitted that the Claimants were not in his presence when he witnessed the 1<sup>st</sup> Claimant's mark and the 2<sup>nd</sup> Claimant's signature that were on the document. It was submitted that the 2<sup>nd</sup> Defendant had nothing to gain from giving evidence in corroboration of the Claimant's evidence on this issue.
- [15] It was argued that the 1<sup>st</sup> Defendant acted fraudulently as he would have forged the Instrument of Transfer and uttered said forged document. Counsel relied on the definition of fraud as stated in **Barron's Law Dictionary** 5<sup>th</sup> ed. where "Fraud" was defined as intentional deception resulting in injury to another. He cited sections 3(1) and 3(2) of the **Forgery Act** for the definitions of "forgery" and "false document" and submitted that the Instrument of Transfer would be false, as the mark that was purportedly made by the 1<sup>st</sup> Claimant is a material part of the

document. It was also submitted that as there was a requirement for the Instrument of Transfer to be executed in the presence of a Justice of the Peace, there is a false statement as to the place of execution. This is because the document was never executed in the 2<sup>nd</sup> Defendant's presence.

[16] The next question considered was whether the Instrument of Transfer was prepared by the 3<sup>rd</sup> Defendant and/ or its servant or agent on the instructions of the 1<sup>st</sup> Defendant. Counsel submitted that based on the evidence given at the trial, the 3<sup>rd</sup> Defendant did not prepare the Instrument of Transfer.

[17] It was further submitted that the Defendant's case ought not to be accepted as his credibility had been impugned by numerous inconsistencies on his own evidence as well as between his evidence and that of his witnesses. In addition, Counsel pointed out that in the absence of documentary proof, the 1<sup>st</sup> Defendant's assertion that he provided all of the monies to purchase the disputed property is insufficient evidence on which the Claimant ought to be divested of ownership of the disputed property.

## **THE 1<sup>st</sup> DEFENDANT'S SUBMISSIONS**

[18] Counsel for the 1<sup>st</sup> Defendant submitted that the Claimants alleged three (3) types of fraud during the trial of this matter, namely: that the 1<sup>st</sup> Claimant's mark on the transfer was forged; that the 2<sup>nd</sup> Claimant's signature on the transfer was obtained by a fraudulent misrepresentation as to the purpose of the document; and that the 1<sup>st</sup> Defendant had knowledge of dishonesty or impropriety of Mr. Courtney Miller at the time of the registration of the transfer.

[19] Counsel relied on **Wallingford v Mutual Society and the Official Liquidator** (1880) 5 App Cas 685 for the submission that general allegations of fraud are insufficient to prove fraud against a Defendant in a manner in which the court is allowed to take notice.

- [20] On the issue of forgery, Counsel submitted that despite the 1<sup>st</sup> Claimant's evidence that she did not place her mark on the Instrument of Transfer, there was no expert evidence or any evidence led by the 1<sup>st</sup> Claimant to dispute the authenticity of the "X" on the said document. Furthermore, that the Claimants failed to particularize and did not lead any evidence that sufficiently proved that the 1<sup>st</sup> Defendant was aided and assisted by the 2<sup>nd</sup> Defendant to fraudulently forge the 1<sup>st</sup> Claimant's mark.
- [21] In relying on the dicta of Lord Lindley in **Assets Company Limited v Mere Roihi and others** [1905] AC 176, Counsel pointed out that the actions of the 2<sup>nd</sup> Defendant cannot invalidate the title under the **Registration of Titles Act**. It was submitted that the oral evidence of the 1<sup>st</sup> Claimant was not sufficient to prove that she did not sign the Instrument of Transfer. Reliance was placed on **Beverley Simpson and Doreen Richards v Ronald Simpson and Patsy Simpson** [2017] JMSC Civ 163 for the assertion that fraudulent conduct must be distinctly proved and cannot be inferred from the facts. Counsel further argued that the 1<sup>st</sup> Claimant should not be deemed as a credible witness as her evidence at trial was inconsistent with that of a registered owner of property.
- [22] As it relates to the issue of fraudulent misrepresentation, the 2<sup>nd</sup> Claimant's evidence was that he only signed the Instrument of Transfer because the 1<sup>st</sup> Defendant informed him that it was for a visa to Canada. It was submitted that the 2<sup>nd</sup> Claimant has not proven on a balance of probabilities that the 1<sup>st</sup> Defendant fraudulently transferred the disputed property from the Claimants to himself. Counsel relied on **Phyllis Gordon v Pamela Gordon** [2017] JMSC Civ. 125 in support of this submission.
- [23] Counsel argued that the 2<sup>nd</sup> Claimant's testimony was also inconsistent with that of the registered proprietor of the disputed property. She noted that the 2<sup>nd</sup> Claimant does not live at the disputed property; he in fact rents a property elsewhere. It was also pointed out that the 2<sup>nd</sup> Claimant's evidence was that it was neither here nor there whether the disputed property was sold. Counsel contended



that it was never argued that the 2<sup>nd</sup> Claimant is illiterate; as such, he could have read the Instrument of Transfer and made an effort to understand its contents. It was stated that the 2<sup>nd</sup> Claimant did not establish that the aforesaid representation was made or prove that acting on the representation that was false, would cause him damage. It was asserted that the Claimants cannot prove that in acting on the false representation the 2<sup>nd</sup> Claimant sustained any damage.

It was submitted that the actions of Mr. Courtney Miller cannot, by way of fraud, defeat the title that was granted to the 1<sup>st</sup> Defendant. If the court finds that Mr. Miller did not have the authority to lodge the transfer, this would amount to the Instrument of Transfer being an improperly obtained document. Counsel relied on the authority of **Beverley Simpson and Doreen Richards v Ronald Simpson and Patsy Simpson** (supra) where the court found that the presentation of a forged document or fraudulently or improperly obtained document does not amount to fraud if the person so presenting honestly believed that the document was genuine. Counsel argued that no evidence was led to establish that at the time of the transfer of the disputed property, the 1<sup>st</sup> Defendant knew that Mr. Miller did not have the authority to lodge the Instrument of Transfer on behalf of the 3<sup>rd</sup> Defendant.

### **THE 3<sup>rd</sup> DEFENDANT'S SUBMISSIONS**

**[24]** Counsel for the 3<sup>rd</sup> Defendant submitted that the allegations of fraud pleaded by the Claimants against it are as follows:

- a) The 1<sup>st</sup> Defendant aided and assisted by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant caused a fraudulent document to be lodged at the National Land Agency- Titles Office when they knew or ought to have known that the 1<sup>st</sup> Defendant was illegally transferring the said property to himself; and
- b) Further the 3<sup>rd</sup> Defendant unlawfully assisted and aided the 1<sup>st</sup> Defendant by lodging the fraudulent documents at the National Land Agency – Titles

Office knowing or ought to have known that Instrument of Transfer dated 28th day October 2011 was a forged.

- [25] Counsel asserted that based on the allegations of fraud which have been made against the 3<sup>rd</sup> Defendant, the applicable law is the maxim “he who asserts must prove.” In support of this submission, reliance was placed on **Williams Rainford v Opal Rainford** [2017] JMSC Civ. 102 wherein Wiltshire, J. stipulated that:

*“The general rule in civil cases is that he who asserts must prove. There are issues that are so essential to a party’s case that he must prove them in order to succeed in the action. Hence the burden of proof usually lies on the party asserting the affirmative of such an issue. Mr. Taylor has correctly submitted that if a defendant asserts a defence which goes beyond a mere denial the defendant must assume the legal burden of proving such defence.”*

- [26] Counsel contended that notwithstanding the Claimant’s allegations of fraud against the 3<sup>rd</sup> Defendant, no evidence was presented to the court to support said allegations. It was argued that the Claimants were ill-advised to name the 3<sup>rd</sup> Defendant as a party to this claim.

## THE ISSUE

- [27] Whether ALL THAT parcel of land part of PENWOOD in the parish of SAINT ANDREW being the Lot numbered One HUNDRED AND THIRTEEN comprised in Certificate of Title registered at Volume 937 Folio 258 of the Register Book of Titles was transferred to the 1<sup>st</sup> Defendant through fraud?

## THE LAW

- [28] Pursuant to section 68 of the **Registration of Titles Act, 1889** (hereinafter referred to as the **RTA**), the registered proprietor of any land brought under the operation of the **RTA** holds an indefeasible title in the said property. Nonetheless, section 70 of the **RTA** stipulates that a registered title can be invalidated in circumstances of fraud.

[29] Section 70 of the **RTA** provides that:

*“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 any portion of land that may by 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 deriving from or through such a purchaser.”*

[30] Additionally, section 161(d) of the **RTA** speaks to fraud being an exception to the indefeasibility of a registered title. Section 161 (d) of the **RTA** stipulates that:

*“No action of ejectment or other action, suit or proceeding, for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act, except in any of the following cases, that is to say-*

*...*

*(d) the case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;”*

[31] In the case of **Registrar of Titles v Ramharrack** SCCA No. 80 of 2002 delivered on July 29, 2005, P. Harrison J.A., as he then was, stated that:

*“Under the Registration of Titles Act, the registered proprietor of any estate or interest has a valid indefeasible title (subject to some reservations) unless such registration by the proprietor has been tainted by fraud.”*

- [32] As the **RTA** does not provide a definition for the term “fraud”, the court is guided by common law. In the Privy Council decision of **Assets Company Limited v Mere Roihi and others** [1905] AC 176, Lord Lindley at page 210 defined the word “fraud” within the context of the Land Transfer Acts of 1870 and 1885 as:

*“... by fraud in these Acts is meant **actual fraud, 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 purchaser 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 out 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 be properly ascribed to him. **A person who presents for registration a document which is forged or has been fraudulently or improperly obtained is not guilty of fraud if he honestly believes it to be a genuine document which can be properly acted upon.**” (Emphasis mine).*

- [33] In *Harley Corporation Guarantee Investment Co Ltd v Estate Rudolph Daley et al* [2010] JMCA Civ 46 Harris J.A. pronounced at paragraph 52 that:

*“The true test of fraud within the context of the Act means actual fraud, dishonesty of some kind and not equitable or constructive fraud. This test has been laid down in **Waimiha Sawmilling Company Limited v Waione Timber Company Limited** [1926] AC 101 by Salmon LJ ...”*

- [34] With respect to allegations of fraud in civil proceedings, the burden of proof falls squarely on the shoulders of the party who has asserted fraud. In regard to the standard of proof in matters such as these, McDonald-Bishop J.A. (Ag.) (as she then was) at paragraph 107 of **Sunshine Dorothy Thomas et al v Beverley Davis** [2015] JMCA Civ 22 posited that:

*“Although an allegation of fraud in civil proceedings must be proved to the requisite civil standard, that being, on the balance of probabilities, the authorities have established that the evidence in support of it must be commensurate with the seriousness of the allegation, which, intrinsically, involves the imputation of the commission of a criminal offence. The courts, in practice, have recognised that the more serious the allegation with which a civil court is faced, the more difficult it will be for the party who bears the burden of proving the truth of that allegation to persuade the court of the probability of its truth. In other words, the authorities have established that the gravity of the issue becomes part of the circumstances which the court has to take into consideration in deciding whether or not the burden of proof has been discharged. Therefore, the more serious the allegation, the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.” (Emphasis mine)*

[35] In **Harley Corporation Guarantee Investment Co Ltd v Estate Rudolph Daley et al** (supra) Harris J.A. at paragraph 57 outlined how allegations of fraud are to be pleaded. The Learned Judge stated that:

*“The Civil Procedure Rules however do not expressly provide that fraud must be expressly pleaded. However, rule 8.9 (1) prescribes that the facts upon which a claimant relies must be particularized. It follows that to raise fraud, the pleading must disclose averments of fraud or the acts or conduct alleged must be consistent with fraud. Not only should the requisite allegations be made but there ought to be adequate evidentiary material to establish that the interest of a defendant which a claimant seeks to defeat was created by actual fraud.”*

[36] In **Sunshine Dorothy Thomas et al v Beverley Davis** (supra), Brooks J.A. (as he then was) stated that:

***“[43] Attorneys-at-law dealing with civil litigation have traditionally been admonished to treat the issue of alleging fraud very cautiously and carefully. Lord Selborne LC in John Wallingford v Mutual Society and the Official Liquidator (1880) 5 App Cas 685 at page 697 stated the general rule. He said:***

*“With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice.” (Emphasis mine)*

[37] In **Davy v Garrett** [1878] 7 Ch D 473, Thesiger L.J. at page 489 stated:

*"In the Common Law Courts no rule was more clearly settled than that fraud must be distinctly alleged and as distinctly proved, and that it was not allowable to leave fraud to be inferred from the facts."*

[38] In **Linel Bent** (Administrator of the estate of Ellen Bent, deceased) et al v. Eleanor Evans (C.L. 1993/B 115), McDonald-Bishop, J (as she then was) posited that:

*"It is clear to me that an allegation of fraud ought not to be taken lightly and so the evidence to prove it must be as weighty as the allegation of it. I will venture to say therefore that **fraud must not only be strictly pleaded but must be strictly proved by those who assert its existence on the clearest, most cogent and indisputable evidence on a balance of probabilities.**" (Emphasis mine).*

[39] The legislative instrument which provides for the issue of forgery is the **Forgery Act**, 1942. The terms "forgery" and "false document" are defined respectively in section 3 of the said statute as follows:

*" 3. – (1) **For the purposes of this Act, "forgery" is the making of a false document in order that it may be used as genuine**, and, in the case of the seals and dies mentioned in this Act, the counterfeiting of a seal or die; and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided.*

*(2) **A document is false within the meaning of this Act if the whole or any material part thereof purports to be made by, or on behalf or on account of a person who did not make it nor authorize its making**; or if, though made by, or on behalf or on account of, the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated therein; and in particular a document is false –*

- (a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein; or*
- (b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; or*
- (c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorized it:*

*Provided that a document may be a false document notwithstanding that it is not false in such a manner as in this subsection set out.”*

(Emphasis mine)

**[40]** As it concerns the attestation of an Instrument of Transfer under the **RTA**, section 152 of the **RTA** provides:

*“Instruments and powers of attorney under this Act signed by any person and attested by one witness shall be held to be duly executed; and such, witness may be –*

*within this Island - the Governor-General, any of the Judges of the Supreme Court, or any Justice of the Peace, or the Registrar under this Act, or a Notary Public, or a Solicitor of the Supreme Court ...”*

## **THE PARTICULARS OF FRAUD**

**[41]** The particulars of fraud pleaded in the particulars of claim are as follows:

- a. The 1<sup>st</sup> Defendant aided and assisted by the 2<sup>nd</sup> Defendant fraudulently forged the 1<sup>st</sup> Claimant’s mark on the Instrument of Transfer dated 28<sup>th</sup> day of October 2011.
- b. The 1<sup>st</sup> Defendant aided and assisted by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant caused a fraudulent document to be lodged at the National Land Agency- Titles Office when they knew or ought to have known that the 1<sup>st</sup> Defendant was illegally transferring the said property to himself.
- c. The 2<sup>nd</sup> Defendant unlawfully and against his oath declared on the Instrument of Transfer dated 28<sup>th</sup> day of October 2011 that he witnessed the 1<sup>st</sup> Claimant making a mark knowing same was not true.
- d. Further the 3<sup>rd</sup> Defendant unlawfully assisted and aided the 1<sup>st</sup> Defendant by lodging the fraudulent documents at the National Land Agency – Titles Office knowing or ought to have known that Instrument of Transfer dated 28<sup>th</sup> day October 2011 was a forged.

## DISCUSSION

[42] As the Claimants have submitted that the disputed property was transferred to the 1<sup>st</sup> Defendant under fraudulent circumstances, I am guided by the abovementioned authorities that the Claimants are obliged to supply the court with cogent and indisputable evidence to prove on a balance of probabilities the allegations of fraud which have been particularized in their particulars of claim.

[43] Against this background, it is noted firstly that while the Claimants made submissions concerning fraudulent misrepresentation on the part of the 1<sup>st</sup> Defendant, they neglected to distinctly allege same in their particulars of claim. I am guided by the dicta of The *Siger* L.J. in **Davy v Garrett** (supra) where the court found that it was settled law that fraud must be distinctly alleged and distinctly proved. Furthermore, it was not allowable to leave fraud to be inferred from the facts. His Lordship stated that the Plaintiff is bound to show that he distinctly means to allege fraud. In addition, Brooks J.A. (as he then was) in **Sunshine Dorothy Thomas et al v Beverley Davis** (supra) pronounced that Attorneys-at-law in civil proceedings were generally admonished to treat the issue of alleging fraud very cautiously and carefully.

[44] In this case, although evidence was given by the parties to the claim as well as the witnesses called by the 1<sup>st</sup> Defendant, it is the Claimants who have the burden of proof. In order to make a determination as to whether the Claimants have distinctly proven the allegations of fraud which they have distinctly alleged, I carefully scrutinised the evidence on which the Claimants seek to rely. It is noted in particular that the Claimants have provided no documentary proof or expert evidence to buttress their claim.

### **Whether the 1<sup>st</sup> Defendant aided and assisted by the 2<sup>nd</sup> Defendant fraudulently forged the 1<sup>st</sup> Claimant's mark on the Instrument of Transfer**

[45] In applying the provisions of section 3 of the **Forgery Act** as well as the authorities cited above, it is evident that in order for the Claimants to discharge their burden



to proof with respect to this allegation of fraud, it is necessary to establish on cogent evidence either;

- a. that the whole or any material part of the subject Instrument of Transfer was made by the 1<sup>st</sup> Defendant with the aid of the 2<sup>nd</sup> Defendant, purporting it to be made by, or on behalf of or on account of the 1<sup>st</sup> Claimant who did not make it nor authorize its making; or
- b. If, though made by 1<sup>st</sup> Defendant with the aid of the 2<sup>nd</sup> Defendant, on behalf of or on account of the 1<sup>st</sup> Claimant by whom or by whose authority it purports to have been made, the time or place of making, where either is material, is falsely stated therein.

**[46]** In an effort to prove this allegation of fraud, the Claimants relied on the evidence of both Claimants, the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Claimant indicated that she did not make her mark on the Instrument of Transfer dated October 28, 2011. In her evidence-in-chief, she asserted that it was not until the 1<sup>st</sup> Defendant informed her in or about December 2020 that the disputed property was being sold that she attended the National Land Agency and conducted a title search. The result of the said title search was what alerted her to the fact that the disputed property had been transferred to the 1<sup>st</sup> Defendant in 2011. Further, she denied appearing before the 2<sup>nd</sup> Defendant and making her mark on the said Instrument of Transfer.

**[47]** The evidence of the 2<sup>nd</sup> Claimant was that in or around 2011, the 1<sup>st</sup> Defendant approached both Claimants and asked them to sign a document relating to the disputed property. The 1<sup>st</sup> Claimant refused to sign the document; however, he signed it as the 1<sup>st</sup> Defendant had assured him that the document would not result in the sale of the disputed property. He further stated that the 1<sup>st</sup> Defendant informed him that the document was to assist him with obtaining a visa to travel to

Canada. He stated that he did not understand what he was signing, but as he trusted the 1<sup>st</sup> Defendant he signed same.

**[48]** The 1<sup>st</sup> Defendant, on the other hand, contended that when he commenced living in Jamaica permanently, the Claimants agreed to transfer the disputed property to him. His mother voluntarily handed over the Title and his evidence was that after the Instrument of Transfer was prepared, he accompanied the Claimants to the 2<sup>nd</sup> Defendant, a Justice of the Peace, and the 1<sup>st</sup> Claimant made her mark and the 2<sup>nd</sup> Claimant signed the said document.

**[49]** The 2<sup>nd</sup> Defendant testified that at in October 2011 he had known the Claimants personally for over three (3) decades. The 1<sup>st</sup> Defendant is also known to him. In addition, he had signed several documents for members of the family over the years. It was his evidence that the 1<sup>st</sup> Defendant visited him and asked him to sign the Instrument of Transfer, as he needed certain documents in order to obtain a visa for Canada. He stated that only the 1<sup>st</sup> Defendant was present at that time. He averred that when he signed the Instrument of Transfer in his capacity as a Justice of the Peace, the mark of the 1<sup>st</sup> Claimant and signature of the 2<sup>nd</sup> Claimant were already written on the said document.

**[50]** On a consideration of all the evidence of the 1<sup>st</sup> Claimant, I did not find her account compelling and observe that there are glaring issues with respect to her credibility as a witness. In her evidence she was unable to account for the money that she claimed to have used to purchase the property. Under cross-examination by Counsel for the 1<sup>st</sup> Defendant, she stated that she could not recall many of the details as to the source of these funds when she was asked about them. Under cross-examination she asserted that in order to purchase the disputed property she transferred monies from a bank book to the account of the vendor; however, she was unable to recall any details of her income at the time and how much of the purchase price for the disputed property she actually contributed. She also stated that she was assisted by some of her children as well as other family

members in the purchasing of the disputed property, but she was unable to say how much each person contributed.

**[51]** This also included the 2<sup>nd</sup> Claimant who gave her money to assist with the purchase of the disputed property. When asked why the 2<sup>nd</sup> Claimant's name was endorsed on the title and not one of the other persons who assisted her with purchasing the disputed property, she indicated that it was because she liked to give.

**[52]** With regard to the Instrument of Transfer dated October 31, 2000 she could not recall any of the following things: whether her mark was made before a Justice of the Peace or an Attorney-at-Law; the name of the trustworthy person who read over the document to her; or the name of the person who assisted her with making her mark on the document.

**[53]** It was suggested to her that she did not remember going before the 2<sup>nd</sup> Defendant to sign the transfer to give the 1<sup>st</sup> Defendant the disputed property. In response, she stated that she did not remember going to the 2<sup>nd</sup> Defendant or to Mr. Latouche. On a review of the Instrument of Transfer dated October 31, 2000 it is a fact that the Justice of the Peace who attested to her mark on the said Instrument of Transfer was Mr. Latouche. Nevertheless, on a later suggestion that she might have gone to the 2<sup>nd</sup> Defendant and did not remember, she contended that she never went to the 2<sup>nd</sup> Defendant.

**[54]** I assessed the evidence of the 1<sup>st</sup> Claimant and observed her demeanour. I found that her inability to recall these important details in relation to the purchase of the disputed property rendered her evidence unreliable especially in relation to her claim as to where she obtained the funds to do so. It also affected her credibility as I found that that her inability to recall was used to avoid answering some of the questions posed to her. One such instance is that she gave evidence that when the 1<sup>st</sup> Defendant began living at the disputed property in 2010, he commenced paying the property taxes for same. However, after the 1<sup>st</sup> Claimant was unable to

recall any of the events in regard to the execution of the Instrument of Transfer lodged in 2000, Counsel for the 1<sup>st</sup> Defendant suggested to her that she remembered important things like the 1<sup>st</sup> Defendant paying property taxes. In response, she indicated that she did not remember.

[55] More importantly, I found that the evidence of the 1<sup>st</sup> Claimant was inconsistent with that of the registered proprietor of the disputed property. Having observed the 1<sup>st</sup> Claimant while she gave her evidence, I found it incredible that as the owner of the property that she would permit much less agree to the living arrangements revealed by the evidence. While the 1<sup>st</sup> Claimant and 1<sup>st</sup> Defendant lived together between 2010 and December 2020, the 1<sup>st</sup> Claimant gave evidence that the 1<sup>st</sup> Defendant resided in the big section of the house which consisted of three (3) bedrooms, while she lived in the extension which was a one (1) bedroom and a garage where the 1<sup>st</sup> Defendant parked his motor vehicle. This arrangement according to the 2<sup>nd</sup> Claimant predated the 1<sup>st</sup> Defendant coming to live there and up to the time of the trial after he and his family moved out. In addition, before he moved out, the 1<sup>st</sup> Defendant eventually blocked off the 1<sup>st</sup> Claimant's section of the house from the larger section without protest or any action from her for it to be removed.

[56] Moreover, she indicated that she did not even use the bathroom inside of the house that she owned which is located in the large section of the house. She used her neighbour's bathroom in order to bathe and relieve herself. Additionally, she would wash and hang her clothes on the neighbour's clothesline. These things were said to have been done in order to avoid arguments. She further indicated that she had to give away her furniture when the 1<sup>st</sup> Defendant's family moved in as she had nowhere to keep them.

[57] Notwithstanding my finding that the evidence of the 1<sup>st</sup> Claimant is inconsistent and unreliable, I will examine the totality of the evidence on which the Claimants have sought to rely in their bid to prove this allegation of fraud. I am guided by the dicta of McDonald-Bishop J.A. (Ag.) (as she then was) in **Sunshine Dorothy**

**Thomas et al v Beverley Davis** (supra) that although an allegation of fraud in civil proceedings is to be proven on a balance of probabilities, the authorities have established that the evidence in support of it ought to be proportionate with the seriousness of the allegation.

- [58] I find that the 1<sup>st</sup> Claimant merely denied making her mark on the document without more. The evidence of the 2<sup>nd</sup> Claimant was that the 1<sup>st</sup> Claimant refused to make her mark on the Instrument of Transfer when she was asked in his presence to do so by the 1<sup>st</sup> Defendant and she did not make her mark in his presence.
- [59] The evidence of the 2<sup>nd</sup> Defendant was that the 1<sup>st</sup> Claimant's mark was already on the Instrument of Transfer when he attested to it. On the other hand, the 1<sup>st</sup> Defendant asserted that the 1<sup>st</sup> Claimant made her mark on the said document in the presence of the 2<sup>nd</sup> Defendant and the 2<sup>nd</sup> Claimant.
- [60] Upon a review of the evidence of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants regarding this issue, a discrepancy was revealed as to who was present when the 1<sup>st</sup> Claimant's mark was purportedly affixed to the Instrument of Transfer. However, as a whole, the 1<sup>st</sup> Defendant's evidence is inconsistent and the 2<sup>nd</sup> Defendant's recollection of the attestation of the Instrument of Transfer is unreliable. The 2<sup>nd</sup> Claimant has only testified that the 1<sup>st</sup> Claimant did not make her mark in his presence. The question to be answered is whether 1<sup>st</sup> Defendant aided and assisted by the 2<sup>nd</sup> Defendant fraudulently forged the 1<sup>st</sup> Claimant's mark on the said document.
- [61] In the absence of evidence from a handwriting expert or adequate evidentiary material to discharge the burden that has been placed on the Claimants to distinctly prove this allegation, I am not satisfied that 1<sup>st</sup> Defendant aided and assisted by the 2<sup>nd</sup> Defendant fraudulently forged the 1<sup>st</sup> Claimant's mark on the Instrument of Transfer.

**Whether the 2<sup>nd</sup> Defendant unlawfully and against his oath declared on the Instrument of Transfer dated 28<sup>th</sup> day of October 2011 that he witnessed the 1<sup>st</sup> Claimant making a mark knowing same was not true**

[62] In accordance with section 152 of the **RTA**, an Instrument of transfer under the **RTA** is deemed to be duly executed when it has been signed by any person and attested by one of the witnesses prescribed by the said provisions. As a consequence, the Claimants are required to prove that the 2<sup>nd</sup> Defendant in his capacity as a Justice of the Peace did not attest to the 1<sup>st</sup> Claimant's mark in her presence. In the event that the Claimants are able to prove on cogent evidence that the 2<sup>nd</sup> Defendant did not witness the 1<sup>st</sup> Claimant's mark on said Instrument of Transfer, this would render the Instrument of Transfer invalid and amount to actual fraud i.e., some sort of dishonesty.

[63] With respect to this allegation of fraud, the Claimants evidence is that they did not execute the subject Instrument of Transfer in the presence of the 2<sup>nd</sup> Defendant. In addition, they relied on the 2<sup>nd</sup> Defendant's assertion that neither Claimant executed the subject Instrument of Transfer in his presence. Counsel for the Claimants submitted that this admission by the 2<sup>nd</sup> Defendant was sufficient to corroborate the abovementioned allegation of fraud as the 2<sup>nd</sup> Defendant is a disinterested party in the proceedings with nothing to gain by making said admission.

[64] The 2<sup>nd</sup> Defendant admitted that he unlawfully signed the transfer as he is aware of the statutory provisions which govern the duties of Justices of the Peace and that he ought not to witness a document when the signee(s) does not sign same in his presence. However, in spite of this I do not find his earlier admission to be reliable evidence.

[65] It is of note that the 2<sup>nd</sup> Defendant stated that when he signed the Instrument of Transfer in 2011 he did not make a copy of it and he did not document that he witnessed same. Furthermore, in his evidence he stated that on a day last year or

the year before, the 1<sup>st</sup> Claimant visited him and showed him a copy of the said Instrument of Transfer as well as a document that she wanted him to sign. According to the 2<sup>nd</sup> Defendant, when he compared the 1<sup>st</sup> Claimant's mark – the "X" on both of the documents, he realised that the "X" was made differently on each document. He asserted that that was what convinced him that the 1<sup>st</sup> Claimant did not make the "X" on the Instrument of Transfer and that she was not in his presence when the "X" was made.

**[66]** On the evidence of the 2<sup>nd</sup> Defendant, prior to the 1<sup>st</sup> Claimant visiting him on the aforementioned date, he did not recall anything about the transaction in relation to the disputed property. Nevertheless, he denied the suggestion that he was simply repeating what he was told by the 1<sup>st</sup> Claimant.

**[67]** In the instant case, no evidence has been put before the court to establish that the 2<sup>nd</sup> Defendant is a handwriting expert. As such, I am of the view that his findings in relation to the mark that was purportedly made by the 1<sup>st</sup> Claimant on the Instrument of Transfer, are not accepted. Having carefully considered the 2<sup>nd</sup> Defendant's evidence, it is obvious that he had no memory of the attestation of said Instrument of Transfer. It was his own evidence that it was a comparison of the marks that were purportedly made by the 1<sup>st</sup> Claimant on the aforesaid documents that persuaded him that the 1<sup>st</sup> Claimant was not present at the time of his attestation of the Instrument of Transfer.

**[68]** I find that the subject Instrument of Transfer was attested to over a decade ago; the 2<sup>nd</sup> Defendant failed to document any particulars with respect to the attestation of the Instrument of Transfer; the 1<sup>st</sup> Claimant's recollection as to whether she appeared before the 2<sup>nd</sup> Defendant and made her mark on the document is unreliable; and the 2<sup>nd</sup> Defendant's recollection of who was present when the said document was attested to is dubious. For these reasons, the Claimants have not proven on cogent evidence that the 2<sup>nd</sup> Defendant unlawfully and against his oath declared on the Instrument of Transfer dated 28<sup>th</sup> day of October 2011 that he witnessed the 1<sup>st</sup> Claimant making a mark knowing same was not true.

**Whether the 3<sup>rd</sup> Defendant unlawfully assisted and aided the 1<sup>st</sup> Defendant by lodging the fraudulent documents at the National Land Agency knowing or ought to have known that Instrument of Transfer dated 28<sup>th</sup> day October 2011 was forged**

[69] In respect of this allegation of fraud, it is noteworthy that both Claimants distanced themselves from the claim against the 3<sup>rd</sup> Defendant and gave oral evidence in contradiction to their witness statements. Both Claimants stated that they never said that the 3<sup>rd</sup> Defendant prepared the relevant Instrument of Transfer. On their evidence, it was their Attorney-at-Law who stated that the 3<sup>rd</sup> Defendant prepared the said document. In fact, when the 2<sup>nd</sup> Claimant was cross-examined about the portions of his witness statement referencing the 3<sup>rd</sup> Defendant, the 2<sup>nd</sup> Claimant said that he did not say those words. He stated that he did not know if the 1<sup>st</sup> Defendant attended the office of the 3<sup>rd</sup> Defendant and Claimant indicated that he received a document (his witness statement) and he signed it.

[70] The 3<sup>rd</sup> Defendant on their part categorically denied any involvement in the execution, preparation and/or the lodgement of the Instrument of Transfer in question and the evidence led at trial appeared to support their contention.

[71] This is because during the course of the trial, the 1<sup>st</sup> Defendant gave evidence which contradicted his filed Defence and Witness Statement regarding the 3<sup>rd</sup> Defendant and supported the 3<sup>rd</sup> Defendant's contentions. At the outset, his position was that he had taken the Duplicate Certificate of Title for the disputed property, Claimants' Identification cards and the Taxpayer Registration Numbers to the office of the 3<sup>rd</sup> Defendant and instructed them to prepare the subject Instrument of Transfer. He also claimed that the said document was prepared and lodged by the 3<sup>rd</sup> Defendant.

[72] However, at trial he testified that the said document was prepared by Mr. Courtney Miller and that the 3<sup>rd</sup> Defendant was not and had never been his Attorneys-at-Law. He also stated that he thought Mr. Miller was an Attorney-at-Law. He



admitted that he had never visited Mr. Miller at an office and that he had stopped by his wife's home in Duhaney Park and that was where the documents for the preparation of the Instrument of Transfer were collected.

- [73]** A similar situation arose on the evidence of Mr. Courtney Miller. His initial evidence was that he is a friend of the 1<sup>st</sup> Defendant and his wife and between 2000 and 2016, he worked as a Paralegal at law firms including that of the 3<sup>rd</sup> Defendant. In or about September 2011, he received instructions from the 1<sup>st</sup> Defendant regarding the transfer of the disputed property from the Claimants which the 1<sup>st</sup> Defendant had instructed had been purchased by them for him.
- [74]** Mr. Miller stated that the 3<sup>rd</sup> Defendant's name was written on the said Instrument of Transfer as he worked for them at that time. Further, that he had been given authorization by Mr. Sean Kinghorn of the 3<sup>rd</sup> Defendant, to use the firm to conduct his personal work. He stated that he never informed Mr. Kinghorn about the preparation and lodgement of the said Instrument of Transfer, as he had general authorization to use the law firm to do his personal business. His evidence was that he prepared the Instrument of Transfer and thereafter he lodged same at the Stamp Office and National Land Agency respectively. He averred that he was not paid for the aforesaid services rendered to the 1<sup>st</sup> Defendant.
- [75]** At the hearing of the claim, Mr. Miller withdrew his earlier statements with respect to the authorization that he had purportedly received from Mr. Sean Kinghorn. He asserted that he was never authorized by the 3<sup>rd</sup> Defendant to use their name for the purpose of his personal matters. In addition, he submitted that he did not have the authority to use the 3<sup>rd</sup> Defendant's name on the said Instrument of Transfer. He also confirmed that he was never instructed by the Claimants to prepare the subject Instrument of Transfer.
- [76]** While the inconsistencies on the evidence of the 1<sup>st</sup> Defendant are glaring and seriously impugn his credibility, I bear in mind that the allegations of fraud have been asserted by the Claimants. It is therefore for the Claimants to prove same.

Upon assessment, I find that there is no evidence that the 3<sup>rd</sup> Defendant unlawfully assisted and aided the 1<sup>st</sup> Defendant to lodge any documents at the National Land Agency in connection with the instant claim. The Instrument of Transfer in question was clearly prepared and lodged by Mr. Courtney Miller, who is not a party to this claim.

**Whether the 1<sup>st</sup> Defendant aided and assisted by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants caused a fraudulent document to be lodged at the National Land Agency when they knew or ought to have known that the 1<sup>st</sup> Defendant was illegally transferring the said property to himself**

[77] Based on the foregoing examination of all the evidence and submissions in this matter, there is no evidence to support this claim. I accept as a fact that the 3<sup>rd</sup> Defendant did not prepare or lodge the subject Instrument of Transfer. The Claimants rely on 2<sup>nd</sup> Defendant's evidence in relation to the attestation but I find to be unreliable. In any event, it does not show the 1<sup>st</sup> Defendant was assisted by the 2<sup>nd</sup> Defendant to forge the 1<sup>st</sup> Claimant's mark on the Instrument of Transfer. Consequently, the Claimants have failed to establish that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants aided and assisted the 1<sup>st</sup> Defendant in a manner which caused a fraudulent document to be lodged at the National Land Agency.

## **CONCLUSION**

[78] In essence, I am of the view that the Claimants have failed to provide adequate evidentiary material to prove the allegations of fraud pleaded in their particulars of claim at the requisite standard. While there are inconsistencies on the evidence of the Claimants as well as the Defendants, the authorities cited have stipulated that the Defendants bear no burden in this instance. Therefore, I have arrived at the conclusion that the transfer of the disputed property by way of gift to the 1<sup>st</sup> Defendant has not been invalidated by the statutory exception of fraud.

**ORDERS**

1. Judgment is hereby entered for the Defendants.
2. Costs to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants to be agreed or taxed.