



[2023] JMSC Civ 182

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. SU 2022 CV 03970

BETWEEN PETER RAY GRANT CLAIMANT/APPLICANT
AND SHELLY-ANN BROWN DEFENDANT/RESPONDENT

IN CHAMBERS

Racquel Willis for the claimant/applicant

The defendant/respondent appearing in person

HEARD: 22 JUNE 2023, 13 JULY 2023 & 28 SEPTEMBER 2023

Civil Procedure – Rule 15.2 – application for summary judgment – whether the defendant has a real prospect of successfully defending the claim – Real property – fraud – whether the defence has established a prima facie case of fraud to defeat title of registered proprietor

MASTER C THOMAS

INTRODUCTION

[1] The application for the court’s consideration is the claimant’s application for summary judgment on his claim that concerns a parcel of land located at Lot 39 West Bay, Coral Drive Bridgeport P.O., in the parish of Saint Catherine, which is registered at Volume 1208 Folio 320 of the Register Book of Titles (“the property”). In the alternative, the claimant asks the court to strike out the defence.

The claim

- [2] The claimant, Mr Peter Ray Grant, by way of claim form and particulars of claim filed on 10 March 2023, seeks a declaration that he is the absolute owner of the property as well as an order that the defendant, Ms Shelly-Ann Brown vacate the property.
- [3] In his particulars of claim, the claimant alleges that he is the registered owner of the property, having purchased same from the previous registered owner, Mr Kemar James ("Mr James"), in or around July 2021. The claimant asserts that as he now requires the property for his own personal use and occupation and to effect major repairs to the property, he issued a letter dated 12 July 2021 to the defendant and other occupants. This letter, attached to the particulars of claim is addressed to 'Ms. Brown also known as Suzie and The Occupants', bears the signature and stamp of Ms Raquel R.W. Willis, attorney-at-law and demands that the addressee 'give up possession forthwith and or within twenty-one (21) days from the date of this letter'. The claimant maintains that this letter was served on the defendant and the other occupants on 16 July 2021 by the St. Catherine Parish Court's bailiff and that the defendant has refused to give up possession of the property which she currently occupies.

The defence and counterclaim

- [4] On 20 April 2023, the defendant filed a defence and counterclaim, and on 13 June 2023, pursuant to an order of the court (made on 27 April 2023), the defendant filed and served an amended defence and counterclaim which included a certificate of truth in accordance with rule 3.12 of the Civil Procedure Rules ("CPR") and was signed by the defendant. This amended defence and counterclaim should have been filed and served on 12 May 2023.
- [5] By way of her amended defence and counterclaim, the defendant contends that the property was owned by Mr Wesley Emmanuel Edwards ("Mr Edwards"), with whom she enjoyed a relationship since the year 2000. She asserts that this

relationship lasted until on or about 12 January 2015 when he passed. The defendant alleges that the property had been owned by Mr Edwards since in or about the year 1989. She alleges that the signature affixed to the transfer form, transferring the property from Mr Edwards to Mr Kemar James is not the signature of Mr Edwards. She further asserts that the transfer was done six (6) years after the death of Mr Edwards and that the transfer of the property to Mr James was fraudulently done. The defendant further alleges that there are anomalies in the transfer of the property from Mr James to Mr Grant and that the transfer to the claimant was done in an illegal attempt to defeat her interests in the property and the claimant is not a bona fide purchaser for value without notice.

- [6] The defendant refuses to vacate the property as she asserts that she has a legal and equitable interest as the purported common law spouse of Mr Edwards. She maintains that she has an equitable interest based on her financial contributions to the improvement and maintenance of the property.
- [7] In her counterclaim, the defendant seeks an order to stay the recovery of possession proceedings until the court determines the 'true owner' of the property as well as declarations that the transfer from the deceased Mr Edwards to Mr James and the transfer from Mr James to the claimant are null and void and should be set aside. She also seeks declarations that Mr Edwards is the true registered proprietor and that she is the legal and beneficial owner of the property.

The application

- [8] The claimant's application for summary judgment, filed on 25 May 2023 seeks summary judgment on the claim, or alternatively, that the defendant's defence be struck out. The claimant has grounded this application on the following bases: -
- i. That the defendant has no real prospect of successfully defending the claim on the issue;
 - ii. That the defendant has failed to comply with a rule and order given by the court in these proceedings;

- iii. That the defendant has made allegations of fraud against the claimant in her defence, however, the said allegations are general in nature and fail to detail any facts surrounding the alleged collusion or even to present any circumstances from which fraud could be suggested;
- iv. That the defendant having made the allegation of fraud it must be distinctly alleged/pleaded and distinctly proved as the burden to prove is on the defendant who has made the allegations of fraud;
- v. That the claimant retains an indefeasible title as he is a bona fide purchaser for value without notice of fraud and section 163 of the Registration of Titles Act (ROTA) establishes that a bona fide purchaser is protected where he has no knowledge of fraud, even if the registered proprietor from whom he obtained title was registered through fraud or error;
- vi. That the court may grant summary judgment – rule 15.2(b);
- vii. That rule 26.3(c) gives the court power to strike out the whole or part of a statement of case if it discloses no reasonable ground for defending the claim;
- viii. That rule 26.3(a) gives the court power to strike out the whole or part of a statement of case when there has been a failure to comply with a rule or order given by the court in the proceedings;
- ix. That the defendant has failed to complete [sic] rule 3.12 of the Civil Procedure Rules and order number two (2) made by this Honourable Court on 27 April 2023;
- x. That pursuant to rule 3.13 of the Civil Procedure Rules, the court may strike out any statement of case which has not been verified by a certificate of truth.

[9] The application is supported by the claimant's affidavit in which the substantive facts deponed by him are, in summary, that:

- (i) He is a real estate agent and the registered owner of the property.

- (ii) He purchased the property from the previous registered owner Mr James by way of an agreement for sale dated 7 April 2021.
- (iii) During the sale transaction in respect of the property, he was represented by Ms Racquel RW Willis, attorney-at-law and the vendor was represented by Mr Sheldon Brydson of Brydson Campbell.
- (iv) He became aware that the property was being sold from “a regular client” of his in or about 2021 and that prior to this he had no contact with the previous owner and/or the said property.
- (v) After making contact with Mr James, he went to the property and looked at it but did not go inside as Mr James indicated that the property was tenanted but that he would be able to give vacant possession upon completion of the sale.
- (vi) An offer was made to the vendor, which was accepted as the property was in need of extensive repairs. Thereafter the matter was handed over to their respective attorneys. The transaction was therefore conducted at arm’s length.
- (vii) A search of the title was made at the National Land Agency which confirmed that Mr James was the registered owner and there were no caveats or endorsement on the title by anyone claiming an interest in the property.
- (vii) He denied the defendant’s assertions in her defence that he was not a bona fide purchaser for value without notice of fraud as he did not know Mr James prior to purchasing the property and he did not know the individual from whom Mr James purchased the property. The defendant only claimed an interest in the property when he applied for recovery of possession against her and other occupants in the St Catherine Parish Court. The defendant exhibited the certificate of title to the property which indicated that the property was transferred to Mr Edwards on 4 July 1989, from Mr Edwards to Mr James on 21 January 2021 and from Mr James to the claimant on 1 July 2021.

[10] The defendant failed to file an affidavit in response and as a consequence on 22 June 2023, the date set for hearing of the application, the application was adjourned to allow her to file same. The defendant was given until 30 June 2023 to file her affidavit but did not file same until 6 July 2023. However, this affidavit did not comply with rule 30.4 of the CPR and at the adjourned hearing, on 13 July 2023, she was given further time to 31 July 2023 to file “an Affidavit which contains the same information as the Affidavit of Shelly-Ann Brown filed on July 6, 2023 and which is sworn to and signed by Shelly-Ann Brown and has a jurat which is executed by a Justice of the Peace. The said shall be filed and served by July 31, 2023,” failing which the court would disregard any affidavit filed by her. The defendant did not comply with the order of 13 July 2023 until two days after the date for compliance had passed. I will address the impact of the defendant’s non-compliance later.

THE SUBMISSIONS

For the claimant/applicant

[11] Ms Willis, referenced rule 15.2 of the CPR and the authorities of **Swain v Hillman** [2001] 1 All ER 91, **Three Rivers District Council v Bank of England** (No. 3) [2003] AC 1, **ED & F Man Liquid Products Ltd. v Patel and Anor** [2003] EWCA Civ 472, **Fiesta Jamaica Limited v The National Water Commission** [2010] JMCA Civ 4 and **Cecilia Laird v Ayana Critchlow and Kinda Venner** [2012] JMCA Civ 157 as enunciating the applicable principles to be considered by the court when faced with an application for summary judgment. She urged the court to consider the issue of whether the defendant has a real prospect of successfully defending the claim while also considering the claimant’s argument that he is a bona fide purchaser for value without any notice of fraud. Ms Willis asserted that the court must first look at the particularization of fraud.

[12] Ms Willis maintained that the allegations of fraud made against the claimant by the defendant must be distinctly alleged or pleaded and distinctly proved. To support

this submission, Ms Willis relied on the cases of **Wallingford v The Directors of Mutual Society** (1880) 5 AC 685, **Davy v Garrett** (1877) 7 Ch. D. 473, **Henry Charles Johnson v Sagikor Bank Jamaica Ltd & The Registrar of Titles v Valerie Brown McIntosh** [2020] JMSC Civ 240. The principles outlined by the aforementioned authorities, she argued, make it evident that once fraud has been alleged, the party raising the allegation bears the onus of specifying the fraudulent acts or omissions. The defendant must clearly and specifically set out the facts and circumstances that are being relied on to prove that the claimant acted fraudulently and as such, cannot ask the court to infer this from general allegations.

- [13] It was submitted that the allegations contained within the defendant's amended defence and counterclaim are general in nature and fail to detail any facts surrounding the alleged collusion or even present any circumstances from which fraud could be suggested on the part of the claimant. These allegations of fraud against the claimant are not sufficient to establish fraud on the part of the claimant as the facts and evidence do not indicate same.
- [14] Ms Willis asserted that the evidential burden to prove fraud is substantial because cogent and indisputable evidence is required to prove fraud; and the defendant had not discharged this burden. The defendant had not established or proved a connection between the claimant and Mr James, nor presented any evidence to show how, when and where the collusion occurred. The purchase of the property was done at arm's length as the vendor, Mr James, and the claimant were both represented by separate independent counsel. The claimant became aware of the property through a third party and had no previous knowledge of or contact with Mr James. On this point, Ms Willis referred to the case of **Ervin Mcleggan v Daphne Scarlett and the Registrar of Titles** [2017] JMSC Civ 115.
- [15] Reference was made to the dicta of Jackson-Haisley J in the case of **Glenton Mcfarlane v Hopeton Ferguson** [2017] JMSC Civ 21 to demonstrate the concept of a bona fide purchaser for value without notice. It was submitted that the claimant retains an indefeasible title for the subject property as he is a bona fide purchaser for value without notice of fraud or irregularity, pursuant to section 163 of the

Registration of Titles Act (“the ROTA”). Ms Willis also referred to sections 68, 70 and 71 of the ROTA and pointed out that though the ROTA does not provide a definition for ‘fraud’, guidance may be found in the dicta of Lord Lindley in the case of **Assets Co. Ltd. v Mere Roihi** [1905] AC 176, which has been adopted by our Court of Appeal in **Harley Corporation Guarantee Investment Company Limited v Estate Rudolph Daley, Walters & RBTT Bank Jamaica Limited** [2010] JMCA Civ 46. Ms Willis submitted that this authority makes it apparent that without more, wilful blindness will not amount to actual fraud, neither will the failure to make enquiries. Section 71 of the ROTA does not impose a requirement for the claimant to have enquired into the circumstances under which the previous registered owner obtained the title to the property. Further, there were no circumstances during the sale of land transaction that required further investigation into Mr James’ title.

- [16] Ms Willis submitted that based on all the circumstances, the factual allegations on which the defendant relies to prove her case cannot support a finding of fraud on the part of the claimant. There is no real prospect of oral evidence affecting the court’s assessment of the facts, and the matter should be disposed of summarily as the defendant has no prospect of succeeding on her defence and counterclaim as filed.
- [17] The defendant submitted that there was obvious fraud as there were two different handwritings in respect of the signatures on the transfer document submitted by Mr James.

Discussion and analysis

- [18] The law with respect to summary judgment applications is well-traversed. It is trite law that the court is empowered to enter summary judgment in a claim or an issue by virtue of rule 15.2 of the CPR. The salient principles and considerations of the court in this regard are informed by the plethora of case law in this area including the cases **Swain v Hillman** [2001] 1 All ER 91 and the other authorities that were

relied on by Ms Willis. Recently in **Gregory Duncan v Angulu Associates** [2023] JMSC Civ 65, in reviewing the relevant principles I stated:

12. I accept the principle as established in **Swain v Hillman** that was applied by Jarrett J (Ag) in **Dwayne McLean v Desmond McKenzie** that the court is not to embark on a mini-trial in considering this type of application. In addition, I have also considered the following relevant principles as established by the various authorities:

- (i) The burden of proof is on the applicant to prove that the other party's case has no real prospect of success (**Island Car Rentals v Lindo** 2015 JMCA App 2; **Cecilia Laird v Ayana Critchlow & Kinda Venner** [2012] JMSC Civ 157).
- (ii) Where the applicant establishes a prima facie case against the respondent, there is an evidential burden on the respondent to show a case answering that which has been advanced by the applicant. A respondent who shows a prima facie case in answer should ordinarily be allowed to take the matter to trial (*Blackstone's Civil Commentary* 2015, para 34.11). [I would also add that it must be shown by the respondent that his case is more than merely arguable (**Delroy Howell v Royal Bank of Canada & Ors; Ocean Chimo Ltd v Royal Bank & Ors** [2021] JMCA Civ 19)].
- (iii) The court will be guided by the pleadings as well as the evidence filed in support of the application (**Sagicor Bank v Taylor Wright** [2018] UKPC 12).
- (iv) The court must exercise caution in granting summary judgment in certain cases, particularly where there are conflicts of facts on relevant issues which have to be

resolved before a judgment can be given (**Bolton Pharmaceutical Co 100 Ltd Doncaster** [2006] EWCA Civ 1661; **Cecilia Laird**)

- (v) Even where there are conflicts of evidence raised by the parties' pleadings, a court is not disabled from critically examining the party's case which is the subject of the application to determine whether there is a real prospect of success.

[19] The court is also empowered by the operation of rule 26.3(1) of the CPR to strike out the whole or part of a party's statement of case. Under this rule, there are four main circumstances that a court can, using its discretion, strike out a part or the entirety of a party's statement of case. These circumstances are as follows:

- i. That there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings;
- ii. That the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;
- iii. That the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or
- iv. That the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10 of the CPR.

[20] The authorities of **S & T Distributors Ltd v CIBC Jamaica Ltd et al** SCCA No. 112/2004, (delivered on 31 July 2007) and **Herbert A. Hamilton v Minister of National Security and Attorney General of Jamaica** [2015] JMSC Civ 39 further reinforce the salient principle that striking out is an approach that is to be employed in plain and obvious cases. Conversely, the cases which require prolonged and serious arguments are unsuitable for the mechanism of striking out.

[21] In light of the certificate of title that was exhibited to the claimant's affidavit in support of the application which clearly shows that the defendant was registered on the certificate of title to the property on 1 July 2021, it is inarguable that the defendant is the registered proprietor of the property. Therefore, in determining whether the defendant has a more than arguable defence to the claim for recovery of possession by the claimant as registered proprietor, it is appropriate to consider firstly, the effect of a person being registered on the certificate of title to property as the owner of that property. This issue was examined by the Court of Appeal in **Harley Corporation** where Harris JA, in delivering the judgment of the court, stated:

[30] Further, sections 70 and 71 of the [Registration of Titles] Act afford a defensible armour and protection to a party in whom registered lands are vested. It is not without significance that, save and except in the case of fraud, the Act confers an indefeasible interest upon a registered proprietor of land. The sections state:

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 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.”

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 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, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

[31] The foregoing clearly and amply demonstrates the conclusive character of ownership under the Act, in the absence of fraud, an absolute interest remains vested in a registered proprietor. All rights, estate and interest prevail in favour of the registered proprietor.

It is therefore clear that sections 70 and 71 of the Registration of Titles Act (“the ROTA”) give a person who is registered as a proprietor an absolute title which can only be defeated by fraud. It seems to me also that section 71 of the ROTA does not impose a requirement on a prospective purchaser of a property to enquire or ascertain the circumstances under which a previous proprietor was registered.

- [22] By virtue of section 153 of the ROTA, the Registrar of Titles is empowered to cancel a certificate of title if it is established that there was sufficient proof of fraud in obtaining said certificate of title. Further under section 158 of the ROTA, the court is empowered to make an order directing the Registrar of Titles to cancel a certificate of title and issue a new one.
- [23] Of importance is also section 163 of the ROTA, which provides protection for a *bona fide* purchaser of registered land. This section reads: -

163. Nothing in this Act contained shall be so interpreted as to leave subject to an action for the recovery of the land, or to an action for recovery of damages as aforesaid, or for deprivation of the estate or interest in respect to which he is registered as proprietor, any purchaser *bona fide* for valuable consideration of land under the operation of this Act, on the ground that the proprietor through or under whom he claims may have been registered as proprietor through fraud or error, or may have derived from or through a person registered as proprietor through fraud or error and this whether such fraud or error shall consist in wrong description of the boundaries or of the parcels of any land, or otherwise howsoever.

Therefore, a bona fide purchaser for value is protected even where the person from whom he received title may have been registered on title by fraud or error.

- [24] In relation to the evidence that is required to satisfy a court that title to property was obtained by fraud, the ROTA does not include a definition of 'fraud'. McDonald-Bishop J (as she then was) in the case of **Linel Bent v Eleanor Evans** Suit No CL 1993/B113 (delivered 27 February 2009) in determining the nature of the evidence required, made reference to the Privy Council's decision of **Assets Company Limited v Mere Roihi (1905) A.C.176** from which she distilled the following principles at paragraph 78 of her judgment:

- a. By fraud in the Act is meant actual fraud i.e. dishonesty of some sort, not what is called constructive or equitable fraud.

- b. The fraud which must be proved in order to invalidate the title of the registered proprietor for value must be brought home to the person whose registered title is impeached or to his agents.
- c. 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 believes it to be a genuine document which can properly be acted upon. (Emphasis supplied)

The dictum of McDonald-Bishop J makes it clear that in order for a registered proprietor to be deprived of his title, it must be shown that he committed the fraud. This dictum in addition to the provisions of section 163 show that in order to impeach the title of a registered proprietor it is not sufficient to show that the person from whom he derived title had committed fraud in the process of being registered on the title.

[25] **In Harley Corporation**, Harris JA in dealing with this issue, stated 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”. Harris JA then referred to, with approval, the following dictum of Salmon LJ in **Waimiha Sawmilling Company Limited v Waione Timber Company Limited** [1926] AC 101:

“Now fraud clearly implies some act of dishonesty. Lord Lindley in **Assets Co. v Mere Roihi** (2) states that: ‘Fraud in these actions’ (i.e., actions seeking to affect a registered title) ‘means actual fraud, 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.’”

Harris JA then went on to state that as was demonstrated by **Asset Company Limited v Mere Roihi** (1905) AC that “acts founded on contrived ignorance or wilful blindness would be such acts arising out of constructive or equitable fraud”.

[26] Harris JA also considered the issue of the type of pleadings required to raise the issue of fraud. She stated at [53] as follows:

In placing reliance on an allegation of fraud, a claimant is required to specifically state, in his particulars of claim, such allegations on which he proposes to rely and prove and must distinctly state facts which disclose a charge or charges of fraud.

At paragraph [56] she referred to, with approval, the following dictum of Thesiger LJ from **Davy v Garrett**:

...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. It is said that a different rule prevailed in the Court of Chancery. I think that this cannot be correct. It may not be necessary in all cases to use the word “fraud” – indeed in one of the most ordinary cases it is not necessary... the word “fraud” is not used, but two expressions are used pointing to the state of mind of the Defendant – that he intended the representations to be acted upon and that he knew them to be untrue. It appears to me that a Plaintiff is bound to shew distinctly that he means to allege fraud.

Harris JA then stated:

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 facts of 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.

Although Harris JA was speaking in circumstances where the claimant was alleging fraud, the principle would clearly apply to a counterclaim. It would also apply to a defence in that pursuant to rule 10.5 of the CPR, the defendant has a duty to set out all the facts on which he/she is relying to support his/her case. If the defendant denies any of the allegations in the particulars of claim, the defendant is required to state the reasons for doing so as well as set out the different version of events from the claimant in the defence. The defendant is also required to identify in or annex to the defence any document which the defendant considers to be necessary to the defence.

- [27]** From the principles I have outlined above, in order for the claimant to succeed in his application for summary judgment to be entered against the defendant, he must satisfy this court that the defendant does not have a more than arguable case of succeeding in establishing that his title was obtained by actual fraud.
- [28]** It is my view that the claimant having put forward evidence demonstrating that he is the registered proprietor of the property; that he did not know Mr James prior to entering into negotiations for the sale of the property; he did search the certificate of title and nothing was noted thereon to put him on notice of any interest of the defendant; the sale of the property was an arm's length transaction in which each party was represented by his attorney; and the facts on which the defendant rely to substantiate her allegations of fraud do not demonstrate any act of fraud or collusion on the part of the claimant, the claimant has satisfied the threshold of proving that in light of the provisions of the ROTA, the defendant does not have a more than arguable case of demonstrating that he obtained title to the property by some act or conduct amounting to actual fraud.
- [29]** As indicated earlier, the affidavit that the defendant was required to file was filed outside of the deadline for doing so, with the result that the sanction that the court would not consider the affidavit would have taken effect. The consequence of this

would be that the defendant would have no evidence to demonstrate that she can establish a prima facie case of fraud against the claimant. However, even if I were minded to consider that in the special circumstances of this case where the defendant is a litigant in person (notwithstanding that it appears that she was being assisted by someone with legal training or knowledge), I should consider the contents of the affidavit, the result would be the same, that is, that the defendant has not shown that she would have a real prospect of successfully showing that the claimant's title was obtained by fraud. To demonstrate the reason for this conclusion, I will examine the evidence contained in the defendant's affidavit against the background of the amended defence.

[30] As would have been appreciated from the outline of the defence as set out at paragraphs 4-7 of this judgment, the substance of the defence and counterclaim is that the previous registered proprietor for the property, Mr James acquired the title fraudulently. At paragraph 5 of her amended defence and counterclaim, the defendant alleges that she was in a committed relationship with Mr Edwards from the year 2000 to the year 2015 when he died. In paragraph 6 of her amended defence and counterclaim, the defendant states that the signature on the transfer form that purported to transfer the subject property from Mr Edwards to Mr James was fraudulent as the signature on the transfer document was not Mr Edwards' signature. Further, she asserts that the transfer was done six years after Mr Edwards had passed.

[31] In her affidavit in response to the application for summary judgment, the defendant states the following:

4. Mr. Edwards unfortunately passed away on the 12th day of January 2015 after his battle with cancer. Attached as "A" is a copy of Mr Edwards' Death Certificate. During his illness Mr. Edwards at no time made mention of plans to sell the relevant property and he does not have any surviving children.

5. ...

6. ...

7. This is a blatant attempt to fraudulently take the relevant property from myself and my children. Based on the Death Certificate presented, it is impossible for Mr Edwards to sell the relevant property 6 years after his passing.[sic] Making the transfer of ownership form a fraud.

8. Further evidence of the fraudulent actions of Mr Kemar James is the signature of the 6 years [sic] deceased Mr Edwards on the transfer form dated the 7th day of January 2021. Attached a "B" is a copy of the transfer form from the National Land Agency. And a sale price that is significantly below the average price of the property in the area.

9. Having lived with Mr Edwards for over 10 years, I can without a doubt say that is not his signature and a deceased person cannot sell property. Based on this information Mr Kemar James cannot legally transfer title by sale of the relevant property to the claimant, hence making his claim to ownership null and void.

[32] She exhibited the death certificate in respect of the deceased Mr Edwards which indicated that he died on 12 January 2015, and the transfer document which was dated 7 January 2021 showing what appeared to be transfer of title from Mr Edwards to Mr James.

[33] The defendant's allegations of fraud particularly in relation to the signature of Mr Edwards on the transfer form being fraudulent and the property being transferred 6 years after the death of Mr Edwards are focused primarily on the transfer of the property to Mr James, the person from whom the claimant bought the property. I agree with Ms Willis that there is no evidence of anything that points to collusion between the claimant and Mr James, the previous owner. In fact, it is quite telling that the claimant also states in her affidavit that "whether the claimant was aware or not of Mr Kemar James' immoral activities, this is our family home and should remain as such". In my view, it is clear from this statement that the defendant is unable to say that the claimant was involved in any wrongdoing with Mr James. The defendant is unable to put forward any evidence that proves that the claimant

is anything other than a bona fide purchaser for value, who would be protected by the ROTA.

- [34] It would appear that based on the death certificate, Mr Edwards would have been deceased for around six (6) years before the purported transfer of the property to Mr James and this would be relevant to determining the propriety of the transfer of the title by Mr Edwards to Mr James, but the claimant was not required to go behind the certificate of title to investigate how Mr James came by his title.
- [35] I note that the defendant has stated in her affidavit that she lived on the property with Mr Edwards and raised her two boys with Mr Edwards and that it is “heartbreaking to know that their home is being fraudulently ripped” from them. Being deprived of one’s home is indeed unfortunate, but the provisions of the law are clear as to the status of the claimant as the registered proprietor and what the defendant is required to prove to challenge his title. The defendant has failed to put forward any concrete evidence to seriously challenge or invalidate the claimant’s title and there is nothing coming from the defendant to suggest that any further evidence will be adduced at trial to affect this outcome. In the circumstances, I conclude that the claimant has made good his application and that summary judgment must be entered in his favour on the claim.
- [36] It is important to state that the defendant also has a counterclaim and the application for summary judgment did not include the counterclaim. However, the counterclaim relies on the facts that are stated in the defence. Rule 15.4(5) of the CPR empowers the court to exercise its power to grant summary judgment without notice at a case management conference. Phillips JA’s view in **Delroy Howell** in respect of exercising powers under rule 15.4 of the CPR was that the real concern is always one of prejudice. I am of the view that in light of the defendant’s counterclaim, the arguments to be advanced in support of the counterclaim would be the same as the arguments advanced in relation to the claim. Consequently, I am of the view that in these circumstances, notwithstanding that the application for summary judgment did not include the counterclaim, it would naturally follow that there being no real prospect of successfully defending the claim by mounting any

serious challenge to the claimant's title, the defendant has no real prospect of succeeding on her counterclaim that she is entitled to the land. Consequently, although there is prejudice to the defendant in entering summary judgment on the counterclaim, there would be greater prejudice in terms of increased costs if the counterclaim were allowed to proceed. Overall, it would be a waste of the resources of the parties as well as the court's resources to allow the counterclaim to proceed any further. In the result, I think this is an appropriate case to exercise the powers granted by rule 15.4(5) of the CPR to grant summary judgment in favour of the claimant on the counterclaim.

[37] My conclusion on the summary judgment application, in my view, renders it unnecessary for me to consider the application to strike out defence.

CONCLUSION

[38] In light of the foregoing, I make the following orders:

- i. Summary judgment is granted in favour of the claimant on the claim and the counterclaim.
- ii. The defendant shall vacate and deliver up possession of the premises now called West Bay in the parish of St Catherine being the Lot numbered 39 on the plan of part of Portmore and Port Henderson registered at Vol 1208 Folio 320 of the Register Book of Titles and shall do so on or before 30 November 2023.
- iii. Costs of the application to the claimant to be taxed if not agreed.