

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2020/0121

BETWEEN:

DANTE TAGLIAVENTI

Claimant

And

HIF-RY O'RIELY KENYATA RUGS

Defendant

Appearances:

Ms. Kema Benjamin of counsel for the Claimant

Mr. Wendel Alexander of counsel for the Defendant

2024: October 15th
November 21st

JUDGMENT

- [1] **DRYSDALE, J.:** This is a claim concerning the discharge of a charge against property owned by the Defendant.

BACKGROUND

- [2] The Claimant alleges that following a loan to the Defendant, a charge was placed on the Defendant's property as security. However, the Claimant contends that the Defendant, through either fraudulent or mistaken means, caused the removal of this charge without the Claimant's knowledge or consent.

THE PROCEEDINGS

- [3] The Claimant initiated legal proceedings on May 6, 2020. The Claimant alleges that in November 2010, the Defendant borrowed US\$24,134.00, and as part of that agreement, a charge as security was executed and registered on December 8, 2010 against a property owned by the Defendant and

located at Registration Section: Christian Valley, Block 52 1583A Parcel 12 (hereinafter “the Property”).

- [4] The Claimant contends that the parties also agreed to a 15% interest rate on any outstanding balance. As of December 2018, the outstanding debt, inclusive of accrued interest, amounted to US\$35,476.98.
- [5] The Claimant further alleges that on December 11, 2018, the Defendant, without the Claimant's knowledge or consent, caused a Discharge of the Charge instrument to be registered against the Property resulting in the loss of security for the unpaid sums. This the Claimant asserts was done either by fraud and/mistake. The Claimant therefore claimed the following reliefs:

‘[i] An order pursuant to section 140 of the Registered Land Act Cap 374, that the register of the land more particularly Registration Section: Christian Valley, Block 52 1583A Parcel 12 be rectified so as to restore Charge RL20105201 as entry no 1 which was removed by fraud and/mistake in a Discharge of Charge dated 11th December 2018 and filed in the Land Registry on 12th December 2018 which falsely purports to be executed by the Claimant.

[ii] Court Fees

[iii] Process Server Fees

[iv] Prescribed Cost

[v] Such further relief as this Honourable Court deems fit.’

- [6] The matter thereafter proceeded only on the Claimant's evidence which was rigorously cross-examined by the Defendant.

The Claimant's Evidence

- [7] The Claimant testified that he personally knows the Defendant and that the Defendant approached him in November 2010 to borrow US\$24,134.00. The Claimant agreed to lend the money on specific terms and conditions, including execution of a Charge to be registered as an encumbrance against the Property.

- [8] Subsequently in 2012 he was arrested, charged and convicted in the United States. After serving his sentence he returned to Antigua on 7th December 2018 and started to reorganize his affairs. During that process he attended the Land Registry to conduct a search and discovered that a Discharge of Charge was on 12th December 2018 recorded on the land register concerning the Property. The Claimant maintains that he never authorized the preparation or signing of the Discharge document as the defendant had not discharged his obligations regarding the loan. He therefore insists that the signature on the document is not his. He also denies any knowledge of the attorney who executed the Discharge and the location of his office.
- [9] The Claimant asserts that the Discharge was purported filed on the basis that the loan had been fully satisfied which is patently false as the loan remains unpaid to date. He accuses the Defendant of forging his signature on the Discharge of Charge and presenting to the Land Registry an instrument of Discharge knowing that it had not been executed in accordance with section 108 of the Registered Land Act.
- [10] The Claimant denies receiving a 2005 Jaguar motor car as payment for the loan. Instead, he contends that the Defendant gifted him the vehicle out of friendship, unrelated to the outstanding debt. The Claimant asserts that there was no discussion of the debt being settled through the vehicle and that the Defendant's intention was to provide them with a means of transportation upon his return to Antigua. The Claimant further contends that the vehicle was in a bad state of repair and was only worth \$7,000.00.
- [11] To facilitate the transfer of ownership, the Claimant provided the Defendant with a copy of his driver's license. The change of ownership was subsequently completed on February 6, 2019, almost two months after the Discharge was registered.
- [12] On the day the Defendant delivered the vehicle, he also provided the Claimant with a payment of \$900.00. Apart from this payment, no further payments have been made towards the outstanding debt.
- [13] On cross-examination, the Claimant reiterated that the vehicle was a gift from the Defendant and emphasized its deteriorated condition. The Claimant explained that while he did not obtain a formal

valuation, the Transport Board sought an estimate from his mechanic. The mechanic's assessment was subsequently used by the Transport Board to determine the vehicle's value.

[14] The Claimant testified that within six months of receiving the vehicle, it suffered significant damage and was subsequently sold for parts. The Claimant acknowledged that he did not provide any evidence, such as invoices or receipts, to substantiate the repairs that were supposedly necessary.

[15] The Claimant denied that the car was part of the set off the loan and further that the Defendant had paid him the sum of \$40,000.00 in addition to the \$900.00 he acknowledged.

[16] In relation to the issue of the instrument of Discharge, the Claimant denied vehemently attending the attorney's office to sign the Discharge document in the presence of the attorney's secretary. He also admitted that despite repeatedly asserting that the signature on the Discharge did not belong to him that he failed to provide any expert evidence to corroborate this claim. Further while acknowledging the seriousness of the forgery allegation, the Claimant admitted to not reporting the matter to the police. Interestingly, the Claimant, who initially denied any knowledge of the executing attorney, later admitted to a long-standing friendship with the executing attorney, dating back over 20 years through their shared involvement in the football association. He explained that instead of involving the police that they discussed the matter with his attorney, who subsequently arranged a meeting.

ISSUE

[17] The issue to be resolved is as follows:

- a. Whether the Instrument of Discharge of Charge was procured by fraud or mistake?

ANALYSIS

Issue: Whether the Instrument of Discharge of Charge was procured by fraud or mistake

[18] The Claimant has sought a restoration of the charge on the basis that the same was procured by fraud and or in the alternative mistake. The Claimant alleges that the Defendant engaged in fraudulent behavior by forging his signature on the Discharge of Charge document. That the Defendant, with knowledge that the debt remained outstanding, submitted the forged document to

the Land Registry, resulting in the wrongful discharge of the charge against the property. This fraudulent act deprived the Claimant of his rightful security and caused significant financial loss.

[19] To successfully prove fraud, the Claimant must present compelling evidence demonstrating the Defendant's intentional and wrongful conduct in creating a false document. The burden of proof lies with the Claimant to establish, on a balance of probabilities, that the Defendant knowingly and intentionally forged his signature on the Discharge of Charge document.

[20] The Court must carefully examine the evidence presented by the Claimant and assess its credibility and probative value. The Court must also apply the appropriate standard of proof, which, according to the case of **Re H and Ors (Minors)**¹, requires proof on a balance of probabilities. Lord Nicholls of Birkenhead articulated the standard of proof in civil cases and stated that 'where matters in issue are facts the standard of proof required in non-criminal proceedings is the preponderance of probability, usually referred to as the balance of probability.' This standard means that the court must be convinced that it is more likely than not that the Claimant's version of events is true.

[21] However, the Claimant's own testimony is riddled with inconsistencies and lacks credibility. The Claimant's initial denial of knowing the executing attorney, followed by a subsequent admission of a long-standing relationship, raises significant concerns about its veracity. The Court, also notes that despite the Claimant in his witness statement asserting that he returned to Antigua on 7th December 2018 during his oral testimony indicated that his return date was 8th December 2018 but that his Driver's License was issued on 5th December 2018, further that the change of the ownership of the vehicle was effected in 2020 and not 2019 as alleged. Therefore, the Court, after observing the Claimant's demeanor and considering his evidence, concluded that the Claimant was selective with the truth and not a credible witness.

[22] Furthermore, the Claimant's failure to provide any independent evidence, such as expert witness testimony to corroborate the claim of forgery, is a significant weakness in his case. A cursory examination of the Claimant's signatures on various documents, including the charge, discharge, claim form, witness statement, and transfer of vehicle ownership documents, reveals noticeable variations in style and penmanship. While it is acknowledged that no two signatures are identical,

¹ [1996] AC 563 at 586

the discrepancies in the Claimant's various signatures should have triggered the need for an expert handwriting analysis to carefully assess and present a report for consideration on whether the signature on the discharge document was a forgery. This is particularly so as the Discharge document was accepted by the Land Registry and registered against the Property. The receipt and registration of the Discharge carries significant legal weight as it is prima facie evidence of the satisfaction of the underlying charge and the intent to release the property from the encumbrance. It is also suggestive that the document has been accepted as being an authentic document which has complied with the legal requirements consistent with the Act.

[23] Additionally, the Claimant did not present any corroborating evidence or testimony from independent sources. Furthermore, there was no admission from the Defendant acknowledging his involvement in the alleged fraudulent execution and submission of the Discharge of Charge document.

[24] In the absence of compelling evidence, the Court cannot simply rely on the Claimant's assertions of fraud. The Claimant has failed to provide sufficient evidence to establish that the Discharge of Charge instrument was forged.

[25] The Claimant also alleges that the Defendant mistakenly caused the Discharge of Charge document to be filed at the Land Registry and recorded against the Property thereby erroneously discharging the charge. The Claimant particularized the allegation of mistake as “[p]resenting to the Land Registry an Instrument of Discharge when knowing or ought to have been aware that it was not executed in accordance with the mandatory provisions of the Registered Land Act Cap 374 as set out in section 108 of that Act.”

[26] Section 108 of the Registered Land Act deals with the verification of the identity of a person executing a document. The relevant sections of section 108 read as follows:

‘108. (1) Subject to subsection (3) of this section, a person executing an instrument shall appear before the Registrar or such public officer or other person as is prescribed and, unless he is known to the Registrar or such public officer or other person, shall be accompanied by a credible witness or shall present to the Registrar,

or a public officer on the Registrar's staff a credible form of photographic identification for the purpose of establishing his identity.

(2) The Registrar or public officer or other person shall satisfy himself as to the identity of the person appearing before him and ascertain whether he freely and voluntarily executed the instrument, and shall complete thereon a certificate to that effect.'

[27] From the above it is pellucid that section 108 deals with the specific formalities necessary for the execution of instruments relating to land. These formalities are designed to protect property rights and uphold the integrity of the process and to ensure that only valid documents are submitted and or relied on.

[28] The Claimant has not clearly articulated the precise mistake that would necessitate the application of Section 108. The Claimant's primary allegation centered on the authenticity of the Discharge document, specifically the alleged forgery of his signature. However, the Court has found that the Claimant has failed to provide sufficient evidence to substantiate this claim.

[29] In any event the Defendant was represented by legal counsel during the preparation and execution of the Discharge document. The responsibility for ensuring compliance with the provisions of the Registered Land Act, including the proper execution of documents, lies with the legal professional. An ordinary person, relying on the expertise of an attorney, cannot be held accountable for any alleged technical legal errors.

[30] Moreover, the Privy Council has consistently held that rectification of the land register is limited to cases involving clerical errors or mistakes made during the registration process itself. In **Lousien v Jacob**² the Privy Council stated as follows:

'There is a line of jurisprudence on section 98 of the LRA and similar enactments in force in other Caribbean Countries, indicating that rectification of the register is available only if the mistake in question (or, no doubt, the fraud, when fraud is in

² Privy Council Appeal No 93 of 2007

question) occurred in the process of registration. See *Skelton v Skelton* (1986)³⁶ WIR, 177, 181 ·182, *Portland v Joseph*; and *Webster v Fleming*. Their Lordships consider that this principle is a correct and useful statement of the law.'

[31] The Privy Council after a thorough exposition of rectification and mistake under the Torrens System recently endorsed the above principle in the recent case of **Bresford and others v Providence Estate Ltd and others**³ and further stated that, '[t]he Board respectfully agrees and observes that the term "mistake" would extend to the registration of an interest acquired under a void disposition, or where the transfer was of land the vendor had already sold.'

[32] In this case the Claimant's allegations do not fall within the scope of such rectifiable errors. The Claimant has also failed to prove the allegation of fraud. The Claimant has not demonstrated a mistake in the registration process or any mistake suitable to justify the rectification of the land register. As such, the Court cannot order the rectification of the land register.

ORDER

[33] In light of the forgoing, it is hereby ordered that:

- i. The Claim Form and Statement of Claim is hereby dismissed
- ii. The Defendant is awarded prescribed costs
- iii. The Defendant is awarded statutory rate of interest



Justice Jan Drysdale
High Court Judge

By the Court

Registrar

³ [2022] UKPC 46