

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

MONTSERRAT

CLAIM NO. MNIHCV2021/0028

BETWEEN:

[1] MABEL VENZEN

Claimant

and

[1] HUGHWARD DANIEL

[2] AMELIA DANIEL

Defendants

Appearances:

No appearance for the Claimant

Mr. Jean Kelsick for the Defendants

2023: NOVEMBER 14

NOVEMBER 29

JUDGEMENT

THE COURT CONSIDERED THE FOLLOWING:

[1] The parties are engaged in ongoing litigation disputing ownership of lands in Montserrat. The Claimant has brought an Application before me seeking to strike (the “Claimant’s Application”) the Defendants’ Amended Defence and Counterclaim dated January 19, 2023 (the “Amended Pleadings”) filed with leave of the Court granted on March 30, 2023.

[2] The determination of the Claimant’s Application before me requires a brief review of the recent history for this litigation.

- [3] As noted above, this case was before the Court on March 30, 2023. On that date the Claimant brought an application to strike the initial Defence and Counterclaim of the Defendants. The fundamental argument then advanced by the Claimant was that the Defendants' initial pleadings were merely an attempt to relitigate the prescriptive title awarded by the Registrar to the Claimant. The Claimant also then argued that there was no basis for the Defendants' claims based in fraud and the equitable principles of constructive trust and unjust enrichment. The Claimant also then argued that the Defendants were not the proper parties and thereby lacked standing for the relief sought.
- [4] In response, the Defendants brought their own application on March 30th for leave of the Court to file the Amended Pleadings.
- [5] The Amended Pleadings asked the Court to set aside ("rectify") the registration of title for the subject property entered in the name of the Claimant by the Registrar of lands pursuant to the *Registered Land Act* ("RLA").
- [6] The Amended Pleadings claimed an ownership interest for the named Defendants in the property or, alternatively, a life interest for themselves on the basis of a promise of ownership and related gift of the property by the former registered owner, Mathew Kelly, whereupon they built their house.
- [7] The Amended Pleadings rely upon allegations of fraud along with the principles of constructive trust and unjust enrichment to support the relief sought by the Defendants.
- [8] The Defendants' Notice of Application dated February 27, 2023 in support of their request for leave to file the Amended Pleadings at paragraph 5 summarizes their argument stating:
- [9] The application for leave to amend the counterclaim was made with sufficient promptitude when contrasted with the Claimant's several failures to obey court orders and file documents on time or at all. The Claimant will suffer no prejudice if the application for leave to amend is granted in view her many said delays,

whereas the Defendants will be prejudiced by being deprived of an important argument in their defence touching on whether the Claimant was guilty of fraud and misleading the Registrar of Lands when arguing her claim to prescriptive title before the Registrar...the administration of justice favours the Defendants being allowed to ventilate an important issue i.e. the Claimant's fraud so that all of the issues in controversy before the parties are determined.

[10] The Defendants' application for leave to file and the contents of the Amended Pleadings were before Justice Morley to be heard and determined on the merits. It is unchallenged before me that the Claimant did not on March 30th strictly oppose the Defendants' application for leave to file the Amended Pleadings. That being said, there can be no doubt that Justice Morley considered the Claimant's arguments directed against the initial pleadings when determining the Defendant's application to file the Amended Pleadings. In this context, Justice Morley ordered that the "Defendant Daniels' amended defence and counterclaim filed on 27th February 2023 are deemed properly filed".

[11] The leave to file the Amended Pleadings granted by Justice Morley was no mere administrative formality or rubber stamping as suggested by the Complainant in argument before me.

[12] Justice Morley's ruling noted that the decision by the Registrar to place ownership of the property in the name of the Claimant did not adjudicate the equitable and other claims being advanced by the Defendants, which claims could over-ride the prescriptive title granted to the Claimant.

[13] Justice Morley rejected the Claimant's application to strike commenting that justice required the Court to "hear the argument between the parties, and not treat the case narrowly on technical points about pleadings and who should sue who".

[14] Justice Morley succinctly pronounced that the Defendant's requested "adjustment of the pleadings should be allowed to tidy what the trial will be about, namely what rights have the Daniels on the land now in the name of Mabel".

- [15] The Claimant's Application before me seeks to strike the Amended Pleadings. The fundamental argument now advanced by the Claimant is that the Amended Pleadings are merely an attempt to relitigate the prescriptive title awarded by the Registrar to the Claimant, which decision the Defendants should have appealed if they took issue. The Claimant now argues that there is no basis for the Defendants' claims based in fraud. The Claimant also now argues that the Defendants are not the proper parties and thereby lack standing for the relief sought.
- [16] The point of the above walk through history is to make clear that all of the pleading complaints identified in the Claimant's Application before me were before Justice Morley and determined by the Court on March 30, 2023 when granting leave to file the Amended Pleadings. Justice Morley already considered and rejected the same arguments the Claimant advances before me when considering the merits of the Defendant's request to file the Amended Pleadings. As such, there is simply no basis to permit the Claimant to now repeat the same fundamental arguments that have already been adjudicated. The Claimant's Application is rejected on that basis.
- [17] Even if the issues raised by the Claimant had not already been decided by the Court and were being determined by me at first instance, the Claimant's Application would fail for the same reasons identified by Justice Morley.
- [18] The Amended Pleading is not re-litigating issues determined by the Registrar of Land. The Registrar has no jurisdiction to consider the equitable or fraud based claims raised in the Amended Pleading. Section 140 of the *Registered Land Act* specifically provides for the authority of the Court to order rectification where title was obtained by fraud, which is exactly what the Defendants have alleged happened here.
- [19] The Amended Pleading provides a sufficient factual and legal foundation for the equitable and fraud based claims being asserted by the Defendants. In other words, the Defendants' pleading serves to inform the Claimant regarding what the Defendants want and why. That is sufficient pleading.

[20] The Defendants have standing for the relief they have pleaded. The Amended Pleading alleges that the Claimant obtained ownership title by fraud. Ultimately, the Defendants are seeking ownership in the subject land in their names and for themselves. The Claimant is incorrect where arguing that the estate of Mathew Kelly is the only party who can claim the relief sought by the Defendants. It is true that the Amended Pleading seeks an order cancelling the Registrar's transfer of ownership and restoring it to the prior owner, namely Mathew Kelly (now deceased so to his estate). However, the Defendants are not seeking relief on behalf of the Kelly estate.

[21] The Amended Pleading simply recognizes the default outcome of cancelling the Registrar's transfer of ownership to the Claimant, which would be for the land to revert to the immediately prior owner, the Kelly estate. That said, the Defendants are looking to have the Court declare that they have ultimate ownership in the subject lands for themselves for the reasons set forth in the Amended Pleading. The Defendants first seek to cancel the Claimant's current ownership and then secondly seek a determination that they have an ownership interest in those lands. The Amended Pleading outlines the factual and legal foundation for the Defendants' standing to seek that relief.

[22] Lastly, the proper administration of justice necessitates a determination of the issues and competing interests in this case on the merits rather than by some preliminary, technical argument on the sufficiency of pleadings. The destruction caused by the Soufriere Hills Volcano lead to the displacement and relocation of many residents on this island. The litigation between the parties in this case arises from such a relocation. The determination of the issues in this case are, clearly, of great importance to the parties but may also offer guidance for the many others who are in similar circumstance.

[23] In conclusion, the Claimant's Application is dismissed.

IT IS HEREBY ORDERED THAT:

1. The Claimant's application to strike the Defendants' Amended Defence and Counterclaim is dismissed.
2. This matter shall return before me on a date to be scheduled to speak to the matter of costs of this application and next steps for the litigation.

The Hon. Dale Fitzpatrick
(Ag) High Court Judge

By the Court

REGISTRAR