

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2019/0494

BETWEEN:

MARILYN JANET MOSES

(Administratrix of the Estate of Alexander Hilton Moses)

Claimant

and

[1] **MERLYN HILDA JOSEPH**

[2] **MARY MISLYN McKENZIE**

[3] **MARGARET QUASHIE**

(Respectively President & Secretary of Women's Group of Mt. Royal,
Carriacou)

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Alban John and Ms. Hazel Hopkin for the Claimant

Mr. George Prime for the First Defendant

Mr. Nigel Stewart for the Second and Third Defendants

2023: March 27

April 11 (Closing Submissions)

May 25

JUDGMENT

- [1] **ACTIE, J.:** This case concerns the ownership of a parcel of land measuring Two Thousand and Sixteen Square Feet (2,016 Sq. Ft.) together with the building thereon situate at La Resource in the Island of Carriacou (hereafter referred to as "the disputed lot").

Claimant's case

- [2] The claimant is the daughter, administratrix and beneficiary of Alexander Hilton Moses (hereafter referred to as "the deceased") who died on 6th August 1999.
- [3] By amended fixed date claim form filed on 26th June 2020, the claimant claims, inter alia, declaratory orders, injunctive relief, interest and costs.
- [4] The claimant contends that the deceased's sister, Emelina Lawrence, in a Deed of Conveyance dated 10th December 1986 (hereafter referred to as "the deceased's deed"), conveyed the disputed lot to the deceased on which he later built a structure.
- [5] The claimant states that the disputed lot was originally in the joint possession of Emelina Lawrence and her husband Isaac Lawrence, both of whom never attempted to formalize title to the land, and that Emelina Lawrence later sold the disputed lot to the deceased after the death of Isaac Lawrence.
- [6] The claimant states that she first learnt of the first defendant laying claim to the disputed lot on 25th October 2014, when she was contacted by a representative of the Mt. Royal's Women's Group (hereafter referred to as "the Group") on the granting of permission to the Group to occupy same.
- [7] The claimant avers that despite agreeing to rent the disputed lot to the Group, the Group declined to acknowledge the claimant as having an interest in or authority over the disputed lot and has unlawfully continued in occupation without accounting to the claimant.
- [8] The claimant states that the first defendant and one Theodora Joseph, believed to be the late mother of the first defendant, caused a deed to be executed in favour of the first defendant as beneficiary of the estate of Emelina Lawrence. The claimant asserts that the property purported to be conveyed by this deed includes the disputed lot, and that this deed is based in whole or in part on a purported Will of Emelina Lawrence.

[9] The claimant avers that the purported Will of Emelina Lawrence on which the first defendant's deed is based is a fraudulent document and pleads the following particulars, inter alia, as against the first defendant:

- (1) Creating and presenting a document purporting to be the Will of Emelina Lawrence knowing fully that it is not;
- (2) Causing writing to be inscribed on the face of the document purporting to be the signature or writing of Agnes Moses as a witness, knowing that to be false;
- (3) Representing the said Agnes Moses to be a witness to the signing of the said Will by Emelina Lawrence when no such event occurred; and
- (4) Implying and pretending that the said Agnes Moses was in Carriacou on 26th February 1986 witnessing the said Will when she was actually then residing in the United Kingdom.

[10] The claimant contends that for so long as the Group has been paying rent to the first defendant without accounting to the claimant for such rent, the second and third defendants as officers and agents of the Group have been acting as trespassers in respect to the disputed lot.

[11] The claimant fears that unless restrained, the defendants intend to continue to use the disputed lot to the detriment of the beneficiaries of the estate of the deceased.

First Defendant's case

[12] The first defendant states that she derived title by a deed of conveyance dated 11th November 2005 made between Theodora Joseph as Administratrix of the estate of Isaac Lorant (also called "Isaac Lawrence"), the first defendant as Administratrix of the estates of Alice Thomas and Emelina Lawrence and the first defendant and Theodora Joseph as beneficiaries of the estates of Isaac Lorant (also called "Isaac Lawrence") and Emelina Lawrence (hereafter referred to as "the first defendant's deed").

[13] The first defendant contends that Emelina Lawrence could not have sold to the deceased what she did not own through the application of the maxim *nemo dat quod non habet*, and that the deceased's deed is bad in law.

[14] The first defendant avers that the disputed lot forms part of the devise to her in the Will of Emelina Lawrence, and contends that she is not a trespasser. The first defendant also denies committing fraud and avers that she did not cause any writing to be inscribed on the face of the Will.

Second and Third Defendants' case

[15] The second and third defendants admit to the Group presently occupying the disputed lot, however they deny that they do so unlawfully, but instead as lawful tenants of the first defendant.

[16] The second and third defendants also aver that Emelina Lawrence was never the owner of the disputed lot and that the deceased's deed was not effective to convey the disputed lot to the deceased.

[17] The second and third defendants aver that the disputed lot was owned by Isaac Lawrence, who was the sole owner of the property. They contend that Isaac Lawrence left Emelina Lawrence, his wife, and his two sisters, him surviving, and that by the first defendant's deed, the disputed lot was lawfully transferred to the parties named therein.

[18] The second and third defendants also deny that the claimant ever agreed to rent the disputed lot to the Group.

Legal Analysis

Whether the land referred to in the deceased's deed is part of the land conveyed in the first defendant's deed

[19] The first defendant argues that the lot conveyed in the deceased's deed is identified by cadastral number 7-026-01-044 whereas the lot to which she claims is identified by cadastral number 7-026-01-043. The first defendant however does not offer any survey evidence with respect to this argument, though her counsel suggests in submissions that a survey be done.

[20] On the other hand the claimant argues that though the parcel size of the land conveyed in the first defendant's deed is larger than the disputed lot, the location of the lot cannot be seriously disputed.

[21] The evidence before the court is that the respective plans attached to the deceased's deed and the first defendant's deed both show that the lots are bounded on the North by a public road located proximate to a T junction in that public road and bounded on the West by the Estate of Dick. These similarities remain despite the plans being drawn nineteen years apart.

[22] In addition and in furtherance of the argument that the land in the deceased's deed is part of that which is referred to in the first defendant's deed, it is the claimant's case that the deceased erected a Club House was on the disputed lot around the foundation of a small shop which was operated by Emelina and Isaac Lawrence. In cross examination, and contrary to her argued case, the first defendant indicated that the Club House was originally constructed by Isaac Lawrence, and reconstructed by the deceased, making the property which Isaac Lawrence possessed that which the deceased later possessed.

[23] Without the first defendant providing the court with further evidence to substantiate her argument and given her evidence with respect to the Club House, this court is satisfied that the properties contained in the plans in the deceased's deed and the first defendant's deed, pertain to similarly located properties, so that

the disputed lot is deemed part of the land purportedly conveyed to the first defendant.

Whether the claimant has better title to the disputed lot than the first defendant

[24] At common law title to land is relative. In **Ocean Estates Limited v Normand Pinder**¹ it was held that:

“Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C might have a better title than A, if C is neither party to the action nor a person by whose authority B is in possession or occupation of the land.”

[25] It is thus for the court to determine which party has proven a better title. Both the claimant and the first defendant claim title derivative of predecessors in title namely Isaac Lawrence and Emelina Lawrence, who they agree were husband and wife.

[26] Despite counsel for the first defendant stating in submissions that Isaac Lawrence and Emelina Lawrence were not in joint possession, it is the evidence of the first defendant, both in her evidence in chief and through cross examination, that at the time of Isaac Lawrence’s death he and Emelina Lawrence owned the disputed lot.

[27] The testimony of Margaret Crocker on behalf of the first defendant corroborated the above statement of the first defendant, in that she averred under cross examination that Emelina Lawrence and Isaac Lawrence owned the disputed lot.

[28] Moreover, the evidence of the second defendant in cross examination indicates that both Isaac Lawrence and Emelina Lawrence owned the disputed lot, and that after Isaac, Emelina owned the property.

¹ Privy Council Appeal No. 30 of 1967

[29] Given the evidence on behalf of the claimant and the first defendant therefore, the court finds that Isaac Lawrence and Emelina Lawrence were in factual possession of the disputed lot.

[30] The claimant claims title through Emelina Lawrence specifically, while the first defendant claims title through both Isaac Lawrence and Emelina Lawrence. Isaac Lawrence predeceased Emelina Lawrence, raising the issue of whether the possession of Isaac and Emelina constituted a joint possession or a single possession.

[31] The claimant's case is that having been put in possession of the disputed lot, Emelina and Isaac took over and controlled same, and possessed the land jointly. The claimant relies on the case of **Shirley Hodge v The Chief Registrar of Lands**² where the following was stated:

“Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly.”

[32] At paragraph 60 of **Shirley Hodge**³ it is stated:

“The judgment in Ward v Ward [1817] LR 6 Ch. App 789 and MacCormack v Courtney [1895] 2 IR 97, make it clear that two persons may jointly exercise acts of ownership, and they may thus gain a possession which vests in them an estate as joint tenants. Where two or more persons acquire a title under the statute of limitation by joint possession, they would become joint tenants of the property so acquired. In such a case, there is really one possession, with the possessors enjoying together the rights which flow from it.”

[33] On the other hand, the first defendant argues that Emelina Lawrence was not vested in the disputed lot and could not convey a good and marketable title to the deceased. Counsel for the first defendant in submissions referred to the maxim *nemo dat quad non habet*. Counsel also referred to the cases of **Henrietta**

² BVIHCV2017/0004

³ BVIHCV2017/0004

Tayliam v Felicita Thomas⁴ and **Raoul Odlum v Catherina Jean Jacques**⁵.

The case of **Henrietta Tayliam v Felicita Thomas**⁶ involved property held on trust for another, and the case of **Raoul Odlum v Catherina Jean Jacques**⁷ involved property which was previously sold and interest in it already divested. No evidence was led by the first defendant to show how Isaac Lawrence possessed the disputed lot independently of Emelina Lawrence, so as to rebut their joint possession.

[34] Applying the legal principles in **Shirley Hodge**⁸ to the facts, the court finds that the possession of Isaac Lawrence and Emelina Lawrence was a single possession exercised jointly. The evidence of both the claimant and the first defendant demonstrates that Isaac Lawrence and Emelina Lawrence, husband and wife, treated the property as their own. Thus, at death and under the joint tenancy principle, the interest of Isaac Lawrence in the disputed lot would have passed solely and exclusively to Emelina Lawrence, as survivor of the joint tenancy with Isaac Lawrence.

[35] Emelina Lawrence lawfully transferred this entitlement to possession of the disputed lot through the deceased's deed given that such an inchoate interest is capable of being assigned⁹. Thus, at the time the first defendant's deed was executed, Emelina Lawrence had no interest in the disputed lot to pass on to the first defendant.

[36] Ironically, the maxim *nemo dat quod non habet* on which the first defendant relies on to challenge the claimant's title in actuality applies to her title deed. Emelina Lawrence could not have bequeathed interest in property which she had already disposed.

⁴ SLUHCVP2007/016

⁵ SLUHCVP2007/0015

⁶ SLUHCVP2007/016

⁷ SLUHCVP2007/0015

⁸ BVIHCV2017/0004

⁹ BVIHCV2017/0004 Shirley Hodge v Chief Registrar of Lands

[37] The court therefore finds that the claimant has a better title to the disputed lot than the first defendant, as Emelina Lawrence would have been dispossessed of the property which she purportedly devised by Will to the first defendant.

The effect of the Will of Emelina Lawrence

[38] The finding of the court with regard to the transfer of title in the disputed lot to the claimant effectively brings this claim to an end, as a Will upon death of a testator could only be effective to what the testator owned at the time of death. Emelina Lawrence having sold the disputed lot did not have title to bequeath to the first defendant.

[39] Nevertheless, for completeness the court will address the issue of fraud raised in the pleadings. The claimant further relies on an allegation of the Will of Emelina Lawrence being a fraudulent document so that the effect of the transfer of the purported interest in the disputed lot fails.

[40] The law on fraud was discussed by Moise J in **Yvette Powell-Freeman et al v Olric Llewellyn Powell**¹⁰ where he referred to the definition of fraud as follows:

“The Common law relating to fraud was established by the House of Lords in *Derry v Peek* (1889) 14 Appeal Cases 337. It was there decided that in order for fraud to be established, it is necessary to prove the absence of an honest belief in the truth of that which had been stated; in the words of Lord Herschell, “fraud is proved when it is shown that a false representation has been made: (1) knowingly; or (2) without belief in its truth; or (3) recklessly, carelessly whether it be true or false.”

[41] The question of whether a false representation was actually fraudulent is a question of fact¹¹, and it is for the claimant to satisfy the evidential burden of proving fraud as alleged.

[42] The claimant states that the Will of Emelina Lawrence has a “Mrs Agnes Moses” as one of the witnesses and a date of 26th February 1986. The claimant avers that

¹⁰ NEHCV2015/0117

¹¹ Halsbury's Laws of England (Volume 31 4th edn) para 758

she knew Agnes Moses who is the purported witness of the Will of Emelina Lawrence as the said Agnes Moses was married to her uncle, her father's brother. She states that Agnes Moses never signed her name the way it appeared on the Will. The claimant further states that Agnes Moses did not retire to Carriacou until 1987.

[43] Witnesses for the claimant, Victoria Moses Alexander and Felecia Monica Noel nee Moses, indicate that their mother, Agnes Moses, has always signed her name as "A Moses" and never as "Mrs Agnes Moses", as it appears on the face of the Will of Emelina Lawrence. Felicity Monica Noel further indicated that her mother was not in Carriacou in 1986.

[44] The first defendant offered no evidence or legal argument in support of the Will's execution, and has not discharged the burden of establishing that the purported Will was properly executed in the face of evidence of the claimant to the contrary. The first defendant merely asserts that there is no expert evidence tendered.

[45] No expert witnesses were produced by either of the parties, making this a matter for the court to determine based on the evidence given at trial.

[46] **Section 6** of the **Wills Act**¹² which states that:

"no will shall be deemed valid unless signed or acknowledged by a testator or signed by the testator's instruction in the presence of two or more witnesses present at the same time"

[47] The court accepts the evidence that the Agnes Moses who is the relative of the claimant is the Agnes Moses who witnessed the Will of Emelina Lawrence. Given the evidence of witnesses for the claimant, Victoria Moses Alexander and Felecia Monica Noel nee Moses, and the documents before the court which demonstrate the signature of Agnes Moses, this court finds that the purported Will of Emelina Lawrence is a fraudulent document. The court accepts that the representation of Agnes Moses to be a witness to the signing of the Will by Emelina Lawrence when no such event occurred as the said Agnes Moses was not in Carriacou at the

¹² CAP 340

alleged date of the execution. Accordingly, the purported Will is invalid due to the breach of **Section 6** of the **Wills Act**. Consequently, the devise in the purported Will to the first defendant to the extent of the disputed lot is rendered null and void by reason of fraud.

Whether the second and third defendants are trespassers

[48] **Halsbury's Laws of England**¹³ sets out the principles concerning trespass as follows:

"A person's unlawful presence on land in the possession of another is a trespass for which a claim may be brought, even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another."

[49] It is the evidence that the Group made contact with claimant and took possession of the disputed lot in or about July 2014, and has since been in occupation.

[50] The second and third defendants indicated in evidence, contrary to the claimant, that the Group never acknowledged the claimant as owner of the disputed lot. They stated that if a representative communicated with the claimant it was without the authorisation of the Group. The court accepts the claimant's evidence that the Group initially made contact with her for the rental of the premises but continued their dealings with the first defendant who purportedly had title to the disputed property. In the circumstances, the court makes no ruling with regard to trespass against the defendants.

[51] This case is a typical example of the inconclusiveness and unreliability of the deed paper title system which does not guarantee title to land. It is merely a record of registration but not conclusive of proof of title and further highlights the need for

¹³ (2021) Vol 97A para 161

the Land Registration System in this jurisdiction to deal with the myriad land disputes filed in the court.

Conclusion

[52] For the foregoing reasons, the court finds in favour of the claimant. The claimant having a better title to the disputed lot than the first defendant and given that the Group has been in occupation of the disputed lot on the authority of the first defendant, it is therefore necessary for the defendants to give an account of their occupation of the claimant's property.

[53] The second and third defendants are to provide the claimant with an account of their dealings with the disputed property and rents paid to the first defendant. It is also for the first defendant to give an account of all rents received from the second and third defendants from the date of their occupation to present.

[54] It is further ordered and declared as follows:

- (i) That Alexander Hilton Moses was, by virtue of a deed of conveyance dated 10th December 1986 made between Emelina Lawrence of the one part and Hilton Moses of the other part, the fee simple owner of all that lot, piece or parcel of land together with building thereon measuring Two Thousand and Sixteen Square Feet (2,016 Sq. Ft.) situate at La Resource, Carriacou, in the state of Grenada;
- (ii) That the deed dated 11th November 2005 made between Theodora Joseph of the first part, Merlyn Joseph of the second part, Merlyn Joseph of the third part and Theodora Joseph and Merlyn Joseph of the fourth part and recorded in the deeds and land registry of Grenada in Liber 26-2007 at Page 443 is based on a fraudulent Will of Emelina Lawrence and so far as it relates to the parcel of land measuring Three Thousand Eight Hundred and Thirty-six Square Feet (3,836 Sq. Ft.) shown in the plan or diagram attaching to that deed the said deed is void and of no legal effect and is expunged from the records of the Deeds and Land Registry of Grenada;

- (iii) That the defendants each, whether jointly or severally, shall within sixty (60) days of today's date provide an account to the claimant for all rents paid by the second and third defendants to the first defendant.
- (iv) The first defendant shall pay the claimant all rents received with interest at the rate of 3% per annum from the commencement of the occupation of the disputed lot by the 2nd and 3rd defendants until judgment and at the rate of 6% per annum from judgment until payment in full;
- (v) That the defendants, whether by themselves, their servants or agents, shall vacate the property and give up vacant possession to the claimant within Sixty (60) days of today's date.
- (vi) Prescribed costs in the sum of \$7,500.00 to be paid to the claimant by the defendants pursuant to CPR 65.5(2)(b) in the sum of \$3750.00 by the first defendant respectively and the 2nd and 3rd defendants within thirty (30) days of the date of this order.

Agnes Actie
High Court Judge

By the Court

Registrar