

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHCV2002/0958

BETWEEN:

HEIRS OF FRANCIS HARRISON PALMER
(Acting herein and represented by
SERENA LUBON nee GEORGE)

Claimants

and

ROBERT WILLIAMS

Defendant

Appearances:

Dr. Nicholas O. Frederick for the Claimants

Mr. Bryan Stephen, with him is Mr. Malcolm Augustin for the Defendant.

2004: December 04
February 11

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** On 4th December 2003, I dismissed the claim brought by Serena Lubon on behalf of the Heirs of Francis Harrison Palmer (the Palmers) with Costs to the Defendant, Robert Williams. I give oral reasons for my decision. I also indicated that I would reduce my reasons into writing subsequently. I do so now.
2. On 28th January 2003, the Palmers filed a Claim Form with Statement of Claim seeking a Declaration that the Deed of Sale executed on 19th February 1991 and registered at the Land Registry on 25th February 1991 as Instrument No. 625/91 between the late Francis Harrison Palmer (the deceased) and Robert Williams be deemed null and void.

3. In a nutshell, the Claimants' claim seems to be grounded on fraud. At paragraph 5 of their statement of claim, they alleged as follows:

“The Claimants have recently discovered a Deed of Sale executed on 19th February 1991 and registered at the Land Registry of Saint Lucia on 25th February 1991 as Instrument No. 625/91 in which the said FRANCIS HARRISON PALMER purportedly “sold” the said land to the Defendant ROBERT WILLIAMS (see Exhibit B). The said Deed of Sale indicated that FRANCIS HARRISON PALMER was unable to sign his name. This is untrue as there are several available documents, including his Last Will and Testament copy of which is attached hereto, on which the said FRANCIS HARRISON PALMER signed his name. The Defendant therefore acquired title by virtue of false declaration.”

4. On 21st February 2003, Mr. Williams filed his defence. Stripped to its bare essentials, the gist of his defence is that he lawfully acquired the parcel of land in dispute. He alleged that at the date of the execution of the Deed of Sale, the deceased stated that he could not have signed his name when questioned by his Notary, Mr. Andre Arthur. The deceased produced his identification card and a Justice of the Peace who would sign on his behalf came to the Notary's Law Offices and the Deed of Sale was lawfully executed by the parties.

The Trial

5. At the commencement of the trial, Mr. Bryan Stephens, Counsel for Mr. Williams fought hard to raise some preliminary objections. I was of the impression that Learned Counsel could have made those submissions at Case Management so I proceeded with the trial mainly because one of the witnesses, Mr. Egbert Palmer indicated that he expended considerable time and money to travel from the United States for the trial.
6. Two witnesses gave evidence on behalf of the Palmers. The first to take the stand was Mr. Egbert Palmer. He is the lawful son of the deceased. He alleged that the Deed of Sale executed between his late father and Mr. Williams contained two patently inaccurate statements. He emphatically asserted that his father was a married man and not a bachelor and secondly, that it was a well-known fact that his father was proficient in reading and writing. At paragraph 7 of his witness statement, Mr. Palmer alleged fraud.

7. Mrs. Serena Lubon also gave oral testimony. Like her brother, she alleged that her deceased father was literate and married at the date of the alleged execution of the Deed of Sale. Mrs. Lubon alleged that the signature on the Deed of Sale is clearly a fraud.
8. At the end of their case, Mr. Stephens raised a no-case submission. He launched a three-pronged attack on the Claimants' case. He argued that their case should be struck out for the following reasons:
 - (i) That the Palmers have no *locus standi* and are not suitable parties to bring this action. A representative claim pursuant to Rule 21 was required in the circumstances.
 - (ii) That there are mere allegations of fraud in the statement of claim but they have not been specifically pleaded.
 - (iii) That the statement of case does not disclose any reasonable ground for bringing the claim – see Part 8.7 and Part 26.3 of the Rules.

Representative Parties

9. Mr. Stephens argued that the Palmers have not complied with Part 21 of the Rules. I do not think that it is necessary for me to recite Part 21 except to state that this point is now moot. There was an initial procedural irregularity. It was subsequently perfected. The record indicates that an order was made on the 13th January 2003 appointing Ms. Serena Lubon as the representative claimant. This is reflected in the amended Claim Form filed on 28th January 2003 and subsequent documents including the Defence.

The Land Registration Act 1984

10. Section 98 of the Land Registration Act, No. 12 of 1984 reads as follows:

- (1) "...the Court may order rectification of the register where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.
- (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession ...unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such

omission, fraud or mistake or substantially contributed to it by his act, neglect or default.”

11. Upon a proper construction of Section 98, it seems to me that the pleadings of a claimant who alleges fraud or mistake is saddled with a burden which he must discharge in order to prove the allegation. In the first instance, he must plead in clear and precise terms that the registration in the Land Register in relation to which rectification is sought was obtained, made or omitted by fraud or mistake. Additionally and more fundamentally, he must prove, by the production of a sufficiency of evidence, to the satisfaction of the court that the registration was in fact obtained, made or omitted by fraud or mistake. He is therefore required to discharge an evidential burden in relation to his allegation regarding the registration.
12. In spite of a claimant proving that the registration was obtained, made or omitted by fraud or mistake there is an additional evidentiary requirement which he must satisfy in order for the Court to order rectification. He must prove one or a combination of the following statutory pre-requisites namely:
 - (i) That the registered proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought;
 - (ii) That he caused the omission, fraud or mistake in consequence of which the rectification is sought; or
 - (iii) That he substantially contributed to the omission, fraud or mistake by his act, neglect or default.
13. In the language of the statute, the Palmers must therefore prove that Mr. Williams participated in the fraud or mistake.
14. Mr. Stephens submitted that mere allegations of fraud are insufficient to meet the demands of the Statute. He next submitted that where, as in this case, the subject matter of the dispute is that of a Deed of Sale signed by the deceased, then evidence of a handwriting expert is mandatory. I do not think it was necessary in this case as it was their submission that the deceased declared to the Notary that he was unable to sign. Indeed, there is no

signature of the Deceased on the Deed of Sale. It was alleged that the Deceased made his mark in the presence of the Justice of the Peace and the Notary.

15. Dr. Nicholas Frederick, Counsel for the Palmers argued that their case hinges not solely on fraud but significant errors or omissions in the Deed of Sale.

Fraud

16. The legal principles which govern the pleadings where fraud is alleged are ancient and well settled. It is a long established rule and practice that a court ought to disregard general and vague allegations of fraud. In *Thomas v Stoutt*¹, Byron LJ (Acting) as he then was, stated at page 117:

“The mere averment of fraud in general terms, is not sufficient for any practical purpose in the prosecution of a case. It is necessary that particulars of fraud are distinctly and carefully pleaded. There must be allegations of definite facts, or specific conduct. A definite character must be given to the charges by stating the facts on which they rest.”

17. The ancient principle was referred to in *Wallingford v Mutual Society and Official Liquidator*² by Lord Selborne LC at page 697:

“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. And here I find nothing but perfectly general and vague allegations of fraud. No single material fact is condescended upon, in a manner which would enable any court to understand what it was that was alleged to be fraudulent. These allegations, I think, must be entirely disregarded.”

18. It is trite law that a claimant can only rely on what he has pleaded. Nowhere in their pleadings have the Palmers given any particulars of the fraud which they now allege. Except for the mere averment of fraud at paragraph 5 of the statement of claim, the Palmers have not produced an iota of evidence to substantiate the fraud alleged. It is to

¹ (1997) 55 W.I.R. 112

² (1880) 5 App. Cas. 685.

be observed that Dr. Frederick made submissions which were never pleaded. He submitted that the Palmers' allegations that Mr. Williams procured the Deed of Sale by fraud arises from the facts that Mr. Williams was fully aware of the following:

- (i) That the Deceased was able to sign his name.
- (ii) That the Deceased was married.
- (iii) That his wife was living in the matrimonial home on the land in dispute and
- (iv) That the price at which the land was sold was unreasonably low.

19. In deference to Dr. Frederick, he has entered into a realm of speculation. Mere allegations of fraud must be disregarded. All particulars of fraud must be distinctly and carefully pleaded in keeping with well -established legal principles.

20. In my judgment, the particulars of fraud as alleged by the Palmers are insufficient to establish that the registration was either obtained, made or omitted by fraud.

Error or Omission

21. The next issue to be decided is whether there are one or more significant errors or omissions in the Deed of Sale to declare it null and void.

22. Dr. Frederick submitted that the Deed of Sale shows that the late Francis Harrison Palmer was a bachelor at the time of its execution when in fact, he was a married man. He also argued that the late Mr. Palmer was literate and the Deed of Sale reflected that he was unable to sign his name. Documentary evidence was furnished to prove that at some point in time, the deceased could have signed his name and that he was married. In my view, it does not necessarily follow that because the Deceased could have signed his name at one point in time, he could always signed his name. Regard must be paid to the witness statement of the Notary who was present at court ready for cross-examination which was otiose.

23. The Palmers brought this action against Mr. Williams. They have alleged fraud in a rather vague manner. They have not alleged errors or omissions. Even if I were wrong to come to

that finding, I would pose the question: if there were errors in the Deed of Sale, whose errors were they: the Notary or Mr. Williams? Should the Notary have been a party to the suit? Should Mr. Williams be responsible for the errors (if indeed there were errors) of his Attorney? After all, the Deed of Sale was voluntarily executed in the Law Offices of a reputable Notary Royal.

24. In my opinion, this issue is devoid of substance.

Part 8.7 of the Rules

25. Mr. Stephens argued that the Court ought to strike out the claim for non-compliance with the Rules. Part 8.7 (1) states that the claimant must include in the claim form or in the statement of claim a statement of all the facts on which he relies.

26. Part 26.3 (1) (b) gives the Court a discretionary power to strike out if it appears that the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim.

27. It seems to me that this claim should have been struck out at Case Management. I see no valid reason why I should proceed any further with this claim.

28. For the above reasons, the Claim is accordingly dismissed with Costs to the Defendant in the sum of \$2,500.00.

INDRA HARIPRASHAD-CHARLES
High Court Judge