

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. CV 2020-03679

Between

Moses Joe

(As Administrator Ad Litem of the Estate of Theo Joe)

Claimant

And

Beverly Joe-Lugo

First Named Defendant

Kirt Harris

Second Named Defendant

Before the Honourable Madam Justice Eleanor Joye Donaldson-Honeywell

Delivered on: 2 March 2021

Appearances

Semone Cudjoe-Peters, Attorney at Law for the Claimant

Gerald Ramdeen and Dayadai Harripaul, Attorneys at Law for the Defendants

Ruling

A. Introduction

1. The Defendants in this case have not filed a Defence. They instead seek early disposal based on the provisions of the Civil Proceedings Rules 1998, as amended [“the CPR”] that allows for striking out of pleadings. This Ruling determines the Application filed by the Defendants requesting that the Claim and Statement of Case filed on 9 November 2020 be struck out pursuant to Part 26.2 (1)(c) and (b) of the CPR on the basis that they disclose no ground for bringing the Claim and represent an abuse of the process of the Court.

B. Background and Findings

2. The subject matter of the Claim is the Estate of Theo Joe and in particular, the property on which he built his dwelling house at No. 28 Guaico Tamana Road, Sangre Grande [“the family home” or “the Property”]. His alleged “beneficial” ownership of the property is the basis for this Claim, which seeks, on behalf of his estate, possession of the property as well as injunctions against the Defendants to prevent them from entering the property and carrying out works on it.
3. Theo Joe [“the Deceased”] died in the United States of America on 5 April 2020 at age 98 leaving thirteen children including the First Defendant. The Deceased and all his children commenced migration to the United States of America from around the 1990s. However, they made frequent visits to the family home.
4. The Claimant is the Grandson of the Deceased. He applied to the Court and was appointed the Administrator ad Litem of his Grandfather’s estate to commence the instant litigation against his aunt, the First Defendant.
5. The Claimant alleges that one month after the passing of the Deceased, the Second Defendant, as agent for the First Defendant entered the premises and removed

certain fixtures. Later on, after a short period during which the Claimant occupied the property, the Second Defendant re-entered and demolished the family home on 13 June 2020. These actions were alleged to have been done based on a 2016 Bill of Sale signed by Theo Joe pursuant to which the First Defendant claimed ownership of the property.

6. The instant Claim, in addition to seeking injunctive relief [“Reliefs Nos. (1) to (3)”] and possession of the property [“Relief No. (4)”], contends that the deceased never signed the Bill of Sale. The Claimant therefore seeks declarations [“Relief No. (5)”] that the Bill of Sale is null and void and that it should be set aside. The Claim further seeks damages [“Relief No. (6)”], payable to the estate, for the destruction of the family home.
7. The Defendants contend, as the first ground for the striking out Application filed on 9 December 2020, that the Claimant has failed to plead facts that support the reliefs claimed. The grounds are set out in the Notice of Application and further clarified in submissions filed on 5 January 2021 pursuant to an order of the Court. The Claimant filed submissions in response on 20 January 2021.
8. The impugned pleadings, as it relates to the claims for possession and declarations that the Bill of Sale is void, are as follows:

*“1. The Claimant is the Administrator ad Litem in the present proceedings and the lawful grandson of the late Theo Joe, **the beneficial owner** of the subject premises. ...*

*3. Sometime in or about the 1950’s, the deceased **purchased the property** situate at No. 28 Guaico Tamana Road Sangre Grande from the then owners Amanda Inocencia Pantin and Dorris Huggins Chan. A true copy of the receipt for purchase is hereto annexed and marked “MJ 2”.*

*4. Unfortunately, **the deed was not prepared** on his behalf at the time of his purchase.*

...

11. *The First Named Defendant has claimed ownership to the subject premises by virtue of an invalid Bill of Sale dated the 18th day of April, 2016 and registered as BS201600556065D001 which refers to “Lot No. 25 Guaico Village, Sangre Grande”.*

12. *Upon further examination of the document purporting to be a Bill of Sale, it was discovered that the said document was **registered outside the requisite period** as stated in the Bill of Sale Act and was therefore invalid. A copy of the said document is now attached and marked “M.J.4”.*

13. *Further, the said document was allegedly signed by the deceased at the office of an Attorney-at-Law in Trinidad and Tobago some time on or around the 08th day of April, 2016. The Claimant will contend that at no time during the year of 2016 did the deceased travel to Trinidad. The Claimant further contends that the visits made by his late grandfather to Trinidad were usually done during the Christmas season.*

14. *It is the Claimant’s belief and that of his father, aunts and uncles that **the signature purporting to be that of the deceased, was acquired fraudulently** and or without his knowledge and consent. A copy of the passport of the deceased illustrating his most recent travel history is now attached and marked “M.J.5”. [Emphasis added]*

9. Focussing on these pleadings, the Defendants say that the following facts are not included:

a. Re Relief Nos. (1) to (3) – The Injunctions – The grant of injunctive relief is incidental to and dependent upon the enforcement of a substantive right¹. No document of title is pleaded to prove that the deceased owned the property, and the Claimant has not pleaded trespass to the property by the Defendants. The Defendants further contend that nothing is pleaded as to evidence of the Deceased’s interest in the property and as such, no facts are disclosed as to an underlying substantive right to be enforced.

¹ The Siskina [1979]AC 210 at 215 per Lord Diplock

- b. Re Relief No. (4) – Vacant Possession - No document of title is pleaded to prove that the deceased owned the property. In those circumstances, a person in possession of land has a better right to possession and the Claimant has not pleaded facts indicating a better right to possession.
- c. Re Relief No. (5) – The Declarations – The facts pleaded cannot support that the Bill of Sale was registered outside the requisite period. On the facts pleaded by the Claimant, including the Bill of Sale annexed to the Statement of Case as “M.J.4.” the property addressed in the Bill of Sale is not the same as the property that is the subject of the Claim. The Bill of Sale refers to a Chattel Dwelling House at 25 Cunaripo Road, Sangre Grande. Additionally, the Defendants contend that the Claimant’s Statement of Case does not include a sufficient substratum of facts relevant to the allegation of fraud.
- d. Re Relief No. (6) – Damages- No specific point is made by the Defendants that the facts set out in the Statement of Case as to damaged property are not sufficient to disclose grounds for bringing this aspect of the Claim. The Statement of Case includes, at paragraphs 19, 21 to 23, facts regarding expenditure on the property, its demolition by the Defendants and the value lost. Implicitly however, the Defendants appears to contend that the failure to prove title to the property also adversely affects this aspect of the Claim.

10. The Defendants contend, as the second ground for the striking out the Application that this case is an abuse of process. However, the Defendants has neither set out grounds nor made submissions in support of that contention. No further consideration will therefore be given to the contention of abuse of process in determining the Application.

11. Having reviewed the Claimant’s pleadings and considered the submissions for and against striking out the case, it is my finding that there is neither sufficient basis nor will justice be served by disposing of the case in that manner. Accordingly, the Application will be dismissed, and the Defendants’ case must be fully pleaded by

way of a filed Defence. However, as the first Case Management Conference has not yet commenced, it will be open to the Claimant to strengthen his pleadings by way of amendment. The reasons for the decision are further explained hereafter.

C. Issues

12. As the ground of abuse of process has not been fully argued by the Defendants, the remaining issues to be determined relate to whether the Claimant's case is sufficiently pleaded to disclose grounds for bringing the Claim. Those issues are as follows:

- a. Is there sufficient factual pleading to support that the Deceased's estate has an interest in the property that can be enforced by way of injunctive relief and an order for vacant possession?
- b. Is there any pleaded factual basis to the Claimant's allegation that the Bill of Sale was not registered within the required timeframe?
- c. Are the Defendants correct in alleging that, on the face of the Claimant's pleadings, the Bill of Sale does not relate to the Family Home? If so, does this mean that no cause of action is disclosed?
- d. Has the Claimant sufficiently pleaded allegations of fraud concerning the Bill of Sale?

13. On a determination of these issues, the Court must further consider the CPR's over-riding objective of dealing with cases justly, in deciding whether to strike out this case.

D. Submissions, Applicable Rules and Authorities

14. The principles governing the determination of applications to strike out a litigant's case are well established. It is an appropriate measure where a Claim is groundless or where the unsuccessful outcome is a forgone conclusion. In such cases, the measure may be used to deal with the case justly in that it protects the parties from needlessly utilising resources for litigation that cannot succeed.

15. Counsel for the Defendants candidly indicates that it is a recognized principle that the Court must exercise the striking out power under the CPR sparingly. As explained by Zuckerman²

“The most straightforward case for striking out is a claim that on its face fails to establish a recognisable cause of action... (E.g. a claim for damages for breach of contract which does not allege a breach). A statement of case may be hopeless not only where it is lacking a necessary factual ingredient but also where it advances an unsustainable point of law”.

16. An important underlying consideration is that striking out is a draconian measure. It is appropriate only for cases where permitting continued litigation would treat a case neither justly nor proportionately.

17. In **Real Time Systems Ltd v Renraw Investment Ltd. CCAM and Company Limited, And Austin Jack Warner also known as Austin Warner Trading as Dr. Joao Havelange Centre of Excellence Privy Council Appeal No. 0056 of 2012** the Privy Council highlighted the discretion of the Court considering applications to strike out pleadings. At paragraphs 17 and 18 of the Board’s judgment, it was noted that:

*“17 ... the court has an express discretion under rule 26.2 whether to strike out (it “may strike out”). **It must therefore consider any alternatives, and rule 26.1(1)(w) enables it to “give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective”, which is to deal with cases justly... There is no reason why the court, faced with an application to strike out, should not conclude that the justice of the particular case militates against this nuclear option, and that the appropriate course is to order the claimant to supply further details, or to serve an amended statement of case including such details, within a further specified period.**” [Emphasis added]*

² Zuckerman on Civil Procedure, 3rd Edition at 9.40

18. It is clear on applying these principles to the issues in the instant Application, that this is not an appropriate case for the nuclear option of striking out the Claimant's case. These issues will be examined in turn.

Right to possession

19. As to the first issue identified above, the Defendants' submission is that it is an essential requirement that the Claimant prove that he is entitled to possession by proving his title. According to the Defendants, failure so to do is fatal to the claims for injunctive relief and for vacant possession. The case of **Murray v Biggart H.C.A. T101 of 1998** is cited as authority for this point.

20. The Defendants contend that the Claimant seeks injunctive relief and possession without pleading any document of title. They say that a Claimant who seeks possession of land from a Defendant must prove his title to the land strictly. He must set out all the links in his title, showing a good root of title and establishing that he is the owner of the land and has an immediate right to possession. In a claim for possession, a Claimant succeeds on the strength of his own title and not on the weakness of the Defendant's title. The authorities referred to for this point are **Charles v Singh³**, **Ramdhan v Solomon⁴**, **Man Hong v Singh⁵** and **Bullen & Leake's Precedents of Pleading 11th ed pg. 45**.

21. The Claimant submits in response that the Claim is based on an equitable interest in the property and not on a title deed. As such, it is not necessary to prove that the Deceased held a title to the property by setting out all the links in his title to support the claims for possession and injunctive relief.

22. The Claimant cites **Surujbally Samaroo v Kishore Ramsaroop Ann-Marie Ramsaroop CV2007-03190** where the Claimant therein relied on the same authorities listed above, as the Defendants presently before the Court. In that

³ C.A. Civ. 50 of 1960

⁴ H.C.A. 522 of 1975

⁵ H.C.A. 1278 of 1980

case, Rahim J carefully outlined the circumstances where the law as stated in cases such as **Murray v Biggart** is applicable. It is in cases where a person is claiming title by Deed that they must establish the said title to be sufficiently in order to recover possession.

23. However Rahim J explained, following the landmark Privy Council case from the Bahamas of **Ocean Estates Limited v Norman Pinder Privy Council Appeal No. 30 of 1967**, that in circumstances where there is no documentary title being relied on by any party, the Court views both parties as two competing trespassers relying on their actual occupation. Those are the circumstances in the present case.

24. This principle in **Ocean Estates Limited** has routinely been adopted and applied in subsequent cases in our jurisdiction. In the case of **Xavier Goodridge v Baby Nagassar Civil Appeal No. 243 of 2011** Mendonca JA stated at paragraph 27:

*“27. The Court of Appeal is bound by its previous decisions and is obliged to follow them. There are however certain limited exceptions to this. One of them is where a decision of the Court of Appeal, though not expressly overruled, is inconsistent with a decision of the Privy Council that is binding on it (see *Young v Bristol Aeroplane Co. Ltd. [1944] 2 All ER 293* and *Civil Appeal 25 of 2003 The Attorney General of Trinidad and Tobago v Rodney Teeluck*). As I am of the view that the decision of the Privy Council in *Ocean Estates* is binding on this Court (as I will discuss below) and the decision of the Privy Council is inconsistent with *Olga Charles*, in my judgment to the extent that *Olga Charles* and the cases that applied it decided it was necessary for the claimant seeking possession of lands against a trespasser, who proved no documentary title in himself, to plead and prove each link in his title for the same period as a purchaser may require of a vendor under a contract of sale as provided for in section 5 of the CALPA, they were wrongly decided and should not be followed.”*

25. In the earlier case of **Bernadine Seebaran Guy v Selwyn Baptiste PCC App # 12 of 2001**, it was decided that a person in possession can maintain an action against a trespasser to recover possession without having to prove 'title'. At paragraph 12 of the said case the following was noted:

“When the chaff is dusted off and the particulars of claim are gleaned in their proper perspective there is little doubt that in the instant appeal the claim is in trespass brought by a party in actual possession with the consequential relief being the recovery of land. In those circumstances, all the appellant had to establish was that she was in actual possession of the land and that the respondent had entered the land without her consent.”

26. The Defendants do not rely only on the argument that the Claimant ought to have pleaded a good title with all the links set out in the Statement of Case. They also submit, citing **Ocean Estates Limited**, that it is a fundamental principle of law that a person in possession of land has a better right to possession than anyone else save a person who has a better title to possession. The Defendants' case is that they are in possession of the Property.

27. According to the Defendants, the mere pleading that the Deceased was the beneficial owner of the property is insufficient to provide a substratum of fact that discloses grounds for claiming the injunctive relief and vacant possession. In addition, the Defendants contend that neither any rights based on adverse possession nor allegations of trespass by the Defendants have been pleaded in the Statement of Case.

28. The Claimant, on the other hand, underscores that his pleading as to the Deceased's interest in the property is not limited to the equitable interest inherent in the pleaded "beneficial ownership". He says that, based on facts pleaded in the Statement of Case, the Deceased's equity in the property is sufficiently addressed to disclose a cause of action to recover possession. Particular reference is made to the interest acquired based on purchase of the property in the 1950s which though never completed by Deed is factually pleaded with the receipt annexed.

29. Further, the pleaded facts indicate that the Deceased built the dwelling house on the property and that he and his family continued in possession prior to its demolition by the Defendants. Additionally, though the validity of the Bill of Sale is challenged by the Claimant and the Defendants suggest there is an issue with the address stated therein, the pleadings as to this transaction also touch and concern the interest held by the Deceased's estate. In other words, the Claimant highlights that the reliance on such a document by the Defendants shows that they too were of the view that he owned the family home.

30. It is also clear from his pleadings that the Claimant relies on the fact that as Administrator ad Litem he was in possession before the Defendants came in and demolished the family home. The Claimant contends that on the pleaded facts the Defendants were never in possession. They merely relied on the Bill of Sale as authority for their limited presence at the property, for purposes of removing fixtures and arranging the demolition. In that regard, based on the pleaded facts the Claimant was in possession and the Defendants were trespassers.

Timing of Registration of the Bill of Sale

31. The Claimant's pleading that the Bill of Sale was registered out of time is based on the following section of the **Bills of Sale Act Chap 82: 32**:

"6. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule, and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

7. Save as hereinafter mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

...

*9. Every bill of sale and every transfer or assignment thereof shall be duly attested and shall be **registered within seven clear days after the execution thereof**, or if it is executed in any place out of Trinidad and Tobago, then within seven clear days after the time at which it would in the ordinary course of post arrive in Trinidad and Tobago if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale, transfer, or assignment shall be void in respect of the personal chattels comprised therein.”*

32. The Claimant pleads that since the Bill of Sale annexed to the Statement of Case is dated as executed on 8 April 2016 but only registered on 18 April 2016, it was registered out of time. In response, the Defendants point out that when the definition of clear days and the fact that there was a weekend just after the execution date are accounted for, the Bill of Sale was registered within less than 7 days, which was on time. This is so based on the following provisions of the Interpretation Act Chap 3:01:

“25(5) Where by a written law a period of time prescribed for the doing of anything does not exceed seven days, Saturdays, Sundays and public holidays shall not be included in the computation of the time.

25(6) Where by a written law a period of time is expressed as “clear days” or the term “at least” is used, both the first day and the last day shall be excluded from the computation of the period.”

33. The Claimant did not argue against this aspect of the Defendants’ Application. As such, it is the sole point in relation to which the Defendants have shown that an aspect of the Claimant’s case, namely the contention that the Bill of Sale was registered out of time, discloses no cause of action.

Was the Bill of Sale for the Family Home?

34. As aforementioned, the Defendants have pointed out the differing addresses in the Statement of Case, namely, there is an address cited as the Family Home, which differs from the address of the home purportedly sold on the Bill of Sale.
35. The Claimant's response is that he disagrees with the Defendants' position that the parcel of land described on the Bill of Sale and the actual premises that the family home stood upon are not the same. It is the Claimant's view that the parcel of land is the same however, same was incorrectly described in the Bill of Sale relied upon by the Defendants and is therefore, not in accordance with the provisions of the Bills of Sale Act.
36. The Claimant underscores that there is a live issue in dispute as to whether the family home possessed by the deceased was the same as the premises incorrectly referred to in the Bill of Sale as at No. 25 Cunaripo Road, Sangre Grande. Accordingly, in the interest of justice, the Claimant has the right to have this issue determined as it falls within the walls of its pleaded case.

Pleadings as to Fraud in the Bill of Sale

37. The Defendants contend that the Claimant failed to plead the material facts as to any dishonest act or omission on their part to support the allegation that the Deceased's signature was "fraudulently acquired" on the Bill of Sale. According to the Defendants, the pleaded belief of the Claimant and the First Defendant's siblings cannot form the basis of fraud.
38. The Claimant does not specifically submit on this point. However, there is an overall argument in the Claimant's submissions that at this stage of the proceedings any shortcomings in the pleadings can be addressed by Amendment. This can be on the parties' own initiative or directed by the Court. There is in fact provisions at CPR 20.1 (1) and (2) that parties may change their Statement of Case at any time before the first Case Management Conference ["CMC"] without the

Court's permission. If parties fail to do so during that time, the Court may permit such changes at a CMC. In the instant case, there is no filed Defence and the first CMC has not commenced. Accordingly, no direction is required for the Claimant to amend the Statement of Case by adding particulars of fraud as well as any other facts relevant to the Claimant's case.

E. Analysis of the Pleadings

39. The Claimant's pleadings are somewhat lacking in particulars as to the facts giving rise to an equity in the premises as well as the alleged fraud. However, this is not a groundless case that discloses no cause of action. There is no foregone conclusion that the Claimant must fail based on the pleadings.
40. The Claimant has pleaded sufficient facts to disclose a case that he was in possession of the property, in which his grandfather held a beneficial interest in as the family home he purchased in the 1950s. Accordingly, the issue as to whether his right to possession is stronger than that of the Defendants based on the Bill of Sale is one that the Claimant is entitled to have determined by the Court.
41. As to the alleged invalidity of the Bill of Sale, it is clear that the Claimant needs to provide more particulars of fraud. His allegation about late registration has been shown to be without basis. The Defendants, therefore, partly succeeded in pointing out deficiencies in the Case. This is helpful going forward in clarifying the issues to be particularised and determined. However, even for the Bill of Sale challenge aspect of the Claim, the Claimant has pleaded sufficient facts such as the lack of travel of the Deceased to Trinidad at the relevant time to disclose grounds for that Claim.
42. In the circumstances as outlined above, the appropriate course will be to allow the case to proceed. It will not be necessary to direct that the Claimant amend his Statement of Case because the first CMC has not yet commenced. However, the Claimant is encouraged to do so in order to provide better particulars of the equity

in the property and the alleged fraud in acquiring the Deceased's signature on the Bill of Sale.

43. As the Defendants pointed out, certain deficiencies in the Claim regarding the alleged out of time filing and fraud in the Bill of Sale as well as that the pleadings as to equitable interest are not detailed, they will be required to pay only half the Claimant's costs of the Application.

F. Decision

44. The Defendants' Application is dismissed.

45. The Defendants are to pay half the costs of the Application to the Claimant in an amount to be assessed if not agreed.

.....EJD Honeywell.....

Eleanor Joye Donaldson-Honeywell

Judge