

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2018-01785

**IN THE MATTER OF THE REAL PROPERTY ACT
CHAPTER 56:02, SECTION 126**

AND

**IN THE MATTER OF THE CERTIFICATE OF TITLE REGISTERED IN
VOLUME 5736 FOLIO 167**

BETWEEN

JOYLIND GRAHAM-JOSEPH

CLAIMANT

AND

WESTMORE WILLIAMS

DEFENDANT

Before the Honourable Madame Justice Quinlan-Williams

Date of Delivery: April 30, 2019

Appearances: Ms. Jashmin K. Sandy and Mr. Sterling D. John for the
Claimant

Mr. Dexter W. Bailey instructed by Ms. Keisha T. Pennie
for the Defendant

DECISION ON THE APPLICATION FOR THE REMOVAL OF A CAVEAT

Background

1. The lands in dispute comprises eleven acres, three roods, and eighteen perches (11A 3R 18P) first owned by York Graham (“the subject property”) who died testate leaving his estate to his wife, Mary Graham. On her demise, the subject property was then directed to his seven children named in his last Will and testament in an undivided one-seventh share and interest. A Grant of Probate was first obtained by Mary Graham as the sole executrix of the Will of York Graham in 1932 and she was registered as the sole proprietor of his estate in Certificate of Title Volume 5736 Folio 167.
2. Mary Graham died in 1949 without fully administering the estate of York Graham. Thereafter, Grant of Letters of Administration De Bonis Non was obtained by her son John Graham, one of the beneficiaries under the Will of York Graham, with the consent of the remaining beneficiaries under the said Will.
3. On the 23rd April 1951 John Graham was registered as the sole proprietor of the subject property by virtue of the Letters of Administration De Bonis Non by the Registrar General. No devolution was ever made to any of the beneficiaries during his tenure as Legal Personal Representative (“LPR”) for the estate of York Graham.
4. After the death of John Graham, the claimant and her mother Nerissa Graham, obtained Letters of Administration with Will annexed for the estate of John Graham in 1991. Nerissa Graham died in 2007. In 2014 the claimant as the LPR, sole beneficiary and next-of-kin of John Graham’s estate, caused the subject property to be registered in her name only, as sole proprietor by Memorandum of Assent dated 1st July 2014 registered as T20140 814000 555661 and endorsed in the Certificate of Title 5736 Folio 177.

5. On the 20th October 2017, the defendant lodged a caveat against the claimant's title to the subject property on the ground that he has an equitable interest in the estate of York Graham. The defendant avers he acquired this interest from the estate of Maxwell Graham, one of the beneficiaries under York Graham's estate. Maxwell Graham passed his entitlement to the defendant's mother Enid Williams Sylvester. Enid Williams Sylvester in turn, bequeathed and devised that inherited interest, in her last Will and testament. The defendant was a named beneficiary and executor of Enid Williams Sylvester Will. Therefore, the defendant avers that he acquired an equitable interest because he is one of the beneficiaries to Enid Williams Sylvester's interest in the subject property.
6. The defendant asserts that the claimant is not the sole proprietor of the subject property as the assets of York Graham's estate were incorrectly administered. The subject property ought to be rightfully vested in all the respective beneficiaries or the estates thereof, as identified in the last Will of York Graham and not to the claimant solely, depriving the other beneficiaries of their respective entitlements.
7. By Amended Fixed Date Claim Form filed on the 17th July 2018 the claimant sought the following reliefs:
 - a. A Declaration that the Claimant is the owner of All and Singular that certain parcel of lands registered in Certificate of Title Volume 5736 Folio 177 and Memorandum of Assent dated 1st July 2014 registered as T20140 814000 555661;
 - b. A Declaration that the caveat lodged against the Claimant's title is unlawful and null and void;
 - c. A Declaration that the Caveator has no caveatable interest in the subject property capable of protection by Section 126 of the Real Property Act Chapter 56:02;

- d. A Declaration that the Caveator is statute barred from making a claim against the Claimant for an equitable interest in the subject property by operation of Section 150 (1) of the Real Property Act Chapter 56:02;
- e. An Order for the Register General's Department to remove the caveat lodged against the Claimant's title registered in Certificate of Title Volume 5736 Folio 177;
- f. Costs; and
- g. Such further relief that the Honourable Court considers just and fit.

Issues

- 8. The issue for the court's determination is whether the claimant is entitled to have the caveat removed as a result of the following, that:
 - a. The claimant by virtue of Certificate of Title registered in Volume 5736 Folio 177 having good title to the subject property;
 - b. Section 150 of the Real Property Act Chapter 56:02 ("RPA") extinguished any claim the defendant may have by rendering such claim statute barred;
 - c. The claimant was entitled to transfer the subject property to herself alone without any regard to the rights of the other six named beneficiaries in the testator's Will;
 - d. The in personam exception is not applicable and the indefeasibility provisions of the RPA protected John Graham's indefeasible title; and
 - e. The defendant has no caveatable interest in the estate;

Law and Analysis

- a. Whether the claimant has good title
- 9. The claimant contends that she is rightfully entitled to the subject property as she is the registered proprietor. She claims her father John

Graham obtained his title and was registered as proprietor of the subject property after successfully applying for Letters of Administration De Bonis Non in relation to the estate of York Graham. As a result, the claimant avers that she subsequently obtained her title from her deceased father, the predecessor in title, who was registered by the Registrar General as the sole proprietor of the subject property in 1951. The claimant upon obtaining the Grant for Letters of Administration with Will annexed in the estate of John Graham thereafter transferred the subject property to herself as the sole proprietor in 2014 by virtue of the Memorandum of Assent.

10. The claimant relies on the provisions of section 108 of the RPA to indicate good title where the personal representative of a deceased proprietor is to be registered:

“108. (1) Where land is vested in a proprietor for any term or estate beyond his life without a right in any other person to take by survivorship or in remainder or reversion, it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives as if it were a chattel real vesting in them, and such personal representatives shall alone be recognised by the Registrar General as having any right in respect of the land, and any registered disposition by them shall have the same effect as if they were the proprietors of the land.

(2) This section shall apply to any land over which a person executes by Will a general power of appointment as if it were land vested in him.

(3) Personal representatives may be registered as proprietors of such land as aforesaid on payment of the prescribed fee and on furnishing the Registrar General with a request in writing setting forth the registered number of the probate of the Will or the Letters of Administration of the estate of such deceased proprietor together with such further evidence as the Registrar General may require.”

11. The claimant further avers that the registered title of every proprietor in property takes on a character of absolute indefeasibility which

cannot be defeated by any purported concurrent estate or interest not registered; the Register is conclusive: *Lincoln Dillion v Mary Almandoz and another* CV75 of 2000.

12. In the authority of *Zanim Ralph Meah John v Courtney Allsop and Ors* CV2010-04559 Kokaram J reiterates the conclusiveness of registered title:

“The system of registration introduced into Trinidad and Tobago by the Real Property Ordinance, now the Real Property Act Chap 56:02 was designed to produce and had produced, certainty in the grant of title to land registered under the Act... (therefore) the Defendant must therefore make out a cogent case of fraud against the Claimant in the context of 141 and (45 in this case) if it is to impeach the registered title of the Claimant.”

13. Sections 37 and 38 of the RPA emphasize the process of registration and endorsement of a proprietor’s title on the Certificate of Title as its conclusiveness of such registration:

“37. Every certificate of title duly authenticated under the hand and seal of the Registrar General shall be received, both at law and in equity, as evidence of the particulars therein set forth, and of their being entered in the Register Book, and shall, except as hereinafter excepted, be conclusive evidence that the person named in such certificate of title, or in any entry thereon, is seised of or possessed of or entitled to such land for the estate or interest therein specified, and that the property comprised in such certificate of title has been duly brought under the provisions of this Act; and no certificate of title shall be impeached or defeasible on the ground of want of notice or of insufficient notice of the application to bring the land therein described under the provisions of this Act, or on account of any error, omission, or informality in such application or in the proceedings pursuant thereto by the Judge or by the Registrar General.

38. Every grant and certificate of title shall be deemed and taken to be registered under the provisions and for the purposes of this Act so soon as the same shall have been marked by the Registrar General with the page and volume as embodied in the Register Book, and every memorandum of transfer or other instrument purporting to transfer or in any

way to affect land under the provisions of this Act shall be deemed to be so registered so soon as a memorial thereof as hereinafter described shall have been entered in the Register Book upon the leaf constituted by the grant or certificate of title of such land, and the person named in any grant, certificate of title, or other instrument so registered as the proprietor of or having any estate or interest shall be deemed to be the proprietor thereof.”

14. The defendant on the other hand, opposes the claimant’s title to the subject property which was initially vested in her father’s name by virtue of a Grant of Letters of Administration De Bonis Non. In support of his contention, the defendant submitted the purpose of “Grants de bonis non” which was set out by the learned authors J.I. Winegarten, R. D’Costa, T. Synak in Tristram and Coote’s Probate Practice, 29th Edition at paragraph 13:01:

“If the person to whom a grant of representation has been made has died leaving part of the estate of the deceased unadministered then ... a grant in respect of the unadministered estate may be made to a new personal representative to enable the administration to be completed...”

15. The defendant also highlighted the fact that the provisions of section 108 of the RPA refers to the powers of the LPR to deal with the deceased lands “as if it were a chattel real vesting in them”.

16. Most importantly, section 109 of the RPA provides that an LPR holds the deceased’s lands as a trustee for the persons by law beneficially entitled also conferring upon the beneficiaries, the power of requiring the transfer of their entitlement to the land:

“109. (1) Subject to the powers, rights, duties, and liabilities hereinafter mentioned, the personal representatives of a deceased person shall hold the land as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a transfer thereof as they have of requiring a transfer of personal estate.

(2) All enactments and rules of law relating to the effect of Probate or Letters of Administration as respects chattels real, and as respects the dealings with chattels real before Probate

or Administration, and as respects the costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate, shall apply to land under this Act, so far as the same are applicable, as if that land were a chattel real vesting in them or him, save that it shall not be lawful for some or only one of several joint personal representatives, without the authority of the Court or a Judge, to transfer, lease, mortgage, or encumber such land.”

17. York Graham left the subject property to his seven children by virtue of his Will. His wife Mary Graham was the sole executrix of his Will who acquired the Grant of Probate on the 22nd July 1932 and died intestate on the 28th March 1949 without having administered the subject property to the beneficiaries. Thereafter, the then five surviving beneficiaries all consented to the claimant’s father John Graham, applying to obtain the Grant of Letters of Administration De Bonis Non as the new LPR.
18. John Graham’s application was for the sole purpose of administering the unadministered estate of York Graham. Administering, in that context had only one meaning; to distribute the estate consistent with the testator’s expressed wishes. The claimant’s father was expected to pass on to his siblings, alive at that time and the estate of those siblings that died before the grant De Bonis Non, their share of their father’s estate.
19. If the claimant takes her argument to her logical conclusion, Mary Graham’s registration as the sole proprietor of the estate in Certificate of Title Volume 5736 Folio 167 should have meant that the subject property would have devolved according to the law of intestacy after her death. However, the claimant’s father did not treat the subject property as if Mary Graham was solely entitled to it before her death. Rather he applied to complete the administration of the subject property by virtue of the provisions of his father’s Will.

20. This is concurrent with the learning in *Tristram and Coote's Probate Practice* as aforementioned and that the property is held by the new LPR consistent with section 109 of the RPA. However, although the Grant of Letters of Administration De Bonis Non was obtained in 1951, John Graham as LPR never administered the subject property to the other beneficiaries in accordance with the terms of York Graham's Will.
21. Instead, the claimant avers that her father was the registered proprietor of the subject property by virtue of the Letters of Administration De Bonis Non and the beneficiaries' interest was extinguished when they failed to assert their rights to ownership. However, this proposition make no legal sense. If this were true, then in reality, LPRs as registered proprietors would be free to distribute assets of the deceased Will as they so pleased in total disregard to the terms of Will.
22. While it is admitted that section 108 of the RPA gives the LPR the power to deal with the subject property as the legal owner, it is qualified by section 109 of the RPA which empowers the LPR, as trustee, to deal with the property only for the benefit of the beneficiaries. Certainly it was not envisioned that the LPR as trustee would deal with the property for his own benefit. The RPA did not intend that the word "proprietor" to be interpreted to convey total ownership to trustees as the claimant contends. Registration of an LPR under the RPA as a proprietor is simply a short and efficient method of authorizing the LPR as trustee to protect, manage or transfer the land of the deceased in accordance with the deceased wishes. It also allows the LPR to be in a position to protect the property and the interest of the estate by being registered in the name of the LPR.
23. The LPR as trustee holds the legal ownership to administer the property in accordance with the law and the wishes of the deceased for the

benefit of the devisees under the Will. Once the Will is proven, the devisees will hold an equitable interest/equitable ownership in the property. Furthermore, as is the standard practice in probate proceedings, one assumes that John Graham would have sworn an affidavit in his application to the Supreme Court promising to distribute the unadministered assets of York Graham's estate according to law in order to obtain the Letters of Administration De Bonis Non.

24. Therefore, while the claimant's father was the proprietor of the subject property by virtue of the Letters of Administration De Bonis Non, and the subsequent registration in his name, he was under a duty to administer the subject property devised by York Graham. The subject property was to be transferred to himself as well as the six other beneficiaries or the estates of those who were deceased, in accordance with the terms of York Graham's Will.

25. Therefore, the registration of John Graham as the sole proprietor of the subject property was not only contrary to the wishes contained in York Graham's Will but was adverse to the purpose for which the Letters of Administration De Bonis Non was granted, thereby depriving the beneficiaries of their interests.

26. The claimant submitted that in order to challenge her title to the subject property, the defendant must not simply allege fraud, but must also put forth cogent evidence to distinctly prove that the title was obtained by fraudulent means¹. The claimant relied on section 143(b) of the RPA which provides:

"143. No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act, except in any of the following cases:

¹ *Zanim Ralphy Meah John v Courtney Allsop and ors* CV2010-04559

(b) the case of a person deprived of any land by fraud, as against the person registered as proprietor of such land through fraud; or as against a person deriving, otherwise than as a transferee bona fide for value, from or through a person so registered through fraud;”

27. The meaning of fraud was expounded by Wooding CJ in *Robert v Toussaint and Others* (1963) 6 WIR 431 where it was stated:

“Moreover, in actions in which a registered title is being impeached, fraud means some dishonest act or omission, some trick or artifice, calculated and designed to cheat some person of an unregistered right or interest.”

28. Hyatali JA also focused on the meaning of fraud in *Robert v Toussaint* (supra):

“The meaning of fraud in the context of this enactment is well settled. In *Wiamiha Sawmilling Co. v Waione Timber Co...* Lord Buckmaster stated in reference to a parallel statutory provision in New Zealand that “fraud” in actions seeking to affect a registered title meant actual fraud or dishonesty of some sort and was to be distinguished from constructive or equitable fraud which denoted transactions having consequences in equity similar to those which flow from actual fraud. Accordingly, unless the respondents established this kind of fraud they could not hope to succeed in their claim against the appellant.”

29. Mohammed J. and Rajkumar J. also dealt with the issue of fraud in the cases of CV2012-03212 *Seepersad Sookhoo v Ramkhalawan Sookhoo and Dhanmatie Sookhoo* and CV2012-00164 *Juramanie Gayapersad v Danraj Gayapersad (By Original Claim)* respectively. Both learned judges concluded that fraud refers to some dishonest act or omission calculated and designed to cheat some person of an unregistered right or interest. Mohammed J. in *Seepersad Sookhoo* (supra) also referred to the case *Lenore Walcott (Sole Executrix of the last will of Catherine Alleyne, deceased) v John Graham Clement Alleyne* HCA No. T92 of 1985 where Hamel-Smith (as he then was) stated at page 10 that:

“Fraud does not necessarily arise from one’s express declarations only. Sometimes, and more often than not, it hides its head in what one fails to disclose”

30. The case of *Gayapersad* (supra) is factually similar to the instant case before the court. In that case, the deceased died intestate and the Administratrix of the estate transferred the entirety of the disputed lands (under the RPA) solely to one son to the exclusion of the deceased’s other children. Rajkumar J. inter alia, corrected the administration of the deceased’s estate even though forty-two (42) years had elapsed since the Letters of Administration was granted. In his decision the learned judge coined the principle referred to as “willful blindness”, which connotes a form of designed or calculated ignorance. Rajkumar J at paragraph 36 further stated:

“The law does not permit a person who has not only ignored the laws of succession, but defied them, to retain the fruits of that conduct. It would not allow this unjustifiable transfer to the claimant to stand, and the willful disregard of the rights of his brothers and sisters...”

31. The claimant asserts that as sole beneficiary and next-of-kin, she is entitled to the entire subject property as it formed part of her father John Graham’s estate. She acquired the same through a Memorandum of Assent which crystallized and perfected her gift² when the subject property passed to her and she is thus the sole and rightful owner. However, it appears to the court that there are elements of willful blindness in the instant matter, parallel to Rajkumar J.’s coined principle. At the initiation of the probate proceedings of John Graham’s estate, the claimant would have known either directly or indirectly through her Attorney-at-Law of the existence and contents of her late father’s Will. The only asset mentioned in the said Will is John Graham’s dwelling house; it makes no reference to the subject property. Further, the Inventory filed with the application for John Graham’s estate dated

² *Lennard Nelson v Patricia De Freitas* CV2007-00042

21st August 1991, signed by the claimant, explicitly references a one-sixth³ undivided share of the subject property.

32. Therefore, based on these undisputed facts, it appears to the court that the claimant was aware or had knowledge of the beneficiaries of the subject property either at the initiation of the probate proceedings of her father's estate or at the execution of the Inventory. Consequently, the information ought to have put the claimant and her Attorneys-at-Law on notice that something was awry.

33. However, in total disregard and neglect of what was known to her, the claimant dishonestly omitted to disclose the true beneficial owners of the subject property which is illustrative of fraudulent behavior. Rather, the claimant assumed full and uninterrupted control of the subject property as the purported sole beneficiary, even collecting land rent from other beneficial successors in title.

34. The court accepts that in keeping with the learnings enunciated by Rajkumar J. in the case of *Gayapersad* (supra) it would be wrong to allow the claimant to retain the fruits of such conduct and continue to willfully deny the beneficiaries their entitlements. Even if the court were to rely on the claimant's belief that she was the sole owner of the subject property pursuant to the advice of her Attorneys-at-Law, such a mistake of law in the execution of the Memorandum of Assent, is not a sufficient reason to deprive the other beneficiaries of their rightful interest in the subject property.

35. Therefore, the court is satisfied that the Certificate of Title registered in Volume 5736 Folio 177 was wrongly registered, how the registration occurred is inexplicable. There is also evidence to find that the

³ The Inventory states a one-sixth share in the subject property despite the fact that there were seven children entitled which can be seen in the Defendant's Affidavit filed 12 July 2018 "W.W.6"

registration was obtained through fraudulent conduct or willful blindness of the claimant. Therefore, on either finding, the claimant does not have good title to the subject property.

b. Whether the defendant's claim is statute barred

36. John Graham became the LPR of York Graham's estate in 1951. No steps were taken to effect a Memorandum of Assent. The RPA at section 109(1) provides that the proprietor shall hold title on trust for the beneficiaries and the beneficiaries shall also have the power of requiring the transfer of their entitlement to the land. Likewise, sections 11(1), 12(1) and 12(2) of the AEA and sections 112 and 113 of the RPA also refer to the beneficiaries' right and entitlement to land owned by a deceased and their right to make the necessary application to the court at any time after one year to compel the proprietor to transfer the land. Additionally, section 143 of the RPA explicitly provides that nothing therein prevents a beneficiary from calling upon the trustee to obtain a decree to effect such a transfer.

37. In circumstances where a beneficiary is deprived of an estate or interest in property, section 119 of the RPA outlines the procedure for redress:

"119. If the proprietor of any land be a trustee, and the person beneficially entitled thereto would, if the land were not under this Act, be entitled to require that the legal estate be vested in him, such beneficiary may take out a summons or commence an action to compel the proprietor to transfer the said land, and on the hearing of such summons or action an order may be made directing the Registrar General, on payment of the proper fee, to register such beneficiary as proprietor, and to issue to him a certificate of title."

38. However, section 150 of the RPA places a limitation of six (6) years within which any beneficiary deprived of their interest can bring an action, but in no case shall such action be brought after twenty-seven (27) years have elapsed from the accrual of such right of action:

“150. (1) No action for recovery of damages sustained through deprivation of land, or of any estate or interest in land as hereinbefore described, shall lie or be sustained against the Registrar General, or against the person upon whose application such land was brought under the provisions of this Act, or against the person who applied to be registered as proprietor in respect to such land, or against the person certifying any instrument as aforesaid, unless such action shall be commenced within the period of six years from the date of such deprivation: Provided that any person being under the disability of infancy, or unsoundness of mind may bring such action within six years from the date on which such disability shall have ceased: Provided further, that in no case shall any such action be brought after twenty-seven years shall have elapsed from the accrual of such right of action.”

39. A LPR cannot legally deprive a beneficiary from their interest in land.

However, if a LPR behaves in a manner to attempt such deprivation, a right of action would accrue from the point of “deprivation of land”. The evidence before this court is that no beneficiary during John Graham’s tenure as LPR exercised the power to request that their interest in the subject property be vested in their name. Therefore, John Graham continued to hold the title on trust for the benefit of the beneficiaries named in York Graham’s Will until his death.

40. The defendant submits that having regard to the aforementioned sections of the AEA, there is no time period limiting the administration of a deceased’s estate in Trinidad and Tobago which was clearly demonstrated in the ruling of Rajkumar J. in the case of *Gayapersad* (supra).

41. However, the claimant contends that section 150 of the RPA is applicable to this case, precluding the defendant from asserting its claim of having a rightful entitlement to the subject property. In Civil Appeal No: S268 of 2014 *Republic Bank Limited v Manichand Seepersad et al* Mendonca J.A. stated that the sections of the RPA cannot be read in isolation, but must be read in the context of the RPA as a whole.

Therefore, upon examination of sections 112, 113, 119 and 143 of the RPA, it is clear that there is no limitation period whatsoever whereby a LPR can assent the beneficial interest to a devisee.

42. The effect of section 150 of the RPA however, comes into operation when an assent or some other action taken by the LPR, actually made, deprived the beneficiaries entitled. In this case the action intended to deprive the beneficiaries occurred in 2015 when, by Certificate of Title issued, the subject land was registered in the claimant's name. Deprivation in section 150 of the RPA is interpreted as having its ordinary meaning, "preventing someone from having or using something"⁴.

43. The limitation period referred to in section 150 of the LPR would therefore only have commenced when the Memorandum of Assent was executed in 2014 and the Certificate of Title issued in 2015 passing title to the claimant. It was only from that time that the beneficiaries were deprived of having or using the subject property. At all times when John Graham held the subject property in his capacity of LPR and registered proprietor, he was the registered proprietor for the purpose of vesting the equitable interests of the subject property to the beneficiaries. Therefore, no beneficiary was deprived of their respective interest as it was held on trust for them.

44. It was only when the claimant executed the Memorandum of Assent and registered her purported title thereby vesting the property in her name, the beneficiaries were deprived of their respective interests. It was at this point limitation period in section 150 of the RPA was triggered. As a result, the court finds that the defendant is well within the six (6) year limitation defence and the twenty-seven (27) year bar

⁴ Oxford Dictionary and Thesaurus 2009 edition.

to take action on the deprivation of his mother's interest in the subject property. This action is not statute barred.

45. In addition, the defendant also relied on the provisions of section 21 of the Real Property Limitation Act Chapter 56:03 which applies to cases of fraud; no time shall run while fraud is concealed. Applying the approach of the court in *Sookoo* (supra), the concealment would have to be unearthed and the period starts to run when the person is in a position to discover the fraud with due diligence. The defendant only discovered the fraud when he was initiating the probate proceedings for the administration of his mother's estate in 2017. Hence, the defendant's claim for his mother's entitlement is not statute barred as he has diligently taken steps to remedy the claimant's concealment soon after he discovered the claimant's fraudulent behaviour.

c. Transfer of subject property in disregard to the six other beneficiaries

46. The law clearly observes the fiduciary obligations an LPR as trustee owes to the beneficiaries of an estate. This was affirmed in the case of *Gayapersad* (supra) where Rajkumar J. stated at paragraph 39:

"39. It is clear:

a. that Ramragee did not own the entirety of the land that she purported to convey solely to Juramanie.

b. that anyone looking at the Certificate of Title would have been able to clearly observe that Ramragee had no basis for conferring in her own right any interest in that land beyond the value of one third of the estate. Further, that even as Administratrix she could not transfer to Juramanie more than her beneficial interest of one third, plus Juramanie's entitlement to 1/7 of 2/3, of the entire estate of Gayapersad. Given that Juramanie had procured or was about to procure the transfer to himself of the family home and land on which it stood, he must have known that in fact he was obtaining, or about to obtain the entirety of his father's estate. His mother therefore certainly had no basis for transferring the entirety of the subject land to Juramanie."

47. Pursuant to the above guidance, it is clear that the subject property rightfully belongs to the estate of York Graham. Therefore, title consistent with true ownership could not have been vested in John Graham only by his fiduciary capacity as the second LPR of his father's estate. John Graham did not own the subject property beyond the value of an undivided one-seventh share in the subject property. Akin to the case of *Gayapersad* (supra) where the court found that Ramragee as Administratrix had no basis for conferring the entire estate to her son and was only able to transfer her beneficial share, is analogous to the instant case.

48. The Grant of Letters of Administration de Bonis Non issued to John Graham ceased on his death on the 31st July 1986. The claimant did not make any application for a Grant of Letters of Administration (with Will annexed) de Bonis Non for the unadministered estate of York Graham. Accordingly, the claimant as LPR of John Graham's estate could not transfer to herself or to any other beneficiary of York Graham, any share or interest in his estate.

49. The court notes that section 3 of the Wills and Probate Act Chapter 9:03 empowers a court to exercise its discretion to grant or revoke the administration of a deceased estate or grant an order to any person claiming under a Will to have it established or to have the trusts of a Will carried into effect:

“3. The Court shall have jurisdiction to determine the validity and admissibility to probate of the Will or the granting of administration of the estate of any person domiciled in Trinidad and Tobago and of the estate in Trinidad and Tobago of any person, wherever domiciled, dying seised or possessed thereof or entitled thereto, and to revoke any probate or administration in any suit instituted either by an executor or administrator or any person claiming under a Will to have it established or to have the trusts of it carried into effect under the decree of the Court or by any person claiming adversely to a Will or administration to have it declared void, and the registration of

it prevented or recalled, or claiming to have administration revoked.”

d. The in personam exception

50. The defendant submitted that the in personam exception challenging the claimant’s registered indefeasible title pursuant to the RPA is applicable to the instant case where the registered proprietor holds the land as trustee. This was confirmed by Lord Browne-Wilkinson in the case of *Gardener v Lewis* [1998] UKPC 26 at paragraph 8 page 4:

“But it is clear that these provisions relate solely to the *legal* title to the land. Although the owner of the fee simple in equity is authorised to apply for first registration of the land, apart from that all trust interests, whilst continuing to exist, are kept off the register... that does not mean that the personal claims (e.g. for breach of contract to sell or to enforce trusts affecting the registered land against the trustee) cannot be enforced against the registered proprietor.”

51. In the case of CV00326 of 2005 *Cynthia Bravo v Avis Baxter, Vincent Graham* consolidated with Suit No: C.L.B 301 of 1998, Anderson J. ruled against the registered proprietor and prohibited her from dealing with the title of the disputed property in any way inconsistent with the equitable interests in the disputed property. In that case Cynthia Bravo secured a registered title for the disputed property and then sought to have her sister and brother-in-law removed from the same. Anderson J. at page 3 opined:

“... it is now well established that indefeasibility of the legal title does not mean that there can be no legitimate challenges to the legal owner in equity”

52. In the Privy Council Appeal 22 of 1978 *Oh Hiam v Tham Kong Tipping J.* sets out four items that must be considered before allowing a claim in personam:

- i. The Claimant/Defendant must show that he has a cause of action on a legal or equitable basis entitling him to the assistance of the court, indefeasibility issues aside.

- ii. The Claimant/Defendant must show it would be unconscionable for the registered proprietor to rely on his indefeasible title.
- iii. The in personam claim must not be contrary to the policy and purpose of the Torrens system (referring to the registration of title system).
- iv. The remedy must be such that it is consistent with the principle of the Torrens system.

53. It is clear on the evidence that John Graham held the subject property which formed part of his father York Graham's estate on trust for his brothers and sisters who were each beneficially entitled to an undivided one-seventh share. Therefore, John Graham held the legal interest and the beneficiaries held the equitable interest in the subject property. Since the subject property was to be held in undivided shares, this meant that the beneficiaries owned their respective interests as tenants-in-common, able to be passed on to their respective estates upon death.

54. The evidence before the court detailing the defendant's interest in the subject property is traced from the last Will and Testament of Maxwell Graham made on the 15th day of October 1997. By that Will, Maxwell appointed Enid Sylvester to be the sole Executrix of his Will. A bequest was made to Elaine Graham in the sum of \$2000.00. In addition to that bequest, Maxwell Graham "devised and bequeath the residue of my real and personal property whatsoever and wheresoever to which I am entitled or over which I have any disposing power at the time of my death unto the said ENID SYLVESTER for her own use and benefit absolutely". Probate of Maxwell Graham's Will was delivered for registration on the 17th January 1984.

55. The defendant's mother Enid Williams Sylvester, being the successor in title to Maxwell Graham's interest in the subject property, thereafter bequeathed her interest in her Will. Enid Williams Sylvester's Will is exhibited to the defendant's affidavit as "W.W.15". The Will states:

"All of my interest in Graham lands, I give devise and bequeath to my son WESTMORE WILLIAMS daughters JEAN FLEMING also called JEAN WILLIAMS, PATRICIA WILLIAMS and JUDY WILLIAMS in equal shares."

56. In the abovementioned authorities, the learned judges highlight that the in personam exception is available in cases where a trustee is of the view that the registration of their title gives them an unchallengeable title not only at law but also at equity. Pursuant to the guidance of Lord Browne-Wilkinson this view is erroneous and mistaken⁵. Because the beneficiaries are kept of the register, does not prevent them from enforcing their beneficial interests against the trustee as registered proprietor.

57. Therefore, based on this guidance, a beneficiary asserting their equitable interest against a trustee as registered owner holding only the legal title, is in accordance with the policy and purpose of the Torrens system. Likewise, such assertion is certainly not inconsistent with the principles of the Torrens system. Such a system was devised to enshrine the "mirror principle" which ought to reflect all interests affecting the land including that of the beneficial owners. The defendant as has successfully proven his beneficial interest.

58. With respect to the defendant proving that it would be unconscionable for the registered proprietor to rely on his indefeasible title, the court is satisfied that the defendant has already discharged this onus. This is so, especially in light of the claimant's aforementioned fraudulent

⁵ *Gardener v Lewis* (supra) at paragraph 4, page 2

behavior. Therefore, in line with the examples and principles outline in the Privy Council cases of *Oh Hiam* (supra) and *Gardener* (supra) the court finds that it would be unconscionable for the claimant as the registered proprietor to retain the subject property. She knew and/or ought to have known that the subject property was vested in other beneficiaries, yet she deprived them of their interest by registering it solely in her name and additionally attempting to sell the rightful owners their entitlement.

e. Caveatable interest

59. The case of *Lennard Nelson and Patricia De Freitas* CV 2007-00042

Pemberton J held:

“In order to caveat any application, the caveator must have an interest to support the entry, for instance, interest in the res, the subject matter of the application.”

60. In *Attorney General v Maharaj and Maharaj* (1966) 11 W.I.R.55

Wooding C.J. also confirms that the caveator must have an interest and it is for him to set forth that interest. As already stated, the court is satisfied that the defendant has sufficiently proven his interest in the subject property by virtue Maxwell Graham bequest to his mother and in turn, the defendant mother’s bequest to him. As a result, the defendant is entitled to lodge a caveat against the registered title of the claimant.

Disposition

61. By Amended Fixed Date Claim Form filed on the 17th July 2018 the claimant sought a number of reliefs and declarations. The court considered the evidence and submissions filed by the claimant and defendant. The court’s decision is that the claimant has failed to satisfy the court, on a balance of probabilities of the claim. As such the claimant’s claim against the defendant is dismissed.

62. Having regard to the reliefs sought by the claimant, IT IS HEREBY ORDERED that:

- a. There be no Declaration that the claimant is the owner of All and Singular that certain parcel of land registered in Certificate of Title Volume 5736 Folio 177 and Memorandum of Assent dated 1st July 2014 registered as T20140 814000 555661;
- b. There be no Declaration that the caveat lodged against the claimant's title is unlawful and null and void;
- c. There be no Declaration that the Caveator has no caveatable interest in the subject property capable of protection by Section 126 of the Real Property Act Chapter 56:02;
- d. There be no Declaration that the Caveator is statute barred from making a claim against the claimant for an equitable interest in the subject property by operation of Section 150 (1) of the Real Property Act Chapter 56:02; and
- e. The court makes no Order for the Register General's Department to remove the caveat lodged against the claimant's title registered in Certificate of Title Volume 5736 Folio 177.

63. The claimant shall pay the defendant's Costs, pursuant to Part 67.5(2) (b)(iii) in the sum of Ten Thousand Dollars (\$10,000.00). Stay of execution 42 days.

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Justice Avason Quinlan-Williams

JRC: Romela Ramberran