

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2018-00963

BETWEEN

BRIAN PELTIER

First Claimant

CHARMAINE PELTIER

(the Legal Personal Representative of the Estate of Joan

Peltier also called Joan Seales Peltier, deceased)

Second Claimant

AND

RUDOLPH SCOTT

SHIRLEY SEALES-SCOTT

First Defendants

WINSTON ISAAC

Second Defendant

BARATARIA INVESTMENT CO. LIMITED

Third Defendant

Before the Honourable Mr. Justice Seepersad

Date of Delivery: 30 November, 2021.

Appearances:

1. Mr B. Camejo Attorney-at-law for the Claimant.
2. No appearance for the First Defendant.
3. Mr L. Murphy, Attorney-at-law for the Second Defendant.
4. Mr D. Alexander, Attorney-at-law for the Third Defendant.

DECISION

1. Before the Court for its determination is the Claimants' Claim Form and Statement of Case filed on 21 March 2018 whereby the Claimants sought the following reliefs:
 - a. A declaration that the purported deed of conveyance dated 17 June 1993 and registered as No. DE201501372667D001 by and between Joan Seales Peltier of the One Part and Rudolph Scott and Shirley Seales-Scott of the Other Part be rescinded, the same having been procured by fraud and that the said Deed be declared null and void and of no effect.
 - b. A declaration that the purported deed of conveyance dated 13 March 2015 and registered as No. DE201501372788D001 by and between Rudolph Scott and Shirley Seales-Scott of the One Part and Winston Isaac of the Other Part be rescinded and declared null and void and of no effect.
 - c. A declaration that the purported deed of conveyance dated 31 October 2015 and registered as No. DE201503072313D001 by and between Winston Isaac of the One Part and Barataria Invest Company Limited of the Other Part is not effective in passing title to the property described in the Schedule thereto to the Third Defendant and that the same be declared to be null and void and of no effect.
 - d. An injunction restraining the Third Defendant whether by themselves, their servants and/or agents and/or workmen or howsoever otherwise from demolishing or engaging in any construction activity and/or dealing with the property known as No. 70 Fifth Street, Barataria, in any way whatsoever until the hearing and determination of this action or until further order in the meantime.
 - e. An order that the Deed of Conveyance dated 17 June 1993 and registered as No. DE20150137667D001 that Deed of Conveyance dated 13 March 2015 and registered as No. DE201501372788D001 and that the Deed of Conveyance dated 31 day of October 2015 and registered as No. DE201503072313D001 be set aside, delivered up for cancellation and expunged from the records at the Registrar General Department.
 - f. A declaration that the property known as and situate at No. 70 Fifth Street, Barataria forms part of the Estate of Joan Peltier also called Joan Seales Peltier, deceased.

- g. An order that possession of the property situate at No. 70 Fifth Street, Barataria be delivered up by the Third Defendant to the Claimants.
- h. An order that the Defendants do pay the Claimants' costs of this action.
- i. Such further and/or other relief as to the Court seems just.

Claimant's facts:

- 2. The Claimants pleaded that Joan Peltier (the deceased) became seised and possessed of a parcel of land situate at No. 70 Fifth Street, Barataria (the subject land) by virtue of deed of conveyance dated 9 May 1991 registered as 10028 of 1991. She died on 21 July 2006 in New York, USA and executed a will on 24 May 1999 in which she declared that she was seised and possessed of the subject land and bequeathed same to her two children namely Brian Peltier and Charmaine Peltier (the Claimants) as tenants in common for their absolute use and benefit.
- 3. A Grant of Probate was issued in favour of the Claimants on 10 February 2017.
- 4. It was subsequently discovered that by Deed of Conveyance dated 17 June 1993 and registered as No. DE201501372667D001, the deceased purportedly sold the subject land to Rudolph Scott and Shirley Seales-Scott for \$100,000.00 (the disputed deed). By further Deed of Conveyance dated 13 March 2013 and registered as No. DE201501372788D001 the subject land was purportedly sold by Mr Scott and Ms Seales-Scott to Winston Isaac and subsequently, by Deed of Conveyance dated 31 October 2015 and registered as No. DE201503072313D001 the subject land was sold by Winston Isaac to Barataria Invest Company Limited.
- 5. The Deed of 17 June 1993 was registered some 22 years after its alleged execution and the Claimants contend that it was procured by fraud. They claim that it was not executed by the deceased who at the time of the purported execution was residing in New York, USA. In addition, they contend that the deceased did not receive the sum of \$100,000.00 and that the signature which appeared on this deed was examined by Mr Glenn Parmassar, Forensic

Document Examiner and he concluded that there is a strong probability that the signature is not that of the deceased.

The First Defendants:

6. The First Defendants did not defend this action and placed nothing before the Court.

Second Defendant's Facts:

7. The Second Defendant pleaded that by virtue of the deed dated 13 March 2013 he became the legal owner of the subject land being a bona fide purchaser of the legal title of the subject land and outlined that he purchased the subject land after making the relevant searches and doing the relevant due diligent enquiries.

Third Defendant's facts:

8. The Third Defendant pleaded that it purchased the subject land under a contract in writing dated 25 June 2015 and that a Deed of Conveyance was executed on 31 October 2015.
9. The Third Defendant had a title search done on the subject land and the root of title was identified as the Deed registered as No. 10028 of 1991. Furthermore, the title clerk's search report revealed that the subject land was vested in the name of the Second Defendant and there were no other transactions on record subsequent to this as well as no judgments or *lis pendens* registered against the Second Defendant.
10. There was a Certificate of Assessment dated 24 June 2015 which certified that the Second Defendant was the assessed owner. Further the Water and Sewerage Authority by its Rates and Charges Clearance Certificate dated 30 June 2015 showed that the bills were paid up and they were in the name of the Second Defendant.

The Evidence:

11. Witness statements were filed by Mr Peltier, Mr Parmassar, Mr Isaac, Mr Persad and Mr Hyatali. Mr Isaac died on 9 September 2019 and an application was made by the Second Defendant on the 27 January 2021 to have the Second Defendant substituted by his lawful son Mr Ariel Isaac and an order for substitution was granted.
12. At the trial Mr Peltier testified that he was close to the deceased and that he saw her write her signature numerous times over a period of 30 to 40 years.
13. The First Claimant stated that he knew his deceased mother made a will in 1999 because she made both Claimants aware of it. He could not remember when he first saw the will but he knew that he came across it after his mother's death in 2006. The witness testified that when he saw the signature on the disputed deed he immediately knew that it was not his mother's signature.
14. The witness further testified that he first became aware of his mother's purchase of the subject land in 1991. Mr Peltier stated that prior to his mother's passing, she paid the taxes in relation to the land and after she passed away he undertook the responsibility to pay the taxes. He further testified that he did not know the First Named Defendants.
15. Mr Parmassar was deemed by the Court to be an expert and he testified that one can get natural variations in handwriting over time because of, *inter alia*, age, medical condition and/or stress. Mr Parmassar accepted there were variations among the three exhibits which he reviewed but said that it was normal for handwriting to have natural variations. He further accepted that handwriting evolves over a period of time. The samples which he received from the Claimants were from different dates namely 1996, 1999 and an undated document. The expert also stated in cross-examination that he understood contemporaneous to mean "around the same time" and he formed the view that the sample documents were all allegedly written by the deceased in the 1990s and he treated them as being contemporaneous.

16. Mr Parmassar stated that most experts prefer ten samples but one can use fewer than ten as it is the weight of the identifiable characteristics that is more important.
17. In examining the samples, the witness said he looked at the letter forms and the line forms for smoothness of signature and formatting of the signature. He also stated that he looked for consistency of all the specimens and noted that they were all relatively consistent with each other.
18. Mr Parmassar testified that although no original samples were provided, he felt that the provided samples were adequate and originals would not have made much difference. He also stated that if two copies looked similar then it would have been important to see the original so as to determine if any tracing was involved. In addition, he testified that he looked to see whether there were any significant difference in the letter forms, design or with respect to the levels of each letter in relation to each other. Mr Parmassar outlined that if an examination of the questioned signature as against the samples revealed significant differences then a determination can be made that the signatures were made by two different people and that examiners usually looked for more than one difference.
19. One difference which Mr Parmassar noted between the samples and the deed was with respect to spacing and another difference was in relation to the writing slant. The Court noted that the letter "J" appeared to be different in each of the three samples and asked the expert about this and the witness explained that there were similarities in the samples and he looked for internal consistencies. As between the samples he said that with the letter "J", the curls were consistent but it was not in the questioned document.
20. Mr Hyatali testified that he has been an attorney since 1981 and that he practises conveyancing. He further stated that for title searches, he normally goes back 20 years to get a root of title. When asked whether any concerns were raised in his mind given that the 1993 deed from the deceased to the First Defendants was registered on the same day as the deed from the First Defendants to the Second Defendant, the witness said that was a matter for the registry. In his opinion there was no need for concern and the document reflected that consideration passed with the 1993 Deed and thereafter as between the First and

Second Defendant. In addition, the witness stated that his client, the Third Defendant paid the market price for the subject land.

Issues:

21. The Court has to ultimately determine whether the 1993 deed was executed by the deceased and whether she sold the subject land to the First Defendants. If the Court determines that the deceased did not convey the subject land, then it must consider the status of all the subsequent deeds.

The Law:

22. The Court considered the decision of **Civil Appeal No. 93 of 2002 Richard Dean v Myra Dick-Humphrey et al.** In this case the Court was asked to consider, *inter alia*, whether a forged Power of Attorney could effectively transfer the respondents' title to the appellant. The Court at paragraphs 12 and 13 stated:

“12. ... A forged document is not voidable and cannot bind the person whose signature is forged. I think there can be no doubt of that. But if authority is required it is sufficiently illustrated by the case of Boursot v Savage [1866] L.R. 2 Eq. 134....

13. ... If the Power of Attorney is a forgery, Boxhill had no authority to act on behalf of the Respondents' and their title and interest in the premises therefore would not have passed under the conveyance to the Appellant. Consequently both the conveyance and the mortgage would be of no effect.”

23. Lord Watson in **Wallingford v Mutual Society and Official Liquidator (1880) 5 App Cas 685** at 709 opined:

“My lord, it is a well-known and very proper rule that a general allegation of fraud is not sufficient to infer liability on the part of those who are said to have committed

it ... [it] would require the parties to state a very explicit case of fraud, or rather of facts suggesting fraud, because I cannot think that a mere statement that fraud has been committed, is any compliance with the words of that rule which require the Defendant to state facts entitling him to defend ... [it] requires not only a general and vague allegation but some actual fact or circumstance or circumstances which taken together imply, or at the very least very strongly suggest, that a fraud must have been committed, those facts being assumed to be true.”

24. In **Pilcher v Rawlins (1872) 7 Ch. App. 259** at 269, Sir W.M. James LJ stated as follows:

“I propose simply to apply myself to the case of a purchaser for valuable consideration, without notice, obtaining, upon the occasion of his purchase, and by means of his purchase deed, some legal estate, some legal right, some legal advantage; and, according to my view of the established law of this Court, such a purchaser's plea of a purchase for valuable consideration without - notice is an absolute, unqualified, unanswerable defence, and an unanswerable plea to the jurisdiction of this Court. Such a purchaser, when he has once put in that plea, may be interrogated and tested to any extent as to the valuable consideration which he has given in order to shew the bona fides or mala fides of his purchase, and also the presence or the absence of notice; but when once he has gone through that ordeal, and has satisfied the terms of the plea of purchase for valuable consideration without notice, then, according to my judgment, this Court has no jurisdiction whatever to do anything more than to let him depart in possession of that legal estate, that legal right, that legal advantage which he has obtained, whatever it may be. In such a case a purchaser is entitled to hold that which, without breach of duty, he has conveyed to him.”

25. The three main requirements for a purchaser to be considered as a bona fide purchaser for value without notice are:

- a. The purchaser must have gained the legal interest in the property;
- b. The purchaser must have given valuable consideration for the property; and

- c. The purchaser must not have had notice of any equitable interest at the time of the giving of consideration: See **Snell's Equity, 30th Edition, paragraphs 4-12 to 4-25.**

Resolution of the Issue:

26. In addressing the issue as to whether the 1993 deed was executed by the deceased, the Court had regard to the evidence of the First Claimant and found that he engendered in the Court the unshakable feeling that he was a forthright witness. The First Claimant testified that he first became aware of his mother's purchase of the land in 1991 and his evidence that his mother was not in the jurisdiction when the disputed deed was allegedly executed, was not challenged. The witness was aware that his mother made a will in 1999 and it is accepted that the will (executed after the disputed deed was allegedly signed), stated that the subject land was to be gifted to the Claimants. There was no evidence before the Court that the deceased suffered from any mental illness or that she lacked testamentary capacity in 1999 and in the absence of such evidence, the Court asked itself, "Why did the testatrix leave the subject land to her children, if in fact she had sold same." In addition the Court noted that even after the date of the disputed deed, the First Claimant testified that his mother continued to pay the taxes in relation to the subject land.
27. The Court considered the First Defendants' failure to defend the claim and the lack of any evidence as to the operative circumstances surrounding the execution of the disputed deed. Notably the lawyer who prepared same was not called before this Court nor was any proof of the payment of the alleged consideration of \$100,000.00, either by way of a copy of the cheque paid, receipt signed by the deceased or by way of a copy of any bank deposit, adduced into evidence. The combined effect of these matters led the Court to conclude and find as a fact that the deceased never sold the subject land to the First Defendants.
28. The Court, in support of its finding as aforesaid, also accepted the evidence of the expert witness in relation to the purported signature of the deceased on the disputed deed. The Court was satisfied that the sample signatures which were provided were all executed by

the deceased and holds the view that they were adequate for the purpose of enabling the expert to consider whether the questioned signature was executed by the deceased. Consequently the Court did not accept the Third Defendant's submission that Mr Parmassar's evidence ought to be rejected on the basis that he had insufficient samples to make a determination or that the specimens were not contemporaneous. Mr Parmassar in cross-examination said that of the three samples submitted, he looked for consistency in all the specimens and they were all relatively consistent with each other but there were differences between the samples and the signature on the disputed deed.

29. Another circumstance which raised a red flag in the Court's mind was the registration of the disputed deed 22 years after its alleged execution. The Court further noted the startling absence of any explanation for such an unusual occurrence. It struck the Court as being rather coincidental that the disputed deed was registered, 22 years after, on the same day on which the First Defendants allegedly sold same to the Second Defendant.

30. Having found as a fact on a balance of probabilities, that the deceased did not sell the subject land and that she did not execute the disputed deed, the registration of same must be set aside.

31. The Court noted the authority of Richard Dean (supra) and recognised that the effect of its decision means that the title and interest in the subject land never passed to the First defendants and by logical extension title never passed to either the Second Defendant and/or the Third Defendant.

32. The Court did address its mind as to the issue as to whether the Second and Third Defendants were bona fide purchasers for value without notice. The plea of bona fide purchaser for value without notice is available to a purchaser who has obtained the legal estate and will usually give him priority over equitable claims which rank before him but the plea cannot be set up by someone who does not hold the legal title so as to defeat the legal title of the person who does: as per Mendonca JA in Richard Dean (supra) at paragraph 14.

33. In Kerr On The Law Of Fraud and Mistake (7th ed.) at page 7 the learned authors dealt with the effect of fraud on the validity of a transaction:

“But a contract or other transaction induced or tainted by fraud is not void but only voidable at the election of the party defrauded. Until it is avoided, the transaction is valid, so that the third parties without notice of the fraud in the meantime acquire rights and interests in the matter which they may enforce against the defrauded”.

34. Having considered the position outlined by the Court of Appeal in Richard Dean (supra) and this Court’s position as to setting aside of the disputed deed, the subsequent deeds simply did not convey any legal interest in the subject land to either the Second or Third Defendants and these Defendants are not entitled to the benefit of the plea of bona fide purchaser for value without notice .

35. **The factual matrix demonstrates that the Second Defendant’s lawyers ought to have been more cautious and alarm bells should have resonated having regard to the 22 years which elapsed before the registration of the First Defendants’ deed. The Third Defendant however did what was necessary for any land transaction and conducted the relevant title searches. Unfortunately, with common law conveyancing there is always the inherent risk that title may subsequently be declared as defective. Sadly, for too long this “land of fete” has also been “the land of fraud” and both the Second and Third Defendants appear to be victims of same.**

36. There exists no common law or statutory requirement which confers upon the Court the authority and discretion to extend the time for registration.

37. Act No. 17 of 2020 Miscellaneous Provisions (Registrar General, Registration of Deeds, Conveyancing and Law of Property, Real Property, Stamp Duty and Registration of Title to Land), which is awaiting proclamation, seeks to amend, inter alia, the Registration of Deeds Act Chap 19:06 (“RDA”). Section 4 of this Act introduced the concept of a “registrable document” as defined by Section 2A of the

RDA. This includes, *inter alia*, a written document to create, transfer or convey any interest in land and includes a conveyance of land required to be by deed. Furthermore, Section 15B RDA mandates that a contract for the sale of land is to be registered by, *inter alia*, the attorney who prepared it within 14 days, and an application is to be made to the Registrar General for late registration (under Section 15B(5) RDA). To complement this, the consequent deed must relate to the contract for sale (Section 15D RDA). The attorney must then file a notice of execution within 14 days of the registrable document's execution (Section 15E(1) RDA) and for late registration an application is to be made to the Registrar General (Section 15E(2) RDA). Any such document must then be registered with the Registrar General within 12 months (Section 15F(1) RDA). There are also requirements to ensure that the attorney who registers the document is, *inter alia*, registered with the Financial Intelligence Unit and holds a valid practising certificate otherwise the Registrar General will not accept the document (Section 15F(4) RDA). In addition where the attorney believes that the document cannot be registered within the 12 month period, an application has to be made to the Registrar General prior to its expiration seeking an extension of time and such application must include reasons for failure to register same (Section 15G(2) RDA).

38. The proactive passage of the aforesaid amendments to the RDA should be heralded and the proclamation of same will be welcomed. These amendments can substantially assist in the mitigation of land fraud. If these amendments existed in 1993, the unfortunate situation which occurred in the present case may have been avoided. Parliament, in its wisdom, may wish to consider further amendments which can vest the authority with regard to extensions of time for registration in the High Court as opposed to the Registrar General, as orders of the Court would provide an increased measure of insulation. This manner of discretion already exists under Section 18 of the Bill of Sale Act Chap. 82:32.

39. In this case, neither the Second nor Third Defendant filed a counterclaim and as a result, the Court is not in a position to award any reliefs to which they may have been entitled.

40. Finally, given the operative circumstances and cognizant as to the Second and Third Defendant's lack of complicity with respect to the disputed deed, the Court in the exercise of its discretion and being mindful of the overriding objectives outlined under the Civil Proceedings Rules 1998 (as amended), is prepared to depart from usual cost order and holds that all costs should be paid to the Claimants by the First Defendants.

41. Based on the reasons herein articulated, the Court orders as follows:

- a. The Court hereby declares that the purported deed of conveyance dated 17 June 1993 and registered as No. DE201501372667D001 by and between Joan Seales Peltier of the One Part and Rudolph Scott and Shirley Seales-Scott of the Other Part was not executed by the deceased.
- b. The Court hereby declares that the deceased did not sell the subject land.
- c. The Court orders that the Deed of Conveyance dated 17 June 1993 and registered as No. DE20150137667D001, that Deed of Conveyance dated 13 March 2015 and registered as No. DE201501372788D001 and the Deed of Conveyance dated 31 day of October 2015 and registered as No. DE201503072313D001 be set aside, cancelled and expunged from the records at the Registrar General Department.
- d. The First Defendants shall to pay the costs of the Claimants in the sum of \$14,000.00.

.....
FRANK SEEPERSAD
JUDGE

Assisted by Mr Liam Labban
Judicial Research Counsel