

2018-HC-DEM-CIV-SOC-451  
IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE  
CIVIL JURISDICTION



BETWEEN:-

FREDERICK GIBSON

Claimant

-and-

GLENDA VENTURE

Defendant

BEFORE: S. Morris-Ramlall, J.

13<sup>th</sup> September & 22<sup>nd</sup> November, 2019

Mr. J. Lindner for the Claimant

Mr. P. Henry for the Defendant

JUDGMENT

**Introduction**

1. The Claimant filed this action seeking the following relief:
  - i. A declaration that the Defendant fraudulently obtained ownership by transport of the Claimant's property situate at Lot 10 Pomona, within the Pomona Good Hope Neighbourhood Democratic Council, in the county of Essequibo and in the Republic of Guyana ("the property");
  - ii. An order declaring the Defendant's transport void;
  - iii. In the alternative, the sum of \$2,000,000 for the loss of property by the Claimant;
  - iv. A declaration that the Defendant holds the property on resulting trust on behalf and for the benefit of the Claimant;
  - v. A declaration that the Defendant is not entitled to the property;
  - vi. An order for possession of the property;

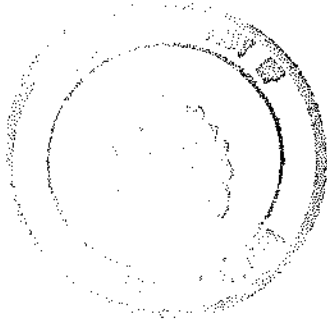
- vii. An order that the Defendant convey and pass transport to the Claimant;
- viii. An injunction;
- ix. Damages in excess of \$100,000 for fraud; and
- x. Other declarations.

2. The property was conveyed to the Defendant pursuant to a Deed of Gift. The Claimant denies gifting the property to the Defendant and alleges that the affidavit of donor was fabricated/forged by the Defendant's attorney, Mr. Rajkumar. He contends that he was tricked into signing a blank sheet of paper and that he had no knowledge of the contents of the first page of the document. He denies appearing before a Commissioner of Oaths and executing the affidavit. The Claimant denies knowledge of the gift of the property to the Defendant and contends that he became aware of the conveyance when he visited the Deeds Registry in Suddie, Essequibo in or around March, 2018.

3. The Defendant's case is that the Claimant intended to give the property to her, gave instructions to his attorney, Mr Rajkumar, to prepare the deed of gift and voluntarily signed it along with ancillary documents.

#### **The law**

4. By section 22 (1) of the Deeds Registry Act, Cap. 5:01 (hereinafter referred to as "the Act") every transport vests in the transferee full and absolute title subject only to certain claims, encumbrances and interests mentioned therein. The proviso to section 22 (1) contains an exception for fraud in the hands of all parties or privies to the fraud once an action is commenced within twelve months of the discovery of the fraud.

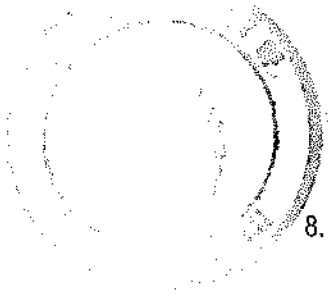


5. The issue for determination is therefore whether the circumstances under which the Defendant obtained title to the property amounted to fraud within the meaning of section 22 (1) of the Act.
6. The Act does not provide definitions of either the word 'fraud' or the phrase 'privies to the fraud' or stipulate what is required to establish fraud in the context of section 22 (1). In Jassoda Ramkishun v- Conrad Ashford Fung-Kee-Fung [2010] CCJ 2 (AJ) and Chee Yiu Kwang et anor -v- Tsui Yokkei a.k.a Cheekee [2016] CCJ 9 (AJ) the CCJ examined the meaning of fraud in the context of section 22 (1) and posited that it encompassed both legal and equitable fraud, that is to say, the *"more serious and obvious form of fraud, in legal parlance "common law fraud" as well as various forms of "unconscionable conduct" or "improper behaviour" which qualify as "constructive fraud", "quasi fraud" or, a rather curious expression, "equitable fraud."* In Raymond Joseph v Kamal Mangal [2016] CCJ 22] the apex court stated the position thus- *"In order to be classified as fraud, conduct must involve an element of dishonesty. Dishonesty is not to be addressed in a narrow or technical manner and must be looked at in a broad sense."* It is also trite that fraud must not only be pleaded with sufficient particularity but it must also be pleaded with certainty.

#### **Analysis**

7. I do not find the Claimant to be a truthful and credible witness regarding the circumstances which led to the conveyance of the property to the Defendant. I reject his evidence that he was unaware of the contents of the affidavit of donor and that he did not execute it. I do not believe that he signed a blank sheet of paper, but even assuming that he had done so, such admitted

voluntary conduct on his part is not a basis for imputation of fraud to the Defendant. It is the Claimant's evidence that he went to Mr. Rajkumar's office with the knowledge that the attorney was to prepare documents pertaining to conveyance of the property. In light of this, I find his evidence that he was unaware of the purpose of affixing his signature on a sheet of paper incredulous. I view the Claimant's contention that the attorney converted the blank sheet of paper with his signature into an affidavit of donor in a like manner. I have considered further, that his evidence of signing on a blank paper is inconsistent with the statement made in his witness statement to the effect that he had not signed any document at all. This inconsistency was unresolved. There is an additional inconsistency in his evidence, in that, under re-examination, the Claimant stated that he discovered the blank document which he had signed to be a Transport, a copy of which he had uplifted from the Registry.

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8. Additionally, the Claimant failed to tender before the court any of the conveyancing documents which he claims were fraudulently executed. In particular, the Deed of Gift and Special Power of Attorney which the Claimant denies executing were not produced. The only documentary evidence produced is Transport numbered 9/2000, which merely evidences the Defendant's previous ownership of the property and does not advance his case.
  9. Evelyn Lane also gave evidence in support of Claimant's case but her evidence did not support his case in any material particular. Her evidence was limited to accompanying the Claimant to Mr. Rajkumar's office in November, 2017.

10. On the contrary, I accept the evidence of the Defendant that the Claimant voluntarily executed a deed of gift conveying the property to her and that this was done in her presence and that of other witnesses. I also believe the Defendant's evidence that the affidavits of donor and donee were executed in the presence of Mr. Singh, the Justice of Peace, and that, thereafter, upon the Claimant's instructions, she caused Mr. Rajkumar to publish instructions to advertise the conveyance.
11. I accept that the Claimant also executed a special power of attorney to facilitate the passing of transport. I believe the Defendant's evidence that the decision to retain Mr. Rajkumar was that of the Claimant and that he told her that he would give her the property as he had nothing to give to her brother.
12. Mr. Rajkumar gave evidence on behalf of the Defendant. I believe his testimony that the Claimant was his client and that he was very clear in his instructions to convey the property as a deed of gift to the Defendant. He supports the Defendant's evidence regarding the voluntary execution of the Deed of Gift and Special Power of Attorney and I believe this evidence as well as his vehement denial of the allegation that he converted a blank sheet of paper with the Claimant's signature into an affidavit of donor.
13. Rajkumar did state under cross-examination that the documents were not executed in his office but that the parties left to take them to the Commissioner of Oaths. Additionally, contrary to his evidence in chief, he stated that he was not present when they were executed before the Commissioner of Oaths. I have considered these bits of evidence and they do not affect my assessment of the overall credibility of his evidence in support of the Defendant's on the material issues.

14. The Claimant, in these circumstances, has failed to satisfy this court that the Defendant was involved in any dishonesty, trick or artifice [ Roberts v Toussant (1963) 6 WIR 431] or that she engaged in any unconscionable or improper conduct in the conveyance of the property. The claim that the property was fraudulently conveyed to the Defendant therefore fails.
15. I have assessed costs on a discretionary basis taking into consideration the relevant factors set out in Part 64.02 of CPR, 2016.

THE ORDERS

16. I therefore make the following orders-
- a) The action is dismissed;
  - b) The Plaintiff shall pay costs to the Defendant in the sum of \$150, 000  
(one hundred and fifty thousand dollars).



*Simone Morris Randall*  
Puisne Judge  
Dated this 18<sup>th</sup> day of May, 2020