

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

REGULAR JURISDICTION

OTHER PROCEEDING

2018-HC-DEM-CIV-SOC-211

BETWEEN:

KEITH HALY in his capacity as Executor of the Estate of **WILLIAM VIBERT HALY**, deceased.

Claimant

-and-

1. **ORIN MC KAY**
2. **ORIN MC KAY** in his capacity as Executor of the Estate of **LYDIA DORNFORD-HALY**, deceased, probate whereof was granted to him by the High Court of the Supreme Court of Judicature on the 10th day of November 2014 No. 909 of 2014

Defendants

Appearances: Mr. Trevor Williams for the Claimant
Ms. Anastacia Sanford for the Defendant

2021: October 4

[1] **CORBIN-LINCOLN, J.:** The Claimant is seeking possession of property located at Zone: E.B.D; Block: XXX; Parcel: 2678 part of South Ruimveldt ("**the property**") currently registered in the name of William Vibert Haly, deceased, by Certificate of Title 05/779. He is also seeking, among other things,:

- (a) Damages for trespass;
- (b) A declaration that the transfer of the property dated **29th November 2012** to William Haly, deceased, and Lydia Haly, deceased, in equal shares is unlawful null and void.
- (c) An order setting aside the transfer of the property dated 29th November 2012

- (d) A declaration that pretended Affidavit Of Donor dated **26th July 2012** is fraudulent and illegal null and void.
- (e) A declaration that affidavit of donee dated **26th July 2012** and affidavit donee dated **29th November 2012** are null and void and that no gift of property was made by William Haly.
- (f) A declaration that the certificate of value dated 23rd October 2012 “*was not issued on the request of William Vibert Haly*” ;
- (g) A declaration that certificate of compliance issued by Guyana Revenue Authority was issued without the request of William Vibert Haly, deceased.
- (h) A declaration that application for lost gross of Certificate of Title and affidavit in support dated 19th November 2012 is fraudulent and a forgery; and
- (i) A declaration that certificate of compliance was issued without request of William Haly, deceased.

[2] The Defendants have counterclaimed for, among other things, a declaration that the transfer of title to the property from Lydia Dornford Haly, deceased, [“LH”] to William Vibert Haly, deceased [“WH”] is a forgery, that title to her undivided half was fraudulently obtained and a declaration that joint tenancy was severed when he committed acts of forgery.

ISSUE 1- Whether the Transfer from WH to LH in equal shares is fraudulent, null and void

[3] I start by first determining the issue of whether the transfer of Parcel 2678 dated 29th November 2012 to WH and LH in equal shares is illegal , null and void. This includes whether the affidavit of door dated 26th July 2012 is fraudulent. The evidence relied on by the Claimant is that of Mr. Keith Haly and Mr. Carlton Charles a handwriting expert.

- [4] I did not find the evidence of Mr. Keith Haly particularly useful in determining this issue having regard to the fact that the documents alleged to be forged were executed in 2012. He tendered a medical report dated 7th February **2018** (with no objection) which stated that the deceased was suffering from advanced Alzheimer's disease. This in my view does not provide evidence in support of an alleged forgery of documents executed in 2012. Under cross examination Mr. Haly states that in his view the deceased started to suffer from memory loss in 2013- after the documents were executed. He further opined under cross examination that WH started suffering from Alzheimer's disease around 2011 in his view. I place no weight on his opinion and there is no medical evidence in support of this.
- [5] Mr. Haly relies on the findings of Mr. Carlton Charles.
- [6] Mr. Charles prepared a report in which he states that he examined 3 "**Questioned Documents**" namely, an affidavit of donor dated 23rd July 2012, an affidavit in support of application dated 19th October 2012 and 2 "Transfers" dated 17th October 2012 and 29th November 2012 and two (2) "**Specimen Signatures**" namely United States passport No. 517517563715 in favour of WH and seven (7) specimen signatures.
- [7] Having read the report and seen and heard Mr. Charles I do not attach much weight to his evidence. Mr. Charles's evidence is that the signatures he examined as "questioned documents" were signatures on an affidavit of donor dated **23rd July 2012**. That document was not part of his report. In fact there is no issue arising in relation to an affidavit dated 23rd July 2012. The affidavit which the Claimant contends is a forgery is an affidavit dated 26th July 2012.
- [8] Further, the documents purportedly examined by Mr. Charles as "known signatures" include what is alleged to be seven (7) specimen signatures of WH. In his report he states that he obtained all the documents from Keith Haly on 26th April 2017. Under cross examination and through questions from the court it was evident that this was not accurate. In response to questions from the court Mr. Charles stated that he obtained the seven (7) specimen signatures referred to in the course of an investigation he did while a serving member of the Guyana Police Force and he retained those signatures.

The signatures were alleged by him to have been obtained by an investigating rank who he alleges obtained them by "dictation" meaning that "*The investigating Rank would have told Mr. Haly to write his signature 7 times.*" Mr. Charles was not present when WH executed these alleged signatures in the presence of another police officer. I do not find that these signatures, alleged to have been executed by WH in the presence of a 3rd party, are credible to be classified as "known signatures of Mr. Haly so as to be used for the purposes of comparison.

[9] Further, the report does not show that a comparison was done of the signature on the passport and the alleged seven (7) specimen signature to determine whether they were made by one and the same person.

[10] The only credible "known signature" used by Mr. Charles for the purposes of his analysis is a signature appearing on the US Passport of the WH. This was compared with the signatures identified as "question signatures" to determine whether the questioned signatures were executed by the author of the signature on the passport. It is noted with concern that the documents from which these signatures were allegedly extracted were not attached to the report of Mr. Charles. Specifically the documents used to extract the "questioned signatures" were not attached to his report. Only a copy of the bio-metric page of the deceased's US passport was part of the report. It is unknown when the signature on the US passport was executed. The passport was however issued on 2nd June 2014. – *two years* after the documents labeled "questioned" documents are alleged to have been executed by him.

[11] Significantly, the evidence of Keith Haly is that the health of WH had deteriorated. His evidence is that by June 2013 he was suffering from loss of memory. As stated there is no evidence of when the signature on the passport was executed but the passport was issued on 2nd June 2014 - *after* Mr. William Haly was alleged by Mr. Keith Haly to have been diagnosed as suffering from Alzheimer's. Since a change in a medical condition could have an impact on someone's signature the fact that Mr. Charles' analysis failed to even take mention that this factor was taken into consideration and say what if any impact it may have had on his analysis in my mind further diminishes the weight of his evidence.

[12] I do not find that the Claimant has established on a balance of probabilities that the transfer dated 29th November 2012 of Parcel 2678 to William Haly and Lydia Haly in equal shares is unlawful, null and void or that the affidavit of donor dated 26th July 2012 is fraudulent, illegal, null and void

[13] The Claimant has also failed to establish that ;

- (a) The certificate of value dated 23rd October 2012 was not issued on the request of William Vibert Haly, deceased;
- (b) The certificate of compliance issued by Guyana Revenue Authority was issued without the request of William Vibert Haly, deceased
- (c) The application for lost gross of Certificate of Title and affidavit in support dated 19th November 2012 is fraudulent and a forgery ; or that
- (d) The certificate of compliance was issued without the request of William Vibert Haly, deceased.

[14] The Claimant's claim is therefore dismissed.

[15] In my view the findings made determine this matter since the failure of the Claimant to prove the case means that the transfer will proceed and the property registered in the names of the Estate of WH and the Estate of LH in equal shares. The counterclaim essentially relates to events which transpired before the 2012 transfer which do not alter or impact the findings in relation to the 2012 transfer save for providing context and the historical background.

[16] Nonetheless for the purposes of completeness I go on to consider the counterclaim.

Counterclaim

[17] The Defendants have counterclaimed for, among other things, a declaration that LH is the registered owner of one undivided half part or share of and in the property and a declaration that WH obtained Certificate of Title No. 05/779 and dated 15th June 2005 to the property by fraud and that the title is null and void.

- [18] The Property was first held by WH and LH jointly by Certificate of Title dated 5th March 1998. A Limited Power of Attorney [“LPOA”] dated 26th October 2004 was allegedly granted to WH by LH to transact business. The Defendants contend that this LPOA was not signed by LH and is a forgery. They rely on the evidence of Mr. Orin McKay and Ms. Myrna Charles David, a retired Police Officer.
- [19] The evidence of Mr. McKay is that LPOA alleged to have been executed by his mother Lydia Haly is a forgery. His mother was not in the jurisdiction at the time the LPOA is alleged to have been signed and this was confirmed by the proof of entry stamp in her passport. His evidence is that in 2011 he and his mother learnt of the fraud and reported the matter to the Police in the presence of Inspector Myrna Charles Davis. In his presence WH was cautioned by the Police and to avoid prosecution WH agreed to re-transfer the undivided half share to his mother LH and for both of the parties to hold it in equal shares. His mother then executed Power of Attorney No. 1516/2011 giving him authority to act on her behalf. By letter dated 28th November 2012 LH wrote to the Registrar of Lands to confirm that she is aware of the transfer of the property from WH to herself to be held equally by herself and WH and also confirmed that she had appointed Orin McKay as her duly constituted POA.
- [20] The evidence of Inspector Myrna Charles David was that a report was made by LH regarding an allegation of fraud allegedly committed by WH. She states that WH confessed that he forged the signature of LH. She was present when WH consented to return by way of transfer the undivided half share of the property back into the name in LH in equal shares.
- [21] I have some doubt regarding whether some portions of the witness statement were in fact the words of Ms. David. I do not believe that Ms. David would for e.g have been aware of the full description of the property in issue including the COT number or that Mr. Haly would have consented to specifically return “by way of transfer the undivided half ½ share in equal shares.”

- [22] Putting those issues aside I found Ms. David to be a forthright witness. I do not find that the assertion that a confrontation or meeting took place between WH, LH and Mr. Orin McKay at the Police Station in the presence of PI David and other named police officers to be a recent invention. This was contained in the original defence filed on 18th June 2018 and in the amended Defence and counterclaim filed on 28th January 2019 . Mr. Keith McKay, not himself being present , could not give any evidence on this matter nor did he call any evidence to refute it.
- [23] The contention by the Defendants is that the LPOA used to transfer the property from the joint names of WH and LH to WH solely was done using a forged power attorney. The burden is on the Defendants to prove this on a balance of probabilities. The Defendants relied on the evidence of Mr. Orin McKay and PI David. After hearing the evidence I find that LH during her lifetime disputed that she ever authroised the transfer of the jointly held property solely into the name of WH. The evidence of her challenge to this alleged act is shown from the evidence of Orin Mc Kay and Inspector David regarding the report made and the meeting held among the parties at the police station.
- [24] I note that prior to the death of Lydia Haly on 5th March 2013 the only action taken by WH was alleged verbal requests of Mr. Mc Kay to remove and a letter sent to him in January 2013 – months before the death of LH to vacate the property. No legal proceedings to remove him from the property were taken *before* the death of LH. An action was filed on 5th April 2013.
- [25] Notably, prior to the death of LH on 5th March 2013 it was never asserted by WH that the transfers and affidavits filed in 2012 were forged. The action to remove Mr. Mc Kay from the property, filed in April 2013 after the death of Mrs. Haly. There is no evidence that an allegation of forgery was raised in that claim. The caveat filed by WH on 18th March 2013 – *mere days after the death of LH* - does not set out an allegation of fraud. In setting out the grounds for the caveat it is stated that the he and LH were joint owners, the property was subsequently transferred wholly to him and “*attempts were being made to retransfer ownership of the said parcel to myself and Lydia Haly, jointly, but Lydia Haly has since died*” There is no allegation that attempts to transfer were “fraudulent” whether by use of the word itself of facts which set out the matters

constitution fraud. The inference from the reasons set out is that it is being asserted that these attempts have been halted by the death of LH. The allegation of forgery of the Transfer and other documents appears to have been raised and reported sometime in 2016.

[26] Having considered all the evidence I do not believe that the LPOA purported to have been executed by LH and used by WH to transfer the property to himself was executed by LH. I find that the alleged transfer of the property from the joint names of WH and LH solely to WH was fraudulent , null and void.

[27] As stated it was not necessary for the court to go on to consider this issue it having already being found that the subsequent transfer of the property from WH to WH and LH in equal shares is valid.

[28] In summary, I make the following findings and orders:

- (1) The transfer dated 29th November 2012 of Parcel 2678 from William Haly, deceased, to William Haly and Lydia Haly in equal shares is valid.
- (2) The affidavit of donor executed by William Haly, deceased, and dated 26th July 2012 is valid.
- (3) The limited Power of Attorney purportedly executed by Lydia Haly, deceased, on 26th October 2004 and registered in the Deeds registry on 29th December 2004 was not executed by Lydia Haly and is null and void.
- (4) The Claimant's claim is dismissed.
- (5) The Registrar shall transfer **Zone:** E.B.D; **Block:** XXX; **Parcel:** 2678 part of South Ruimveldt in to the names of the Estate of William Vibert Haly, deceased and the Estate of Lydia Dornford –Haly, deceased, in equal shares. The costs of transfer shall be borne equally by the Estates.
- (6) The Claimant shall pay the Defendants costs of \$250,000.00.

Fidela Corbin Lincoln
Puisne Judge