

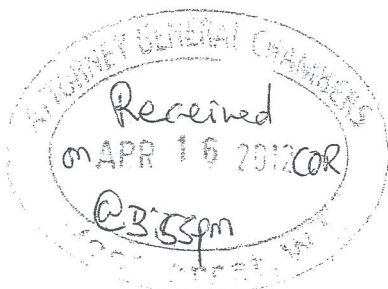
EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

MONTSERRAT

CLAIM NO: MNIHCV2002/0017

BETWEEN:



CLARICE RYAN
JOSEPH RYAN
DANIEL RYAN

AND

CHARLES RYAN

Claimants

Defendant

CLAIM NO: MNIHCV2003/0012

BETWEEN:

CHARLES RYAN

AND

CLARICE RYAN
JOSEPH RYAN
DANIEL RYAN
REGISTRAR OF LANDS

Claimant

Defendants

Appearances:

Mr. David Brandt for the Claimants Clarice Ryan, Joseph Ryan and Daniel Ryan.

Mr. Khari Markham for the Defendant Charles Ryan.

✓ Ms. Sheree Jemmotte for the Registrar of Lands.

2009: October 13,

2012: April 16.

JUDGMENT

Introduction

- [1] **LEIGERTWOOD-OCATVE J:** The Claimants, Clarice Ryan [**"Clarice"**], Joseph Ryan [**"Joseph"**], Daniel Ryan [**"Daniel"**] are the older siblings of the Defendant Charles Ryan [**"Charles"**]. The Registrar of Lands [**"the Registrar"**] is sued in his official capacity.
- [2] On 15th August 1970, Octavia O'Garro executed a Deed evidencing the sale of 15 acres of land at Friths Village Montserrat to Charles, described as Block 11/3 Parcel 18. The Claimants' case is that on 16th January 1973, Charles executed an Indenture transferring Block 11/3 Parcel 18 to himself, the Claimants and William Ryan [**"William"**], who is not a party in this claim, as tenants in common in equal shares.
- [3] On 12th September 1980, the Claimants and the Charles were recorded as the provisional owners of Block 11/3/18 and registered as absolute owners on 12th January 1981.
- [4] On 2nd February 1997, Block 11/3 Parcel 18 was mutated into two parcels Block 11/3 Parcel 70 and Block 11/3 Parcel 71, both of which were registered in the names of the Claimants, the Defendant and William. William's name was removed after his death.
- [5] On 12th March 1997, Block 11/3 Parcel 71 was transferred to the Crown. **Block 11/3 Parcel 70** remains registered in the names of the Claimants and Charles and it is the land in dispute in these claims.
- [6] On 27th June 2002, the Claimants brought proceedings against Charles in **MNIHCV2002/0017**, seeking an Order that Block 11/3 Parcel 70 be partitioned in terms of the Mutation Form and

documents that they had submitted. They also sought a declaration that they had a legal interest in the property and an Order that they be registered as legal owners of the respective portions of land as described in the Mutation Form.

- [7] On 7th April 2003, Charles commenced proceedings against the Claimants in **MNIHCV2003/0012**, seeking an Order that the Register in respect of the property be rectified by removing the names of the Claimants, which had been placed on the Register by fraud or mistake and substituting his name as the sole proprietor. He also claimed that he was entitled to \$12,001.50 being the amount paid by the Crown for Block 11/3 Parcel 71, or any amount that the court deemed just.
- [8] **MNIHCV2002/0017** and **MNIHCV2003/0012** were consolidated by the Order on Case Management made on 9th April 2003.
- [9] In his written submissions, Mr. Markham alluded to the fact that "*[a] number of amendments were made to the initial claim form*", filed by Charles. I have carefully perused the trial bundle and both court files in this matter including the endorsements and I am unable to find an order amending the Claim form that that was filed on 7th April 2003. What the file reveals is that an Application for Leave to Amend Claim Form was filed on 3rd March 2004 along with a copy of the proposed Amended Claim Form and a Draft Order. The three documents all bear the court's filing stamp and the date "*3 Mar 2004*".
- [10] There is no record however that the Application was ever heard. The hearing date after the filing of the Application is recorded as 15th March 2004. The Order from that hearing was entered on 18th March 2004. It has eight paragraphs and none of them speak to an amendment of the Claim Form and that is the same position in relation to all of the subsequent orders made in these proceedings.
- [11] In the circumstances, the court cannot consider the reliefs sought by Charles in the proposed Amended Claim.

The Evidence

- [12] It is common ground that members of the Ryan family, that is the Claimants, Charles, their parents and other siblings cultivated property at Friths belonging to the now deceased Octavia O'Garro. No rents were paid to her but she was given produce from the land. What the parties cannot agree on is who those members were. Charles insisted that it was only him and his father and he started at age 8 and continued until he was 21, which was even after his father had died. Clarice and Joseph remembered both their parents cultivating the land. Clarice stated that they were assisted mainly by her older brother Daniel and the younger ones only went and sat down while Joseph recalled all the children assisting.
- [13] Joseph left Montserrat for the United Kingdom in 1956, Clarice in 1957 and Charles in 1959. Charles returned in 1962.
- [14] When he returned, Charles said Octavia O'Garro offered to sell him Block 11/3 Parcel 18 for \$6,000.00. He paid her \$3,000.00 from what he had saved while working in the United Kingdom and arranged to pay her the balance over time. He paid her the balance in 1964 from money he had saved working as a cane cutter in the United States. None of the Claimants had contributed any part of the payment to Octavia O'Garro. In 1965, he entered into an agreement to sell a portion of the land to Michael Laser.
- [15] In 1970, Octavia O'Garro gave him a Deed executed by her evidencing the purchase of the property, he had not been previously aware that he required some formal documentation. A copy of the Deed was exhibited as part of his case.
- [16] In her Affidavit, Clarice denied that Charles had ever bought land from Octavia O'Garro for \$6,000.00 or any other sum. When she was cross-examined, she said she was not aware of it and she knew Octavia "*was not a crazy person*". Octavia had given a lot of the land at Cork Hill to her sister but she had not given the Friths land to her brother Charles.

- [17] Joseph was clear that he was not in a position to say what Charles and Octavia O'Garro had discussed. He did not know if Charles had paid her \$6000.00, whether she had acknowledged it or whether she had given instructions to her solicitor in relation to it.
- [18] When Joseph visited Montserrat 1973 Charles said he told him that he had bought the land from Octavia. He explained to Joseph that he had gotten a second hand Vauxhall car for \$2,700.00 and he had borrowed the money from the Royal Bank of Canada. He had defaulted on his payments and Joseph had lent him \$275.00 on condition that the names of the Claimants were added to his deed as a measure of security. He wanted the \$275.00 and Joseph wanted to add the names. Joseph never lent him \$6,000.00 or anything more than \$275.00 but after so long he did not have a receipt to show that he had paid the Bank \$275.00.
- [19] Joseph's recollection of his 1973 visit to Montserrat had different dimensions to Charles'. Firstly, in the presence and hearing of Octavia O'Garro he had asked Charles whether or not he had placed his siblings' names on Block 11/3 Parcel 18, as Octavia had told him to do. Block 11/3 Parcel 18 was to be put in all their names and as he was the only one in the country, Charles was to put them until the others came home. Charles responded that he had put the Deed in his name alone and that it was in the Bank as security for a loan and that he could not get it back until he paid off the Bank. Secondly, Charles told him he had bought a car and he owed the Bank "6,000 something dollars" and that was what he had paid for him not \$275.00. He had taken it from the bank and given it to Charles.
- [20] During early January 1973, Joseph, his wife and Charles went to the offices of Mr. John Kelsick, Attorney at Law. Joseph contradicted both himself and Mr. Kelsick, who testified on his behalf, in his Affidavit and in cross-examination and re-examination as to what transpired during that visit. In the former, he sufficiently detailed his meeting with Mr. Kelsick and the instructions that he had given him in relation to correcting the Deed.
- [21] In the two other instances, he was clear that he had never met Mr. Kelsick and never had an opportunity to speak to him at all. This was consistent with what he had told Clarice. He testified

about meeting the receptionist at Mr. Kelsick's office and he had explained to her that Charles had a deed that he wanted to put all their names on it and he had given her the names.

[22] In his Affidavit, Mr. Kelsick recalled meeting with Joseph, his wife and Charles. Joseph was the one who had told him that Charles had put the title to the land at Hope in his name only, when it should have also put in the names of his brothers and sisters. He confirmed with Charles that this was correct and that he had agreed to do that. When Mr. Kelsick testified he made the point in cross-examination that his Affidavit spoke to matters which had taken place in 1973 and at this point in time he could not remember the details of the conversations that had taken place.

[23] He was sure however, that paragraph 5 of his Affidavit was correct. When Charles had returned to his office on 16th January 1973, he had read the deed over to him, showed him where to sign, given him a pen and Charles had signed the deed and left. Charles had not ever told him that he had any objections to signing the deed. When Mr. Markham put to him that Charles had said otherwise, Mr. Kelsick insisted that this was "*exactly what happened*".

[24] Mr. Kelsick stated that he had seen Charles again in 1997, when he and Clarice came to his offices to execute a transfer of land from the Claimants and Charles to the Crown. On that occasion, Charles did not raise any questions as to why the Claimants' names were included in the transfer.

[25] Charles' evidence as to what transpired when he visited Mr. Kelsick's law office was as contradictory as that of his brother Joseph. In his Affidavit, he spoke of one visit on or about 16th January 1973, which was on Clarice's instruction, and it was to go to Mr. Kelsick's Chambers to sign a document to add the Claimants' names to the deed that had been executed by Octavia O'Garro. At the office he was presented with a document, which he signed without reading it or having it read over to him or without him having the benefit of independent counsel.

[26] From his cross-examination there were at least two visits. The first with Joseph and Joseph's wife and on the other occasion he went alone. He could not say when the first visit took place but he knew it was before Joseph loaned him the \$275.00 because it was from Mr. Kelsick's office that he went to the Bank. Joseph had done all the talking to Mr. Kelsick. Although Charles was present

he could not say what Joseph had told Mr. Kelsick. He did not know that Joseph had said that he had put the land in his name instead of the names of his brothers and sisters. He had agreed to put their names on the deed because Joseph wanted security for his money. He also agreed to return when Mr. Kelsick had prepared the document and he did return by himself.

[27] Charles admitted that he returned and signed a deed but denied that Mr. Kelsick was there when he signed it. He got the document from "*Delcina*" and he had signed it with her. Mr. Kelsick had not told him anything neither had he read it over to him.

[28] Charles' Affidavit is dated 17th April 2003 and in it, he stated that he had "*recently learnt*" that the land he had purchased from Octavia O'Garro had been registered in the names of himself and Clarice, Daniel and Joseph. He maintained in cross-examination that this was the truth, he only knew when C.T. John had told him so. At one point, he testified that he knew that the land was registered in his name February 1997 but in his next answer when shown his signature on the Transfer of Land to the Crown, he admitted that he knew that all the names were on the Transfer Document. He had asked Clarice for his share of the proceeds of the sale but she told him she would not give him because he was living on the land. He clarified to the Court that the land was not the land that his family used to live on. He had not applied to subdivide the land.

[29] Christopher Gerald, the Acting Registrar of Lands testified that during the years 1979 to 1980, the Government of Montserrat commenced a land adjudication process of all the property on the island under the provisions of the Land Adjudication Act.

[30] As part of the process, on 12th September 1980, Charles Ryan, Clarice Ryan, Daniel Ryan, Joseph Ryan and William Ryan were recorded as the provisional owners of 5.5 acres of property described as Block 11/3/18 in Salem on the stringy of a Deed of Conveyance dated 31st December 1973 and numbered 129/1973 which had been presented to the Recording Officer. He knew that under the Land Adjudication Act some owners were registered using Deeds of Conveyance or by Indentures. On 12th January 1981, they were registered as absolute owners of the property.

[31] On 2nd February 1997, the property described as Block 11/3 Parcel 18 was mutated into two parcels Block 11/3 Parcel 70 and Block 11/3 Parcel 71 were registered in their names. The name of William Ryan was subsequently removed. On 12th March 1997, Block 11/3 Parcel 71 was transferred to the Crown. Block 11/3 Parcel 70 remains registered in the names of the Ryan siblings, Charles, Clarice, Daniel and Joseph.

[32] Mr. Gerald denied any complicity on the part of the Registrar in any alleged or actual fraud.

The Issues

[33] The questions which are raised on the pleadings and the facts are firstly: whether the court should order the rectification of the Register because the Claimants' names were registered as proprietors of Block 11/3 Parcel 70 by fraud or by mistake; secondly, if the court finds in the negative, it must then determine whether the Claimants are entitled to an order of partition in the terms of the Mutation Form that they had submitted. If the court concludes that rectification should be ordered, it must consider whether there is any liability on the part of the Registrar.

Were the Claimants' names registered as proprietors of Block 11/3 Parcel 70 by fraud or mistake?

[34] The court has the power to order the rectification of the register by directing that a registration be cancelled or amended, where it is satisfied that it has been obtained or made by fraud or mistake¹.

[35] In Charles' claim, he alleged that the register in respect of Block 11/3 Parcel 70, should be rectified by removing the names of the Claimants because they were placed there by fraud or mistake and the onus is on him to prove it on a balance of probabilities.

[36] In his affidavit evidence he repeats that assertion and goes on to state that it was not his intention to transfer his legal interest to them. He gave no further evidence as to the specifics of either the fraud or the mistake.

¹ Section 140 (1) of the Registered Land Act Cap. 8:01

- [37] Charles' case as presented to the court contains no reference as to whether the fraud or mistake that is alleged related to the actual registration of the Claimants' as proprietors or to the registration process. In my judgment, it is important that a Claimant set out the full particulars of the alleged fraud or mistake as well as whether it occurred on registration or during the registration process, when invoking the court's discretion to order rectification under Section 140(1)².
- [38] From Mr. Gerald's evidence, the Claimants and Charles were registered first as provisional owners and then absolute owners of Block 11/3/ Parcel 18 on the basis of a Deed of Conveyance Number 129/1973, which was presented to the Recording Officer as part of the adjudicating process. He also clarified that it was not unusual that owners were registered using Deeds of Conveyance and Indentures.
- [39] Without being specifically stated, the argument raised by Charles regarding fraud or mistake, clearly relates to the Indenture 129/1973, which the Claimants say he executed and he disagrees vehemently.
- [40] At paragraph 1.6 of the written submissions filed on behalf of Charles, under the rubric "*Unconscionable Bargains*", Mr. Markham refers to paragraph 344 of Halsbury's Law and the "*Jurisdiction to grant relief*", "*as part of the jurisdiction to grant relief against constructive fraud, courts of equity have acted to protect persons in cases in which it is apparent from the intrinsic nature and subject of the bargain itself, that it was one which no man in his senses and not under delusion would make on the other hand and no honest and fair man would accept on the other; in fact, an inequitable and unconscionable bargain. The principle has now been extended to all cases in which the parties contracting do not meet on equal terms, and is not limited to expectant heirs but applies to all persons under pressure without adequate protection, and the onus of supporting the transaction is thrown on the person benefitting. In determining, whether the bargain is a hard one, the whole transaction has to be considered and not only the price*". Mr. Markham submitted that Charles was a simple, trusting and naïve individual who had been taken advantage of and hoodwinked by his siblings.

² Ibid Note 1

- [41] If Mr. Markham is correct on one critical point, most of the arguments put forward would be of no moment. That point is that the Claimants have not satisfied the court that Charles executed a Deed conveying Block 11/3 Parcel 18 to them. He submitted that what the Claimants have relied on is not a copy of a deed but a copy of an unsigned document, purporting to be a deed and one which contains a fraudulent reference to the land being purchased by the Claimants and Charles for \$6,000.00.
- [42] In the Claimants' submissions, Mr. Brandt did not address the issue that they had relied on a document purporting to be a deed. He focused on authorities like **L'Estrange v F Graucob Ltd**³, **Muskham Finance Ltd v Howard**⁴, **Gaillie v Lee**⁵ to submit that in general if a person signs a document he is bound by its contents, unless it is signed mistakenly and in which case he can rely on the plea of non est factum. A plea which could not apply to Charles as on his own admission he knew that document which he was signing was one purporting to deal with his property and it did in fact deal with his property⁶.
- [43] The document that the Claimants rely on as being executed by Charles became part of the documentary evidence in this case through Mr. Kelsick. It was exhibited to his Affidavit filed on 2nd November 2007 and referred to as "JCK1". When Mr. Kelsick testified at the trial, Mr. Brandt applied to have the contents of his affidavit stand as his examination in chief, there was no objection from Mr. Markham and accordingly the Affidavit and "JCK1" were admitted into evidence. "JCK1" is a copy of an Indenture bearing the Number 129/1973. It was made on 16th January 1973 and the parties are Charles Ryan, the Transferor, and Charles Ryan, Clarice Ryan, Daniel Ryan, Joseph Ryan and William Ryan, the Transferees and concerns the transfer of approximately 15 acres of land at Friths Village. On the first page bears this notation "Registrar's office Filed on 5 Mar 1973 BH at 2.30 p.m. MONTSERRAT, W.I."

³ [1934] 2 KB 394

⁴ [1963] 1 QB 904

⁵ [1971] AC 1004

⁶ Howatson v Webb [1908] 1 Ch 537 Warrington J at 547

- [44] On the bottom of the second page at the right of the words "SIGNED SEALED AND DELIVERED by the above named CHARLES RYAN before and in the presence of: (Sgd) J.C. Kelsick Barrister-at-Law, are the words "Sgd) Charles Ryan (SEAL)".
- [45] The last page there are several notations including "RECORDED IN LIBER P VOL L FOLS 729 – 732 AND EXAMINED J.S. WEEKES REGISTRAR OF DEEDS CERTIFIED A TRUE COPY J.S. WEEKES REGISTRAR HIGH COURT MONTSEERRAT".
- [46] I do not agree with Mr. Markham that "JCK1" is a draft conveyance, the notations on the document particularly by the Registrar of Deeds, which were not challenged, lead me to conclusion that the Indenture was executed and signed by Charles and it was registered in the Deeds Registry and the court can rely on it as part of the Claimants' case.
- [47] I agree with him that the Indenture contains the recital that the Claimants purchased the land along with Charles from Octavia O'Garro for \$6,000 and this is not supported by any from them. In fact, both Clarice and Joseph denied knowing anything about the transaction.
- [48] In this case Charles has come to the court asking it to exercise its power to rectify the register in his favour because of fraud or mistake. No submissions were made in relation to mistake. The thrust of his arguments were that he was induced by fraud to execute the 1973 Indenture.
- [49] Mr. Markham has argued that if Charles had in fact transferred Block 11/3 Parcel 18 to his siblings as a gift, as Mr. Kelsick was the donee's solicitor Charles should have had independent advice⁷.
- [50] Charles' evidence is that on the first visit to Mr. Kelsick's office with Joseph and Clarice, he knew that Joseph wanted him to put the names of the Claimants on the deed. He might not have known exactly what Joseph said to Mr. Kelsick but he knew exactly why he was there, Joseph had not hidden that from him. Charles went back on his own to Mr. Kelsick when the deed was ready and I have accepted what Mr. Kelsick said transpired on that occasion, Mr. Markham has not suggested that I do otherwise. Mr. Kelsick read the document to Charles before having him sign it, he had

⁷ Powell v Powell [1900] 1 Ch 243 and Halsbury's Laws Vol. 18 para. 343

ample opportunity whether between the first and second visits to Kelsick or when the document was read to seek clarification independently, whether he is a trusting and naïve individual, he testified clearly that he agreed to put the names, he could therefore not have been hoodwinked.

[51] Charles was part of the process from the beginning when Joseph told him as a condition of him giving the money to clear off his debt bank, he wanted the names added. In my judgment, there is no basis for the court to exercise its jurisdiction to grant relief against constructive fraud. Even if I accept that Charles might be a simple man, in my judgment, he was fully in his senses and not under any delusion when he executed the Indenture.

[52] In my judgment, there is no evidence adduced by Charles on which the court can be satisfied on a balance of probabilities that the registration of the Claimants as joint proprietors was fraud or mistake or that there was fraud or mistake in the registration process.

Are the Claimants entitled to partition of Block 11/3?

[53] Section 5 of the Partition Act⁸ provides that any person entitled to claim partition may apply to the High Court for an order of partition. Section 103(1) of the Registered Land Act⁹ provides that any one or more of the proprietors of land owned in common may apply for partition.

[54] Having concluded, that the registration of the Claimants as joint proprietors is valid, it is my judgment that they are entitled to an order of partition in relation to Block 11/3 Parcel 70.

Was there any liability on the part of the Registrar?

[55] Section 7 of the Registered Land Act confers an indemnity on the Registrar where he has acted in good faith, in the exercise of his statutory duties.

[56] There was no allegation or evidence in this matter that the Registrar did not act in good faith in the exercise of his duties and therefore there can be no finding of liability against him.

Order

⁸ Cap. 8.16 of the Revised Laws of Montserrat

⁹ Revised Edition Laws of Montserrat 1999

- [57] For the reasons I have stated for my conclusions in this judgment, I make the following the orders:
- 1) Charles Ryan's application for an order for rectification removing the names as Clarice Ryan, Joseph Ryan and Daniel Ryan as proprietors of Block 11/3 Parcel 70 is refused.
 - 2) Clarice Ryan, Joseph Ryan and Daniel Ryan are three of the four proprietors of Block 11/3 Parcel 70 and are entitled to the partition of the property.
 - 3) That the partition of the property is directed and writ of partition is issued to the Registrar of Lands for the due carrying out of the order in accordance with Section 5 of the Partition Act¹⁰.
 - 4) That the part of Block 11/3 Parcel 70 on which Charles Ryan is in actual occupation shall not be affected by the partition.
 - 5) That the parties in this matter are to each bear their own costs.


Ianthea Leigertwood-Octave
High Court Judge

¹⁰ Supra