ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.326 OF 1994

BETWEEN:

EARL MC LEAN and
ELIZABETH MC LEAN

Plaintiff

and

PEARL MC LEAN and
LENNOX MC LEAN

Defendant

Appearances:
Ms Nicole Sylvester for the Plaintiffs
Mr Olin Dennie for the Defendants

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2000: June 21, 26
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JUDGMENT

[1] MITCHELL, J: This was a case brought for revocation of a Grant of Letters of Administration and cancellation of a deed of conveyance made by an administrator on the ground of fraud.

[2] The case was not a probate action brought under Order 53 of the 1970 Rules of the Supreme Court. None of the requirements of Order 53 have been complied with. There has been no citation to the Administrator to bring in the Grant. Indeed, the Administrator died some years before the issuing of the writ and the commencement of these proceedings. This action proceeded as an ordinary civil action in the High Court.

[3] There were many issues raised on the Statement of Claim endorsed on the Writ issued on 16 July 1994, and many other issues raised on the Defence filed on 10 April 1995, which were not pursued at the trial. For that reason, there is no point in setting out or even summarizing the pleadings and the claims made in them. Let us go straight to the facts as they emerged from the evidence and to the law and submissions produced by both parties to this dispute.

[4] Other than the acting Registrar of the High Court, who was called only to produce two files containing the documents relating to the applications for grants of letters of administration to the estate of the deceased Fitzroy McLean, the only witness for the Plaintiffs was the 1st Plaintiff himself. The 47-year old 1st Plaintiff gave his evidence in a straightforward and credible manner. He is an architectural designer who normally resides in Trinidad. The 2nd Plaintiff is a victim of Downs Syndrome, and resides in a nursing home in Trinidad. She did not appear in court. The only witnesses for the Defendants were the two Defendants themselves. The 1st Defendant was a frail and aged woman of 78 years who, in the words of her son, has a mind that sometimes goes off track. The 47-year old 2nd Defendant had a wild and unkempt appearance in the witness box, and admitted that he has a drinking problem. His memory of events was not good. He had been at one time in his youth been a bartender on a cruise ship, then a teacher, but has now been unemployed for some years. I did not find him a credible witness.

[5] From the testimony of these witnesses and the exhibits they put in evidence, I find that this is what happened. Fitzroy McLean was a Vincentian carpenter who spent most of his adult years in Trinidad. He married there, had his two children by his wife there, and died there. He was the father of the Plaintiffs, the two children referred to. On 9 July 1953 he had married Agatha Collins. Gerald Earl, their first child and the 1st Plaintiff in this case, was born on 19 September 1953 at the Colonial Hospital in Port-of-Spain. Elizabeth Ruth, their daughter and the 2nd Plaintiff, was born on 22 April 1955 at their home in Rosslands in St James in Trinidad. I will refer to Fitzroy McLean from now on as “the Deceased.” The

Deceased died at the age of 48 years of cardiac failure at his home on 30 August 1961 when his son the 1st Plaintiff was only 7 or 8 years old. His widow, Agatha, died the following year on 11 April 1962 at the equally early age of 47. The children were brought up at the family home at Rosslands by Mary Macdonald, their maternal grandmother. The Deceased had made a life for himself as a carpenter in St James in Trinidad. He does not appear to have visited St Vincent in the years just before he died. He died young in 1961, and we can safely assume that there is no one about living now to give evidence of him returning to St Vincent.

[6] The Deceased was a Vincentian. His father had been Remus McLean of Stubbs in St Vincent, now long deceased. His brother Bertram McLean was the husband of the 1st Defendant and father of the 2nd Defendant. There were other brothers and sisters of the Deceased and his brother Bertram McLean, including Sydney McLean and Kathleen Grant. Bertram McLean visited the Deceased and his wife and children in Trinidad at least once before he died, and stayed with them in their home in Rosslands for about a month. He returned to Trinidad in August 1961 to attend the funeral of his brother the Deceased. He stayed on that occasion as before in the home of the Deceased, with his widow and the children of the Deceased, the two Plaintiffs, for the duration of his visit, until he returned to St Vincent. The Deceased and his family do not appear to have visited St Vincent before the early

[7] This dispute is over one acre of land at Ratho Mill in St Vincent, allegedly belonging to the Deceased, that the Plaintiffs claim should have passed to the heirs of the Deceased. They allege that their uncle, Bertram McLean, fraudulently applied for a Grant of Letters of Administration to their father's estate. The claim of the Plaintiffs is that Bertram McLean, who I shall refer to from now on as "the Administrator," first vested the disputed land in himself and, then, subsequently transferred it by a deed of conveyance to the 2nd Defendant, reserving a life interest in himself and his wife, the 1st Defendant. The history of the title to the

land at Ratho Mill is not relevant to this case. There is evidence of other lands of the father of the Deceased and the Administrator at Stubbs, but that land is not involved in this dispute. The Defendants in their evidence and in their final submissions accept that the lands at Ratho Mill belonged entirely to the Deceased and should have passed to his children on his death.

[8] The history of the administration of the estate of the Deceased bears setting out in full. The earliest file produced in evidence shows that in 1978 the 1st Plaintiff was in St Vincent and instructed Hilary Samuel, a Solicitor practising at that time in Kingstown in St Vincent, to apply on his behalf for a Grant in the estate of his father, the Deceased. That file is numbered 33/1979. In the Petition in support of the application, the 1st Plaintiff sets out the death of the Deceased, of his widow less than a year later, and of the existence of the surviving two children, himself and his sister Ruth. The Estate Duty Affidavit of the 1st Plaintiff filed at the same time as the above Petition lists the estate as consisting of 2 acres, 3 roods, and 18 poles at Ratho Mill and 2 acres at Upper Stubbs. The application shows that the applicant, the 1st Plaintiff, proposed to divide the lands equally between himself and his sister. Estate duty due was $2,906.07. P Rutherford Cox of Kingstown and Hermie Miller of Fair Hall came forward to sign the Administration Bond with the 1st Plaintff. The two declarations of value on the file show that the land at Ratho Mill was recorded on the Tax Roll as owned by the Deceased while the Deceased was entitled to a half share of four acres at Upper Stubbs, which he had as I understand it from the evidence inherited from his late father. It is not clear how the lands at Upper Stubbs came to be claimed by the 1st Plaintiff as being owned equally by his late father and his uncle. These lands at Upper Stubbs are not involved in this lawsuit. Nothing came of this application, No 33/1979, for a Grant to the estate of the Deceased. The 1st Plaintiff gave evidence of his going from lawyer to lawyer over the next several years, but not being able to get the application for a Grant completed. To this day he does not understand why the Grant was not issued to him. No explanation has been forthcoming. Though it is a possibility, there is no evidence that his residence in Trinidad, which puts him

outside of the jurisdiction of this court, was the reason why the Registrar did not issue the Grant. The amount of estate duty had been calculated and the Registrar's note on the file says that Mr Samuel had been informed on 5 February 1981 and on 1 December 1981. A Grant cannot normally issue until the applicant pays the estate duty into the Treasury. Perhaps, the Grant was not made to the applicant 1st Plaintiff simply because the assessed estate duty was not paid. In any event, the application languished uncompleted and pending on the files of the Registrar of the Supreme Court.

[9] On 3 May 1982 the Administrator applied for a Grant of Letters of Administration to the same estate of the Deceased. It would appear that the Registrar does not keep an index of applications for Grants of Probate and Letters of Administration. I am forced to this conclusion because the name of the deceased is identical on both applications, made only three years apart. The death certificates on file confirm that it is the same Fitzroy McLean who died on 30 August 1962 who is the object of the two applications. It must by unusual to make a Grant to one applicant when there is another, earlier, still fresh, application in the same estate pending on the files. If there had been an index of applications in the Probate Registry, then the Registrar could never have approved the second and later application when there was still pending and almost complete the earlier application that put a lie to the various claims of the applicant in this second application. In one of the first affidavits that the Administrator swore in this application, on 3 May 1982, he deposed merely that he was the eldest brother of the Deceased, and one of the persons entitled "along with Katreen Grant" to share in the estate of the Deceased. The Estate Duty Affidavit lists only the real property at Ratho Mill as belonging to the Deceased. It is given as two acres, 3 roods, and 18 poles of land. The Upper Stubbs land is not mentioned at all. The Administrator apparently considers that his late brother had no interest in the lands of their father at Upper Stubbs. There is no explanation for this conclusion before me, and in any event, the question does not arise in these proceedings. The Valuation Certificate of 25 May 1982 explains that the land in question consists of Lots 76, 77, 80, 81, 84, 88, 89, 92,

93, and 94 at Ratho Mill. It is stated in the Certificate that Remus McLean of Stubbs purchased the land in 1945 and listed the land on the House Tax Roll in the name of the Deceased. Joining with the Administrator in the Administration Bond were Annette Harry and Rosita John both of Kingstown. It would appear that the Registrar was not satisfied on the documents filed with the entitlement of the Administrator to a Grant, for on 19 October 1982 there is another affidavit of the Administrator on the file. This time, the Administrator swears that the Deceased, his brother (in whose home in Trinidad and with whose family he had stayed on his visits, not least at the time of the Deceased's funeral), had died "intestate, a widower, without issue, and his parents having predeceased him." This statement was patently false. The Administrator must have known it was false. It was a fraud on the children of the Deceased.

[10] It would appear from deed No 2501/1982 that, on 26 October 1982, the Administrator obtained a Grant of Letters of Administration to the estate of the Deceased based on his fraudulent application described above. He proceeded in deed No 2501/1982 to vest in himself the entire property of the Deceased at Ratho Mill. This deed was a fraud on the estate of the Deceased.

[11] Subsequently, on 12 August 1983, by deed No 292/1991, the Administrator proceeded to transfer to his son, the 2nd Defendant, subject to a life interest reserved to himself and conveyed to his wife the 1st Defendant, one acre of the Deceased's Ratho Mill lands. This acre is the land in dispute in this case. The deed for the land in dispute states that the 2nd Defendant paid $2,000.00 in consideration of the conveyance of what would be the reversionary interest in the one acre to him. The consideration for the conveyance of the life interest to his wife is given in the deed as "natural love and affection." It would seem that the Inland Revenue Department was not satisfied with the expressed consideration of $2,000.00 said to have been paid for the land. They did not accept the price paid as the open market value of the property. The Tax Officer on 16 August 1983 valued the property at $21,780.00, or some ten times the value of the

consideration allegedly paid by the 2nd Defendant for the land in dispute. In evidence at the trial, the 2nd Defendant gave evidence of having supported his aged father and mother for many years. He attempted to say that this support was additional consideration for the conveyance to him. I have no doubt that he has supported his father and mother. However, there is no credible evidence that this support was consideration for the conveyance. No such consideration is mentioned in the deed. No such consideration was pleaded in the Defence filed in this case. The 2nd Defendant in cross-examination admitted that he carried out no investigation of his father's title before purchasing his acre. He claimed he simply believed his father owned the land. Before leaving the deed, it needs to be commented on that the conveyance in question was not registered for some eight years. It was kept from 1983 until it was presented to the Registry of Deeds for registration in the year 1991. The Registration of Documents Act, Cap 93 of the Laws of St Vincent and the Grenadines, governs the registration of deeds. This Act does not, unlike similar Acts in other islands of this jurisdiction, place any restriction on the period of time that may pass before an executed deed must be registered. In other islands of this jurisdiction, the deed in question would have been incapable of being registered so late without the leave of the court. No such restriction applies in St Vincent, and the late registration was lawful. No one could know of this wrongful transfer until the deed had been published to the world at large by registering it in the year 1991 in the Registry of Deeds.

[12] In the year 1992, the 1st Plaintiff was pursuing through new lawyers his stale application for a Grant to the estate of his late father, the Deceased. It was at this time he became aware that the Administrator had obtained the previously mentioned Letters of Administration to the estate of the Deceased, and had transferred the acre of land to the 2nd Defendant. In suit No 224/1992 the 1st Plaintiff, expressing himself on the summons in that suit as the intended administrator of the estate of the Deceased, obtained an order in Chambers from Joseph J on 22 May 1992 that the 1st Defendant be appointed personal representative of the estate of the Administrator pursuant to Order 15, Rule 15, of

the 1970 Rules of the Supreme Court. It is in that capacity that the 1st Defendant is sued in this suit. This suit ensued on 18 July 1984.

[13] The 2nd Defendant relies on the protection given to a bona fide purchaser for valuable consideration of a legal estate without notice. The governing statute is the Administration of Estates Act, Cap 377 (hereinafter "the AEA".) Counsel for the Defendants had no law other than the statute for the assistance of the court. He submitted that the if the court found that the Administrator had converted the lands of the Deceased to his own use, then his personal representative should be liable to the extent that the Administrator would be liable if he were still alive. He submitted that the Plaintiffs had not proven that the 2nd Defendant knew of the fraud committed by his father. Counsel for the Plaintiffs relied on the AEA as well, submitting that it was the Defendants who bore the burden of proving that they were entitled as bona fide purchasers for valuable consideration without notice. She urged the court to find that the Defendants had not discharged that burden. In addition to her extensive and very helpful written skeleton argument, counsel produced a list of her authorities and copies for the court and for counsel for the Defendants of the authorities and legal texts on which she relied. This skeleton argument dealt with all the issues raised on the pleadings. Some of these issues, such as the Limitation Act defence, and the defences of acquiescence and laches, were, in the event, not pursued by the Defendants at the trial, and the argument and authorities of counsel for the Plaintiffs on those issues need not be dealt with further. The authorities and texts produced by counsel for the Plaintiffs that do relate to the remaining issues, and that have proven very helpful to the court in dealing with the facts as found above, include:

Lazarus Estates Ltd v Beasley [1956] 1 QB 702
In re Nisbet and Potts' Contract [1906] Ch 386
Hooper v Conyers [1886] LR. 2 Eq, 549
Re Diplock [1948] Ch 465
Ministry of Health v Simpson [1951] AC 251

> Williams, Mortimer and Sunnucks on Executors, Administrators and Probate, 16 Edition, 1982, at page 673 under the rubric "Fraudulent purchaser is not protected."
>
> Cheshire and Burn's Modern Law of Real Property, 14 Edition, 1988, at page 58 under the rubrics, "Without notice," and "Bona fide."
>
> Snell's Principles of Equity, 27 Edition, 1973, at page 46 under the rubric "The Purchaser without Notice."
>
> Halsbury's Laws of England, 4 Edition, Volume 17, at paragraph 1130, dealing with the Administration of Estates Act, 1925.
>
> Halsbury's Laws of England, 4 Edition, Volume 18, at paragraph 375, in the Chapter under Family Arrangements, Undue Influence, Voidable Conveyances, under the rubric "What amounts to good faith."

[14] The beneficiaries of a deceased have long had in equity a right to follow the assets of a deceased into the hands of those to whom it has been wrongfully distributed. The House of Lords, in Ministry of Health v Simpson [supra] reviewed the authorities going back nearly 300 years and pointed out the basis of the jurisdiction, the evil to be avoided, and the remedy available. Further, apart from equity, there is the statutory right to follow the properties. This is found at section 53(1) of the Administration of Estates Act, Cap 377:

> An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice the right of any person to follow the property to which the assent or conveyance relates, or any property representing the same, into the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested.

[15] In section 2 of the AEA, 'purchaser' is defined as a person who in good faith acquires an interest in property for valuable consideration. In the same section,

'valuable consideration' is defined as not including a nominal consideration. The consideration paid by the 2nd Defendant for the land in dispute was one tenth of its value. That can be fairly described as a nominal consideration. The 2nd Defendant was, therefore, not a purchaser of the land in dispute for valuable consideration. The consideration expressed to have been paid by the 1st Defendant was 'natural love and affection.' That is not valuable consideration as would protect a purchaser in circumstances of fraud. But that is not the only problem with the disputed deed. The 2nd Defendant grew up in the home of his parents, the Administrator and the 1st Defendant. His father, the Administrator, visited the family of the Plaintiffs in Trinidad and stayed in their house for a month on at least one occasion. He attended the funeral, and stayed again for several days in their house. It strains belief, in those circumstances, that the 1st and 2nd Defendants did not know, as they testified, of the existence of their nephews and nieces and first cousins in Trinidad. The 2nd Defendant knew, as he admitted, that his father had obtained the estate of the Deceased. He claims that he did not know that the Deceased left a wife and children. I do not believe him. I believe that he either knew that his father had defrauded the estate of his own brother to enrich himself with the admitted lands of his brother, or he was reckless in taking an acre of the lands of the Deceased without making the necessary enquiries. The same applies to the 1st Defendant. One can expect that a purchaser from a fraudulent Administrator will take care not to have notice of the fraud. The rule is, therefore, that a purchaser must be diligent and act in a reasonable manner, making all those investigations that a purchaser of land is normally expected to make. Then, he will be affected only by actual notice of the fraud. If he omits to make the usual investigations, then, he lays himself open to be affected by constructive notice. Notice has long been implied when a purchaser omits to investigate the vendor's title properly, or to make reasonable enquiries as to deeds or facts which come to his knowledge. He will be deemed to have notice of anything which he has failed to discover because he did not investigate the title properly or if he did not inquire for deeds or inspect them. Proof of title in St Vincent takes the form of the production by the vendor of an abstract of title. One

object of investigating title is to discover if the land is subject to rights vested in persons other than the vendor. The equitable doctrine of notice says that a purchaser is bound by any right which he would have discovered if he had made the ordinary investigations of deeds, births, deaths, marriages, and other facts which affect the ownership of land. I find that the 1st and 2nd Defendants had actual notice of the fraud of their husband and father, the Administrator. Even if they did not have actual notice, they had constructive notice from the application of the principles above. It has long been established that the onus of proving the purchase of a legal estate was without notice rests on the purchaser. The 1st and 2nd Defendants have not discharged this onus. The transfer from the Administrator to them was fraudulent and the 1st and 2nd Defendants not taking in good faith do not obtain the benefit of the statutory protection provided by the AEA to a bona fide purchaser without notice.

[16] By the Amended Statement of Claim filed on 3 April, 1995, the Plaintiffs seek the revocation of the Grant of Letters of Administration of the estate of Fitzroy McLean, deceased, numbered 145 of 1982. That Grant was, I have found above, fraudulently obtained. If the relief had been sought against the Administrator in a probate action while he was alive, I should have no hesitation in granting the order. In this case, the Administrator is dead, and this suit is not a probate action as properly understood. Fraudulent though the application for the Grant was, the Administrator may have taken action in relation to other properties and other persons under the Grant which may be protected under the AEA. Revoking the Grant will not affect the validity of those acts. Any fraudulent act committed by the Administrator in collusion with any other person than the Defendants in this case must await challenge and proof on the facts in that case. Revoking the Grant now will not automatically affect even other fraudulent actions taken by the Administrator in collusion with persons who are not parties to this action without specific proof in those cases. The rule as I have always understood it is that a Grant of Letters of Administration dies with the death of the administrator. If the administrator acted fraudulently in obtaining the Grant, his heirs, administrators,

and assigns cannot use the Grant to do more mischief. The estate of a deceased remaining unadministered after the death of the administrator awaits the appointment of an administrator *de bonis non* to continue and complete the administration. The Non-contentious Probate Rules set out the procedure for one of the heirs of the deceased whose estate remains wholly or partly unadministered after the death of the administrator to apply to have another administrator appointed. The 1st Plaintiff, providing he satisfies the residence and other restrictions contained in the Probate Rules and the probate practice of St Vincent, may be entitled as an heir to complete the application he made earlier for the Grant to his late father's estate. With suitable amendments to the application, a grant may perhaps be made to him as a Grant *de bonis non*. Or, he may be advised to abandon his earlier application, and to file a new application. If he does not satisfy the requirements of the Rules, for example, through not residing under the jurisdiction of this court, then he may give a Power of Attorney to someone within this jurisdiction to make the application on his behalf and to vest the estate in himself and his sister. I am unable to see what possible use will be served, even if it is legally possible, applying section 20 of the Eastern Caribbean Supreme Court (St Vincent and the Grenadines) Act, in revoking the fraudulent Grant of Letters of Administration at this point many years after the death of the Administrator when the Grant has become spent and of no further power or effect. To do so smacks more of the medieval punishment of pillorying the murder weapon when the murderer is not available than of a properly authorised legal remedy. However, no one doubts that the Grant was fraudulently applied for. For what it is worth, the Grant of Letters of Administration of the estate of Fitzroy McLean, deceased, numbered 145 of 1982 made to Bertram McLean are hereby revoked.

[17] The Plaintiffs next ask for an order that the deed of conveyance No 292 of 1991 be cancelled. For the reasons given above the relief is proper and appropriate and an order is made accordingly.

[18] The Plaintiffs ask for a declaration that the Defendants are holding the property in trust for the Plaintiffs. There is no jurisdiction in the court to grant this declaration in the terms sought. The Defendants are holding the property in trust for the estate of the Deceased. The Deceased's heirs must go through the normal and appropriate procedures, some of which have been referred to above, and have a new Administrator of the estate of the Deceased appointed. The estate of the Deceased may be more than the lands at Ratho Mill, as it appears from the earlier application of the 1st Plaintiff for a Grant that the estate may include an interest in the lands at Upper Stubbs. The new Administrator will hold all the Deceased's estate, including the property in dispute, in trust for the heirs of the Deceased. But, the appropriate procedures set out in the law for the protection of the revenue, creditors, and others dealing with the Deceased and his estate ought in each case to be followed. The Plaintiffs are granted a declaration that the property described in deed of conveyance No 292 of 1991 remains vested in the estate of the deceased Fitzroy McLean and awaits the appointment of an Administrator to deal with it as part of the unadministered estate of the Deceased.

[19] The next relief sought is a declaration that the Plaintiffs are the only persons entitled to the estate of Fitzroy McLean, deceased. This is not a probate action, as previously mentioned. I am not sure what good the relief sought will be. However, having heard the evidence, I am prepared to grant the order if it will help in some way to sort out the administration of this much abused estate. The Plaintiffs are declared to be the only persons entitled to the estate of Fitzroy McLean, deceased.

[20] The further relief sought by the Plaintiffs is an injunction to restrain the Defendants whether by themselves their servants and/or agents or howsoever otherwise from entering or crossing or occupying or building or excavating or cultivating the property or any portion thereof and from exercising any acts of ownership thereon. This relief is appropriate and is granted.

[21] The Plaintiffs further seek an injunction to restrain the Defendants whether by themselves their servants and/or agents or howsoever otherwise from selling, mortgaging, leasing, renting, transferring or howsoever otherwise dealing, disposing, transferring or alienating the property or any part or portion thereof. This relief is appropriate and is granted.

[22] The Plaintiffs are entitled to their costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge