

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANGUILLA
(CIVIL)**

AD 2009

CLAIM NO. AXA/HCV 2005/0053

BETWEEN:

**WILMOTH RICHARDSON
CISLYN RICHARDSON**

Claimants

AND

**LOLITA DAVIS-RICHARDSON
REGISTRAR OF LANDS & SURVEY**

Defendants

2007: January 24;
2009: June 23.

Appearances:

Ms. Siobhan Lloyd with Ms. Eustella Fontaine for the Claimant.

Ms. Paulette Harrigan for the 1st Defendant.

Mr. Ivor Greene, Senior Crown Counsel, holding a watching brief for the 2nd Defendant

JUDGMENT

Background

[1] The First-named Claimant ["Wilmoth Richardson"] is a businessman. The Second-named Claimant ["Cislyn Richardson"] is Wilmoth Richardson's wife. The First Defendant ["Mrs. Davis-Richardson"] owns land at West End in the island of Anguilla and is a lawyer by profession. The Second Defendant is the Registrar of Lands and Surveys ["the Registrar"].

[2] In February 2001, Wilmoth Richardson agreed to purchase one acre of land at West End, from Mrs. Davis- Richardson. The terms of that agreement are central to the dispute this claim.

[3] The case for Wilmoth Richardson and Cislyn Richardson is that after preliminary discussions on the matter, Mrs. Davis-Richardson had verbally agreed to sell Wilmoth Richardson an acre of land at West End, identified as Parcel 179, at a purchase price of US\$60,000.00. Wilmoth Richardson had made arrangements to obtain funds to complete the purchase from the Caribbean Commercial Bank ["CCB"] and a manager's cheque in that sum was issued in favour of Lolita Davis-Richardson and Barclays Bank. Mrs. Davis-Richardson had signed a Transfer of Land Form in relation to the transaction.

[4] Some months later, Wilmoth Richardson paid the stamp duty for the parcel of land but was unable to register it because Mrs. Davis-Richardson still held the Land Certificate. He then applied to the Registrar, under the Registered Land Act ["the Act"]', that the requirement for the Land Certificate had to be produced, be dispensed with, in order to facilitate the registration of the Transfer of Land Form. The Application was not adjudicated on by the Registrar, who had subsequently recused himself from the matter.

[5] Wilmoth Richardson and Cislyn Richardson then filed this Claim seeking orders:

1. Directing the Registrar of Lands and Surveys to register Parcel 179 in their names;
2. Restraining Mrs. Davis Richardson, her servants and/or agents from interfering with the registration;
3. Directing Mrs. Davis Richardson to produce the Land Certificate for registration in accordance with the Land Registration Act.

Or in the alternative damages for:

1. Interference with their title; and
2. Breach of the Sale Agreement.

Additionally they have also claimed:

1. Interest; and
2. Costs.

[6] In her Defence, Mrs. Davis-Richardson alleged that she had agreed to sell Parcel 179 to Wilmoth Richardson for US\$80,000.00. He had made an initial payment of US\$60,000.00 with the balance to be paid within six months. Despite extensions and repeated requests, Wilmoth Richardson made additional payments but never paid the full purchase price. Mrs. Davis-Richardson had subsequently informed the Registrar that Wilmoth Richardson owed her money for the sale of Parcel 179 and that she was holding her Land Certificate until he paid the money owed to her.

[7] Wilmoth Richardson later asked her to sell him 0.75 acres of land for US\$60,000.00 instead of one acre, which she agreed to do and she had undertaken to have Parcel 179 sub-divided to remove 0.25 acres from the lot.

[8] Mrs. Davis- Richardson counterclaimed alleging that Wilmoth Richardson and Cislyn Richardson and/or their servants and/or agents had fraudulently represented in the Transfer of Land Form that she had sold them Parcel 179 for US\$60,000.00. She claimed that in addition to and and/or in the alternative Wilmoth Richardson, had by his conduct, renounced the contract to purchase 0.75 acres of land causing her loss or damage.

[9] In her counterclaim, Mrs. Davis-Richardson sought the following relief:

1. An order that the Transfer of Land Form dated the 3rd October 2001 be set aside;
2. A Declaration that Wilmoth Richardson had by his conduct renounced the contract to purchase 0.75 acres of land;
3. Damages for breach of contract and misrepresentation;
4. Costs.

Issues for Determination

[10] The issues that the court must determine in this matter are as follows:

1. Did the Transfer of Land Form reflect the terms agreed by Wilmoth Richardson and Mrs. Davis-Richardson for the sale of Parcel 179?
2. Did Wilmoth Richardson and Cislyn Richardson whether by themselves or by their servants or agents falsely represent on the Transfer of Land Form that the purchase price for Parcel 179 was US\$60,000.00?
3. Was there an agreement between Wilmoth Richardson and Mrs. Davis-Richardson, for the sale of 0.75 acre of land, which was subsequently renounced by Wilmoth Richardson?

Representation of the Registrar

[11] At the commencement of the trial, Senior Crown Counsel, Mr. Greene applied to the court to be allowed to hold a watching brief for the Registrar.

[12] He submitted that in accordance with Section 13[2] of the Crown Proceedings Act, all civil proceedings against the Crown must be issued against the Attorney General and not as in this case against the Registrar. No documents had been served on the Attorney General and Mr. Greene was not aware of the substance of the matter. Ms. Lloyd agreed with the applicability of section 13[2] and confirmed that only the Registrar had been served. The court granted Mr. Greene's application.

The Oral Agreement

[13] In coming to determination on the issues in this case, the evidence in relation to three aspects are particularly relevant, the oral agreement between the parties, the Transfer of Land Form and the payments made by Wilmoth Richardson to Mrs. Davis-Richardson after she had received the cheque for US\$60,000.00. An appropriate starting point would of the oral agreement.

[14] Wilmoth Richardson's evidence is that he had learned through Pedro Martin, that Mrs. Davis-Richardson had land for sale in West End. On 14th February 2001, he met with Mr. Martin on the land. He understood that the land measured two and a half acres and he wanted to purchase an acre. Mr. Martin relayed that information to Mrs. Davis-Richardson, who had then joined them at West End.

[15] Wilmoth Richardson walked around the land with Mrs. Davis Richardson and identified the part that he was interested in buying. He had enquired and Mrs. Davis-Richardson had confirmed that this was the land that Barclays Bank had put up for sale. She told him that she just wanted to pay off Barclays Bank and he would be assisting her in doing so if he bought the land.

[16] Mrs. Davis Richardson told him that she was asking US\$80,000.00 for the land. His response was that he would pay what was owed to Barclays Bank in exchange for one acre of land. Mrs. Davis-Richardson later confirmed to him that she owed Barclays Bank US\$60,000.00. Wilmoth Richardson asked her if she was willing to accept US\$60,000.00

for the acre of land that he was interested in purchasing and Mrs. Davis-Richardson agreed.

[17] They agreed that Mrs. Davis-Richardson would make arrangements to have the property surveyed and to have all the necessary documents forwarded to CCB to facilitate the transaction. After the CCB had received the documents, Wilmoth Richardson signed the requisite loan documents and a manager's cheque dated 15th February 2001, for the sum of US\$60,000.00 was issued in favour of the Mrs. Davis-Richardson and Barclays Bank.

[18] When he was cross-examined, Wilmoth Richardson vigorously denied agreeing at any time to purchase Parcel 179 from Mrs. Davis-Richardson for US\$80,000.00. He did not recall any discussions with Mrs. Davis-Richardson in November 2000 about buying, dividing or surveying land. He agreed that the land that he was looking at with Pedro Martin on 14th February 2001, belonged to Mrs. Davis-Richardson and to the best of his knowledge it was 2 ½ acres. Therefore, to get the one acre that he wanted to buy the 2 ½ acres would have to be divided up. When it was put to him that on the 14th February 2001, Parcel 179 did not exist, his answer was that he did not know. What he did know was that he had shown Mrs. Davis Richardson the portion of land that he wanted and they had actually walked on that particular piece of land.

[19] When he was asked to explain what he meant by saying that after they had agreed the purchase price of US\$60,000.00, it was agreed that Mrs. Davis-Richardson would make arrangements to have the property surveyed and all the documents forwarded to the CCB for the transaction to occur. His response was that he was new to buying land but he knew that if someone was selling land or transferring land to someone, there would be procedures to be followed, which would include surveying the land and title of ownership. Information such as the names of the parties, purchase price, parcel number and lot and the signatures had to be recorded on the form. He also understood that the transfer form was the relevant or necessary document to be forwarded to CCB to facilitate the transaction.

[20] Mrs. Davis-Richardson was clear throughout her evidence that at no time did she have any agreement or discussion with Cislyn Richardson in relation to this case. Mrs. Davis-Richardson's evidence is that discussions between herself and Wilmoth Richardson about him purchasing one acre of land from her began sometime in November 2000. At that time she was selling Registration Section West End Block 17809B Parcel 78. She informed Wilmoth Richardson that Parcel 78 was not sub-divided at the time and that her asking price for an acre was US\$80,000.00 for locals and US\$100,000.00 for non-locals.

[21] In February 2001, her land at West End consisted of 2.94 acres and it was not subdivided at that time. Barclays Bank had a charge on the property. She owed US\$60,000.00. and Barclays Bank had advertised the property for sale.

[22] On 14th February 2001, she met with Wilmoth Richardson on the land and it was agreed that he would purchase an acre of land from her for US\$80,000.00. After he made some enquiries in her presence, he informed her that his bankers could only give him US\$60,000.00, which he asked her to accept as a deposit allowing him to pay the balance within six months. She agreed to this. As she needed money urgently, Wilmoth Richardson made arrangements for her to collect a cheque from CCB on the following day. She maintained that Preston Bryant the manager of CCB knew that the purchase price for the one acre was always US\$80,000.00.

TRANSFER OF LAND FORM

[23] The evidence on the oral agreement between Wilmoth Richardson and Mrs. Davis-Richardson leads directly to the hotly disputed Transfer of Land Form.

[24] Mrs. Davis-Richardson's evidence is that after the oral agreement with Wilmoth Richardson, she went to CCB to collect the cheque on 15th February 2001. It was ready but she had to sign the Transfer of Land Form before the funds would be released. She signed a blank Transfer of Land Form that CCB had given to her. In cross-examination on this point, she went to say "we are required to do it all the time by the bank without details".

- [25] She stated that she fully understood that she was signing a land transfer form but did expect anyone to put in false particulars. She left it in the custody of CCB, in particular, with Preston Bryan, CCB's manager. She received the Manager's cheque in the sum of US\$60,000.00. She did not complete the Transfer of Land Form but she knew that the document did not reflect the terms of agreement between herself and Wilmoth Richardson.
- [26] Wilmoth Richardson admitted in cross-examination that in obtaining the loan from CCB, he had provided them with instructions as to whom he was purchasing the land from and where it was located and that he was paying US\$60,000.00 for the land. He had also given CCB instructions to release the funds when Mrs. Davis-Richardson had signed the Transfer of Land Form and to put his wife's name as joint owner, as the loan was to the two of them.
- [27] He however denied having any dealings or anything to do with the Transfer of Land Form. When he had collected the Transfer of Land Form from the Bank on 3rd December 2001, it was fully completed and he noted that it had been signed by Mrs. Davis-Richardson. He was not present when it was filled in or when it was signed by Mrs. Davis-Richardson. The particulars on the Form had been filled in but he did not know who had filled them in. Those particulars stated that Mrs. Davis-Richardson was transferring Parcel 179, which measured approximately one acre to Wilmoth Richardson and Cislyn Richardson as joint owners in consideration of the sum of US\$60,000.00. He denied that he or any person on his behalf had filled in those particulars.
- [28] When asked why he waited so long to collect the Transfer of Land Form, his response was that he had collected it in his own time. After collecting it he did not have sufficient funds to pay the Stamp Duty and he felt that he could take any amount of time to pay. It was his money and he did not have a burning obligation to transfer the land at any particular time.
- [29] In the skeleton arguments and in her closing address, Ms. Lloyd submitted on behalf Wilmoth and Cislyn Richardson that the court should accept that the Transfer of Land Form, signed by Mrs. Davis-Richardson, as a complete record of the contract between the

Richardsons and Mrs. Davis-Richardson, as it contained all the material terms of the contract for sale, namely, who the parties were, the property being disposed of and the consideration for the disposition¹. She urged the court to consider this further in light of the certificate at the back of the Transfer of Land Form, not challenged as being that of Preston Bryan or being signed by Mrs. Davis-Richardson, which is in the following terms:

'I HEREBY CERTIFY that the above-named appeared before me on the 15th day of Feb. 2001 and being identified by me ... acknowledged the above signatures ... to be ... hers ... and that ... she had freely and voluntarily executed this instrument and understood its contents'

[30] By signing, Mrs. Davis-Richardson had authenticated the Transfer of Land Form. Although, the Transfer of Land form had not been registered, there was nothing to prevent Wilmoth Richardson from relying on it as representing the contract² with Mrs. Davis Richardson. Where, as in this case the contract was in dispute and it involved the disposition of an interest, the Registered Land Act³ requires that there must be evidence that the party to be charged has signed a note or memorandum⁴. As the Transfer Form contained all the material terms of the contract, the court should not admit extrinsic evidence, i.e. evidence of matters outside the Transfer of Land Form⁵, to prove that the parties had orally agreed to terms which ought to have been but were not included in the memorandum.

[31] It was not sufficient for Mrs. Davis-Richardson to say to the court that she had signed the form when it was blank and to argue that for that reason the Transfer of Land Form and its contents ought to be disregarded.

[32] Relying on **United Dominions Trust Ltd. V Western and Another**⁶, Ms. Lloyds's submitted that by signing the blank form Mrs. Davis-Richardson was under a duty of care to the Richardson's to ensure that the completed document represented her true

¹ Halsbury's Laws of England, 4th ed., Vol. 42 at para. 35

² Revised Laws of Anguilla R 30

³ Section 37[2]

⁴ Ibid.

⁵ Chitty on Contracts 27th ed. Para. 2-080

⁶ [1975] 3 All ER 1017

contractual intention and that the onus was on Mrs. Davis- Richardson to show that in allowing the form to be filled in by someone else, she had acted carefully.

- [33] Ms. Harrigan did not disagree with that legal proposition but she sought to distinguish the case on the basis that they were factually different. In **United Dominion**, the plaintiff sought to enforce the contract and there was no claim made in relation to fraud, rescission or material alteration as in the present case.
- [34] Ms. Harrigan also argued that as Mrs. Davis-Richardson's had alleged that Wilmoth Richardson, knowing the purchase price under the contract to be US\$80,000.00, had whether by himself or his agents, fraudulently misrepresented it on the Transfer of Land Form to be US\$60,000.00, it fell into one of the exceptional circumstances where extrinsic evidence, should be admitted⁷, even if there was a written agreement, as required by law.
- [35] She referred to Wilmoth Richardson's evidence that he had given instructions to CCB in relation to his agreement with Mrs. Davis-Richardson. She urged the court to accept that the Transfer of Land Form was filled in by Wilmoth Richardson and Cislyn Richardson, in light of the particulars that it contained. As far as Mrs. Davis-Richardson was aware she was selling land to Wilmoth Richardson, and he was the only person who would know that his wife Cislyn Richardson was to be included as a joint owner and this was one of the particulars on the form. In addition, at the time Mrs. Davis-Richardson signed the Transfer of Land Form, there was no parcel number in relation to the land that Wilmoth Richardson had agreed to buy because the land had not been partitioned, yet the Form included a parcel number. It was her submission that Wilmoth Richardson had acted dishonestly and as such the Transfer of Land Form should be set aside.
- [36] Because Mr. Richardson had acted fraudulently, the court could properly consider the extrinsic evidence that in October 2001, Mrs. Davis-Richardson had sold a half an acre of land in the location and to Brent Davis for US\$40,000.00 and that Wilmoth Richardson had admitted to Pedro Martin that he owed Mrs. Davis Richardson money.

⁷ Phipson on Evidence, 16th ed. Para. ??? 42-46

[37] Wilmoth and Cislyn Richardson denied any fraudulent misrepresentation on their part and it was submitted that that it would be for Mrs. Davis Richardson to satisfy the court on a balance of probabilities that not only was there a false representation, but that it was fraudulent⁸. Only if the court was so satisfied and found fraud on the part of the Richardsons would it be permissible to consider extrinsic evidence⁹.

[38] It was argued in the skeletons filed on behalf of Mrs. Davis-Richardson that other than for Wilmoth Richardson's fraudulent misrepresentation, the court should set aside the Transfer of Land Form on the basis that it reflected a material alteration of the contract between Wilmoth Richardson and Mrs. Davis-Richardson. I agree with Ms. Lloyd that this was not pleaded and I do not think it necessary to consider it further.

THE PAYMENTS AFTER THE \$US60, 000, 00

[39] There is no dispute that Wilmoth Richardson made payments to Mrs. Davis-Richardson after she received the manager's cheque for US\$60,000.00 on 15th February 2001. Not surprisingly, the evidence is quite different as to why he made those payments.

[40] Mrs. Davis-Richardson's version is that some five months after Wilmoth Richardson had paid the initial deposit of US\$60,000.00 in February 2001, he requested and she granted him a six month extension to pay the outstanding balance of US\$20,000.00. They had subsequently agreed that he could pay it by installments but had agreed that he would not register the transfer forms until the balance was paid.

[41] Around August 2001, she had sub-divided Parcel 78 into 3 parcels and Parcel 179 was set aside for Wilmoth Richardson. Wilmoth Richardson did not pay the outstanding balance within the six month extension period and gave her various reasons for not doing so. He did eventually make some payments and she received payments which totaled US\$5,800.00. These payments had nothing to do with any another piece of land but related to the one acre, i.e. Parcel 179. When she became uneasy with the situation, she

⁸ Halsbury's Laws of England 3rd ed. Vol. 8 at para. 1057

⁹ Chitty on Contracts 27th ed. para. 12-080

took steps to protect herself by holding on to the Land Certificate for Parcel 179 until she relieved the full balance of what was owed. She also informed the Registrar and staff at the Lands & Surveys Department about her position.

[42] Wilmoth Richardson subsequently informed her that he was unable to make any more payments and asked her to take back a quarter of acre of the land and to sell him 0.75 acres instead. Mrs. Davis-Richardson agreed. To reflect their new agreement, she indicated that she would have Parcel 179 sub-divided and contacted her surveyor on the matter.

[43] In March 2005, Wilmoth Richardson contacted her about his concern as to how the land was being sub-divided. At the end of that month, he informed her that CCB had informed him that the purchase price for the whole acre of the land was \$US60, 000, 00. When contacted by his solicitors about his inability to register the land because Mrs. Davis-Richardson held the Land Certificate, she explained her reason for doing so.

[44] Wilmoth Richardson in his evidence gave a completely different dimension in relation to the payments. He stated that Mrs. Davis-Richardson contacted him around January 2002 and told him that she was having financial difficulties. She also said that that she had not received any of the US\$60,000.00, which he had paid.

[45] She enquired if he would be interested in purchasing a quarter acre of land next to the acre that he had purchased previously, for US\$15,000.00. When he told her that such a purchase would be a financial strain she suggested that he could pay by installments whenever he had money. He subsequently made 6 payments totaling US\$4,800.00 over the period January 2002 to September 2004. When he had requested that Mrs. Davis Richardson draft an agreement and also issue him with receipts for each payment, her response was that he could trust her as she was a lawyer. His evidence is that neither the agreement nor the receipts were forthcoming.

- [46] When he had attempted to pay the balance for the quarter of an acre of land, Mrs. Davis-Richardson informed him that she was no longer selling any more of her land. She was upset that she had sold land to one Brent Davis who ended up making a lot of money on its resale. She refused to return what Wilmoth Richardson had paid towards the purchase of the quarter of an acre and said the monies would go towards the one acre that he had purchased.
- [47] After that incident, he paid the stamp duty calculated on the one acre of land he had purchased for US\$60,000.00 and took steps to register the Transfer of Land Form in relation to it. He was unable to do so because Mrs. Davis Richardson still held the Land Certificate for the land and this led to an application being made to the Registrar and subsequently to the institution of these proceedings.
- [48] In cross-examination, he denied that any of these payments represented any outstanding balance in relation to the one acre of land that he had agreed to purchase from Mrs. Davis-Richardson. He insisted that what was owed for that acre, being Parcel 179, had been paid off by the manager's cheque of US\$60,000.00 and that contract was closed. These payments were towards the purchase the quarter acre of land adjacent to the acre that he had already bought. He made the payments in that way because as he told Mrs. Davis-Richardson, it would have been a strain on him financially to pay the full US\$15,000. 00.
- [49] He had no transfer of land forms, or receipts from Mrs. Davis-Richardson in relation to the quarter acre. All he had were his cheque stubs. When he had requested a receipt or a contract, Mrs. Davis-Richardson had told him that she was a lawyer and that he should trust her and he continued to pay the installments amounting to \$US5800.00 from January 2002 to September 2004.
- [50] When asked about this being a wise business practice, in light of his experience, or if he would have let to people without a lease, his response was that it depended and sometimes it was give and take. He was not seeking to recover these amounts in this action because he saw them as being separate.

- [51] It was contended on behalf of Mrs. Davis-Richardson that Wilmoth Richardson rescinded the contract to buy to one acre of land. i.e. Parcel 179 ["the original contract"] from Mrs. Davis-Richardson when he told her that he could not pay the outstanding balance. He made a counter-offer to buy 0.75 acres instead for US\$60,000.00 and Mrs. Davis-Richardson accepted that offer. The terms of the original contract were therefore so altered that it resulted in a new contract¹⁰.
- [52] The new contract had the effect of discharging¹¹ the original contract because it had all the requisites of a valid contract¹², i.e. an offer, an acceptance, consideration, an intention to create legal relations and capacity. The discharge of the original contract meant that the parties' obligations under it had come to an end¹³. Wilford Richardson could therefore not sue to enforce its provisions. However, as he was the defaulting party, Mrs. Davis-Richardson could sue him to recover damages for the loss she sustained due to his failure to perform his primary obligations¹⁴.
- [53] Ms. Harrigan quite rightly submitted to that the court the issue as to whether there was a new contract would in the end depend on whose evidence the court chose to believe.

FINDINGS

- [54] The first issue that the court must decide is whether the Transfer of Land Form is complete record of the terms of the contract of sale for Parcel 179.
- [55] The transfer of land between parties in Anguilla is effected by a Transfer of Land Form as prescribed by Rule 5 of the Registered Land Ordinance 1974. The particulars of the transfer of land to be recorded on the form are brief but extremely critical. They include the description of the property, the names of the Transferor[s] and Transferee[s] and the consideration [with a receipt clause].

¹⁰ Sookraj v Samaroo [2004] UKPC 401 at para. 19

¹¹ Halsbury's Laws of England 3rd ed. Vol. 8 para. 294

¹² Ibid

¹³ Chitty on Contract para. 1477

¹⁴ Supra at para. 1476

[56] The Transfer of Land Form serves very particular purposes. It allows the transferor and the transferee to ensure that the terms and nature of a transfer of land are recorded in a prescribed format. More importantly, it allows the transferor of land to protect and secure his or her interest before effecting the transfer of that interest to the transferee. It is for the transferor however to avail himself or herself of that protection and security.

[57] In this case, the transferor, Mrs. Davis-Richardson signed a blank Transfer of Land Form, By doing this, she placed herself in a similar position to the Defendant in **United Dominions Trust**¹⁵, who in arranging financing to purchase a motor car had signed a form in blank and left it for a third party to complete. Although the Defendant had indicated that he wished to complete the purchase under a hire-purchase agreement, it turned out that the form he had signed blank was a standard loan agreement with the Plaintiff finance company. The third party inserted figures in the form without the Defendant's knowledge and consent. Plaintiff company subsequently sued the Defendant to recover payments under the loan agreement which he had refused to pay on the ground he did not have a valid contract with the company because the document as filled in by the third party did not represent his true intention.

[58] The court ruled in favour of the Plaintiff company and ruled that the Defendant, as the signatory, had a duty to ensure that the completed document represented his true contractual intention. It¹⁶ approved Lord Wilberforce in **Saunders v Anglia** when he stated as follows:

'... the correct rule is that ... a person who signs a document and parts with it so that it may come into other hands, has a responsibility, that a normal man of prudence, to take care what he signs, which if neglected, prevents him from denying his liability under the document according to its tenor. The onus rests on him, i.e. to prove that he acted carefully and not on the third party to prove the contrary¹⁷.'

[59] I would go further than Lord Wilberforce and say when signing a blank form, the duty should be even higher. Mrs. Davis-Richardson stated in her evidence that she has been a

¹⁵ Supra. At 6

¹⁶ Ibid at 1022 and 1023

¹⁷ Ibid at page 1022

lawyer for nearly twenty-five years; her responsibility would have to be higher than a man of normal prudence. I have great difficulty in accepting her explanation that she left the signed blank Transfer of Land Form with the manager of CCB whom she trusted and did not leave it in the street or that this was a common practice. None of these explanations are sufficient in my view to prove that she had acted carefully. She had no contractual or other arrangement with CCB in relation to the transaction and there was no duty imposed on CCB to protect her interest.

[60] Mrs. Davis-Richardson did not avail herself of the protection given by law in the Transfer of Land Form, when she chose to sign the blank form, the contents and effect of which she said that she fully understood. She rightly stated that it is by this method that land is sold in Anguilla. The Transfer of Land Form serves the purpose of preventing situations as have arisen in this case because the Transferor can ensure that his or her contractual intention is recorded. Mrs. Davis-Richardson not only signed the form in blank to her detriment but on the evidence she has failed to discharge the legal burden placed on her to prove that she had acted carefully when she signed the Transfer of Land Form on 5th February 2001 and therefore she cannot deny her liability under it.

[61] Ms. Harrigan has submitted that the Transfer of Land cannot be relied upon because Wilford Richardson falsely represented on the Transfer of Land Form that the purchase price for one acre of land was US\$60,000.000 and that Cislyn Richardson had entered into an agreement with Mrs. Davis Richardson.

[62] Denning LJ gave one of the clearest expositions on how the court should approach these matters where an allegation of this type is made, in **Lazarus Estates Ltd. V Beasley**¹⁸:

'No court ... will allow a person to keep an advantage which he has obtained by fraud... Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved, but once it is proved, it vitiates judgments, contracts and all transactions whatsoever.'

[63] The principle was held to extend to include transactions evidenced by a prescribed form, with the Court of Appeal holding that a notice to quit purported to be given under section

¹⁸ [1956] 1QB 702 at 712

26[2] of the Agricultural Holdings Act 1986, was ineffective because it contained a false representation.

[64] There is no difficulty in concluding that the Transfer of Land Form falls within a transaction of the type described in **Lazarus**¹⁹. Fraud has been pleaded in Mrs. Davis-Richardson's counterclaim but the question remains as to whether it has been proved.

[65] To determine the issue the court must come to a conclusion as what was the agreed purchase price for Parcel 179.

[66] The evidence is completely divergent, with Wilmoth Richardson holding firmly to US\$80,000.00 and Mrs. Davis-Richardson holding just as firmly to US\$60,000.00. In my view, it would assist the court to place the evidence in the context of the circumstances existing at the time.

[67] When the parties met on February 14th 2001, Mrs. Davis-Richardson, on her own admission owed Barclays Bank US\$60,000.00. The 2.94 acres of her property at West End, on which Barclays Bank held a charge had been advertised for sale. Mrs. Davis-Richardson told Wilmoth Richardson her asking price for one acre of the land was US\$80,000.00, his evidence was that when he told her could not come up with that amount and he had offered US\$60,000.00 instead and she had accepted.

[68] There is evidence that Mrs. Davis-Richardson had previously sold one acre at the same West End location for US\$80,000.00 and that she had also sold half an acre for US\$40,000.00. However contracts of sale between Mrs. Davis-Richardson and other parties do not assist the court in determining the price she agreed with Mr. Richardson. Every contract for sale must stand and where the circumstances dictate, fall on its own terms.

¹⁹ Ibid.

- [69] I accept Wilmoth Richardson's evidence that the price he and Mrs. Davis-Richardson orally agreed to for the one acre of the land was US\$60,000.00 because it is consistent with her circumstances at the time. She was under strained financial circumstances and US\$60,000.00 had special significance, being the amount owed to Barclays Bank at that time and it is likely that Wilford Richardson, a business man of some experience, being armed with that information made an offer which he thought Mrs. Davis-Richardson could not refuse and she did not refuse. By the next day Mrs. Davis-Richardson had US\$60,000.00. Mrs. Davis-Richardson agreed to sell below her asking price but it was in response to her immediate need for US\$60,000.00.
- [70] There is no evidence that Wilmoth Richardson or Cislyn Richardson or any person on their behalf entered any information on the transfer of Land Form. I find as a fact that the price agreed for the purchase of the one acre of land was US\$60, 000.00 and by representing it to be so, there was no fraud on the part of Wilmoth Richardson. To say that the name of Cislyn Richardson appeared on the Transfer of Land Form by itself does not amount to fraud, especially when one consider the reason being that the loan was being taken in by her and husband jointly. Accordingly, Mrs. Davis-Richardson has not proved fraud on the part of Wilmoth Richardson and Cislyn Richardson.
- [71] On the issue of the renunciation of the agreement to purchase 0.75 acres for US\$60,000.00, the court would have to first decide whether such a contract ever existed. Mrs. Davis-Richardson relied on this contract coming into existence when she accepted Wilmoth Richardson's counter offer discharging the original agreement in relation to Parcel 179. Mrs. Davis-Richardson has claimed that he renounced the contract by attempting to register the Transfer of Land Form in relation to one acre. Interestingly, she would have already received the full purchase price for US\$60,000.00, plus an additional \$US5, 800.00. There was no mention of a willingness to transfer the 0.75 acres, or to repay any amounts to Wilmoth Richardson but has asked the court to find that he renounced the contract and to award her damages. Is it that she considers itself entitled to over US\$65,000.00 in damages in circumstances where she has had received the full purchase price under the contract.

[72] I prefer Wilmoth Richardson's evidence on the issue because in my view it makes more sense in the circumstances. Once again, finding herself in difficult financial circumstances, Mrs. Davis-Richardson agreed to the sale of another lot of land at West End, this time a quarter of an acre, for US\$15,000.00 to address an immediate need. The fact that it was adjacent to the lot previously bought by Wilmoth Richardson, would have made him a very interested buyer. She was even willing to accept the purchase price on an installment basis. This evidence accords with the evidence in relation to the first transaction and the similarity is striking. I have no difficulty in accepting it to be the truth.

[73] I find that there was no counter offer and I accept the payments amounting to US\$5,800.00 by Wilmoth Richardson had nothing to do with the purchase of Parcel 179 and I agree with him that it was an altogether separate matter.

[74] I wish to finally conclude that as the matter was not pursued in relation to the Registrar, there is no evidence and or basis on which I can make a finding in relation to him. I therefore make none.

ORDER

[75] In light of my findings, I make the following order:

1. Judgment is entered for the Claimants, Wilmoth Richardson and Cislyn Richardson in relation to the First Defendant, Mrs. Davis-Richardson.
2. Lolita Davis-Richardson is ordered to produce the Land Certificate for Registration Section West End Block 17809B Parcel 179, within fourteen days of the date of this order, to facilitate the registration of that parcel of land in the names of Wilmoth Richardson and Cislyn Richardson, in accordance with the Registered Land Act.
3. If Lolita Davis-Richardson fails to produce the Land Certificate under paragraph 2 of this order, the Registrar of Lands and Surveys, is ordered to dispense with the requirement for the production of the Land Certificate and to register Parcel 179 in

the names of Wilmoth Richardson and Cislyn Richardson in accordance with the Registered Land Act.

4. Lolita Davis-Richardson is to pay the prescribed costs of Wilmoth Richardson and Cislyn Richardson in the sum of EC\$14,000.00 in accordance with Rule 65.5[2][b][iii] of the Eastern Caribbean Supreme Court Rules 2000.
5. The Claim against the Registrar of Lands and Surveys is dismissed with no order as to costs.
6. Lolita Davis-Richardson's counterclaim against Wilmoth Richardson and Cislyn Richardson is dismissed.



Ianthea Leigertwood-Octave
High Court Judge