

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2008/0445

BETWEEN:

IAN PETERS

Claimant

and

**ROBERT GEORGE SPENCER
PATRICIA SIMON-FORDE
HILROY HUMPHREYS
ERNEST GILEAD**

Defendants

Appearances:

Mr. Dane Hamilton, Q.C. and Mr. D. Raimon Hamilton for the Claimant
Dr. David Dorsett for the First Defendant
Mr. Kendrickson Kentish for the Second Defendant
Mr. Septimus Rhudd for the Third Defendant
Mr. John Fuller for the Fourth Defendant

.....
2011: May 24, 25
August 24
.....

JUDGMENT

- [1] **MICHEL, J.:** By Amended Claim Form and Statement of Claim filed on 17th December 2008 the Claimant, Ian Peters, claimed against the Defendants, Robert George Spencer, Patricia Simon-Forde, Hilroy Humphreys and Ernest Gilead, damages for fraud; rectification of the register relating to Parcel: 135, Block: 45 1795A, Registration Section: Mc Kinnons; a declaration that the said Parcel 135 is owned by the Claimant or is held in trust for him; interest on the damages awarded; and costs.
- [2] By Defences filed on 15th January, 12th January and 6th March 2009 the First, Third and Fourth Defendants respectively disputed the Claimant's claim, denying some paragraphs of the Amended Statement of Claim, not admitting some and admitting others. The Second Defendant never filed a Defence to the Claimant's Amended Statement of Claim but appeared to rely on her Defence filed on 2nd October 2008 to the Claimant's original Statement of Claim filed on 21st July 2008. No objection was taken by any of the other parties to the Second Defendant so proceeding and so the Court did itself and now formally deems the Defence filed by the Second Defendant to the original Statement of Claim disputing the Claimant's claim against her as being her defence to the Claimant's Amended Statement of Claim.
- [3] The evidence in the case came from the witness statements and the oral testimony of the Claimant and the four Defendants, with no independent witnesses presented by any of the parties, not even the several "witnesses" to events in the case mentioned by the parties, like Chris Reynolds, Ms. Browne, Mr. Garfield, Mr. George Duberry, Mr. Terry Henry or the other Ian Peters.
- [4] At the conclusion of the evidence the parties were given three weeks to file written closing submissions. All the parties filed their written closing submissions during the month of June, three within the stipulated time and two outside the stipulated time. The Court accepts and deems all five submissions as having been properly filed.

[5] The Claimant's evidence was that he is a citizen of Antigua and Barbuda resident in New York, USA. He visits Antigua periodically and on one of his visits in or about the year 1990 he went to the Ministry of Agriculture to see the then Minister, Hilroy Humphreys (the Third Defendant), about purchasing a piece of land from the Government of Antigua and Barbuda. After several visits to the Ministry of Agriculture, the Third Defendant told him that plots of land were available at Friars Hill and that the parcel of land would cost him \$47,397.00. The Third Defendant instructed one Chris Reynolds to take him (the Claimant) to Friars Hill and show him the parcel of land. Mr. Reynolds showed him the boundaries of the parcel of land and gave him a map which identified the parcel of land as Parcel: 117, Block: 45 1795A, Registration Section: Mc Kinnons. Upon his return to the office of the Third Defendant, he informed the Third Defendant that he liked the plot of land and, in response to a question by the Third Defendant, he told the Third Defendant that he would pay cash (presumably for the land). On the following day he gave the Third Defendant the US equivalent of \$8,247.50, which the Third Defendant paid into the Ministry of Agriculture and, on the day following, the Third Defendant gave him a Treasury receipt written in the name of the Third Defendant as payee. Sometime afterwards, in about October 1991, in the course of a telephone conversation, the Third Defendant told him that he was coming to New York and he offered to meet the Third Defendant at the airport and take him to his hotel, which he did. He accompanied the Third Defendant to his room and they spoke about the property. He paid the Third Defendant US\$13,500.00 in cash, which the Third Defendant acknowledged receipt of on some Holiday Inn stationary. On a visit to Antigua in 1992 he made a further payment of \$25,000.00 to the Third Defendant at his office on All Saints Road and the Third Defendant gave him a Land Certificate for Parcel: 117, Block: 45 1795A, Registration Section: Mc Kinnons.

[6] The Land Certificate given to him by the Third Defendant showed him (the Claimant) to be the registered proprietor with absolute title of the aforesaid parcel of land containing approximately one acre and he felt that the act of the Third Defendant in giving him the Land Certificate brought the transaction to an end. He accordingly left for New York with his Land Certificate with the intention to build a home on the land when he eventually retired and returned to live in Antigua. He visited Antigua on several occasions between

1992 and 2008 and, during these visits, he would take members of his family to visit the property and discuss his intentions with them. In February 2008 he returned to Antigua with the intention of starting the process of building a home on the property but, when he visited the property, he found that someone had cleared the land without his consent. As a result, he went to the Ministry of Agriculture and then to the Land Registry where he was asked to bring in the original of his Land Certificate. After getting it sent to him from New York, he presented his Land Certificate to the Registrar of Lands who, upon examining her records, told him that his Land Certificate was no good, that it was not issued out of the Land Registry and that the Land Registry had no record of the parcel of land being transferred to him.

[7] The Claimant stated that it was clear to him that the Third Defendant had misled him and had transferred Parcel 117 to himself, while giving the Claimant a bogus Land Certificate. The Land Register for Parcel 117 revealed that in or about the month of October 1991 (after he had already paid a deposit on Parcel 117) the parcel of land was transferred to the Third Defendant. It also revealed that the parcel of land was transferred by the Third Defendant to Mr. Anthony Richardson for the sum of \$350,000.00, who then transferred it to Garfield and Elizabeth Abbott, and that his (the Claimant's) name did not appear anywhere on the register.

[8] The Claimant stated that upon making these discoveries he contacted the Third Defendant and enquired of him about the land and the Land Certificate that he had given to him and the Third Defendant told him to go to the Ministry of Agriculture and speak to Ms. Browne there, that there was a mix up and Ms. Browne will clear things up. He went to the Ministry of Agriculture and was told that the land that he had bought was actually Parcel 135 in the same Block: 45 1795A and Registration Section: Mc Kinnons and not Parcel 117 and that there was a typing mistake. When he asked for copies of the documents in respect of Parcel 135, Ms. Browne gave him a copy of a receipt dated 17th January 1992 in the amount of \$15,000.00 and a copy of a land transfer dated 17th July 1992. He then went to the Land Registry and requested a copy of the Land Register for Parcel 135, upon which he noted that Entry No. 1 (dated 23rd July 1992) had Ian Peters of Old Road Village

registered as the proprietor of that parcel of land, while Entry No. 2 (dated 19th November 1992) had Robert George Spencer (the First Defendant) registered as the proprietor of the parcel of land. Upon reading the land transfer document given to him by the Ministry of Agriculture in respect of Parcel 135, he noted that the signature of Ian Peters on the transfer, witnessed by Ernest Gilead (the Fourth Defendant), was not his signature. He stated that he did not sign the document or any transfer in respect of this parcel of land; that he did not have any dealings with the Fourth Defendant; and that the document was a forgery. He later received copies of a transfer of Parcel 135 from Ian Peters to the First Defendant (dated 7th October 1992) which document he had never seen before, and noted too that the signature of Ian Peters on the document, witnessed by Patricia Simon-Forde (the Second Defendant), was not his signature. The document indicated that Ian Peters was present before the Second Defendant and signed it in her presence, but this was not true and it is evident that the execution of this document was a forgery. He never received any part of the purchase price, he did not know the Fourth Defendant, he had no dealings with him whatsoever and he never gave him any power of attorney or any authority to sell any land, enter into any agreement or collect money in his (the Claimant's) name. It was clear that the Fourth Defendant acted fraudulently.

[9] He says too that he had no dealings with the Second Defendant and he never attended the Chambers of Kendall & Forde on any occasion to sign any transfer or agreement to sell any property.

[10] Under cross examination by Counsel for the First Defendant, the Claimant agreed that the transfer of land documents relating to Parcel 135 are in respect of Ian Peters of Old Road and that the documents do not concern him.

[11] Under cross examination by Counsel for the Second Defendant, the Claimant conceded that the land he had paid for and was dealing with Mr. Humphrey on was Parcel 117 and that it is possible that the receipt in relation to Parcel 135 to Ian Peters did not relate to him.

- [12] Under cross examination by Counsel for the Third Defendant, the Claimant testified that after he had been to the Ministry of Agriculture in 2008 and had spoken to Mr. Garfield and Ms. Browne, he accepted that he no longer had an interest in Parcel 117 and he was focusing on Parcel 135.
- [13] Under cross examination by Counsel for the Fourth Defendant, the Claimant admitted that he did not consider that he was buying Parcel 135; he thought that he was buying Parcel 117; and he never signed anything or authorized anything for Parcel 135. He also admitted that he had a conversation with the Fourth Defendant a few months prior to May 2011 and the Fourth Defendant told him that somebody named Ian Peters (other than the Claimant himself) came to him and asked him to sell the land.
- [14] The evidence of the First Defendant was that sometime in the early 1990s, while on a visit to the Land Registry, he enquired of the Fourth Defendant whether he knew of beachside or hillside land that was available for sale. A few weeks afterwards the Fourth Defendant informed him that he knew of a Parcel 135 at Friars Hill which was available for sale and that he had the power of attorney for the registered proprietor who resided overseas. He said that the Fourth Defendant showed him "a power of attorney document" and, given the fact that the Fourth Defendant worked at the Land Registry and was experienced in these matters, he (the First Defendant) believed him and proceeded to pay him a deposit and, over the course of a year, paid him in full for Parcel 135.
- [15] The First Defendant stated that he had no reason to believe or suspect that anything about the land purchase that he was involved in was improper. He was looking for land to purchase, the Fourth Defendant informed him about the availability of appropriate land and his authorization to sell it, he paid the Fourth Defendant for the land, signed what was presented to him for signature, got his title documents and owns the land. He stated too that several years ago he was offered \$800,000.00 for the land and if he had reason to believe that there was anything illegitimate about his acquisition of the land he would have disposed of it.

[16] The First Defendant was cross examined by Counsel for the Claimant and by Counsel for the Second and Fourth Defendants and emerged from cross examination unscathed.

[17] The Court is not satisfied from the evidence that the First Defendant committed any fraud or knowingly participated in any fraud. He may well have been less than diligent and vigilant in his handling of the purchase of Parcel 135, but there is no evidence of fraud on his part in the acquisition of the land. Moreover, the Court cannot be satisfied on a balance of probability that his title was derived from a fictitious person so as to render it impeachable. Inasmuch as the Court never got the opportunity to meet Ian Peters of Old Road – the alleged vendor in the sale of Parcel 135 to the First Defendant – his existence was asserted and insisted upon by two of the parties in the case and not seriously disputed by any of the other parties. The Claimant himself conceded that it was possible that there was a person with that name and address in Antigua to whom the documents concerning Parcel 135 might have been related. In all of the circumstances, the case against the First Defendant cannot stand.

[18] The evidence of the Second Defendant was that the Chambers where she worked as a lawyer prepared the instrument of transfer which effected the transfer of Parcel 135 from Ian Peters of Old Road to the First Defendant and that she witnessed the signatures appearing on the transfer. She stated that the vendor was identified to her by the Fourth Defendant, who was at the time a Senior Clerk at the Land Registry and a Commissioner of Oaths. She stated too that she had no knowledge of any fraud committed on the Claimant and that she would have no reason to participate in any such fraud if it occurred.

[19] The Second Defendant was cross examined by Counsel for the Claimant and by Counsel for the First Defendant. She did not emerge from the witness box as a very confident witness, despite her profession, but she also did not emerge as a fraudster. It may well be that her apparent lack of confidence in the witness box may have been the result of sheer discomfort and embarrassment of being a defendant in a fraud case and being cross examined by her colleagues about her honesty and integrity in her handling of a transaction as a lawyer. Be that as it may, the Court is not satisfied that the Second

Defendant committed or knowingly participated in any fraud and so the case against her cannot stand.

[20] The evidence of the Third Defendant (as per his witness statement) was that from December 1990 to July 1995 he served as Minister of Agriculture in the Government of Antigua and Barbuda. In or around August 1991 Cabinet approved his application for the purchase of two parcels of Crown land registered as Parcels: 116 and 117, Block: 45 1795A, Registration Section: Mc Kinnons for a total price of \$27,000.00. On 17th September 1991 he paid \$8,247.50 to the Ministry of Agriculture as part payment for the lands and paid the balance of \$18,752.50 by cheque in early October 1991 and the instrument of transfer was registered by the Land Registry on 14th October 1991.

[21] The Third Defendant stated that sometime in 1991 he was introduced to the Claimant by Chris Reynolds and the Claimant advised him that he and a business partner were interested in obtaining lands for development and were desirous of making an application to Cabinet for the allocation of an appropriate parcel of land to them. After their introduction, the Claimant visited his office at Temple Street in St, John's, Antigua and left some cash for him to deliver to one of his business associates. He counted the money in the presence of the Claimant and acknowledged receipt of the sum of \$13,500.00 on stationary he had on his desk and dated and signed the receipt. He stated that, contrary to the Claimant's assertion, he never met the Claimant in New York, all his encounters with the Claimant were in Antigua and the money left with him was EC currency. The stationary he used to acknowledge receipt of the money was stationary he had taken from Holiday Inn Hotel during a visit to New York in August 1991. He stated that he never received nor accepted monies from the Claimant for payment to the Ministry of Agriculture in respect of his alleged property purchase.

[22] The Third Defendant stated that sometime after his introduction to the Claimant, the Claimant submitted an application for the allocation of lands to him and he (the Third Defendant) believes that the application was submitted by him to Cabinet. The application was approved and the Claimant was allocated an acre of land registered as Parcel: 135,

Block: 45 1795A, Registration Section: Mc Kinnons. He stated that subsequent to his submission of the Claimant's application he had no further dealings with the Claimant and was not involved in the preparation or processing of any instrument of transfer relating to the property; he was never in receipt of any documents belonging to the Claimant in respect of any transfer of property to him by anyone and never delivered or instructed anyone to deliver any documents to the Claimant in respect of a transfer of lands to him; and he has no knowledge as to circumstances leading to production of a copy of a land certificate showing the Claimant as the registered proprietor of Parcel 117.

[23] In his oral evidence, the Third Defendant testified that after receiving "these documents" he checked his passport and realized that he was coming back from the Middle East and that he got US\$5,000.00 and not US\$13,500.00 from the Claimant and that he did actually meet the Claimant in New York. This is a complete volte-face and it boggles the mind to understand how upon checking his passport the Third Defendant would realize that he got US\$5,000.00 from the Claimant, as opposed to US\$13,500.00 or the EC\$13,500.00 which he said in his witness statement that he had received in cash from the Claimant and counted in his presence; or how upon checking his passport he would realize that he had met the Claimant in New York after his definitive assertions that he met the Claimant at his office at Temple Street, St, John's, Antigua, that he acknowledged receipt of the money on stationary that he had on his desk which he had taken from the Holiday Inn Hotel during a visit to New York in August 1991, that he never met the Claimant in New York and that all of his encounters with the Claimant were in Antigua.

[24] Then there is the amazing coincidence brought out in the cross examination of the Third Defendant by Counsel for the Claimant, that the Land Certificate given to the Claimant and showing him to be the registered proprietor of Parcel 117 is dated the same day as the transfer of that parcel of land to the Third Defendant and that the Third Defendant subsequently swore to an affidavit that his Land Certificate for that parcel of land was lost and successfully made application for a new one, resulting in the cancellation of the one in the possession of the Claimant.

[25] Then there is the fact that the Third Defendant testified under cross examination by Counsel for the Claimant that he did give the Claimant the receipt for \$8,247.50 from the Ministry of Agriculture reflecting part payment for Parcel 117, but stated that he only did so in 2008 so that the Claimant could take the receipt to Ms. Browne so that she could find the lands at Friars Hill. Now of all the documents - a plan, a map, a land register, a land transfer, among others - one could provide to enable a parcel of land to be traced, the one that the Third Defendant chose to give to the Claimant to trace his land is a receipt - the same receipt which the Claimant says evidences his payment of \$8,247.50 as a deposit on Parcel 117. Then there is the fact that the receipt evidences a payment on Parcel 117 only (specifying its number and size) and does not therefore support the evidence of the Third Defendant that it was a receipt evidencing a down payment by him on two parcels of land (Parcels 116 and 117) together measuring 4.51 acres, as opposed to the 47,397 square feet specifically referred to on the receipt. Of some significance too is the fact that both in his witness statement and in his oral evidence the Third Defendant speaks of the first payment for the land of \$8,247.50 and the second payment by cheque of \$18,752.50. By specifying both in his witness statement and in his oral testimony that the second payment was by cheque, it would certainly suggest that the first payment was by cash. Now it is perfectly conceivable that the Claimant, in Antigua on vacation, upon being told by the Third Defendant of the price he had to pay for the land, would return the next day and give to the Third Defendant for payment on his behalf all of the cash he had at his disposal, which amounted to \$8,247.50, but if the Third Defendant were making a down payment to his Ministry on the price of land that he was purchasing from the Crown, why would he have paid it in cash, and why \$8,247.50, as opposed to \$8,000.00 for example?

[26] Then there is the fact that the Third Defendant stated in his witness statement that the Claimant had given him \$13,500.00 in cash at his office at Temple Street for him (the Third Defendant) to deliver to one of the Claimant's unnamed business associates and, under cross examination, that the Claimant had given him US\$5,000.00 in New York to take back to one Terry Henry in Antigua for him and the Third Defendant says that Terry Henry is a person who was not a friend of his, never was and never will be. Now why should a Minister in the Government of Antigua be a courier of cash from someone in Antigua to

someone else in Antigua or from someone in the USA to someone in Antigua who is not, never was and never will be his friend? Why would the Claimant not deliver cash to his business associate himself instead of giving it to a Minister to deliver for him or, if he were in the USA and wanted to transmit money to someone in Antigua, why would he not use one of the several means of international money transfer available instead of saddling a Government Minister with that task? And why would the Government Minister take on such a task?

[27] Also significant is the fact that the Third Defendant referred to several documents in his witness statement and in his oral testimony, but he did not present a single one of these documents to the Court, filing a List of Documents – as per the Case Management Order - with no documents disclosed.

[28] The fact is that the evidence of the Third Defendant as a whole lacks credibility, cogency and consistency and leads inevitably and ineluctably to the conclusion that the Third Defendant's evidence is not to be believed. Although the Claimant in his pleadings largely misdirected his fire at the other defendants in the belief that Parcel 135 was the land that he had purchased and paid for, the preponderance of the evidence in the case leads the Court to the conclusion that the real fraud in this case was perpetrated by the Third Defendant on the Claimant and that he did commit a fraud on the Claimant in receiving funds from him and representing to him that he (the Claimant) was purchasing and had purchased Parcel 117 from the Crown, while purchasing the land for himself, furnishing the Claimant with a bogus Land Certificate to further the deception of him and then diverting him off the track of the parcel of land that he was supposed to have purchased and onto the track of a Parcel 135 evidently purchased from the Crown by someone with the same name as but a different address to the Claimant. The Court accordingly finds that the Third Defendant is liable to the Claimant.

[29] The evidence of the Fourth Defendant was that he was introduced to a gentleman identified to him by the Chief Lands Officer, Mr. George Duberry, as Ian Peters of Old Road Village. He witnessed the signature of the said Ian Peters on a land transfer of

Parcel 135 by the Crown to him. He was given a letter of authorization by Ian Peters to sell Parcel 135 for him and the parcel of land was sold to the First Defendant who paid him in instalments over a period of five to six weeks. Whenever the First Defendant paid him money for the land, he (the Fourth Defendant) gave the money to Mr. George Duberry. When the payment was completed the land transfer document was done at the Chambers of the Second Defendant and he brought the First Defendant there to sign it. He also said that he introduced Ian Peters to the Second Defendant, but the person he introduced to her was not the Claimant, but was someone else who had been introduced to him by Mr. George Duberry.

[30] The Fourth Defendant was cross examined by Counsel for the Claimant and by Counsel for the First and Second Defendants and, although there were some inconsistencies between his evidence and the evidence of the First Defendant as to whether the document he showed to the First Defendant was a power of attorney or a letter of authorization and as to the amount of time which the First Defendant took to pay for the land, he emerged substantially unscathed from cross examination.

[31] The Court is not satisfied from the evidence that the Fourth Defendant committed any fraud or knowingly participated in any fraud. The Claimant had clearly formed the impression that there was fraud by the Fourth Defendant involving the acquisition and sale of Parcel 135 by Ian Peters of Old Road, whom he assumed was intended to be him with an incorrect address, but he did concede, under cross examination by Counsel for the First Defendant, that the transfer of land documents relating to Parcel 135 were in respect of Ian Peters of Old Road and that the documents do not concern him and, under cross examination by Counsel for the Second Defendant, that the land he had paid for and was dealing with the Third Defendant on was Parcel 117 and that it is possible that the receipt to Ian Peters in relation to Parcel 135 did not relate to him. The mystery of the other Ian Peters is still unresolved one way or the other, as are the whereabouts of George Duberry who allegedly introduced him and on whose instructions the Fourth Defendant claimed to have acted, but no fraud on the part of the Fourth Defendant has been proved to this Court and the case against him cannot stand.

[32] Having regard to the Court's findings on the evidence and to the applicable law, in particular the Registered Land Act, Cap. 374 of the Laws of Antigua and Barbuda Revised Edition 1992, the Court's Order is as follows:

1. The claims against the First, Second and Fourth Defendants for damages for fraud, rectification of the register relating to Parcel: 135, Block: 45 1795A, Registration Section: Mc Kinnons, a declaration that the said parcel of land is owned by the Claimant or held in trust for the Claimant, interest and costs are dismissed.
2. The claim against the Third Defendant for damages for fraud is allowed and the Third Defendant is ordered to pay to the Claimant damages in the sum of \$350,000.00 (being the price which the Third Defendant sold Parcel 117 for on 10th December 2003) plus interest on the sum of \$350,000.00 at the rate of 5% per annum from 10th December 2003 to the date of judgment.
3. The claim for rectification of the register relating to Parcel 135 under section 140 of the Registered Land Act, Cap. 374 is dismissed, because the Court is not satisfied that the registration of the First Defendant as proprietor was obtained or made by fraud or mistake or that the First Defendant had knowledge of any fraud or mistake in consequence of which the rectification is sought or that he caused or substantially contributed to any such fraud or mistake by his act, neglect or default. The party to the proceedings against whom a finding of fraud has been made is not the owner of Parcel 135 and is no longer the owner of Parcel 117 (which was the subject matter of the fraud) having parted with it since December 2008 for very valuable consideration.
4. The claim for a declaration that Parcel 135 is owned by the Claimant or that title to it is held in trust for him is also dismissed because it has not been established that

the Claimant has any right, title or interest to and in Parcel 135, and Parcel 117 - to which he was entitled - is now twice or thrice removed from his grasp.

5. The parties are hereby directed to make written submissions on costs - in terms of quantity of and liability for – within fourteen days of the date of this judgment, after which the Court will make an assessment of the costs in this matter.



Mario Michel
High Court Judge