

ANGUILLA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. AXAHCV 0029/2010

BETWEEN:

FRANKLYN RICHARDSON

Claimant

And

EGBERT RICHARDSON

(Represented by his Next Friend ROSE ALPHONSO)

Defendant

Appearances:

Mrs. Tara Ruan for the Claimant

Mrs. Keesha Webster-Carty for the Defendant

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2011: November 30
2011: December 7, 9
2012: February 1
.....

JUDGMENT

[1] **BLENMAN, J:** This is a claim by Mr. Franklyn Richardson against Mr. Egbert Richardson (who is represented by his next friend Rose Alphonso) for a refund of the purchase price allegedly paid on Parcels 109 and 110 described as East Registration Section 89117B, Parcels 109 and 110, respectively.

[2] Mr. Franklyn Richardson also seeks damages and costs.

[3] Mr. Egbert Richardson strenuously opposes Mr. Franklyn Richardson's claim. However, it is undisputed that he now suffers from a mental illness and did not have the ability to defend himself. He was also unable to provide the Court with any personal evidence by way of his witness statement or otherwise. At the trial he was therefore represented by his next friend.

Background

[4] Mr. Franklyn Richardson says that Mr. Egbert Richardson offered to sell him three parcels of land for the sum of US\$75,000. The parcels of land are described as East Central Registration Section 89117B, Parcels 108, 109 and 110, respectively. He also says that he accepted the offer to purchase all three parcels of the aforementioned parcels of land.

[5] Mr. Franklyn Richardson alleges that he paid the deposit towards the total purchase price of US\$75,000 for the three parcels of land and he was given the signed transfer forms which both he and Mr. Egbert Richardson had signed before Mrs. Mary Richardson, Justice of the Peace.

[6] While the transfer forms in relation to all of the three parcels of land were signed by both parties, two of the forms which were signed by Mr. Egbert Richardson and Mr. Franklyn Richardson, namely, parcels 109 and 110, did not state the purchase price even though the one in relation to Parcel 108 stated the purchase price.

[7] Subsequently, Mr. Egbert Richardson sold the two Parcels, 109 and 110, to third parties.

[8] Mr. Franklyn Richardson complains that Mr. Egbert Richardson unlawfully sold Parcels 109 and 110 and seeks to be reimbursed the purchase price. He says that he was unaware that Mr. Egbert Richardson had sold Parcels 109 and 110 to third parties.

[9] Mr. Egbert Richardson denies that there was any agreement between himself and Mr. Franklyn Richardson in relation to Parcels 109 and 110. He says that there was no agreed purchase price for the two parcels of land. The discussions had not crystallized into a sale in relation to the two parcels. Mr. Egbert Richardson says that the deposit which Mr. Franklyn Richardson paid was only in relation to Parcel 108, the price of which was US\$75,000. He therefore opposes Mr. Franklyn Richardson's claim since he says that there was no agreement between the two of them in relation to Parcels 109 and 110.

[10] Mr. Egbert Richardson, through his next friend Rose Alphonso, maintains that he was therefore at liberty to sell the two parcels of land, which form the subject matter of the dispute, to third parties as he did.

Issue

[11] The issues that arise for the court to resolve are as follows:

(a) Whether there was a contract between Mr. Franklyn Richardson and Mr. Egbert Richardson for the sale of Parcels 109 and 110.

(b) If so, whether Mr. Egbert Richardson breached the contract by selling the parcels to third parties.

(c) What is the fair amount of damages to which Mr. Franklyn Richardson is entitled.

Claimant's Submissions

[12] Learned counsel Mrs. Tara Ruan urged the Court to accept Mr. Franklyn Richardson's evidence and find that there was an agreement to sell all three parcels of land. Learned counsel Mrs. Tara Ruan referred the Court to Section 37 of the Registered Land Act:

“37 (1) No land, lease or charge shall be capable of being disposed of except in accordance with this Act, and every attempt to dispose of such land, lease or charge otherwise than in accordance with this Act shall be ineffectual to create, extinguish, transfer, vary or affect any estate, right or interest in the land, lease or charge.

(2) Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract, but no action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which the action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged or by some other person thereunto by him lawfully authorized, but an action shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract-

(a) Has in part performance of the contract taken possession of the property or any part thereof; or

(b) Being already in possession continues in possession in part performance of the contract and has done some other act in furtherance of the contract”.

[13] Learned counsel Mrs. Ruan requested that the Court finds that the three (3) Instruments of Transfer be considered as the written part of the agreement between both Mr. Franklyn Richardson and Mr. Egbert Richardson with or without the insertion of consideration. The failure to complete registration of the parcels by filing the instruments is not fatal.

[14] Learned counsel Mrs. Ruan argued that Mr. Egbert Richardson's actions were clear indications that he intended to sell all three (3) parcels of land, namely: 108, 109 and 110 to Mr. Franklyn Richardson for US\$75,000.00. Mr. Egbert Richardson executed all three (3) forms before a Justice of the Peace, left all three (3) Land Transfer Forms with

Mr. Franklyn Richardson and made no efforts to retrieve the forms from Mr. Franklyn Richardson. Mr. Franklyn Richardson was in possession of the signed Transfer Forms since the transaction in 2002. Furthermore, he removed the sign that advertised all three (3) parcels of land from the property and did not replace the sign indicating that two (2) parcels were still to be sold.

[15] If it were Mr. Egbert Richardson only intended to sell one (1) parcel, that is 108, to Mr. Franklyn Richardson or that Mr. Franklyn Richardson needed proof to acquire the loan, then there was no need for Mr. Egbert Richardson to prepare and sign all three (3) Transfer Forms with Mr. Franklyn Richardson before the Justice of Peace.

[16] In support of her arguments, learned counsel Mrs. Ruan referred the Court to the case of *Storer v Manchester City Council* [1974] 1 W.L.R. 1403 which states that:

The offer is an expression of willingness to contract made with the intention (actual or apparent) that it is to become binding on the person making it as soon as it is accepted by the person to whom it is addressed.

[17] Mrs. Ruan also referred to **Chitty on Contracts**, Vol 1, 29th Edition, which explains at paragraph 2-002 that:

"Under the objective test of agreement, an apparent intention to be bound may suffice, i.e. the alleged offeror (A) may be bound if his words or conduct are such as to induce a reasonable person to believe that he intends to be bound, even though in fact he has no such intention."

[18] Learned counsel Mrs. Ruan submitted that the actions of Mr. Egbert Richardson induced Mr. Franklyn Richardson to believe that Mr. Egbert Richardson sold and transferred all three (3) parcels of land to Mr. Franklyn Richardson. Mr. Egbert Richardson made no efforts to retrieve or secure the return of the signed land transfer forms in relation to Parcels 109 and 110.

- [19] Mr. Egbert Richardson's conduct evinced a common intention to sell and transfer all three (3) parcels to Mr. Franklyn Richardson and based on Mr. Egbert Richardson's actions and behaviour, Mr. Franklyn Richardson fully believed that Mr. Egbert Richardson intended to sell and transfer all three (3) parcels of land together for the sum of US\$75,000.
- [20] Mr. Franklyn Richardson was always of the opinion that it was the intention of Mr. Egbert Richardson, based on his voluntary actions, to sell and transfer Parcels 108, 109 and 110 to him.
- [21] With regards to the registration of the three (3) parcels of land, Mrs. Ruan urged the Court to accept Mr. Franklyn Richardson's evidence that he was under the impression that all three parcels of land were in fact already registered. This is evidenced by Mr. Franklyn Richardson having approached the bank with intentions of using all three parcels of land as collateral in 2005. It was at that point that Mr. Franklyn Richardson learnt, through the bank, that only Parcel 108 had been registered in 2002.
- [22] Despite Mr. Franklyn Richardson's failure to register Parcels 109 and 110, Mrs. Ruan maintained that this does not rescind or negate in anyway the contract that was made between himself and Mr. Egbert Richardson.
- [23] Next, Mrs. Ruan stated that the land transfer forms for Parcels 109 and 110 were complete and are very well capable of being registered although a separate consideration was not inserted. Mrs. Ruan purported to rely on Sections 83 of the Registered Land Act in support of her contention:

"83 (1) A proprietor, by an instrument in the prescribed form, may transfer his land, lease or charge to any person with or without consideration."

- [24] Mrs. Ruan submitted that the word *"Prescribed"* under the Act means: *'prescribed by regulation'*.

[25] Mrs. Ruan argued that both Mr. Franklyn Richardson and Mr. Egbert Richardson duly executed the proper instrument as required by section 83(1) of the Act. While the consideration was only inserted into one of the forms, she said that this did not invalidate the other forms for Parcels 109 and 110 but that both parcels were also transferred and/or passed to Mr. Franklyn Richardson and the instruments of transfer were capable of registration.

[26] In *Edwin M. Hughes v. La Baia Limited* HCVAP 2006/008, the Court of Appeal affirmed the lower court's decision as it related to the finding of validity of two purchase and sale agreements for the sale of land to the Defendant. In that case the parties entered into a second agreement for sale of land in 1986. Following the execution of this second agreement, the seller, *inter alia*, delivered to the purchaser a blank Land Transfer Form to be filled in by the authorities (see paragraph 11[2]). In paragraph 18, the Court of Appeal restated the lower court's findings (which findings were upheld by the Court of Appeal and later the Privy Council). On page 18, the court stated that:

"Also, as required under the Second Agreement, George executed and delivered in blank, a Land Transfer Form. George's signature on the blank form of Transfer was witnessed by Mr. Mitchell, an experienced legal practitioner at the time. These acts by George, taken together, amount, in my view, to a full and effectual adoption and ratification of the First and Second Agreements".

The court continued on page 11, paragraph 22:

"The full purchase price had been paid...it would seem to me that the transaction was complete save for the perfection of the Land Transfer by registration, by the Claimant. For all these reasons I hold the agreements coupled with the ancillary documents constituted a valid and binding agreement for the sale of Land".

[27] Armed with the above mentioned authority, Mrs. Ruan advocated that the signing of the three (3) Instruments of Transfer by both parties in front of the Justice of Peace did effect the passing of the land from Mr. Egbert Richardson to Mr. Franklyn Richardson and also conveyed an interest in the land to Mr. Franklyn Richardson save for the perfection of the Land Transfer by registration. She relied on the decision in *Great West Permanent Loan Co. V Friesen* ([1924] A.C. 196 which was also upheld in *Thomas Townsend v Persistence Holdings Ltd.* HCVAP 2004/008 where it states in paragraph 23 that:

"the effect of such a delivery of the transfers to the transferee was to confer on the transferee an equitable claim or right in the land comprised in such transfers..."

[28] On the issue of consideration, Mrs. Ruan argued that the sum of US\$75,000 was indeed the price negotiated for all three (3) parcels of land together. Parties are free to negotiate and set whatever price they agree upon.

[29] Learned counsel Mrs. Ruan maintained that Mr. Egbert Richardson willingly set his price at US\$75,000 for all three (3) parcels of land to be sold to Mr. Franklyn Richardson. The sign advertising the sale of the land is evidence of Mr. Egbert Richardson's eagerness to sell. The language used as well would suggest desperation.

**PRIME LAND
FOR SALE
"3" ACRES
OWNER MOTIVATE TO SELL
ALL OFFERS CAN BE NEGOTIATED
BRING YOUR REASONABLE OFFER!!!**

[30] Mrs. Ruan submitted that the Court should have regard to the fairness to both sides in this matter in determining the level of costs. As such, Mrs. Ruan said that US\$5000.00 is fair and reasonable given the nature of the case.

Evidence

- [31] Mr. Franklyn Richardson testified on his own behalf and was cross-examined at length. Testifying on behalf of Mr. Egbert Richardson represented by his next friend Ms. Rose Alphonso, were the said Ms. Rose Alphonso, Ms. Althea Hodge and Mr. Cleveland Richards, and they were cross-examined. As alluded to earlier, Mr. Egbert Richardson was unable to testify due to his mental condition.
- [32] There is evidence of Mr. Cleveland Richards which is uncontroverted and indicates that in 2002 Parcel 108 would have been valued at US\$112,000 and Parcels 109 and 110 would have been valued at US\$28,000. The combined value of the three parcels would have been US\$168,000.
- [33] It is also accepted that Mr. Egbert Richardson received the sum of US\$75,000 from Mr. Franklyn Richardson.

Defendant's Submissions

- [34] Learned counsel Mrs. Carty said that the formal requirements of these contracts for sale of land are settled through judicial interpretation as being identification of the parties, subject matter, consideration and terms - Chitty on Contracts, Vol I, 13th Edition, Sweet and Maxwell 2008. Learned counsel Mrs. Carty submitted that failure to satisfy any of these elements would be a violation of the very object of section 37 of the Registered Land Act and would render the contract unenforceable.
- [35] In the case at bar, the most obvious missing element is that of consideration. It is a requirement of the Registered Land Act (section 106) and as confirmed in case law that "the memorandum of a contract for the disposition of an interest in land must state the consideration provided by the purchaser" Chitty on Contracts Vol I, 13th Edition, Sweet and Maxwell 2008. Mrs. Carty submitted that Mr. Franklyn Richardson has failed to show or prove, based on his documents, that any consideration passed from him to Mr. Egbert

Richardson for the purchase of Parcels 109 and 110. This is true given the following circumstances, among others, namely:

- (a) None of the transfer forms for parcels 109 and 110 state any sum for consideration, nor do they acknowledge any sum being passed as required by section 106(3) of the Registered Land Act.
- (b) The Claimant has pleaded and testified that he paid the sum of US\$75,000. This is the amount which parcel 108 was sold for and which is noted on the transfer form for same.

[36] Learned counsel Mrs. Carty submitted that it is open to the Court to find as a matter of fact that the purchase price of Parcel 108 was US\$75,000 as listed on the Land Transfer Form for the parcel, and must so find in accordance with section 106(3) of the Registered Land Act. Mrs. Carty further submitted that the Court ought not to go behind the instrument of transfer which was registered, since the Court ought not to assist in a fraud on the revenue of the State.

[37] Next, learned counsel Mrs. Carty submitted that it is an affront to the Registered Land Act for Mr. Franklyn Richardson to only give oral evidence of the consideration for Parcels 109 and 110, since section 37 of the said Act requires that all dispositions of land must be in writing. On the Transfer Forms, which it is submitted is the only relevant documentary evidence before the Court, Mr. Franklyn Richardson is unable to prove that any consideration passed at all for Parcels 109 and 110, and more so, on the said documentary evidence, it is shown that the only consideration which passed was that for Parcel 108, which has already been transferred.

[38] Mr. Franklyn Richardson cannot cure this defect through oral evidence since the section requires that all dispositions must be in writing, and while equity will not look at form above substance, it will not allow Mr. Franklyn Richardson to escape the requirements or

elements which must be proven to satisfy a claim. Mrs. Carty maintained that Mr. Franklyn Richardson cannot show in any form that consideration passed for Parcels 109 and 110. Further, in equity, he cannot seek to link Parcels 109 and 110 to the consideration of parcel 108 where the Transfer Forms for Parcels 109 and 110 do not relate to the Transfer Form for Parcel 108.

- [39] Mrs. Carty said that Mr. Franklyn Richardson has not pleaded the separate alleged values for Parcels 109 and 110 and therefore there is nothing even by way of oral evidence for the Court to consider, if it could so consider. Mr. Franklyn Richardson's claim therefore for reimbursement of the purchase price for Parcels 109 and 110 plus interest must fail since Mr. Franklyn Richardson has never pleaded or offered any evidence of the purchase prices for same. Further, the only indication of value of these two parcels from him are the assessed values marked on each transfer of the Eastern Caribbean equivalent of US\$20,000.00, which, at the highest, shows unjust enrichment of Mr. Franklyn Richardson.

Equity

- [40] Next, Mrs. Carty said that equity will only allow a vendor to be heard on the payment of the purchase price alone, that is whether or not it was paid, although endorsed in a receipt or instrument of transfer. This was confirmed by the Privy Council in the British Virgin Islands case of **Nathalie Creque v. Cecil Penn**, Privy Council Appeal No 36 of 2005, where Lord Walker quoted the leading statement of the equitable rule given in the judgment of *Wilson v. Keating* (1859) 27 Beav 121, as follows:

"It is true the deed does estop the parties at law, because at law you cannot contradict the deed, but it is settled by abundance of authority that in this [Rolls] Court you can contradict the statement of the payment of the purchase money; nay more, though there is a receipt for the purchase money endorsed and duly signed by the vendor, yet even then, the vendor would have a lien on the estate for the unpaid purchase money, and which would also be a debt due from the purchaser to the vendor".

- [41] That case was similar to the case at bar in that the only written evidence of the contract was the executed and registered Land Transfer Forms. In that case, the Appellant who was the seller had signed Transfer Forms for two parcels, purporting to have acknowledged receipt of the sums of US\$60,000.00 and US\$40,000, respectively. The Appellant claimed that while she had signed the forms, she did not receive all of her money. The Privy Council overruled the Court of Appeal's decision that the Court could not go behind the Land Transfer Form by applying the equitable principle that the Court could hear evidence from the Appellant only on the issue of whether or not the purchase money was paid, and (as stated in *Wilson v. Keating*) nothing more.
- [42] Mrs. Carty argued that this Privy Council case is distinguishable from the case at bar, in that in the case engaging the Court's attention there is no consideration listed at all in the Transfer Forms, and therefore the Transfer Forms were not only not registered, but were consequently incapable of being registered. Mr. Franklyn Richardson, in the case at bar, therefore suffers from the incurable deficiency that he cannot prove consideration at all for Parcels 109 and 110, and therefore cannot be allowed to be heard on whether or not he paid that consideration for the said parcels.
- [43] Even in equity, Mr. Franklyn Richardson must satisfy all the elements of the contract. Mrs. Carty posited that Mr. Franklyn Richardson is not able to satisfy the requirement of consideration passing for Parcels 109 and 110 in this matter.
- [44] The only form capable of being registered and which was registered was Parcel 108. Regarding that form, Mr. Franklyn Richardson acknowledges having paid the full purchase price as listed, and therefore there is nothing more on this document on which Mr. Franklyn Richardson can be heard.
- [45] Further, whereas parol evidence is allowed where the agreement is contained in several documents, it "cannot be admitted to connect two or more writings which contain no reference expressed or implied to each other" Chitty on Contracts Vol I, 13th Edition, Sweet

and Maxwell 2008. Mr. Franklyn Richardson therefore cannot refer to the Land Transfer Form for Parcel 108 where that form does not refer anywhere to Land Transfer Forms for Parcels 109 and 110, or vice versa. In the absence of any other document signed by Mr. Egbert Richardson evidencing the consideration for parcels 109 and 110, Mr. Franklyn Richardson cannot, at law or in equity, prove his Claim. His word is not sufficient to satisfy the legal or equitable requirements.

- [46] Mrs. Carty stated that even outside of Mr. Egbert Richardson's incapacity, Mr. Franklyn Richardson's claim suffers from the incurable defect that he cannot prove his case on a balance of probabilities given the deficiency in the written agreement or transfer document and given the numerous contradictions in his oral evidence under cross examination.
- [47] Learned counsel Mrs. Carty urged the Court not to accept Mr. Franklyn Richardson's evidence since it was inconsistent and unreliable.
- [48] Mrs. Carty said that Mr. Franklyn Richardson also relies on the authority of the Court of Appeal's decision in *Thomas Townsend and Therese Townsend v. Persistence Holdings Ltd HCVAP2004/008*. However, what the judgment of the Court in that matter states at paragraphs 23 and 24 is in favour of Mr. Egbert Richardson's position in this matter. Her Ladyship Edwards JA stated as follows:

"In Great West Permanent Loan Co v. Friesen (which was referred to in Rose Hall Ltd) the Privy Council considered the position of a purchaser/transferee under section 58(1) of the Land Titles Act of Saskatchewan where duly executed transfers by the vendor/registered owner were delivered to the transferee without the full purchase price being paid. The transfers were delivered to Trustees of the transferor who were bound by the written contract of sale to retain the transfers until the transferee had paid a specific portion of the purchase price. The transfers showed that at the date of the execution the money had not been paid. Before the money was paid the Trustees handed the transfers to the

transferee. It was held that the effect of such a delivery of the transfers to the transferee was to confer on the transferee an equitable claim or right to the land comprised in such transfers, but since that equitable claim or right was acquired with notice of the breach of trust committed by the Trust Company, the transferee is precluded from relying on its equitable title as against the legal title of the registered owners. The condition in the contract for the Trustees to retain the transfers until the specified portion of the purchase price had been paid may be compared, in my view, with clause 8 of the instant Agreement which made completion contingent on the licence being granted to the respondent. The trial judge opined that clause 8 buttressed the condition in the second proviso of clause 5 which was a condition precedent to the obligation of the parties to complete the sale.

*The trial judge was correct in finding at paragraph 55 that the Townsends held the property on a bare trust for the respondent after the purchase price was paid and the Transfer instruments were delivered to the respondent. "Though the delivery of the Transfer Instruments to the respondent may have conferred an equitable claim or right on the respondent, on the authority of **Great West**, that equitable claim was subject to the condition in the second proviso of clause 5 and clause 8 of the Agreement, and the respondent's legal title to the property would be forthcoming only if the Land Holding Licence was obtained before a valid termination of the Agreement". [My emphasis]*

- [49] Relying on the above principle, Mrs. Carty said that the Transfer Forms were left with Mr. Franklyn Richardson upon the condition that the purchase price of Parcels 109 and 110 were determined and paid. There being no consideration for either parcel, it can be inferred that no such purchase price was ever determined, agreed or paid between the parties and therefore Mr. Egbert Richardson was within his right to sell the property, having not received any payment for same.

[50] Learned counsel Mrs. Carty said that Mr. Franklyn Richardson's claim ought to be dismissed and costs should be awarded to Mr. Egbert Richardson.

Costs

[51] Mrs. Carty stated that the general rule is that the unsuccessful party pays the costs of the successful party. Pursuant to part 65 of the Civil Procedure Rules 2000, the applicable rule for costs is prescribed costs (rule 65.5 and Appendix B). In order to calculate prescribed costs, the claim must be valued. The claim in this matter was for two parcels of land measuring a total of 1 acre. The parties have agreed a valuation in the agreed documents which states the current value of the parcels as US\$37,500 each, for a total of US\$75,000.

[52] The conversion into Eastern Caribbean Currency using the bank rate of US\$1 – EC\$2.7169 is EC\$203,767.50. Applying the scale of prescribed costs in Appendix B, the calculation on a claim for EC\$203,767.50 would be as follows:

First \$30,000	30%	\$9,000.00
Next \$20,000	25%	\$5,000.00
Next \$50,000	20%	\$10,000.00
Next \$103,767.50	15%	\$15,565.13
Total		\$39,565.13

[53] In conclusion, Mrs. Carty said that Mr. Franklyn Richardson has no right in law or in equity to the relief he seeks in his claim. Consequently, his claim ought to be dismissed and Mr. Egbert Richardson awarded his prescribed costs in the sum of EC\$39,565.13.

Court's Analysis and Findings

[54] The Court has given deliberate consideration to the evidence adduced on behalf of Mr. Franklyn Richardson and that provided on behalf of Mr. Egbert Richardson. The Court has also paid close regard to the very helpful submissions of both learned counsel.

- [55] It is undisputed that Mr. Egbert Richardson was the registered owner of the three parcels of land. It is also undisputed that both Mr. Franklyn Richardson and Mr. Egbert Richardson completed Land Transfer Forms in relation to all three parcels of land before the Notary Public, Mrs. Mary Richardson.
- [56] Indeed, one land transfer form was signed in relation to Parcel 108, one Land Transfer Form was signed in relation to Parcel 109 and the other one was signed in relation to Parcel 110. However, the task of the Court is to determine whether there was agreement by Mr. Egbert Richardson to sell Mr. Franklyn Richardson all three parcels of land for the total price of US\$75,000. Let me say straight away that Mr. Franklyn Richardson did not strike the Court as being an honest or forthright witness.
- [57] The Court finds as a fact that only the Land Transfer Form for Parcel 108 was dated and stated that purchase price for that parcel was US\$75,000. The other two Land Transfer Forms contained no purchase price.
- [58] The Land Transfer Form in relation to Parcel 108 clearly stated that "I Egbert Richardson of Philipsburg St. Maarten, in consideration of US\$75,000 (the receipt whereof is hereby acknowledged) HEREBY TRANSFER to Franklyn Richardson of George Hill, Anguilla, the land comprised in the above title."
- [59] Neither of the Land Transfer Forms for Parcels 109 and 110 stated any sum for consideration.
- [60] In view of the fact that it is accepted by both sides that Mr. Egbert Richardson does not have the mental capacity to testify or provide the Court with evidence, accordingly, much would turn on the reliability of the evidence that Mr. Franklyn Richardson provided to the Court.

- [61] In fact, most of the other witnesses who testified on behalf of Mr. Egbert Richardson could not properly shed any light on the alleged transactions between Mr. Franklyn Richardson and Mr. Egbert Richardson. They simply were not privy to any discussions or negotiations that the parties may have had in relation to the proposed sale of Parcels 109 and 110. It is also passing strange that neither party sought to call as a witness Mrs. Mary Richardson, the Justice of Peace, in front of whom the transfers were allegedly signed.
- [62] Be that as it may, the onus of proof is Mr. Franklyn Richardson's. Much depends on the weight the court attaches to his evidence and whether or not it is borne out by the documentary evidence.
- [63] Let me say straight away, the court has absolutely no doubt that Mr. Franklyn Richardson was not very candid in the evidence he provided, to put it very mildly. He was not forthright, in fact, in relation several material questions and was unnecessarily combative and argumentative with learned counsel during cross-examination which sought to test the veracity of his evidence. Try as I did to ascertain significant aspects of his evidence on which the Court could have relied, it was well-nigh impossible. He simply was untruthful. He sought to mislead the Court in relation to several material aspects of the claim. The Court accepts learned counsel Mrs. Carty's submissions that Mr. Franklyn Richardson's evidence during cross-examination was very inconsistent and therefore unreliable.
- [64] In an effort "to pull wool" over the Court's eyes he sought to include several bits of irrelevant matters into the evidence such as his alleged retention of the "For Sale" sign. The Court attached very little, if any, weight to that bit of evidence. Also, the fact that he sought to utilise the three parcels of land to obtain the loan from the bank is very self-serving and of very little moment.
- [65] The Court does not need to repeat all of the inconsistencies in his evidence since they were very helpfully pointed out by learned counsel Mrs. Keesha Carty. He was also unusually aggressive and rude to learned counsel Mrs. Carty in an attempt to avoid answering the questions that were posed to him.

- [66] In a word, Mr. Franklyn Richardson did not paint a very good picture as being a credible or a reliable witness.
- [67] He was very evasive and prevaricated quite a bit on critical matters that go to the root of the matter. The evidence presented by Mr. Franklyn Richardson does not meet the threshold to establish that there was any conduct on behalf of Mr. Egbert Richardson which is consistent with Mr. Egbert Richardson entering into agreement to sell Parcels 109 and 110 together with parcel number 108 for the total sum of US\$75,000.
- [68] At its highest, the evidence is consistent with the parties having discussed the sale of the three parcels but had only agreed in relation to the sale of the one parcel of land, namely, Parcel 108. There is absolutely no evidence before the Court upon which it could properly be concluded that the parties had agreed to sell all three parcels of land for the sum of US\$75,000.
- [69] The fact that there is uncontroverted evidence before the court that Mr. Egbert Richardson had indeed signed the Land Transfer Forms in relation to all three parcels of land, without more, is in no way consistent with the position that is advanced by Mr. Franklyn Richardson.
- [70] The Court is fortified in its view based on the fact that the Land Transfer Forms in relation to Parcels 109 and 110 do not indicate the purchase price for those parcels of land. Neither is there any documentation which indicates that a deposit was paid towards the purchase price. In fact, the Court has no doubt that the discussions between the parties did not reach as far as the crystallization of the purchase price for Parcels 109 and 110.
- [71] The Court does not believe Mr. Franklyn Richardson when he said that he did not realise that the land transfer forms in relation to Parcels 109 and 110 did not contain any purchase price. Mr. Richardson struck the court as an astute businessman. He admitted to having

previously purchased other parcels of land and was involved in ensuring that those parcels of land that he had previously purchased were registered in his name. Why would he have wanted several years after the alleged purchase of the land to ascertain whether the other two parcels of land, namely: Parcels 109 and 110, were registered in his name? This is a gentleman who was able to provide the court with minute details, for example, the date of completion of sale in relation to other matters. The Court do not for one moment believe him when he said that it was very late when he realised that the Land Transfer Forms in relation to Parcels 109 and 110 were not registered but rather were still in his possession.

[72] Equally, I am not of the view that anything turns on the fact that Mr. Franklyn Richardson had retained the signed Land Transfer Forms in relation to Parcels 109 and 110.

[73] As stated earlier, it is very interesting that Mr. Franklyn Richardson sought to persuade the court that he did not realise that he had retained the agreed Land Transfer Forms in relation to Parcels 109 and 110. The court did not find this position very tenable. The two material parcels were allegedly sold to him in 2002 and he expects the Court to believe that that was in 2007.

[74] In addition, when he said in his evidence in chief that he had taken ill and was off island in 2005, seeking to advance that absence as the reason for his having not registered the other two land transfer forms, under cross-examination the evidence put paid to that untruth. He clearly was not ill and away from Anguilla for an extended number of years as he sought to have the Court believe.

[75] It is equally incredible that Mr. Franklyn Richardson would seek to have the court believe that it was several years after the alleged sale of the property when he sought to have the Land Transfer Forms registered in his name that he realised that Mr. Egbert Richardson had sold the two parcels of land to third parties. It was then that he tried to make contact with Mr. Egbert Richardson but learnt that he was ill.

- [76] The court is convinced that the truth of the matter is that Mr. Franklyn Richardson concocted this story about the sale of the two parcels of land, i.e., Parcel 109 and 110 when he realised Mr. Egbert Richardson was ill. He obviously feels that he is in an advantageous position simply because Mr. Egbert Richardson, due to his lack of mental capacity, is unable to defend himself. How wrong was he!
- [77] For the sake of completeness, the fact that Mr. Franklyn Richardson may have borrowed monies from the National Bank of Anguilla in order to pay for the purchase of lands is of no moment. Mr. Franklyn Richardson admitted, as was correctly pointed out by learned counsel Mrs. Keesha Carty, that Mr. Egbert Richardson was not privy to those negotiations, nor was he ever involved in any discussions Mr. Franklyn Richardson may have had with the bank.
- [78] On the evidential ground, Mr. Franklyn Richardson has failed to meet the threshold required to establish that there was an agreement of sale between himself and Mr. Egbert Richardson in relation to Parcels 109 and 110.
- [79] The Court having so concluded, it becomes otiose for there to be any consideration given to the ancillary matters as to whether there was a breach of section 107 of the Registered Land Act. However, the court will not refrain from stating that the memorandum of a contract for the disposition of an interest in land must state the consideration provided by the purchaser.
- [80] Accordingly, there is no need for the Court to address the two other issues that were identified.
- [81] In view of the totality of circumstances, Mr. Franklyn Richardson has failed to establish his claim against Mr. Egbert Richardson represented by his next friend Rose Alphonso.

Conclusion

[82] In the premises, Mr. Franklyn Richardson's claim against Mr. Egbert Richardson (represented by his next friend Rose Alphonso) is dismissed.

[83] Prescribed costs are awarded to Mr. Egbert Richardson

[84] The Court gratefully acknowledges the assistance of learned Counsel.

Louise Esther Blenman
Resident High Court Judge
Anguilla