

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 46/2014

**BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE P WILLIAMS JA**

**BETWEEN THOMAS ANDERSON APPELLANT
AND MONICA WAN RESPONDENT
(AS PERSONAL REPRESENTATIVE IN THE
ESTATE OF IRIS ANDERSON)**

Mrs Emily Shields and Miss Marissa Wright instructed by Gifford, Thompson & Shields for the appellant

Ransford Braham QC instructed by McDonald, Jordan & Co for the respondent

15, 17 November 2017 and 25 September 2020

MORRISON P

Introduction

[1] In a judgment given on 9 May 2014, Batts J ('the judge') made an order cancelling the title to a parcel of land at Maidstone in the parish of Portland registered in the name of the appellant ('Thomas') at Volume 1145 Folio 270 of the Register Book of Titles ('the

land)¹. The ground on which the order was made was that Thomas' title was tainted by fraud.

[2] The judge also granted a declaration that Mrs Iris Anderson ('Mrs Anderson'), the successful claimant in the proceedings, is the true owner of the land, "having purchased the said land from Talbert Anderson (sometimes referred to as Talberg Anderson) and having remained in sole open continuous peaceful undisturbed and undisputed possession for in excess of 12 years".

[3] This is Thomas' appeal against this judgment. Unfortunately, Mrs Anderson, who was 93 years old at the time of the trial, died before the appeal could be heard. Consequently, by an order made on 25 July 2017, the respondent was appointed personal representative in the estate of Mrs Anderson and substituted as the respondent in this appeal. The respondent is therefore purely a nominal party to the appeal.

[4] Having heard the appeal on 15 November 2017, the court reserved its judgment to 17 November 2017. On that date, the appeal was dismissed, with costs to the respondent to be agreed or taxed.

[5] These are the reasons which were then promised for the decision. On behalf of the court, I must apologise profusely to the parties for the fact that, owing to an unfortunate oversight, the reasons are only now being made available.

¹ A certified copy of the Certificate of Title (issued 18 November 2010) was admitted in evidence at the trial as exhibit 4.

The issue on appeal

[6] The facts of the case were heavily contested at the trial, but at the end of the day the judge preferred the evidence of Mrs Anderson and her witnesses. Despite the filing of some grounds of appeal which appeared to challenge the judge's findings of fact, these grounds were not vigorously pursued at the hearing of the appeal before us. The principal issue on appeal, therefore, was whether, as a matter of law, the facts as found by the judge supported his conclusion that Thomas' title to the land should be cancelled on the ground of fraud.

Background

[7] The judge accepted Mrs Anderson's evidence in its entirety. I am therefore happily able to take most of the relevant history from the judge's summary of Mrs Anderson's evidence².

[8] The late Mr Robert Anderson ('Robert') had three sons, Maxwell Anderson ('Maxwell'), Talbert Anderson ('Talbert') and Joseph Anderson ('Joseph'). Mrs Anderson married Maxwell in 1953 and they made their life together until his death in 1984. Thomas is the son of Joseph.

[9] The land first came into the possession of the Anderson family in or around 1953, when Talbert purchased it from one Dr Harold Daughma. In or around 1957, Talbert, who was about to migrate to the United States of America, sold the land to Maxwell and

² Judgment, paras. [6]-[13]

Mrs Anderson ('Mr and Mrs Anderson'). Mr and Mrs Anderson moved onto the land and put about five acres of it into cultivation, while the remaining acreage was used as pasture for their cows. They built a two-bedroom board house with a thatched roof on the land and raised four of their nine children there. They lived in the two-bedroom house for about seven years, until they moved to another property which they had acquired in Shrewsbury, also in the parish of Portland. The reason for the move was to facilitate easier access to school for the children, but they remained in possession of the property. Mr and Mrs Anderson and their four boy children continued to go back and forth to farm the property until Maxwell's death in 1984. After Maxwell's death, the four boys continued to farm the property and to raise their livestock on it. In time, even Mr and Mrs Anderson's grandchildren raised their stock on the property. In order to ensure that the stock remained on the property, the entire acreage was enclosed with barbed wire fencing and Mrs Anderson's evidence was that "[a]t no time did anyone else have control and possession of the said [land]"³.

[10] Mrs Anderson knew Thomas, who was Maxwell's nephew, from he was a little boy. He and his siblings were all well aware of the fact that Mr and Mrs Anderson had been in possession of the land for many years. Indeed, Thomas' brother, Donald, had lived with Mrs Anderson when he was a teenager of about 14 or 15 years.

³ Witness statement of Iris Anderson dated 9 November 2012, para. 9

[11] Maxwell paid the property taxes on the land from the time Mr and Mrs Anderson acquired it, and Mrs Anderson continued to pay them after he died. She would continue to do so until 2008, when she discovered that Thomas had started to pay the property taxes.

[12] One of Mrs Anderson's sons, Leroy Anderson, gave evidence in support of her case at the trial. He stated that he had personally farmed the land for a period in excess of 37 years. He did so without disturbance or interruption from anyone until the year the suit was filed. His evidence was that in that year he was threatened by Thomas and his two brothers, Lloyd Anderson ('Lloyd') and Donald Anderson ('Donald'). As he put it, Thomas and Lloyd "fire gun at me and I leave"⁴.

[13] In or about 2002, Mrs Anderson retained an attorney-at-law to apply for registered title to the land. She gave him all the relevant documents to prove that she and Maxwell had bought the land. But the attorney fell ill and died before the process was completed and, when she went to retrieve the documents, she was told that they had either been misplaced or destroyed in a fire.

[14] Mrs Anderson made an application for registered title to the land by description on 4 December 2006. The application was supported by, among other things, evidence of payment of property taxes for the land for the years 1966 to 2009 and statutory declarations from neighbours. As she had done in her statutory declaration, the

⁴ Notes of Evidence, page 19

neighbours attested to Mrs Anderson's sole, open, continuous, peaceful, undisturbed and undisputed possession of the land for close to 50 years. However, the Registrar advised that the application was required to be supported by a pre-checked survey diagram. As a result, the surveyor instructed to conduct the survey on Mrs Anderson's behalf went to the land on 24 September 2007. But, just as the surveyor made his preparations to commence the survey, he was approached by Lloyd, who objected to the survey on the ground that the land belonged to Thomas, who was also present. Lloyd told the surveyor that Thomas had documents to substantiate his claim. In due course, at the request of the surveyor, Lloyd signed the document recording his objection to the survey.

[15] This led Mrs Anderson to file actions against Donald and Lloyd in the Resident Magistrate's Court for the parish of Portland in October 2007⁵ and January 2008⁶ respectively. Mrs Anderson's claims were for possession of the land and damages for trespass. In defences filed on 27 January 2009 and 21 October 2009 respectively, Donald and Lloyd both asserted that Thomas had bought the land and that Mrs Anderson was never in possession of it.

[16] Talbert died intestate on 6 December 1982. In January 2008, Thomas was granted letters of administration in Talbert's estate, and he applied for registered title to the land in his own name in September 2008. He based his application for title on a purported gift of the land to him by his uncle Talbert, the fact that he Thomas applied for and was

⁵ Complaint No 237/07

⁶ Complaint No 27/08

granted letters of administration in Talbert's estate on 15 January 2008, and had been in sole, undisturbed possession of the land since then.

[17] But he made no mention of the fact that Mrs Anderson also claimed an interest in the land and that there had in fact been previous litigation by her in support of this claim.

[18] On the contrary (as the judge noted⁷), the three statutory declarations given in support of the application⁸ stated (i) that Talbert had remained in "open, undisputed, undisturbed and continuous possession of the said land" right up until his death in December 1982; and (ii) that Thomas had thereafter, since 15 January 2008 "enjoyed similar sole, open, undisputed, undisturbed and continuous possession of the said land up to [the present], while reaping all crops therefrom, paying all taxes and rates accruing against the said land and generally performing all other acts consistent with ownership".

[19] On 18 November 2010, the Registrar of Titles issued title to the land registered at Volume 1145 Folio 270 of the Register Book of Titles to Thomas. And, when this fact was brought to the attention of the court in the action against Lloyd in the Resident Magistrate's Court on 30 August 2011, Mrs Anderson was non-suited.

[20] In amended particulars of claim dated 10 October 2011, Mrs Anderson claimed that Thomas' application for first registration as proprietor of the land was effected by way of fraud on his part, since he either knew of, or had constructive notice of, Mrs

⁷ Judgment, para. [64]

⁸ Statutory declaration of Thomas Anderson dated 11 November 2009, statutory declaration of Donald Anderson dated 12 November 2009, and statutory declaration of Huton Lammie dated 25 November 2009

Anderson's interest in the land, "as said interest was revealed to him directly and through his agents". The following were the particulars of fraud relied on:

(i) Failure on the part of [Thomas] or his predecessors in title or agents, to notify [Mrs Anderson] whilst [she] was occupying the disputed lands as owner that a survey was being carried out on the disputed lands.

(ii) Failure on the part of [Thomas] or [his] predecessor in title, to advise the Registrar of Titles ... that from 1955 up to the date of the application for title, [Mrs Anderson] was occupying the disputed lands without [Thomas'] or his/her predecessor in title's permission and consent and/or that [Mrs Anderson] was occupying the disputed lands as a Purchaser for value.

(iii) Failure on the part of [Thomas] or his predecessor in title, to advise the Registrar of Titles, that during the statutory relevant period of thirty years within which title had to be traced by [Thomas] ... [Mrs Anderson] and her children had occupied the disputed lands without their permission and consent.

(iv) Failure on the part of [Thomas] and his predecessor in title, to advise the Registrar of Titles, that they were never in occupation of the disputed lands during the relevant period of thirty years within which title had to be traced by the Applicant.

(v) Failure on the part of [Thomas] and his predecessor in title, to advise the Registrar of Titles, that [Mrs Anderson] had claimed ownership of the disputed land and in fact had taken [Thomas'] agent to court for recovery of possession and trespass on land.

(vi) Failing in all the circumstances to advise the Registrar of Titles that [Mrs Anderson] was occupying the disputed lands as a Purchaser for value.

(vii) Filing the application for first registration of titles and obtaining Duplicate Certificate of Titles while the trial before the Portland Resident's Court was being heard knowing very

well that [Mrs Anderson] had filed the claim as owner of the disputed lands.” (Underlining as in original)

[21] In response to Mrs Anderson’s claim that he had obtained title by fraud, Thomas pleaded (among other things) that⁹:

“28. ... I deny paragraph numbered 12 of [Mrs Anderson’s] Amended Particulars of Claim. I deny that [Mrs Anderson] has any beneficial interest in the said lands or that my application for title to the said lands was effected by fraud.

(i) I deny, that there was any duty on me to serve [Mrs Anderson] any Surveyor's notice in respect of the said lands, because she is the beneficial owner of the said lands. The estate of Maxwell Anderson, by virtue of being an adjoining owner to the said lands, was served a notice of the survey by M.C. Dyce, Commissioned Land Surveyor.

(ii) ... neither [Mrs Anderson] nor her pre-decessor in title have occupied the said lands. If [Mrs Anderson] or her pre-decessor in title occupied the said lands at any time, it could only have been with the consent of Francella Anderson or Joseph Anderson, who were the caretakers of the said lands for Talbert Anderson and his estate, and any such occupation would be of a short duration.

(iii) [Mrs Anderson] and her pre-decessor in title were not in possession of the said lands for the period of thirty (30) years and consequently, there was no duty on my part to so advise the Registrar of Titles.

(iv) ... my pre-decessor in title and I were in possession of the said lands for the relevant statutory period of thirty (30) years and I had the right to apply for title.

(v) There was no duty on my part to advise the Registrar of Titles that [Mrs Anderson] was claiming the said lands, as

⁹ Defence of 1st defendant filed 26 June 2012, para. 28

[she] did not produce any document to substantiate her allegation, and she did not bring a suit against me.

(vi) ... I have no knowledge that [Mrs Anderson] ever occupied the said lands as a Purchaser for value.

(vii) [Mrs Anderson] did not file a case in the Resident Magistrates Court for the parish of Portland against me.”

The judge’s decision

[22] At a trial stretching over five days, the judge heard the evidence of Mrs Anderson and three witnesses in support of her claim. Thomas and two witnesses also gave evidence in support of the defence. In his judgment, after a full and careful review of the evidence which each witness gave, as well as several items of documentary evidence which he found to be of “particular importance”, the judge made the following findings of fact¹⁰:

“[66] The documentation notwithstanding, there is very little by way of objective hard evidence to assist this court to determine the really crucial issue. That is whether [Mrs Anderson] has been in open and undisturbed possession for the period she alleges. In this regard I have seen and heard all witnesses. I observed their demeanour and formed a view as to their candour. I accept [Mrs Anderson] and her witnesses as witnesses of truth. I do believe that [Mrs Anderson’s] sons were run off the land at gun point by agents of [Thomas]. I do accept that they had been farming and rearing livestock on the land for a considerable period. I accept also that [Mrs Anderson] at one time lived on the land and even constructed a dwelling there. Mr. Johnathan Lammie also impressed me as truthful. I find that [Thomas] was present when objection was taken to [Mrs Anderson’s] survey of the property in September 2007.

¹⁰ Judgment, paras [66]-[68]

[67] [Thomas] did not similarly impress. It is strange that a person with legal training, as he asserts he had, would not read carefully the Declarations before signing. This is his explanation for the inaccuracies contained therein. His failure to disclose the existence of [Mrs Anderson's] claim was indicative of a want of candour. It is rather odd that he, someone with legal training, would purchase land from beneficiaries of an estate which had not yet been probated. He then sought to be administrator of an estate from which he asserts he had purchased the land. His failure to disclose that he purchased items from the estate subsequent to the death of the proprietor suggests he may have been aware of his position of conflict. I also found his denial of knowledge of the Claim brought by [Mrs Anderson] to be unconvincing. I have no doubt that his brother, who defended that claim on his behalf and who objected to the survey on his behalf, brought the existence of the action to his attention very promptly.

[68] This of course is not to deny that there were inconsistencies in [Mrs Anderson's] evidence. Her inaccuracies with dates and sequence of events can however be explained by her age. What I accept is that herself and her husband purchased and had been in possession and done farming and livestock rearing on the land (Personally and later through the activities of her children) for over 30 years. The Claimant would therefore be entitled to a possessory claim to the land."

[23] The judge then considered (i) the submission made by counsel for Thomas that, even if Mrs Anderson had an equitable interest in the land, the effect of the provisions of the Registration of Titles Act ("RTA") and well-known decisions such as **Chisholm v Hall**¹¹ was that the first registration of Thomas as proprietor of the land under the RTA defeated Mrs Anderson's unregistered interest; and (ii) the submission of counsel for Mrs

¹¹ (1959) 1 WIR 413

Anderson, which was that, under section 70 of the RTA, Thomas' first registration as proprietor of the land had been vitiated by fraud.

[24] Having considered these submissions and the authorities cited on both sides, the judge stated his conclusion in the following way¹²:

"[73] I am satisfied that whereas a first Registration of Title extinguishes prior equitable claims, it will not do so if the Registration is the result of fraud. Furthermore a subsequent Registration for example by transfer to a new owner does not extinguish a possessory Title acquired subsequent to a lawful first Registration, see per Lord Jenkins *Campbell v Hall* [sic] **(1959) 1 WIR page 421 H to 422 I**. Dicta to the contrary in some recent authorities must be regarded as per in curiam that decision.

[74] The case before me concerns a first registration which I have found to have been obtained in reliance on fraudulent information, evidence and declarations. It therefore ought not to defeat the Claimant's possessory title and her ability to rely on the Statute of Limitations."

The grounds of appeal

[25] As originally filed, the grounds of appeal were as follows¹³:

"(a) That the Learned Judge finding [sic] that [Mrs Anderson] had purchased the land in dispute was wrong in law and against the weight of the evidence.

(b) That the Learned Judge's finding that that [sic] [Thomas'] application for first registration of title was obtained by fraud was wrong in law and against the weight of the evidence.

¹² Judgment, paras [73]-[74]

¹³ Notice of appeal filed 26 May 2014

(c) That the Learned Judge erred in law in finding that [Thomas] failed to make full disclosure and that this failure amounted to fraud.

(d) That the Learned Judge erred in law in holding that [Thomas] had made false declarations to the Registrar of Titles especially since this was not pleaded in the Statement of Case/Witness Statement and was never suggested in cross examination.”

[26] In a counter-notice of appeal filed on 11 June 2014, Mrs Anderson supported the judge’s judgment for the reasons which he gave. In particular, Mrs Anderson said this¹⁴:

“6. [Thomas] cannot pray the principle of indefeasibility in aid as [his] title was acquired fraudulently by way of first registration of titles and not by way of a transfer.

7. The particulars of fraud were largely proven and amounted to fraud. The Learned Trial Judge was therefore correct in so concluding that the application [for] registration of [the land] was tainted by fraud.”

The submissions

[27] As regards ground (a), in which it was contended that the judge’s finding that Mrs Anderson (and, presumably, Maxwell) had first acquired the land through purchase was “against the weight of the evidence”, Mrs Shields readily acknowledged the difficulty of challenging a trial judge’s finding of fact on appeal. She therefore concentrated her efforts on grounds (b) and (c), submitting that the judge erred in finding that the conduct which he attributed to Thomas, amounted to fraud within the meaning of the RTA. In this

¹⁴ Counter-notice of appeal filed 11 June 2014, paras 6-7

regard, Mrs Shields referred us to the provisions of the RTA itself, the guidance available on the website of the National Land Agency ('NLA') on how to apply for registered title, and some of the well-known authorities on the issue of fraud in the context of the RTA. On this basis, she submitted that the RTA imposes no duty on an applicant for first registration of land to disclose a third party interest or claim, and the judge therefore erred in treating Thomas' failure to make such disclosures as fraud. And finally, on grounds (d), Mrs Shields submitted that the judge erred in making unpleaded findings of fraud against Thomas.

[28] Mr Braham QC submitted that an applicant for first registration is required to make full disclosure of all issues, including adverse claims, relating to the land, of which he is aware. Accordingly, by failing to disclose the fact that Mrs Anderson had, to his knowledge, asserted a claim to the land, Thomas had obtained title to the land by dishonesty, amounting to fraud within the meaning of the RTA. Mrs Anderson's case against Thomas was properly pleaded and there was no basis upon which the judge's conclusions could be disturbed.

[29] Both Mrs Shields and Mr Braham referred us to a number of authorities. I will mention some of them in a moment.

Discussion on the relevant provisions of the RTA

[30] First, as regards the application process to bring land under the operation of the RTA, there is section 28, which sets out the persons who may make such an application to the Registrar of Titles ('the Registrar'). In the first category of persons are those who

claim “to be the owner of the fee simple, either at law or in equity”¹⁵. The application must be made in the form prescribed in the First Schedule to the RTA. The prescribed form of application in the First Schedule calls for the applicant to, among other things, specify the nature of the estate which he claims; set out the deeds, documents or other evidence on which he relies; and state whether he is aware “of any mortgage or incumbrance affecting the said land, or that any other person hath any estate or interest therein at law or in equity, in possession, remainder, reversion, contingency or expectancy ...”¹⁶

[31] Next, there are sections 29 and 30. The former deals with the material required to be provided to the Registrar in support of the application, which includes “the deeds and documents or other evidence that the applicant relies on in support of his title ...” And the latter requires the applicant to “describe and identify the land in one or other of the following ways - (a) by plat or diagram; (b) by metes and bounds”.

[32] Section 31 then requires the Registrar to submit the application, along with all supporting deeds, documents and so on, to a Referee of Titles¹⁷ (‘the Referee’) for direction as to whether the applicant is a person entitled to make the application. Before giving approval, the Referee must satisfy himself that the applicant is in possession of the land in question (whether by himself or a tenant); and that the applicant “would be

¹⁵ RTA, section 28(i)

¹⁶ RTA, First Schedule, para. 4

¹⁷ Appointed under section 6 of the RTA

entitled to maintain and defend such possession as against any other person claiming the same or any part thereof”.

[33] And finally, under the rubric ‘How to apply for a registered title’, the NLA website, though obviously not having the force of law, summarises the statutory requirements in this way¹⁸:

“1. An Application form prescribed by the Registration of Titles Act and signed by the applicant.

2. A Statutory Declaration by the applicant to prove possession (a statutory declaration is a written statement confirmed by oath).

3. Supporting statutory declarations to prove ownership from two persons who have known the land for at least 30 years and can verify ownership of the land throughout this period. It must be their personal knowledge of the history of the land.

4. An up-to-date certificate of payment of Property Tax.

5. Survey pre-checked diagram (if the land is being registered by plan).

6. Any other document you may have that proves ownership e.g. Receipt, Conveyance, Probate, Certificate of Compliance under the Facilities for Titles Act.

7. Applications otherwise than by Plan must describe the land so as to enable identification of the location of the parcel on the ground by reference to a land mark and must state the names by which the property is known. The description must state the distances along each boundary and the compass direction of each boundary line, the names of the abutting properties, the names of adjoining owners, and where the

¹⁸ <https://www.nla.gov.jm/content/how-apply-registered-title>

abutting land is registered land, the title reference for the property.

8. There may be other documents required depending on the facts of each respective case. Persons who wish to register land should therefore seek the assistance of a lawyer.”

[34] Turning now to the effect of registration, section 68 provides that a certificate of title issued under the RTA shall be “conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in ... the land therein described is seised or possessed of such estate or interest ...”

[35] Section 68 is reinforced by section 70, which, insofar as is immediately relevant, provides that:

“Notwithstanding the existence in any other person of any estate or interest ... which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, **except in case of fraud**, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be specified in the certificate, and to such incumbrances as may be notified on the *folium* of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title or instrument evidencing title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser ...” (Emphasis mine)

[36] As Lord Rodger of Earlsferry explained in **Pottinger v Raffone**¹⁹, a decision of the Privy Council on appeal from this court, “[t]he main aim of this system of registration of title is to ensure that, once a person is registered as proprietor of the land in question, his title is secure and indefeasible except in certain limited circumstances which are identified in the [RTA]”.

[37] Section 70 makes it plain that fraud is the principal exception to the indefeasibility of title secured by section 68. Fraudulent conduct on the part of the registered proprietor therefore defeats a registered title.

[38] In **Assets Company Limited v Mere Roihi and others**²⁰, a decision of the Privy Council on appeal from the Court of Appeal of New Zealand, in which the system of land registration was at the material time very similar to that established by the RTA²¹, Lord Lindley explained the meaning of the word ‘fraud’ in this context:

“... by fraud in these Acts is meant actual fraud, i.e., dishonesty of some sort, not what is called constructive or equitable fraud - an unfortunate expression and one very apt to mislead, but often used, for want of a better term, to denote transactions having consequences in equity similar to those which flow from fraud. Further, it appears to their Lordships that the fraud which must be proved in order to invalidate the title of a registered purchaser for value, whether he buys from a prior registered owner or from a person claiming under a title certified under the Native Land Acts, must be brought home to the person whose registered title is impeached or to his agents. Fraud by persons from whom he claims does not affect him unless knowledge of it is brought

¹⁹ [2007] UKPC 22, para. 20

²⁰ [1905] AC 176, 210

²¹ The equivalent New Zealand statute was the Land Transfer Act, 1870

home to him or his agents. The mere fact that he might have found out fraud if he had been more vigilant, and had made further inquiries which he omitted to make, does not of itself prove fraud on his part. But if it be shewn that his suspicions were aroused, and that he abstained from making inquiries for fear of learning the truth, the case is very different, and fraud may be properly ascribed to him. A person who presents for registration a document which is forged or has been fraudulently or improperly obtained is not guilty of fraud if he honestly believes it to be a genuine document which can be properly acted upon."

[39] Fraud in this context therefore connotes dishonesty of some kind. Lord Buckmaster made the same point in **Waimiha Sawmilling Company Ltd (In Liquidation) v Waione Timber Co Ltd**, another decision of the Privy Council on appeal from New Zealand²²:

"If the designed object of a transfer be to cheat a man of a known existing right, that is fraudulent, and so also fraud may be established by a deliberate and dishonest trick causing an interest not to be registered and thus fraudulently keeping the register clear ... each case must depend upon its own circumstances. The act must be dishonest ..."

[40] These principles were applied by this court in, among numerous other cases, **Harley Corporation Guarantee Investment Company Limited v Estate Rudolph Daley et al**²³.

²² [1926] AC 101, 106.

²³ [2010] JMCA Civ 46; see in particular the judgment of Harris JA at paras [59]-[60]

Conclusion

[41] I accept that, as Mrs Shields was anxious to demonstrate, neither sections 28-31 of the RTA nor the NLA guidance on how to apply for a registered title incorporates an explicit requirement for the applicant to disclose competing or adverse interests. But, in my view, the clear intention of the stated requirements is that the applicant should disclose all such matters as may be necessary to put the Referee in a position to make an informed assessment of whether a case for bringing the land in question under the operation of the RTA has been made out. In particular, the information supplied must be, as Mr Braham submitted, sufficient to enable the Referee to determine that the applicant is in possession of the land in question and that he “would be entitled to maintain and defend such possession against any other person claiming the same or any part thereof”.

[42] Mrs Shields elected not to pursue any real challenge to the judge’s findings of fact. In the light of this court’s traditional disinclination to disturb a trial judge’s findings of fact save in certain specified circumstances²⁴, none of which apply in this case, I think she was clearly right to do so. But the upshot of this decision is that I must seek to apply the principles to the facts as found by the judge.

[43] The judge found as a fact that Mr and Mrs Anderson purchased the land and that they and their children had been in possession of the land for over 30 years. The judge also found that Thomas was present on the land on the occasion when his brother Lloyd

²⁴ See, for example, **Industrial Chemical Co (Jamaica) Ltd v Ellis** (1986) 35 WIR 303, applying the well-known rule in **Watt (or Thomas) v Thomas** [1947] AC 484

blocked the survey which was about to be conducted on Mrs Anderson's instructions. It is true that, as Mrs Shields pointed out, Mrs Anderson did not bring action against Thomas himself arising out of this incident. But she did sue both Donald and Lloyd; and they defended the actions on the basis that Mrs Anderson had never been in possession of the land and that it belonged to Thomas. Against this background, I find it inconceivable that Donald and Lloyd would not have apprised Thomas of Mrs Anderson's attempts to vindicate her claim to the land (which she had previously attempted to have surveyed) by action in the Resident Magistrate's Court.

[44] In these circumstances, so it seems to me, the judge's conclusion that Thomas' failure to disclose the existence of Mrs Anderson's claim to the Registrar in his application for registration "was indicative of a want of candour" is completely unassailable. In a word, Thomas' conduct was dishonest. I accordingly think that Mrs Anderson's contention that Thomas' registration as proprietor of the land was procured by fraud, was made out on the evidence and the judge was correct to so find.

[45] This conclusion sufficed to dispose of grounds (a), (b) and (c).

[46] In ground (d), as will be recalled, Thomas' complaint was that the judge erred in finding that he had made false declarations in his application to obtain registered title to the land when this was not pleaded. But, as Mr Braham submitted, the clear implication of the particulars of fraud set out in the amended particulars of claim²⁵ was that Thomas'

²⁵ See para. [19] above

application to the Registrar had falsified the factual position by failing to disclose Mrs Anderson's interest in the land. In his defence, Thomas averred that "[t]here was no duty on my part to advise the Registrar of Titles that [Mrs Anderson] was claiming the said lands, as [she] did not produce any document to substantiate her allegation, and she did not bring any suit against me"²⁶. In my view, this pleading clearly demonstrated that Thomas fully understood the nature of the case that was being brought against him. I accordingly concluded that the pleading point contained in ground (d) should be dismissed.

[47] There was no specific mention of the counter-notice of appeal when the matter was disposed of on 17 November 2017. However, in light of my conclusion that the appeal should be dismissed, it followed that the counter-notice of appeal – in which it was contended that judge's decision was correct for the reasons which he gave²⁷ - necessarily succeeded.

[48] These are my reasons for concurring in the decision of the court referred to at paragraph [4] above.

SINCLAIR-HAYNES JA

[49] I have read in draft the reasons for judgment of the learned President and I agree with his reasoning and conclusion.

²⁶ See para. [20] above

²⁷ See para. [26] above

P WILLIAMS JA

I too have read the draft reasons for judgment of the learned President and agree with his reasoning and conclusion.