



**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS**

ACTION NO. CL 167/22

BETWEEN:

BERNARD HERMAN VAN BILDERBEEK

PLAINTIFF

-and-

**(1) PAUL DEMPSEY (PRACTISING AS
DEMPSEY & CO. (A FIRM))**

(2) FITZROY HOLDINGS LTD.

(3) JANICE ELIZABETH MATEJA

(4) THE REGISTRAR OF LANDS

DEFENDANTS

JUDGMENT

Before: The Hon. Mr. Justice Anthony S. Gruchot

**Appearances: Mr Conrad Griffiths KC of Griffiths & Partners for the
Plaintiff**

No appearance by the 1st and 2nd Defendants

**Ms Shantae Francis of Misick & Stanbrook for the 3rd
Defendant**

**No appearance on behalf of the 4th Defendant pursuant to
the Order of 12th June 2023**

Hearing Date: 20th June 2023

Venue: Court 5, Graceway Plaza, Providenciales.

To be Handed Down: 7th September 2022 at 3:00 p.m.



Background

1. In 2000, the Plaintiff instructed the 1st Defendant to form the Grace Trust ('the 2000 Grace Trust'). The 2nd Defendant was declared as trustee holding 1 fully paid-up share in O.F.M. Holding Limited¹ beneficially for the Plaintiff.
2. On 15th July 2001 the 2000 Grace Trust was amended and restated. The restated 2000 Grace Trust appointed the Plaintiff and 1st Defendant as the trust's protector committee. On 28th June 2011, the Plaintiff and the 1st Defendant resigned as members of the protector committee. On the same day the Plaintiff, David Laing and Graham Stevens became members of the protector committee.
3. On 20th February 2020 the 2nd Defendant was retired as trustee and Coriats Trust Company Limited was appointed as the new Trustee, thus moving the trust and its administration away from the 1st Defendant, no doubt as a result of the issues raised in this matter.
4. In 2003 the Plaintiff instructed the 1st Defendant with respect to the purchase of unit 737 at the Ocean Club West Resort ('the Resort'). This was successfully transferred into the name of the Plaintiff in trust for the 2000 Grace Trust
5. In 2005 the Plaintiff acquired unit 738 at the Resort, the 1st Defendant acting on the transaction for the Plaintiff. This unit was sold in 2009, the 1st Defendant again acting for the Plaintiff on the transaction.
6. In 2007, in pursuit of plans to join the units together to create 1 large accommodation, the Plaintiff agreed to purchase unit 736, parcel 60906/167/K88 ('the Property') from the 3rd Defendant and her husband, Chester Anthony Mateja ('Mr & Mrs Mateja') for US\$500,000.00. It appears that the purchase price was to be split between the acquisition of the Property and its contents in the amounts of US\$455,000.00 and US\$45,000.00 respectively, and although the Plaintiff in his oral evidence could not recall the precise split, nothing turns on that. The Plaintiff again instructed the 1st Defendant to act on his behalf in the transaction and instructed that

¹ A company incorporated under the laws of the Turks and Caicos Islands.

the Property was to be transferred to him in trust for the 2000 Grace Trust.

7. The Plaintiff took possession of unit 736 in 2007 and his evidence is that he was accepted by the executive committee of the strata corporation as being the owner of the Property and that he received the net rental income generated by the Property.
8. In 2017, permission by the strata corporation for the merger of the units having been refused, the Plaintiff placed the Property on the market for sale and he says he advised the 1st Defendant of the intention to sell at that time. On 2nd August 2018, an offer for the purchase of the unit acceptable to the Plaintiff was received and the 1st Defendant was instructed to act on the transaction. Shortly after, on 7th September 2018, the Plaintiff received an email from his realtor advising that the purchaser's attorney had suggested that there was a problem with the Plaintiff's title to the Property. The purchaser's attorney had obtained a copy of the Land Register for the Property which showed that the registered proprietors were still Mr & Mrs Mateja.
9. The Plaintiff then went to see the 1st Defendant who provided the Plaintiff with an explanation which he says he did not understand, but suggested that there was a problem with the Land Registry which he was resolving. The Plaintiff says that he took the 1st Defendant at his word and awaited confirmation that the problem had been resolved.
10. The Plaintiff says the next communication was from his realtor on 20th December 2018 advising that the Property had been recently transferred² and a restriction had been entered against the title to the Property preventing any dealings with it. On 21st December 2018, the Plaintiff emailed the 1st Defendant raising this new issue. A response was received from the 1st Defendant. It is unclear whether this was by email or telephone but a response is inferred as on 22nd December 2018 the Plaintiff emailed his realtor as follows:

"The good news is that the title is now held in trust for our Trust by our Trustees. We don't know what the nature of the restriction is. Can you find

² The transfer was registered on 17th August 2018.

out? Our lawyers say that the Registrar cannot give a reason.

Could there be a general restriction on the OCW units, because of the court action?”

11. The matter appears to have staggered on through 2019 with there being further emails from the Plaintiff and also David Laing and Graham Stevens to the 1st Defendant.
12. On 31 October 2019, the proposed purchaser’s attorney suggested to Graham Stevens that the Plaintiff may wish to appoint an independent attorney. On or about 2nd November 2019, Griffiths & Partners (‘G&P’) were instructed to act on behalf of the Plaintiff and the 2000 Grace Trust.

The Impugned/Fraudulent Transactions/Documents

13. Following some investigative work Mr Griffiths KC submits that the following actions were taken by the 1st Plaintiff:
 - a. That on or about 8th August 2018 the 1st Defendant purportedly procured a trust agreement between Mr & Mrs Mateja as settlors and the 2nd Defendant as trustee (‘the 2018 Grace Trust’).
 - b. That on or about 9th August 2018 the 1st Defendant purportedly procured a deed of settlement between Mr & Mrs Mateja as settlors and the 2nd Defendant as trustee of the 2018 Grace Trust settling the Property into the said trust.
 - c. That the 1st Defendant had submitted an application for exemption from stamp duty dated 13 September 2018³ stating:
 - i. the names of the applicants as being Mr & Mrs Mateja;
 - ii. the value of the Property as being approximately US\$400,000.00;
 - iii. that the grounds for the application were:

³ This date is not consistent with the dates of the other purported documents and its purported submission to the Land Registry and Collector of Stamp Duty as per the Memorandum detailed at paragraph 17 below.

“THIS IS A TRANSFER FROM REGISTERED PROPRIETORS TO A TRUST OF WHICH THEY ARE BENEFICIARIES; THERE BEING NO CHANGE IN BENEFICIAL OWNERSHIP; THE CHANGE IS BEING UNDERTAKEN FOR ESTATE PURPOSES.”

The application was purportedly signed by the 1st Defendant. Exemption from payment of stamp duty was granted on 18th September 2018⁴.

14. Additionally, a transfer of title must have been submitted for registration, transferring the legal title of the Property to the 2nd Defendant as the 2nd Defendant is registered as the proprietor as of 17th August 2018⁵.
15. It is averred by the Plaintiff that these documents were fraudulently created and executed, which allegation is supported by Mrs Mateja (see paragraphs 21 to 24 below).
16. On 1st October 2018, the Registrar of Lands caused a restriction to be registered against the Property preventing any further dealings from taking place unless by order of the Court or the Registrar.

The Restriction

17. On 1st October 2018 the Registrar of Lands sent an internal memorandum (‘the Memorandum’) to the Commissioner of Lands raising/confirming the following:
 - a. That a transfer of the Property from Ocean Club West Ltd. to Mr & Mrs Mateja was on 6th December 2000, endorsed on the title to the Property.
 - b. On 17th August 2018 under cover of a letter of 9th August 2018, a transfer was received from Dempsey & Co purporting to transfer the title from Mr & Mrs Mateja to the 2nd Defendant.
 - c. That an application for exemption from stamp duty was received under cover of a letter dated 9th August 2018 to the Collector of Stamp Duty.

⁴ This is confirmed in the Memorandum.

⁵ This is confirmed by the Memorandum.

- d. The following supporting documents were enclosed with the exemption application:
 - i. An affidavit of the 1st Defendant in support of the application;
 - ii. A deed of settlement between Mr & Mrs Mateja and the 2nd Defendant;
 - iii. A trust agreement between Mr & Mrs Mateja and the 2nd Defendant.
 - e. The Memorandum recites that the application for exemption was submitted to the Collector of Stamp Duty on 19th August 2018 and returned to the Registrar of Lands on 18th September 2018, approved.
 - f. Enquiries had been made concerning the notary public who had purportedly witnessed the signatures of the transferors [Mr & Mrs Mateja] who was found not to be on the list of notaries.
 - g. That the Registrar of Lands requested copies of the Agreement for Sale and Transfer of the Property to the Plaintiff⁶. The Registrar concluded that the signatures of Mr & Mrs Mateja on those documents did not match the signatures on the 2018 transfer.
18. It appears that in light of the above, on 1st October 2018 a restriction was registered by the Registrar of Lands against the title to the Property⁷. By reference to paragraph 18 of the 4th Defendant's Defence, the Registrar of Lands⁸ has removed that restriction and entered a fresh restriction in the following terms:

"No dealing to be registered until the conclusion of case CL 167/22 in the Supreme Court otherwise than pursuant to an order of court or the Registrar."

⁶ These had been obtained from Misick and Stanbrook, attorneys acting on behalf of the Matejas' in the sale to the Plaintiff.

⁷ Pursuant to section 132(1) of the RLO the Registrar of Lands may enter a restriction against dealing with land for the prevention of any fraud or improper dealing or any other sufficient cause.

⁸ There have been a number of persons appointed as Registrar of Lands over the relevant period.

Meeting with the 1st Defendant

19. The Plaintiff states that on 9th March 2020, he had a meeting with the 1st Defendant at his offices, in the company of Mr Griffiths KC at which the 1st Defendant was asked to give an explanation of what had happened. He says that the 1st Defendant had a number of documents with him which were handed over to Mr Griffiths KC.

20. The Plaintiff summarised the meeting as:

a. The 1st Defendant said that:

- i. There had been a “*fuck up*”;
- ii. The transfer of the Property to the Plaintiff had been sent to the Registry in 2007 together with payment for stamp duty;
- iii. Endless “*chase-ups*” with the Land Registry by him and his team members to the Registry and to different Registrars, had been made without any success.

b. The 1st Defendant produced:

- i. A (unsigned) copy of a letter dated 22nd May 2007 to Kendal B. Williams, the then Land Registrar, headed “***Parcel 60906/167/K88, Leeward Going Through, Providenciales Mateja to Bilderbeek***” purportedly enclosing:

“

1. *Transfer of Land in triplicate;*
2. *Application for Certified Copy of Register in triplicate;*
3. *Our trust account check in the amount of US\$44,376.00 being:*
 - i. *US\$44,362.50 on account of Stamp Duty on the purchase price of US\$455,000.00;*
 - ii. *US\$10.00 on account of the registration of the Transfer;*
 - iii. *US\$3.50 on account of the Certified Copy Register.”*

- ii. 2 copies of bank reconciliation reports dated ‘May 1/2007 – May

31/2007' and 'Aug 1/2007 – Aug 31/2007'⁹.

- iii. A copy of a letter dated 4th June 2013 to Paul Madgwick, the then Registrar of Lands chasing the registration.
- iv. A letter dated 7 June 2018 to Michael A. Shedrinsky, purportedly a US attorney (in New York) in some way connected to the Matejas.
- v. A copy of the 2018 Grace Trust.
- vi. A copy of the 2018 deed of settlement.
- vii. The application for exemption from stamp duty.

The Affidavit of Janice Elizabeth Mateja ('Mrs Mateja')

- 21. The Plaintiff, through his attorneys ('G&P') engaged the services of a private investigator in the USA who tracked down Mrs Mateja. Mr Mateja had sadly passed away on 11th May 2020.
- 22. On 22nd June 2021 Mrs Mateja swore an affidavit confirming *inter alia* that:
 - a. She and her husband had purchased the Property from the developer in 2000.
 - b. In 2007, she and her husband instructed Misick & Stanbrook attorneys to deal with the sale of the Property to the Plaintiff and that they received the proceeds of sale as confirmed by a copy of the attorneys' client ledger exhibited to the affidavit¹⁰.
 - c. She had been sent copies of the trust agreement and the deed of settlement (referred to in paragraphs 13.a and 13.b above) and the signatures on those documents were not those of her and her husband.

⁹ These reports were internal to Dempsey & Co and were of poor quality. In reply to a request for better copies, Mr Dempsey advised that they were from an old accounting system and he did not know if access was still possible.

¹⁰ This ledger shows credits of a deposit on 4 May 2000 of US\$50,000.00 from the Turks and Caicos Banking Company Ltd; on 21 May 2007 of US\$450,000.00 from Dempsey & Co. It also shows debits of US\$30,000.00 to Turks and Caicos Property Ltd.; US\$465,000.00 to Chester Mateja and US\$5,000.00 to Misick and Stanbrook in respect of legal fees.

- d. She had never seen the trust agreement and deed of settlement before they had been sent to her in 2020.
 - e. She believed that the Property had been sold in 2007 and that full payment had been received.
 - f. She has never had any contact with the 1st Defendant, never requested any exemption from payment of stamp duty to be made and was certain her husband had not.
 - g. She had no knowledge of anyone called Michael A. Shedrinsky.
 - h. She has never transferred the Property to the 2nd Defendant (in trust or otherwise) and the only person the Property was sold to was the Plaintiff.
23. The Plaintiff makes no allegations of impropriety or wrongdoing against Mr & Mrs Mateja and Ms Francis essentially appeared on a watching brief.

Discussion

24. The specially endorsed writ of summons was issued on 11th October 2022.
25. The 4th Defendant filed an acknowledgement of service on 27th October 2022 and filed a defence on 14th November 2022. This defence is, in essence, with respect to the technical application of the Registered Land Ordinance (Cap. 9.01) ('the RLO') and the role of the Registrar of Lands. The Registrar avers that there was no reason to join him in the proceedings as:
- "Where the Court makes an order that any party is entitled to any land the Registrar is bound by virtue of section 121 of the Registered Land Ordinance (on the application of any interested party supported by such evidence as he may require) to register the person entitled as proprietor."*
26. The 3rd Defendant filed an acknowledgement of service on 7th December 2022 not contesting the Plaintiff's claim.

27. The writ was served on the 1st and 2nd Defendants on 17th October 2022¹¹. They have failed to acknowledge service.
28. I was referred to a copy letter dated 4th December 2019 from David Laing to the 1st Defendant in which he set out the allegations made in this claim and requested that all documentation relating to the matter be passed over to G&P.
29. I was also referred to a copy letter dated 3rd October 2021 from G&P to the 1st and 2nd Defendants. In that letter, G&P wrote:

“... 3. It will be obvious to you that Dempsey & Co were instructed in 2007 to represent the interests of Mr Van Bilderbeek, who was acting in trust for OFM Holdings Limited, in relation to the purchase of the Property. However, notwithstanding payment of the purchase price, and the payment of stamp duty and of registration and legal fees to your law Firm, this conveyance did not complete.

4. It is unclear to us as to what happened in 2018 save that all of those events took place without the knowledge or consent of Mr Van Bilderbeek and he has been shocked and distressed to discover that the Property is not registered in his name (in trust). It is now registered in favour of Fitzroy Holdings Ltd. (in trust), purportedly in favour of Mr and Mrs Mateja. Mr Mateja is deceased. Mrs Mateja disclaims any interest in the Property or prior knowledge of the events for 2018.

...

6. We should also be grateful if you would please confirm in writing that so far as you are all concerned the Property is held for Mr Van Bilderbeek as trustee and confirm that you will do all things to cooperate with the rectification of the Register to that effect.

30. I was also referred to the following further correspondence:

¹¹ This is confirmed by the 1st affidavit of Yajaira Marte sworn on 1st May 2023 showing that the documents were sent both by hard copy and by email.

- a. A letter from G&P dated 1st November 2022 chasing acknowledgement of service and advising of intention to move in default, delivered in hard copy and by email:
 - b. An email dated 6th November 2022 chasing acknowledgement of receipt of the proceedings and the above letter.
31. I am told by Mr Griffiths KC that no response has been received other than some without prejudice correspondence.
32. In light of the above, I am persuaded that the 1st and 2nd Defendants have been properly served with and have the full knowledge of these proceedings. The relief sought in this matter is not of the nature where default judgment can be entered administratively and therefore the Plaintiff has to proceed with the action as if the Defendants had given notice of intention to defend¹². O.19 r.7 provides that in such circumstances the Plaintiff may apply to the Court for judgment and the matter is then set for a judgment hearing.
33. On 2nd May 2023 the Plaintiff issued a summons for various orders and directions including an order that the question of liability be determined first and if established the question of damages be determined at a later hearing. That application came before me on 12th June 2023 at which time I allowed the application and ordered:
1. The question of liability shall be determined first and if liability is established the question of damages and other relief shall thereafter be served at a later hearing.
 2. Formal discovery by lists shall be dispensed with and the Plaintiff may serve a list of documents he proposes to rely on in relation to the question of liability and shall lodge a bundle of such documents with the Registry before the trial date.
 3. The first affidavit of the Plaintiff sworn on 28th April 2023 may stand as his

¹² O.13 r.6(1).

evidence-in-chief and may be supplemented if so advised.

4. The Plaintiff may serve and rely on a Hearsay Notice in respect of the affidavit of the 3rd Defendant sworn prior to the commencement of these proceedings.
5. The trial of the Action is listed at 10:00 a.m. on Tuesday 20th June 2023 with a time estimate of one hour.

34. The Registrar of Lands having indicated that he would abide by any orders the Court makes in relation to the removal of a restriction and rectification of the Register, his attendance and that of his attorney at the hearing of this matter was excused.

Decision

35. The above history paints a disturbing picture as to the events which have taken place.
36. The 1st and 2nd Defendants have failed to engage in this litigation at all.
37. The Plaintiff issued a summons for directions which was listed before me on 30th May 2023. At that hearing, Mr Griffiths KC confirmed that the summons had not yet been served on the 1st and 2nd Defendant and the hearing was adjourned to 12th June 2023.
38. On 12th June 2023, Mr Griffiths KC confirmed the summons had been served on the 1st and 2nd Defendants. I made the Orders set out at paragraph 33 above.
39. On 20th June 2023, I took evidence from the Plaintiff. Copies of relevant correspondence were contained within the trial bundle, all of which supported the narrative provided by the Plaintiff. In addition, in the absence of the 1st and 2nd Defendants, that evidence went unchallenged.
40. In the absence of any explanation from the 1st Defendant, I am left with the inescapable impression that the documents sent to the Land Registry on 9th August 2018 were fraudulent documents and that the 1st Defendant must have known that was so. In my judgment, the documents submitted to the Land Registry and the

Collector of Stamp Duty do not reflect any genuine transaction. I make the observation that the weight of the evidence suggests that the documents were not only fraudulent but also were created by or at the direction of the 1st Defendant, however, that is not a matter that is before me and I do not make such a finding.

41. I am mindful that these documents were created and submitted after the fact that the Plaintiff's title had not been registered in 2007 had come to light and after the 1st Defendant had been charged to rectify the problem. Instead of doing so, it appears that he entered into a course of conduct to disguise what had transpired previously. Whilst the Property had been settled in trust for the benefit of the Matejas, they had no knowledge and so would have never claimed as beneficiaries under the trust, a trust of which the 2nd Defendant was the trustee and which Defendant was under the control of the 1st Defendant.
42. The claim before me has been framed in negligence and I am asked to find that the 1st Defendant was negligent to the extent that, on acting on behalf of the Plaintiff in 2007 he:
 - i. failed to submit the 2007 executed instruments of transfer of registration promptly or at all, alternatively, failed to follow up on the same to ensure registration was successfully completed.
 - ii. Failed to make payments of stamp duty in a timely manner and any additional sums required to secure registration.
 - iii. Failed to keep and maintain accurate records.
 - iv. Failed to report and to warn and alert the Plaintiff to any of the matters set out above or to inform the Plaintiff that he was not in fact registered as the proprietor as trustee of the Property.
43. I cannot accept that the 1st Defendant's bank reconciliation records prove, on the balance of probabilities, that the payments to the Land Registry and the Collector of Stamp Duty were actually paid. From the Defence of the 4th Defendant, it appears as if documents were submitted to the Land Registry in 2007, the Registrar of Lands surmising that the registration was rejected for non-payment of stamp duty and no

records of payment can be found.

44. In all of the circumstances, and in particular as there is no explanation from the 1st Defendant as to what occurred, the claim of negligence is made out. Simply put, the 1st Defendant was instructed to ensure that title to the Property was duly vested in the Plaintiff (as trustee) and he failed to do so.
45. I therefore find that the true and proper proprietor of the Property is the Plaintiff (as trustee). Pursuant to section 121 of the RLO the Plaintiff may apply to the Registrar of Lands to be registered as the proprietor.
46. With respect to the claim of professional negligence, I find in favour of the Plaintiff against the 1st Defendant and judgment is entered against the 1st and 2nd Defendant for damages to be assessed, the 2nd Defendant at all times being under the control of the 1st Defendant and was therefore complicit in the transaction by taking title to the Property when it knew it had no legal right to do so.
47. The Plaintiff seeks an order that the first and second Defendants shall jointly and severally pay the Plaintiff's and the 3rd and 4th Defendants' costs of Action to the date of judgment on an indemnity basis.
48. The restriction entered against the title to the Property appearing to the Court to now fall away, I will hear counsel with respect to the form of order and in respect of costs, for which I shall have to trouble the 4th Defendant (or his attorney).

7th September 2023



The Hon. Justice Anthony S. Gruchot
Judge of the Supreme Court