



[2018] JMSC Civ.109

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2017HCV02104

BETWEEN	CLAUDINE BISHOP	1ST CLAIMANT
AND	LEONARD BISHOP	2ND CLAIMANT
AND	SHARON BEVERLEY BRISSETT	1ST DEFENDANT
AND	SCOTIA JAMAICA BUILDING SOCIETY	2ND DEFENDANT

Mrs. Hannah Harris-Barrington instructed by the Jamaican Forum for Human Rights for the Claimants

Mr. Clive Monroe instructed by Monroe & Monroe for the first Defendant

Messrs. Courtney Williams and Kristopher Brown instructed by DunnCox for the 2nd Defendant

HEARD: July 16 and 23, 2018

WINT-BLAIR, J

The Background

[1] The applicant is the first defendant (“Ms. Brissett”) in a claim filed by the first and second claimants (“the Bishops”). Ms. Brissett, is a bona fide purchaser for value of a property from the second defendant (“SJBS”) pursuant to the powers of sale contained in a mortgage registered against the Certificate of Title for the subject property. Ms. Brissett, is now the registered proprietor of the subject property. By this application, Ms. Brissett seeks to have this matter determined with the following orders:

1. That the claimants claim numbered 2017HCV02104 against Sharon Brissett be struck out.
2. That judgment be entered in favour of Sharon Brissett against Claudine Bishop and Leonard Bishop in both claims.
3. That costs be agreed or taxed.
4. Such further and other relief as the Court thinks just.

[2] Ms. Brissett had commenced an action for recovery of possession in the St Catherine Parish court which was transferred to this court, numbered 2017HCV04039 and consolidated on November 24, 2017, by order of Batts, J with claim numbered 2017HCV02104 which had been filed by the Bishops.

[3] Counsel for the applicant submitted in writing that the court should strike out the Bishops' statement of case in both matters as they have no proprietary right beyond the date of registration of her proprietorship. This application was grounded in the indefeasibility of the registered title held by Ms. Brissett and her right to possession which flowed therefrom. Counsel Mr. Monroe submitted further that once a determination was made by the court that Ms. Brissett's title was indefeasible then the Bishops' claim would fail. In support of his submissions, counsel argued that the court should rely on the cases of **Div Deep Limited and Mahesh Mahtani et al** [2011] JMCA Civ 25. **Dennis Atkinson v The Development Bank of Jamaica Limited et al** [2016] JMCC COMM37 and **Sebol Limited v Selective Home & Properties Limited et al** 2004HCV2526 delivered on October 9, 2007.

The Bishops seek to oppose the application on the grounds of fraud, in that a caveat had been lodged by them and that Ms. Brissett would have had constructive notice of the caveat. Counsel Mrs Harris-Barrington submitted that she had moved her chambers and did not receive the notice sent out by the Registrar of Titles. Mrs Harris-Barrington argued that the respondent was in breach of its statutory duties in that proper and/or adequate relevant notices were not duly served upon the Claimant. The exercise of a power of sale on the part

of SJBS had not therefore arisen and that raises the issue of fraud. The Defendant's action was tantamount to fraud in obtaining by deception the exercise of its power of sale by falsely claiming to have complied with section 106 of the Registration of Titles Act. Additionally, that the retention or ownership and possession of the premises by the Defendant in the circumstances is inequitable and an act of unjust enrichment at the expense of the Claimant.

[4] Lastly, in her oral submission, counsel argued that section 3 of the Limitation of Actions Act applied to the first claimant as she had occupied the premises since the notice was first served and 12 years had expired. She relied on the case of **Recreational Holdings v Lazarus** [2016] UKPC 22, a decision of the Privy Council. In light of all this the claimants were entitled to ask the court to allow the claim to proceed.

[5] In response, Mr. Monroe submitted that section 106 does not entitle the bona fide purchaser to look behind the mortgagee's dealings with the land. The caveat lodged was not an absolute bar on dealings with the land. The caveator is to ensure that the Registrar of Titles is given an address at which he can be reached, a move from that address is to be communicated to the Registrar. The first claimant, Mrs. Bishop has no locus standi. There is no suggestion in the pleadings that both claimants did not live together in the subject property in any wise other than harmoniously and adverse possession could not arise in these circumstances or on the pleadings.

Discussion

[6] This application proceeded without affidavit evidence and has been determined based on the pleadings filed. The issue has been treated as one of law. It is the pleadings under attack which the court has examined to ascertain whether the statement of case discloses that there are no reasonable grounds for bringing or defending the claim pursuant to Rule 26.3 of the Civil Procedure Rules ("CPR").

The rule has been construed to mean have the claimants disclosed in their pleadings that there is a reasonable cause of action against the defendants.

The caveat

- [7] Mrs Harris-Barrington in her oral response to the application pleaded under the head “unjust enrichment” in her particulars of claim, that there had been a caveat lodged by the claimant, notice of which was served at the former address of her chambers for she had moved. She had therefore not received, the warning and the caveat was removed. She argued that the property was a consequence improperly transferred. This caveat has been exhibited showing the address for service as to the claimant, Leonard Bishop at 1 Colliston Drive, Kingston 10, Saint Andrew. There was nothing before the court to show that the claimant had appointed counsel to receive notices or proceedings in respect of the caveat. Nevertheless, the notice to caveator issued on May 9, 2017 (which is also not in dispute lodged on behalf of the bank) was addressed to Leonard Bishop c/o his counsel at her chambers at 121 Windward Road, Kingston, 2, Kingston as well as c/o his counsel at 9A Skyline Drive, Jacks Hill, Kingston 6, Saint Andrew as also to Leonard Bishop at 406 Gerald Road, Saint Catherine.
- [8] That this caveat existed is not in dispute, counsel did not indicate what the former and current addresses were in her submissions, however from the pleadings filed before this court; in the affidavit of service Mr. Chanordo Martin, process server employed to the Jamaican Forum for Human Rights, at paragraph 1 it says the chambers of counsel Mrs Harris-Barrington is situate at 75 East Street, Kingston CSO. That affidavit was filed on April 27, 2018 by counsel with an address for service at the foot of the affidavit being 75 East Street, Kingston CSO and 5 Stanton Terrace, Kingston 6, St. Andrew. Counsel did not exhibit any documents to show that she had written to the Head Postmaster requesting that her mail be forwarded to a new address nor had she produced before this court a notice to the Registrar of Titles that there had been a change in the address for service in

respect of the caveat lodged on behalf of the claimant. There was no submission in respect of the other two addresses to which the notice had also been sent.

- [9] In response to this submission Mr. Monroe argued that the Registrar of Titles requires an address within the bounds of Kingston, it is not the duty of the Registrar to search for a caveator. If a caveator moves, it is his duty to inform the Registrar of Titles of this event. The caveat lapsed and this is not in dispute. The registered title of Ms. Brissett is indefeasible and in the absence of fraud gives her an absolute right to possession.

The Law

- [10] In the Court of Appeal decision of **George Hylton v Georgia Pinnock et al** [2011] JMCA Civ 8 it was stated by Phillips, J.A. at paragraph 29 among other observations in respect of the application of the common law in relation to caveats that:

“A caveat is not an interest in land. It does however, protect the caveator’s undetermined interest in the property. It gives the caveator the right to relief given by the court under that section so that he may have his interest determined. If the caveat has lapsed, there is no caveat in place and therefore no basis upon which the court can grant any relief or order sought under the section.”

- [11] At paragraph 38 the learned Judge of Appeal went on to say as follows:

“The notice must therefore be delivered to be received at the address given in the caveat. That, I think, is the most that can be done to ensure that the notice reaches the caveator. I do not agree that it should mean notice actually communicated. To insist upon such a requirement would be contrary to the clear words of the Act that service is duly effected once the notice reaches the address and it is received at that address. It therefore need not be further proved when the notice actually reaches the caveator’s attention.”

- [12] At paragraph 40:

It must be remembered that a caveat is lodged to protect the caveator’s interest. If the caveator does not appear to seek relief, then the Registrar will be obliged to enter the dealing with the

property. The consequence of this would be be then tht the caveator's interest in the property would have been extinguished. In Half Moon Bay Hotel v Crown Eagle Hotels Limited PCA 31/2000 the Board said at paragraph 30:

'Be that as it may, the entry of a caveat merely operates to prevent the registration of a transfer or dealing without the consent of the caveator or the removal or withdrawal of the caveat. It does not of itself subject the title of the transferee to the interest or incumbrance which the caveat serves to protect. If, notwithstanding the failure to obtain the consent of the caveator or the withdrawal of the caveat, and in breach of section 142, the Registrar mistakenly registers a transfer without making the appropriate entry or notification of the caveator's interest on the Register Book, then subject to the Registrar's powers under Section 15(b) the transferee takes free from that interest.'

- [13] The effect of the authorities is that the caveat lodged by Leonard Bishop had lapsed and the transferee in the case at bar, obtained a title free from that interest as the caveator's interest in the property had been extinguished. This means, the bank then had a legal interest in the property which was indefeasible and superior to the equitable interest claimed by the claimants.

Fraud

- [14] The claimants assert firstly, that Ms. Brissett was aware of their caveat when she entered into an agreement for the purchase of the subject property and this is evidence of fraud. Secondly, that Scotiabank did not serve the statutory notice required by section 106 of the Registration of Titles Act ("RTA") upon them.
- [15] On the first point, the mere assertion by the claimant, Leonard Bishop does not render the bank's legal mortgage subject to his equitable interest. Section 71 of the Registration of Titles Act makes it plain that fraud is an exception to the rule governing the indefeasibility of title.

Section 71 provides:

*“Except in the case of Fraud, no person contracting or dealing with, or taking or proposing to take a transfer, from the proprietor of any registered land, lease, mortgage or charge, shall be required or in any manner concerned to enquire or ascertain the circumstances under, or the consideration for, which such proprietor or any previous proprietor thereof was registered, or to see the application of any purchase or consideration money, or **shall be affected by notice, actual or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.**” (emphasis mine)*

[16] The section clearly establishes that mere knowledge of the existence of the claimant’s equitable interest even, if it had remained in existence, having lapsed, could not affect the registration of the mortgage or be considered as fraud.

[17] In addition, section 108 of the RTA provides that upon transfer of property by a mortgagee who sells under his powers of sale, the interest of the mortgagor vests in the purchaser. Section 108 of the Act reads:

“Upon the registration of any transfer signed by a mortgagee or annuitant, or his transferees, for the purpose of such sale as aforesaid, the estate and interest of the mortgagor or grantor in the land herein described at the time of the registration of the mortgage or charge, or which he was then entitled or able to transfer or dispose of under any power of appointment or disposition, or under any power herein contained, shall pass to and vest in the purchaser, freed and discharged from all liability on account of such mortgage or charge, and of any mortgage, charge or incumbrance, registered subsequently thereto, excepting a lease to which the mortgagee or annuitant, or his transferees, shall have consented in writing; and the purchaser when registered as the proprietor shall be deemed a transferee of such land, and shall be entitled to receive a certificate of title to the same.”

[18] In the case at bar, the bank, by virtue of the mortgage, held a legal interest in the subject property. The mortgage was in default. The bank exercised its right of sale and having done so, legally transferred the property to Ms. Brissett. She was not required to enquire into the circumstances of the previous registration. The estate and interest of the mortgagor passed to and vested in Ms. Brissett, free

and discharged from all liability. She was entitled to be registered as proprietor and to receive a registered certificate of title to the property.

- [19] Further, sections 70 and 71 of the RTA confer protection upon a party in whom registered lands have been vested. Save and except in the case of fraud, the RTA confers an indefeasible interest upon a registered proprietor of land. Section 70 is set out below as follows:

Section 70 provides:

*“Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, 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 the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser.” (emphasis mine)*

- [20] In the case of **Harley Corporation Guarantee Investments Co. Ltd.v The Estate Rudolph Daley** [2013] JMSC Civ.114, Harris, J.A. on the issue of fraud said:

“In the absence of fraud, an absolute interest remains vested in a registered proprietor. All rights, estate and interest prevail in favour of the registered proprietor. Harley Corporation being registered as the proprietor of the land holds a legal interest therein which can only be defeated by proof of fraud. We will say more about this later.”

- [21] At paragraph 52 and the following the learned Judge of Appeal stated as follows:

*“The true test of fraud within the context of the Act means actual fraud, dishonesty of some kind and not equitable or constructive fraud. This test has been laid down in *Waimiha Sawmilling Company Limited v Waione**

Timber Company Limited [1926] AC 101 by Salmon LJ, when at page 106 he said:

*“Now fraud clearly implies some act of dishonesty. Lord Lindley in *Assets Co. v. Mere Roihi* (2) states that: ‘Fraud in these actions’ (i.e., actions seeking to affect a registered title) ‘means actual fraud, 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.’”*

*The test has been followed and approved in many cases including *Stuart v Kingston* (1923) 32 CLR 309; and *Willocks v Wilson and Anor* (1993) 30 JLR 297.*

In placing reliance on an allegation of fraud, a claimant is required to specifically state, in his particulars of claim, such allegations on which he proposes to rely and prove and must distinctly state facts which disclose a charge or charges of fraud.

At the time of the commencement of the actions the Civil Procedure Code, was the relevant procedural machinery in place. Section 170 stipulated that certain causes of action, on which a party seek to rely, must be expressly pleaded. The section reads:

“In all cases in which the party pleading relies on any misrepresentation fraud shall be stated in the pleading.”

*In *Wallingford v The Directors of Mutual Society* [1880] 5 AC 685 at 697 Lord Selbourne succinctly defined the principle in this way:*

“With regard to fraud, if there be any principle which is perfectly well-settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice. And here I find nothing but perfectly general and vague allegations of fraud. No single material fact is condescended upon, in a manner which would enable any Court to understand what it was that was alleged to be fraudulent. These allegations, I think, must be entirely disregarded ...”

*In *Davy v Garrett* [1878] 7 Ch D 473, Thesiger L.J at page 489 acknowledged the principle as follows:*

“In the Common Law Courts no rule was more clearly settled than that fraud must be distinctly alleged and as distinctly proved, and that it was not allowable to leave fraud to be inferred from the facts ... It may not be

necessary in all cases to use the word "fraud" ... It appears to me that a Plaintiff is bound to shew distinctly that he means to allege fraud. In the present case facts are alleged from which fraud might be inferred, but they are consistent with innocence."

The Civil Procedure Rules however do not expressly provide that fraud must be expressly pleaded. However, rule 8.9 (1) prescribes that the facts upon which a claimant relies must be particularized. It follows that to raise fraud, the pleading must disclose averments of fraud or the facts or conduct alleged must be consistent with fraud. Not only should the requisite allegations be made but there ought to be adequate evidentiary material to establish that the interest of a defendant which a claimant seeks to defeat was created by actual fraud.

*...It is perfectly true that although fraud has not been expressly pleaded, it may be inferred from the acts or conduct of a defendant - see *Eldemire v Honiball* (1990) 27 PC 5 of 1990 delivered on 26 November 1991.*

[22] In order to determine whether it fraud arises on the pleadings filed by the Bishops an examination of the claimant's amended statement of case is necessary. Under the head of unjust enrichment and fraud the pleadings which I will have set out here in summary, state:

- (i) That the claimant's caveat being lodged was removed without notice as counsel had moved her chambers.
- (ii) A Notice pursuant to section 106 of the RTA had not been served personally by the bank on the 2nd claimant.
- (iii) The power of sale had not arisen and therefore the bank had no legal right to sell the property.

Notice

[23] The question whether or not a purchaser is protected even before the transfer is registered arose in the case of **Lloyd Sheckleford v Mount Atlas Estate Limited**. Forte P, in delivering one of the judgments of the court, traced extensively the development of the legislation which resulted in the present section 106. In interpreting that section he stated at page 7:

"It is clear from the provisions of section 106, that it not only gives the mortgagee the power to sell, but is specific in protecting a bona fide purchaser for value from the consequences that may flow, if the exercise

of the power by the mortgagee was the result of impropriety or irregularity. The real question then, is whether a bona fide purchaser, who had no obligation to enquire into whether there was any default, impropriety, or irregularity in the sale should be deprived of the benefits of his contract already executed, for the reason that he had not yet registered the transfer.”

At page 8:

“Where then, the purchaser is a bona fide purchaser without any knowledge of an impropriety or irregularity in the sale, and where he has no obligation to make enquiries into such matters, the statute bestows upon him the guarantee that the registration cannot thereafter be restrained.”

At page 14:

“In any event in my judgment, on a simple reading of section 106, it is clear and unambiguous that the legislature intended to give the purchaser the protection as soon as the mortgagee, in the exercise of his power of sale, enters into a contract with a bona fide purchaser for the sale of the mortgaged property.”

- [24] Based on section 106 of the RTA, as construed in the case of **Sheckleford v Mount Atlas Estate Limited**, the registration of the transfer to Ms. Brissett could only be restrained if it can be shown that she was not a bona fide purchaser. In the case at bar it cannot be said that Ms. Brissett is not a bona fide purchaser, the real challenge is to the exercise of the power of sale by the bank. Therefore Ms. Brissett enjoys the protection of section 106 of the RTA and is a bona fide purchaser holding an indefeasible registered title.
- [25] In the case of **Div Deep and Mahesh Mahtani et al** [2011] JMCA Civ 25 the appellants appealed from a judgment granting possession of registered land and the striking out of the ancillary claim brought by the appellants against the respondent. The appellants argued that the respondent had falsely represented himself as a bona fide purchaser for value and that there had been a fraudulent circumvention of a caveat recorded against the property.
- [26] The Court of Appeal in a decision delivered by Panton, P determined the appeal by interpreting sections 71, 105 and 106 of the RTA. The Court held that given

the statutory provisions, the position of the respondent was untouchable in the absence of fraud.

[27] The main aim of the 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 legislation.

[28] In **Pottinger v Raffoone** [2007] UKPC 22, the Privy Council having set out the provisions of section 161 of the RTA said:

"No action of ejectment or other action, suit or proceeding, for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act, except in any of the following cases, that is to say—

(a) the case of a mortgagee as against a mortgagor in default;

(b) the case of an annuitant as against a grantor in default;

(c) the case of a lessor as against a lessee in default;

(d) the case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;

(e) the case of a person deprived of or claiming any land included in any certificate of title of other land by misdescription of such other land, or of its boundaries, as against the registered proprietor of such other land not being a transferee thereof bona fide for value;

(f) the case of a registered proprietor with an absolute title claiming under a certificate of title prior in date of registration under the provisions of this Act, in any case in which two or more certificates of title or a certificate of title may be registered under the provisions of this Act in respect of the same land,

and in any other case than as aforesaid the production of the certificate of title or lease shall be held in every court to be an

absolute bar and estoppel to any such action against the person named in such document as the proprietor or lessee of the land therein described any rule of law or equity to the contrary notwithstanding."

"The basic rule is that, if any proceedings are brought to recover land from the person registered as proprietor, then the production of the certificate of title in his name is an absolute bar and estoppel to those proceedings, any rule of law or equity to the contrary notwithstanding. The only situations where a certificate of title is not a complete bar to proceedings are those listed in paragraphs (a) to (f). For present purposes the only relevant paragraph is (d), proceedings by a person deprived of any land by fraud against the person registered as proprietor of land through fraud. Therefore, assuming in Ms Raffone's favour that she could claim to have been deprived of the 34 lots, Mr Pottinger's certificate of title would not be a bar to her proceedings if, but only if, she could show that she had lost the land because Mr Pottinger had been registered as proprietor of it through fraud.

- [29] In the case at bar, the issue of fraud does not arise on the part of Ms. Brissett and therefore she is protected by law as the registered proprietor of the subject property.

Adverse possession

The first claimant has no locus standi in this matter. This issue of any claim for possessory title does not arise.

Power to strike out

- [30] The case at bar concerns the statement of case filed by the second claimant, which the first defendant argues discloses no reasonable grounds for bringing or defending the claim.
- [31] In the case of **Three Rivers District Council v Bank of England (No 3)** [2003] 2 AC 1, the test set out is whether the claimants have a real prospect of succeeding on the claim. In **Swain v Hillman** [2001] 1 All ER 91, 92, Lord Woolf MR said:

The test is whether there is a 'realistic' as opposed to a 'fanciful' prospect of success."

[32] Stuart Smith LJ, in *Taylor v Midland Bank Trust Co Ltd* said that, the court should look to the CPR and also to what will happen at the trial and that, if the case is so weak that it had no reasonable prospect of success, it should be stopped before great expense is incurred.

[33] In **Swain v. Hillman** Lord Woolf gave this further guidance at pp 94 and 95:

"It is important that a judge in appropriate cases should make use of the powers contained in Part 24. In doing so he or she gives effect to the overriding objectives contained in Part 1. It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose, and, I would add, generally, that it is in the interests of justice. If a claimant has a case which is bound to fail, then it is in the claimant's interests to know as soon as possible that that is the position. Likewise, if a claim is bound to succeed, a claimant should know this as soon as possible...."

"Useful though the power is under Part 24, it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at the trial. This does not involve the judge conducting a mini trial, but to enable cases, where there is no real prospect of success either way, to be disposed of summarily."

Whether the claim should be summarily struck out

[34] For the reasons which I have just given, I think that the question of whether the claim has no real prospect of succeeding at trial has to be answered having regard to the overriding objective of dealing with the case justly. As Lord Woolf said in **Swain v Hillman**, at p 95, the object of the rule is designed to deal with cases that are not fit for trial at all.

[35] In **Wenlock v Moloney** [1965] 1 WLR 1238 the plaintiff's claim of damages for conspiracy was struck out after a four day hearing on affidavits and documents. Danckwerts LJ said of the inherent power of the court to strike out, at p 1244B-C:

"this summary jurisdiction of the court was never intended to be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action. To do that is to usurp the position of the trial judge, and to produce a trial of

the case in chambers, on affidavits only, without discovery and without oral evidence tested by cross-examination in the ordinary way. This seems to me to be an abuse of the inherent power of the court and not a proper exercise of that power."

[36] Rule 26.3, rule states, in part:

"In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court- ...

(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim;..."

[37] The overall burden of proving that it is entitled to summary judgment lies on the applicant for that grant. The applicant must assert that he believes that that the respondent's case has no real prospect of success. In **ED & F Man Liquid Products Ltd v Patel and Another** [2003] EWCA Civ 472, Potter LJ, in addressing the relevant procedural rule, said at paragraph 9 of his judgment:

"...the overall burden of proof rests upon the claimant to establish that there are grounds for his belief that the respondent has no real prospect of success..."

[38] In applying the relevant rule and the overriding objective I will adopt the statement of Lord Woolf MR at page 94 of **Swain v Hillman** as stated above. On application to the the case at bar, The submissions of Mrs. Harris-Barrington on the main issue of fraud can be settled in light of the foregoing reasons and concluded with the case of **Div Deep Limited v Mahesh Mahtani et al** [2011] JMCA Civ 25, in which Panton, P specifically makes the point at paragraph 22:

"When applied to the instant case, it means that the respondent, barring fraud, by purchasing lot 81B, is not required to enquire or ascertain the circumstances under which the previous proprietor was registered. Nor is the respondent affected by notice of any trust or unregistered interest, notwithstanding any rule of law or equity to the contrary. In addition, knowledge of any such interest is not of itself to be imputed as fraud."

[39] The fraud being alleged cannot arguably be based on knowledge imputed to the bona fide purchaser. Fraud has not been shown to arise in the circumstances of this case.

[40] There are no issues of fact which the claimants seek to raise which can be regarded as highly complex. They relate to matters which affect the mortgagee's power of sale and involve the purchase of property by a bona fide purchaser. There is no nexus in fact between the actions of the bank and the actions of the purchaser, Ms. Brissett who was not directly involved, as she was a third party.

[41] For the foregoing reasons, the court makes the following orders:

Orders

1. Application to strike out the claim number 2017HCV02104 against Sharon Beverley Brissett is granted.
2. Claudine Bishop has no locus standi in this matter as consolidated and is removed from this action as a claimant.
3. Judgment for Sharon Beverley Brissett against Leonard Bishop in claim numbered 2017HCV02104.
4. Judgment for Sharon Beverley Brissett against Leonard Bishop in claim numbered 2017HCV 04039.
5. Costs to Sharon Beverley Brissett to be agreed or taxed in both claims at order number 3 and 4 above.