[2016] JMSC Civ 188

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2011 HCV-03765

BETWEEN	**JOAN MATHESON**	**CLAIMANT**
AND	**DONOVAN LENNOX**	**FIRST DEFENDANT**
AND	**MARLENE LENNOX**	**SECOND DEFENDANT**

Property Law – Sale of Property – Authenticity of Vendor's Signature on Agreement of Sale – Whether Fraud committed – Whether Defendant's or their Attorney negligent on failing to seek independent legal advice.

Mr. Ravil Golding & Ms. Bobbette Brown instructed by Lyn-Cook, Golding & Co for the Claimant

Mrs. Angela Cousins-Robinson & Ms. Simone Gentles instructed by Robinson, Gentles & Co for the First and Second Defendants

Heard: 6th & 7th October, 2015, 28th October, 2016

EVAN BROWN, J

Introduction and background

[1] This claim arose from a dispute regarding the authenticity of the vendor's signature on an agreement for sale dated 21st June, 1993. The agreement was concluded between the vendor Headley Henry Williams, and Donovan Lennox and Marlene Lennox as purchasers. The agreement was for the vendor to sell his interest in lands registered at volume 1130 folio 136, "the property", to the defendants.

[2] Mr. Williams died testate on 8th January, 1994. By his will executed 10th April, 1990, he appointed his son, Winston Williams, as one of the executors of his estate. A grant of probate of the will was issued on 16th February, 2006. Pursuant to that grant, Winston Williams was registered on transmission to the title on 23rd April, 2007. No other entry was made on the title.

[3] Winston Williams subsequently executed a power of attorney and appointed his sister, Joan Matheson, as one of his three agents. Mrs. Matheson is also one of the daughters of Headley Henry Williams. Pursuant to that power of attorney, she was given authority to conduct real estate transactions for the estate of Headley Henry Williams. She brought this action, suing the defendants for damages for fraud and the forgery of the signature of Headley Henry Williams on the sale agreement. Mrs. Matheson also sought the following orders:

(i) An order directing the Registrar of Titles to immediately remove caveat numbered 1439492 lodged against the Certificate of Title, and

(ii) An order declaring that the defendants have no interest, whether legal or equitable, in the premises registered at volume 1130 Folio 136.

(iii) An injunction be granted prohibiting the trespass by the defendants on the property.

Case for the claimant

[4] In May 1993, Headley Williams suffered a massive stroke after his ninety-ninth birthday. Mrs. Matheson visited Jamaica from the United States of America in July 1993 and saw that he was bedridden. Her visit was for one week and during that time he did not see him write or sign any documents. He spoke with a slurred speech and he was lucid. At this time, she said, he was not infirm of mind, though she did not know whether he could write in his usual way after the stroke.

[5] Mrs. Lennox approached Mrs. Matheson in July 1993 and expressed her desire to purchase the property from Headley Williams. Mrs. Matheson informed her that time that he was in no position to conduct legal transactions because his health was deteriorating. Mrs. Lennox, however, did not intimate to Mrs. Matheson that she already had a sale agreement purportedly signed by Mr. Williams while he was in the hospital.

[6] Mrs. Matheson therefore sought the services of handwriting expert Carl Major, to determine the authenticity of the vendor's signature, as it does not appear to be that of the Mr. Williams. She also submitted two letters to Mr. Major that were handwritten by Mr. Williams before his stroke in May 1993.

[7] Mr. Major said his examination of the signatures was not limited to "initial stroke, form, slant, shading, connection, skill, embellishment and terminal stroke". The signature at the end of the letters appeared as either "pops" or "papa", while the signature on the sale agreement appeared as "H.H Williams". Though he said that the signatures in the letters were undecipherable, he however opined that the vendor's signatures were of a "different authorship" than those in the letters. Mr. Williams, he said, did not make those signatures on the sale agreement.

[8] The signatures on the sale agreement, he said, were to give the appearance that a debilitated vendor placed them there. Mr. Major made reference to one of the letters sent to Mrs. Matheson dated 17th February, 1993. In that letter, Mr. Williams wrote that he was both ill and dying. Mr. Major observed that though the letter contained that information, the deceased was able "to pen such beautiful handwritings with very good spelling".

[9] It was his opinion that Mr. Williams would have been able to make his signature with "some degree of personal characteristics" just before his death. He would have made an earnest attempt to make his signature in a flowing fashion, rather than that script form which appeared on the sale agreement. He therefore

concluded that the signatures on the sale agreement are not those of Mr. Williams, and they were not written by him.

[10] He, however, admitted under cross examination that the signature on the supplemental sale agreement was unclear. He attributed that to the multiple times the document was photocopied. This signature, though ambiguous, also formed part of his examination. He also contradicted himself by suggesting that Mr. Williams' stroke would also affect his handwriting since the stroke affected his mental stability.

Case for the defendant

[11] Marlene Lennox met Headley Williams on Lincoln Road in Manchester, in or about 1992. She was introduced to him by Nellie Alexander who previously purchased a portion of land from him. On that day, she expressed to him her desire to purchase the property. As such, she said, she has never met Mrs. Matheson and has never entertained any discussion with her regarding the property.

[12] In 1993 Mrs. Lennox received a note from the deceased in which he enquired whether she was still interested in the property. Upon her receipt of this note, she visited Mr. Williams at his home to discuss the purchase price of the property. He suggested $15,000.00 per acre. She disagreed with that sum as she considered it to be unreasonably low as he was retired and elderly. She instead suggested $30,000.00 per acre. He agreed, and sale agreement was subsequently prepared by Mrs. Helen Scott, attorney at law who had carriage of sale.

[13] The drafted agreement was taken to Mr. Williams' house by Ms. Francis Blair, the secretary of Mrs. Helen Scott. On the 21st June, 1993, Mrs. Lennox executed the sale agreement with Mr. Williams for the purchase of the property. Though he was bedridden, he was able to sign the sale agreement with his right hand in his bedroom. The sale agreement was pinned to a clipboard, and he signed it by

elevating it. This he did in the presence of his son Lancelot Williams and Frances Blair, who both signed as witnesses of his signature.

[14] Donovan Lennox, on the other hand, was not present at Mr. Williams' home that day and did not see the transaction there. He however signed the agreement as joint purchaser when it was subsequently delivered to his house by Ms. Blair. Though he signed the agreement, he was never in approval of the purchase as the property was overgrown with trees. His sole purpose for signing the agreement was to support his wife in the purchase.

[15] The instrument of transfer, on the other hand, was executed a few weeks after the execution of the sale agreement. Mr. Williams executed the transfer, again, before Lancelot Williams and also before Mrs. Helen Scott at his home. She brought the document to his home. Mrs. Scott was taken there by Mrs. Lennox as she did not know where he lived. She said Mr. Williams executed the transfer while he was seated upright in a chair in at his home.

[16] Mrs. Scott explained the nature of the transaction to him, and that she represented both he and the defendants in this transaction. She also advised him to seek independent legal advice. Her discourse with him, she said, lasted about thirty minutes. He acknowledged that he understood and gave his approval by signing his signature on the transfer. This signature, she said, was similar to that of the sale agreement.

[17] Mr. Williams was very alert and responsive throughout the transactions. According to Mrs. Scott, Mr. Williams spoke, understood and he wrote. She therefore saw no need to verify the signatures on the sale agreement as it was similar to the one she saw him wrote on the instrument of transfer.

[18] The defendants paid the outstanding balance of the purchase price to Mrs. Scott. In accordance Mr. Williams' directions, she paid the sums to Lancelot Williams and one of his daughters, Ruby Shelter. Upon paying the full purchase price, the defendants went into possession. The property was passed to the defendants

with the provision that they were to complete infrastructure for phase one of the subdivision.

Claimant's submissions

[19] Ms. Brown submitted that the issues to be determined were: (i) whether the signature, purportedly signed by Headley Williams was forged or procured through fraud or, alternately, (ii) whether the defendants or their attorney was negligent in failing to ensure that Headley Williams obtained independent legal advice as he was elderly and infirm.

[20] She argued that Mr Williams was bedridden after his massive stroke and was in no position to either write or sign his name after May 1993. This, counsel submitted, was supported by Mrs. Matheson's evidence that she did not see him writing or signing any documents during her one week visit, and that she did not receive any letter from him after the stroke.

[21] Ms. Brown relied on the findings of Mr. Major's assessment of the signature on the sale agreement. She argued that there was no basic characteristic between the signature on the sale agreement and those previously written by Mr. Williams in his letters. She posited that it was obvious that if the signature resembled those on the letters, then Mr. Major would have assessed that they came from the same source. She urged the court to accept his conclusion that they did not originate from Mr. Williams.

[22] Mrs. Lennox, counsel submitted, foisted her proposal upon Mr. Williams as he was a sick and elderly person. His condition made him unable to make any decision to accommodate discussions concerning the sale of the property. Finally, Ms. Brown submitted, that Mr. Williams experienced the following being foisted on him: a sale price, an attorney, a sale agreement, transfer documents and attorney fees, with no opportunity to obtain independent legal advice.

Defendant's submissions

[23] Mrs. Cousins-Robinson submitted that the claimant must prove beyond a reasonable doubt that the signature of Headley Williams was forged on the sale agreement. In the alternative, counsel submitted, the claimant must prove that the defendants acted dishonestly or fraudulently in procuring the signature of Headley Williams on the sale agreement.

[24] Counsel argued that Mrs. Matheson's evidence was not tenable as it does not contribute much to a finding that fraud was committed by the defendants. She was only able to produce letters that were written by Mr. Williams prior to what she described as a "massive stroke". Mrs. Cousins-Robinson said further that Mrs. Matheson did not see her father write on any document during her one week visit in July 1993, and neither did she know the manner of his handwriting after the May 1993 stroke. Counsel concluded this point by submitting that no medical report was produced to show that Mr. Williams could not write after the stroke.

[25] Mrs. Cousins-Robinson then made the argument that Mr. Major's conclusion cannot be sustained. This was so as the signatures in the letters were undecipherable, and he admitted that the stroke could also affect Mr. Williams' handwriting. Mr. Major was never given any other document to compare the signatures on the sale agreement and therefore his conclusion was flawed.

[26] Counsel also argued that it could not be inferred that there was dishonesty in the transaction between the defendants and Mr. Williams. Though there was no attorney present at the conclusion of the sale agreement, it was the practice that parties would conclude the agreement themselves. Mrs. Cousins-Robinson continued that an attorney's assistance would only be required for the proper transfers to be effected. Therefore there was no dishonesty where a party did not seek legal advice.

[27] Mrs. Cousins-Robinson relied on ***Franklyn Grier v Tavares Ellis Bancroft*** (1997), delivered 6th April, 2001. In that case, the respondent was the registered owner of a large plot of land. Following the subdivision of the land, the respondent acquired the services of the appellant to construct a dwelling house on one of the subdivided plots. The need to construct this dwelling house arose from the medical expenses that the respondent faced due to his wife's condition. These expenses also caused the mortgages on the land to be in arrears.

[28] The respondent subsequently left Jamaica for England. Before his departure, he was in a state of financial embarrassment and sought the appellant for assistance. He wished the appellant to purchase his dwelling, but he was not in a position to do so at the time. The parties instead came to an agreement whereby the appellant was to take a lease of the respondent's dwelling house for a fixed term with an option to purchase the freehold during the term of the lease.

[29] Pursuant to the lease agreement, the appellant was to pay an initial premium of $10,000.00 to the respondent. This payment was to facilitate the respondent's departure for England. Also, the respondent was to pay the monthly mortgage instalments, all outstanding rates and taxes due on the property as well as the mortgage arrears. All such payments made including rental of the premises in the event of the appellant exercising the option, were to abate in relation to the consideration price of fifty-five thousand dollar.

[30] The respondent, before leaving Jamaica, left no forwarding address where he could be contacted. As a result, his attorney prepared an undated instrument of transfer which was executed by both parties. The instrument of transfer was to give effect of the respondent's true intention of selling the property to the appellant. The respondent's stay in England was more than ten years. During that time, the attorney dated the transfer and handed it to the appellant.

[31] The Court of Appeal took the view that the respondent did not sign blank documents headed "Lease Agreement" and "Transfer of land under the

Registration of Titles Act" as he averred. The court decided that the standard of proof of fraud due to forgery is "beyond a reasonable doubt". This standard of proof is the same regardless of whether the matter is criminal or civil.

[32] To establish fraudulent conduct, one must show conduct of a dishonest nature on the part of the defendant. The respondent failed to establish fraudulent conduct as he clearly executed both documents, not being blank documents, before he left for England. The appellant honestly relied on the instrument of transfer given to him by the respondent's attorney, whom the court considered to be the agent of the respondent. The appellant appeal was upheld.

[33] Mrs. Cousin-Robinson made the submission that the defendants honestly believed that the sale agreement was a genuine document. Mrs. Lennox saw Mr. Williams signed it. Lancelot Williams and Francis Blair witnessed the execution of the agreement. There was no evidence that they were the agents of the defendants. Neither was there evidence that they or the defendants forged the signature of Mr. Headley Williams to the sale agreement. She submitted that the evidence did not prove beyond a reasonable doubt that the defendants engaged in fraud through forgery of the signature.

[34] Mrs. Cousins-Robinson further submitted that the evidence showed that Mr. Headley Williams was clear in his thinking as he was not infirm. He also conducted land transactions prior to that time. Therefore, Mr. Williams' failure to obtain legal advice does not meet the standard required for proof of fraud. Also, Mr. Major's report in inconclusive and contradictory as he did not receive any sample of my Mr. Williams' actual signature.

Issues

[35] Four issues arise for my determination. First, was the signature of the vendor which appears on the agreement for sale and supplemental agreement for sale forged? Second, if the answer to issue number one is in the affirmative, was it the defendants or the servants or agents who forged, or caused to be forged, the

signature of the vendor? Third, if the answer to issue number two is in the negative, did the defendants or their servants or agents unlawfully and fraudulently procure the vendor's signature on the agreement for sale and supplemental agreement for sale? Fourth, whether the defendants or their attorney-at-law were negligent in failing to ensure that the vendor obtained independent legal advice?

Analysis

[36] Taking the issues in numerical order, was the signature of the vendor on the agreement for sale and supplemental agreement for sale a forgery? According to Blackburn, J., "forgery [at common law] is the falsely making or altering a document to the prejudice of another, by making it appear as the document of that person" (see ***Re Windsor*** (1865), 6 B.&S. 522). under the ***Forgery Act***, section 3 (1) "forgery is the making of a false document in order that it may be used as genuine". By virtue of section 3 (2) of the ***Forgery Act***, "a document is false ... if the whole or any material part of it ... purports to be made by, or on account of a person who did not make it nor authorized its making".

[37] The conclusion of the handwriting expert was that the questioned signature of the vendor on both documents bore no pictorial resemblance to the written name "H.H. Williams" appearing on the two envelopes or the contents of the letters. In short, they were of "different authorship". If the expert's evidence stopped there, I would be compelled to find that the vendor's signature was forged and, by that same token adjudge both documents to be forgeries.

[38] He, however, went on to say: "*Although being ill and consciously staring death in the face, I believe Mr. Williams would have made an earnest attempt to make his signature, and such an attempt or execution thereof would have been easier flowing into the signature (handwriting) introduced whether consciously or unconsciously and there would bound to be some degree of personal characteristics, than the script form of writings shown in the questioned*

signatures which give the impression for some reason, that the writer was unable to write in his usual manner".

[39] As was observed in the background, the allegation of fraud was made post mortem. That is, the claim was filed after the vendor's death and he made no such allegation. Neither did the vendor's son Lancelot (who witnessed the vendor's signature) make any such allegation. The only person allegedly present when the documents were signed, whom the court heard from, was the second defendant.

[40] The second defendant, Mrs. Marlene Lennox, said that she, along with the first defendant, executed the agreement for sale on the 21st June, 1993. She further said that the vendor also signed the agreement for sale. Under cross-examination she described the circumstances in which the agreement for sale came to be signed. It was signed in the vendor's bedroom as he was then bedridden. The vendor was the one who had sent to enquire if she was still interested in purchasing the land. It was in the bedroom that the negotiations took place and the price of $30,000.00 per acre agreed, a 100% counter offer made by the second defendant. All of this took place in the presence of Nelly Alexander, Martin Edwards and Lancelot Williams.

[41] As intimated above, not only was the court deprived of the evidence of Lancelot Williams, neither Nelly Alexander nor Martin Edwards was called. So, at the end of the day, the competing evidence concerning whether or not the vendor affixed his signature to the agreement for sale was that of the handwriting expert and the second defendant.

[42] In the final analysis, the evidence of the handwriting expert was, at best equivocal. He seemed unsure whether to accept "H.H.Williams" as a signature. It appears a part of his reticence was that "H.H.Williams" was in script and he was not given a number of the vendor's signature to compare with that on the agreement for sale. In fact, in his report at paragraph four which is quoted above,

he seemed to be of the opinion that the "script form of writings" was not the vendor's signature. That opinion, in my view, is undermined by his belief about what efforts the vendor would have made to write his signature notwithstanding his debilitated physical condition.

[43] The handwriting expert agreed with cross-examining counsel that a person's signature can be different from that person's regular handwriting. It is, therefore, not without significance that the writings used to compare and declare the questioned documents forgeries were "regular handwriting". Since both can be different, that they were different pictorially cannot be conclusive. When that is juxtaposed with the vacillation of the handwriting expert on the question of how conclusive his opinion can be, he having used photocopy documents for comparison, the unreliability of his opinion that the questioned signature was a forgery comes into sharper focus.

[44] He also agreed that a stroke can affect handwriting. That acceptance did not find expression in his written opinion. On the contrary, the handwriting expert appeared to have dismissed any impact from the vendor's illness upon his forming signature. This was how he jettisoned the possible impact of the illness upon the vendor's handwriting, "Although being ill and seriously staring death in the face, I believe Mr. Williams would have made an earnest attempt to make his signature." So, he appeared to be saying, no matter how grave and debilitating his illness, the vendor would have made the effort to cursively write his signature. Never mind that he had no other signature to make a comparison, the vendor's handwriting would have been largely unaffected by his prevailing physical condition. That is wholly inconsistent with his evidence under cross-examination.

[45] Retired Senior Superintendent Major was a most difficult witness to follow, not because the subject of his expertise was arcane but for the lack of clarity in his evidence and deliberate refusal to answer what was asked. He was like that to

the court and counsel on both sides. He refused to shed light on his evidence, instead hiding behind the assertion "I stand by my report".

[46] In my understanding, a document examiner should be prepared to state his opinion clearly for the court and demonstrate why he came to that opinion. Usually, this demonstration would take the form of an enlarged photograph of the known and questioned handwriting. The similarities and dissimilarities between both would be highlighted and discussed. None of that was done. The upshot was, I did not find him a witness upon whose evidence I could safely rely, even on a balance of probabilities.

[47] The second defendant, on the other hand, was a witness who was left unshaken at the end of cross-examination. I believed her that the vendor affixed his signature to the agreement for sale. Not only in that did I find her to be a credible witness. Her testimony concerning the circumstances surrounding the transaction was also credible. I find, therefore, that the agreement for sale and supplemental agreement for sale were documents made by the vendor. Consequently, both documents are genuine and not false either in whole or any material part.

[48] Having found that the questioned documents are not forgeries, the second and third issues raised become moot. The evidence disclosed a transaction which went to the point of the signing of the instrument of transfer. Mrs. Helen Scott, the attorney-at-law who acted for both parties, testified to the signing of the instrument of transfer in her presence. The execution of the agreement for sale and instrument of transfer were both witnessed by the vendor's son, Lancelot Williams.

[49] Mrs. Scott was taken to task under cross-examination for not stating in a letter to a lawyer acting for the vendor's estate that she was present at the signing of the instrument of transfer, as she asserted in her witness statement. I accepted her as a witness of truth. Although it was sufficient for her as an attorney-at-law to witness the signature of the vendor, she went the distance of having his son sign

also as a witness. Her reason for going that extra mile was to pre-empt the type of allegation at the base of this claim, having regard to the vendor's physical state. That commended her to me as a person who was anxious to see that everything was done above board, to use an hackneyed phrase.

[50] On the face of it, there was nothing untoward about this transaction. The land was sold for $150,000.00 with the stipulation that the purchaser would put in the infrastructure, it being part of a subdivision. The payments from the sale were handed over to Ruby Shelter, the vendor's daughter and Lancelot Williams on the instructions of the vendor. In the opinion of Mrs. Scott that was a reasonable price in the circumstances. There was no evidence from the claimant to contradict this. Since the claimant was overseas at the time of the transaction, one would have expected that at the very least Ruby Shelter would have been called.

[51] This takes me to the fourth issue, whether the defendants or their attorney-at-law were negligent in failing to ensure that the vendor obtained independent legal advice. In pleading a failure "to ensure that the vendor, an elderly, sick and dying man obtained independent legal advice," the claimant was saying that that failure is an article of fraud. What was the evidence in this regard?

[52] The claimant, not being privy to the transaction, gave no evidence concerning whether the vendor was so advised; and, the vendor, having died before this claim was brought, was not available to testify positively to the issue. The claimant, therefore, sought to establish this by questions directed to the Mrs. Scott during cross-examination.

[53] Mrs. Scott was asked pointedly if she advised the vendor to get independent legal advice since she was representing for everybody, in addition to the vendor being infirm. In response, she said although it was her policy to so advise "them" because of the lapse of time she could not recall if she in fact had done so in this case (the transaction was concluded in mid 1993, approximately twenty-two

years before the trial). That advice, however, was usually given to the purchaser as, as I understood her, having the carriage of sale she would have been retained by the vendor.

[54] Although she could not recall whether she had a copy of the agreement for sale in her possession when she attended upon the vendor to execute the instrument of transfer, she insisted that she explained the transaction to the vendor. Mrs. Scott, however, admitted that the agreement for sale would not have contained information such as how the purchase price was to be paid and the date when possession was to be given. In any event, according to her, at that stage the instrument of transfer was the more important document. She maintained that she would have explained the agreement for sale to the vendor she would not commit to a positive memory having done so.

[55] Finally, in answer to the court, Mrs. Scott said it was not her usual practice to act for the parties on both sides of the transaction. She would act for both if the parties insisted after having been advised. In this claim her firm became involved through her secretary and she did not know if it was at the instance of the buyers or the vendor. She went to say, under further cross-examination, that the vendor accepted her representation (he appears not to have insisted upon it). The meeting between the vendor and Mrs. Scott lasted about half an hour.

[56] The leading authority on the propriety of an attorney-at-law acting for both sides in a transaction is ***Clark Boyce (a firm) v Mouat [1993] 3 LRC 500*** (***Clark Boyce v Mouat***), a decision of the Privy Council from the New Zealand Court of Appeal. It was held that: "there was no general rule of law that a solicitor should never act for both parties in a transaction where their respective interests might conflict. A solicitor could properly act in such a matter provided he obtained the informed consent of both parties to his so acting". While there is no general rule against one solicitor acting for both parties to a single transaction, that the solicitor or attorney-at-law should so act is a thing deprecated. The practice is

deprecated as it places the lawyer in an invidious position in so far as disclosure is concerned.

[57] It may be said, therefore, that Mrs. Scott was not strictly prohibited from acting for both the vendor and the purchasers in the transaction, as long as she had the informed consent of both parties. The evidence as, to whether she had that informed consent is hazy. Firstly, it is altogether unclear as to how she came to be acting for the vendor. Without be ungracious, it appears her services were foisted upon the vendor as she told him she was his lawyer, as opposed to him explicitly retaining her. Secondly, there was evidence that the matter was specifically raised and discussed with the parties as a prelude to obtaining their consent for her to act for both. Even so, accepting Mrs. Scott that the vendor showed a ready understanding of the intricacies of the transaction, it is difficult to conclude that he had no appreciation of the fact that she was acting for both parties.

[58] That takes me to the question of independent legal advice. It appears to have been accepted in ***Clark Boyce v Mouat*** that the proper course of action for the lawyer in these circumstances is to advise the subsequent client to obtain independent legal advice. There does not appear to be the further duty to ensure that the person in fact seeks independent legal advice.

[59] It that is correct, then Mrs. Scott ought to advised the vendor to obtain independent legal advice. As was narrated above, her evidence on the point is rather equivocal. Her description of what transpired at the signing of the instrument of transfer there is ample room to infer that the vendor was not advised to obtain independent legal advice. It is inferable from the fact of an absence of any lag time between her attending upon the vendor for him to execute the instrument of transfer and the actual execution. That is to say, if he was advised according to her policy did she allow for any time for him to consider that course of action? And if no time was allowed, why was none given? Did the vendor decline to obtain the independent legal advice and insisted on proceeding

with execution of the document? It is unlikely that all of that would have been reduced to a blur if it had taken place, even after the passage of twenty-two years. So, Mrs. Scott may very well have failed in her duty to the vendor.

[60] The question is, does that failure sound in the vein of dishonesty or moral turpitude to render it a species of fraud? That question must be met with a resounding no. From the authorities reviewed, of which ***Clark Boyce v Mouat*** is the most well-known, the jeopardy which arises is negligence or breach of contract on the part of the lawyer. It is a very long walk from there to fraud on the part of the defendants even in the absence of any averment that the defendants and Mrs. Scott conspired to perpetrate a fraud upon the vendor.

Conclusion

[61] To prove the allegation of fraud the claimant was required to show either an element of dishonesty or moral turpitude on the part of the defendants; and the standard of proof is beyond a reasonable doubt: ***Grier v Bancroft***, *supra*. None of the particulars of fraud was strictly proved. In short, I do not find that the claim has been proved. To recap, I did not find the allegation of forgery of the vendor's signature proved and if there was no forgery there could not have been any fraudulent procurement of the vendor's signature; further, a failure of the Attorney-at-law to advise the vendor to obtain independent legal advice is not a species of fraud. Judgment is given for the defendants. Costs are awarded to the defendants, to be agreed or taxed.

Postscript

[62] As a postscript, I apologize for the length of time it has taken for the delivery of this judgment. Judgment was initially reserved for delivery on the 21st November, 2015. The parties should have exchanged their submissions on or before the 20th October and to file the submissions on or before the 26th October, 2015. Both sides were late in filing their submissions. The claimant's submissions were filed on the 23rd October and the defendants' submissions were filed on the 24th

November. That was compounded by the notes of evidence not becoming available until the latter part of July, 2016. Again, the late delivery is regretted.