[2026] JMSC Civ 128

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2019CV04328

BETWEEN	**CALLY SPENCER**	**CLAIMANT**
AND	**CHARMAINE MCLEAN**	**DEFENDANT**

IN OPEN COURT

Mr. Glenroy Mellish instructed by Smith & Cole for the Claimant

Mr. Michael G. Howell and Ms. Christina Blake for the Defendant

Heard: December 15, 2025 & October 13, 2026

Property Law ─ Sale of Land ─ Fraud ─ Vesting Order ─ Defendant Holds Land in Trust of Estate of Deceased Vendor

WINT- BLAIR, J

The Evidence

[1] The claimant is Cally Spencer of 15 Jackson Street, May Pen, Clarendon. Carl Athelstan Spencer, also known as Carl Spencer, died intestate at the Public General Hospital in May Pen on 27 October 1998. The claimant is Carl Spencer's brother. Carl Spencer owned land at Glenmuir, formerly part of Denbigh, Clarendon, comprising four acres, three roods, nine perches and two-thirds of a perch, registered at Volume 1174, Folio 436, of the Register Book of Titles.

[2] The claimant says he did not apply to administer Carl Spencer's estate after his death because he did not know he had to. He says that he lives on adjoining land

and maintained the disputed property by bushing it and keeping it clear of debris. The claimant says that Carl Spencer did not sell the property to anyone before his death.

[3] In her defence, the defendant says she does not know whether the claimant is Carl Spencer's brother. However, in her application for vesting under section 135 of the Registration of Titles Act, she relied on an affidavit filed by the claimant stating that he is Carl Spencer's brother. The defence also states that she does not know whether Carl Spencer owned the property, as alleged. Yet, in her vesting application and before this court, she asserted that Carl Spencer sold the land to her. The defendant denies that the claimant maintained the property, saying that she maintained it herself.

[4] The defendant says she met Carl Spencer in or around 1996 or 1997 while looking for a home in May Pen. She learned that he was subdividing land on Jackson Street. In or around February 1998, she and Carl Spencer entered into an oral agreement for her to purchase the land for $200,000.00. She says she initially paid him $100,000.00, then paid an additional $50,000.00 toward the purchase price. The remaining $50,000.00 was to cover survey diagrams, water installation, and related expenses. Carl Spencer then allowed her to enter and take possession of the property. She also says the claimant and his sister, Hermine Samuels, knew about the transaction because they assisted Carl Spencer.

[5] The claimant says that, sometime in 2017, Lawrence Miller told him he had paid the defendant for a lot on Carl Spencer's land. The claimant says he told Mr Miller that the land belonged to Carl Spencer and was not for sale.

[6] The claimant says he later saw William Ashton, a commissioned land surveyor, on the property. It is undisputed that the defendant had hired Mr Ashton. The claimant says he objected to the survey, but it continued.

[7] The defendant denies receiving any money from Lawrence Miller as payment for any part of Carl Spencer's land, and she does not know whether the claimant objected to the survey.

The title and subdivision

[8] The claimant says he found documents showing that the property, formerly registered in Carl Spencer's name at Volume 1174, Folio 436, was later registered in the defendant's name at Volume 1491, Folio 966. He also found evidence that the defendant applied to the Clarendon Municipal Corporation for permission to subdivide the property and received approval. He says the defendant then began selling lots, and people paid her for them.

[9] The defendant says she does not know which documents the claimant found. She admits that she applied to the court to have the property vested in her name. She says the application granted by Edwards, J (as she then was) in respect of the title registered at Volume 1174 Folio 436 was issued in her name. She further says the claimant later agreed to sell her the land and accepted an additional payment of $550,000.00. As at the date she filed her defence, she had not sold any of the lots. She asserts that she purchased the property, paid the property taxes over the years, and was entitled to sell it.

The police report and Parish Court proceedings

[10] The claimant says the matter of how the defendant obtained registered title was reported to the May Pen Police Station, but no statement was taken from him at that time.

[11] The defendant could not confirm what was reported to the police and demands proof that a report was made.

[12] The claimant says that Lawrence Miller brought proceedings against the defendant in the Clarendon Parish Court under Plaint No. CV00841, and that he attended court as a witness to support his assertion that the land belonged to Carl Spencer,

not to the defendant. The Parish Judge transferred the matter to the Supreme Court because the value of the land exceeded the Parish Court's jurisdiction.

The claimant's authority to bring the proceedings

[13] The claimant says that, after learning the defendant was taking steps to dispose of the property, he applied for a grant ad colligenda bona in Carl Spencer's estate to enable him to commence proceedings against her.

[14] The defendant denies acquiring the property by fraud. She requires the claimant to prove the facts on which he relies regarding the grant and his authority to bring the claim.

The disputed receipt

[15] The claimant says that the defendant exhibited a receipt for $150,000.00 in an affidavit filed in Claim No. 2010 HCV 02851. He alleges that although the receipt purports to be in Carl Spencer's handwriting, Carl Spencer did not write it. The receipt was used to support a vesting application granted on December 21, 2012, and was further used to transfer to the defendant the property registered at Volume 1174 Folio 436.

[16] The defendant says she paid Carl Spencer $150,000.00, but he did not give her a receipt. She says the claimant produced the disputed receipt while the vesting application was being prepared, and that she first saw it at that time. She believed it had come from papers Carl Spencer left behind because it accurately reflected the $150,000.00 she says she paid him. She denies knowing how the receipt was created and cannot identify who wrote or created it. She does not accept the claimant's evidence that the handwriting is not that of Carl Spencer.

The alleged payment to the claimant

[17] The defendant says that, in or around 2005, she paid the claimant a further $550,000.00 in cash and by cheque from her now-deceased spouse, Roy Jackson. She says the claimant issued her a receipt dated June 25, 2005, for that sum.

The claimant's affidavit

[18] Exhibit 8 is the claimant's affidavit, filed on June 16, 2010, in support of the defendant's application under section 135 of the Registration of Titles Act. The Particulars of Claim do not explain the circumstances in which the claimant signed the affidavit, whether he read it, instructed the attorneys to prepare it, or intended it to support the defendant's application.

[19] At trial, the claimant sought to distance himself from his affidavit, saying he had not read it, could not read, and disputed that it had been prepared on his instructions.

[20] The defendant says the claimant knew the full history of the transaction and supported her application for title. It was the claimant who took her to his attorneys-at-law, Vacciana & Whittingham, and they applied to have the property vested in her name. The attorneys required a member of Carl Spencer's family to provide evidence in support of her claim to the property, and the claimant willingly provided his affidavit confirming that she had purchased the property and was entitled to obtain title.

[21] She relies on the claimant's affidavit dated 9 February 2010, filed in support of her application for vesting under the Registration of Titles Act in Claim No. 2010 HCV 02851. The defendant says a reputable law firm prepared the affidavit on the claimant's instructions, adding that even if the claimant did not read it, he signed a document prepared by his attorneys on his instructions.

The allegations of fraud

[22] The claimant alleges that the defendant fraudulently represented to the Supreme Court that Carl Spencer wrote the receipt for $150,000.00 and issued it to her in

payment for land sold to her. Further, the defendant fraudulently represented that she was entitled to an order vesting the land in her under sections 135 and/or 155 of the Registration of Titles Act because she had paid the purchase price to Carl Spencer.

[23] The defendant denies making any fraudulent representation to the Supreme Court or the Registrar of Titles. She says the claimant knew about the transaction, accepted her additional payment, took her to his attorneys, provided an affidavit in support of her application, and generated the disputed receipt.

Issues

[24] The issues for determination are:

i. Whether Carl Spencer entered into an oral agreement to sell the property to the defendant. That issue includes the terms of any agreement, the agreed price, the alleged payments and whether Carl Spencer placed the defendant in possession.

ii. Whether the claimant knew of and assisted with the defendant's application.

iii. Whether and for what purpose the defendant paid the claimant $550,000.00 for which the claimant issued a receipt.

iv. Regarding the claimant’s affidavit dated 9 February 2010, whether the claimant instructed his attorneys to prepare it, whether he read its contents, and whether he intended it to support the defendant’s vesting application.

v. The disputed receipt for $150,000.00: Whether the handwriting is that of Carl Spencer

vi. Whether the defendant believed the receipt was genuine when she submitted it to the court, or whether she knowingly relied on a false document.

vii. Whether the defendant made any fraudulent representation to the Supreme Court or to the Registrar of Titles and whether the vesting order was obtained by fraud.

viii. Whether the resulting registration of the property in the defendant's name is valid.

ix. Whether the defendant received money from Lawrence Miller or any other person for subdivided lots.

x. Whether the claimant has established any entitlement to the declarations and orders sought.

xi. The remaining lots.

The relief sought

[25] The claimant asks the court to declare that fraud was used to obtain the judgment entered on 21 December 2012 and to set it aside. He also asks the court to determine whether the handwriting on the disputed receipt is valid, and to declare that the defendant fraudulently misrepresented the receipt's origin and her entitlement to a vesting order. He seeks an order restoring to Carl Spencer the property formerly registered at Volume 1174 Folio 436, cancelling the certificate of title registered at Volume 1491 Folio 966, and the issuance of a new title in the claimant's name.

[26] The claimant also seeks an order preventing the Clarendon Municipal Corporation from issuing a certificate of completion in relation to the subdivision approval granted on 11 January 2018. He seeks disclosure of the documents submitted to the Registrar of Titles in Application for Vesting No. 1581093, together with costs and any further relief the court considers appropriate.

[27] Alternatively, a declaration that Charmaine McLean holds title to the lands registered at Volume 1491, Folio 966, in trust for the estate of Carl Spencer, and

that the Registrar of Titles is directed to issue a new title in the name of the said estate.

[28] The defendant denies that the claimant is entitled to any of those remedies.

Fraud

[29] The claimant seeks to set aside the judgment granting the vesting application to the defendant on the ground of fraud, and to cancel the registered title issued following that judgment. The burden rests on him to establish the matters he asserts so the Court can consider the alleged dishonesty in the application for vesting in order to have the judgment set aside.

[30] In **Harley Corporation Guarantee Investment Company Limited v Estate Rudolph Daley and others; RBTT Bank Jamaica Limited v Estate Rudolph Daley and others**,[1] the Court of Appeal explained that fraud under the Registration of Titles Act means actual dishonesty, rather than constructive or equitable fraud. The facts constituting it must be distinctly alleged and proved. Under rule 8.9(1) of the Civil Procedure Rules, the claimant must particularise the facts relied upon. It is insufficient merely to describe conduct as fraudulent without identifying and proving the facts which make it so.

[31] The standard of proof is the balance of probabilities. The gravity of an allegation of fraud requires careful consideration of cogent evidence, but does not change the civil standard of proof as explained in **Paul Duncanson v Derrick Sharpe and Marva Sharpe**.[2]

[32] In **Winston Finzi v Jamaican Redevelopment Foundation Inc and others**,[3] the Privy Council approved the principles governing a claim to set aside a judgment

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[1] [2010] JMCA Civ 46, at paragraphs [52]–[57]
[2] [2023] JMSC Civ 34, at paragraphs [30]–[32]
[3] [2023] UKPC 29, at paragraph [34]

for fraud. There must be conscious and deliberate dishonesty in relation to relevant evidence or conduct, and that dishonesty must be material. It must have been an operative cause of the judgment being obtained on the terms on which it was made. Materiality is assessed by the effect on the evidence supporting the original decision, not by asking whether the same result might be reached today if the matter were retried on honest evidence.

[33] The registered title must also be considered, as section 70 of the Registration of Titles Act ("the Act") preserves an exception to the indefeasibility of a registered title where there is fraud. Section 161(d) permits recovery by a person deprived of land by fraud against the proprietor registered through fraud, subject to the statutory protection of a subsequent transferee bona fide for value. In **Millard Dunbar v St Catherine Co-operative Credit Union**,[4] the Court of Appeal restated the protection afforded by registration, its statutory exceptions, and the requirement of actual fraud. A registered title is therefore not beyond challenge where the fraud has been established.

Discussion

Whether Carl Spencer entered into an oral agreement to sell the property to the defendant.

[34] The claimant says his brother did not sell the property to anyone before his death. But he gave no evidence explaining how he could know whether a sale had taken place. He was not a party to the alleged agreement between his brother and the defendant, nor did he establish that he was present during any discussions about his brother's dealings with the land. There is no evidence that Carl Spencer reported all his transactions to the claimant or acted as the agent or manager of all his affairs. Nothing before the court supports the claimant's assertion that the

[4] [2022] JMCA Civ 41, at paragraphs [49]–[52]

land was not sold. In any event, any information told to him is inadmissible hearsay and carries no weight if it is tendered for the truth of its contents to prove that no sale occurred.

[35] In his witness statement, the claimant said he came across documents and discovered that the registered title in his brother's name had been transferred to the defendant. He also "came across" documents that showed that subdivision approval had been granted for the property to be divided into lots. That does not prove there was no sale of the land. Rather, it tends to show that a sale took place, although the claimant said he came across documents, it can be inferred that both the title and subdivision approval from the Clarendon Municipal Corporation were among Carl Spencer's papers and that the claimant found these after his brother's death.

[36] In his affidavit, filed in support of the defendant's affidavit for vesting of the title which was admitted as an exhibit at trial, the claimant averred that his brother died owning lots 1, 2, and 3, which comprise part of the land at Glenmuir, Clarendon, registered at Volume 1174, Folio 436 of the Register Book of Titles. That the defendant purchased the land from his brother for $200,000.00 in or around February 1998. She had paid his brother $150,000.00 before his death, and Carl Spencer died before the defendant could be registered as proprietor of the land.

[37] The claimant now asserts that the land was not sold at trial, directly contradicting his affidavit filed before this claim and in which he identified both the sale price and the amount paid. The claimant had admitted that the transaction had taken place and was willing to swear to a document concerning it. He knew enough about the transaction to state these details.

[38] The claimant gave no explanation for his inconsistent positions on this issue, which materially weakened the reliability of the assertion that no sale had taken place. I therefore find that Carl Spencer sold the land to the defendant before his death.

[39] The defendant has a vested interest in retaining the title she obtained. Although she had no written agreement with Carl Spencer and received no receipt for the payment she made to him, the claimant's conduct and affidavit support the particulars of her account. On the balance of probabilities, I find that Carl Spencer genuinely sold the property to her for $200,000.00, of which she paid him $150,000.00.

The land sold by Carl Spencer

[40] However, I do not accept that this transaction entitled the defendant to all the land Carl Spencer owned, which was ultimately registered in her name. This finding that there was a sale is not a finding that Carl Spencer sold the entire property. The parcel of land sold is registered at Volume 1174 Folio 436. Both parties aver that the sale involved the land comprised in that certificate of title.

[41] In 1996, a portion of the land was sold to Mr Stephen Pearson for $400,000.00, and this lot appeared on the subdivision plan as lot 4. The registered title describes the land owned by Carl Spencer as part of the land comprised in the certificate of title registered at Volume 944 Folio 292. The attached plan shows that the diagram relates only to Volume 1174 Folio 436 and not to all of the land.

[42] On the diagram, Carl Spencer's land consists of several lots that form part of Volume 944 Folio 292. The subdivision approval was before the court, and it states that the Parish Council approved the subdivision of lot 19, registered at Volume 1174 Folio 436, into four lots. The defendant was the applicant for that approval.

[43] Her possession of the land is also significant because it is consistent with her acquiring an interest in the land and with her having an agreement with Carl Spencer. There is no evidence that Carl Spencer or anyone else had objected to the defendant's presence on the land.

[44] Both the claimant and the defendant testified that the remainder of the purchase price was to be applied to obtaining survey diagrams, getting water supplied, and

related expenses. The survey, which the claimant refutes, was also based on the defendant's previous dealings with the property and bolsters the inference that she had an interest in the land. By inference, the survey preceded the subdivision application, which was approved without the claimant's knowledge, and he also came across it later in the documents. These matters show the consistency of the defendant's account of the sale and the existence of the transaction in which both she and Carl Spencer were involved.

The receipt for $150,000.00

[45] In his affidavit, the claimant averred that he later learned from his brother, and from a receipt he saw, that $150,000.00 of the agreed sale price of $200,000.00 had been paid as a deposit. Following that payment, the defendant was granted possession and has remained in possession. Since then, she has carried out all the acts expected of an owner free from disturbance. He was aware that, as agreed with Carl Spencer, she used the balance of the purchase price to obtain a survey diagram, subdivision approval, and a valuation report, and to pay outstanding property taxes and utility bills.

[46] In her witness statement, the defendant accepts that she received no receipt from Carl Spencer when she made the payment. Her evidence states that the claimant produced the receipt to help prepare the vesting application. The receipt directly relates to the affidavit the claimant signed, which avers that the defendant paid $150,000.00 to Carl Spencer.

[47] The claimant called expert evidence in the form of a handwriting expert, Mr George Dixon, who, after comparing a 1978 passport with Carl Spencer's signature and handwriting and a rent receipt dated 1998, concluded that the rent receipt and the passport were not signed by the same person. I accept Mr Dixon's opinion; however, it does not identify who wrote the disputed rent receipt.

[48] I therefore find that Carl Spencer did not write the receipt. This supports the defendant's account that he gave her no receipt and strengthens the inference that

the claimant wrote it, as she says, to help her. The expert did not identify the claimant as the writer. Rather, the inference follows from the totality of the surrounding circumstances, based on the evidence, that the claimant produced the receipt and provided his signed affidavit, all in a bid to assist her with the vesting application.

[49] Further, in describing the claimant's conduct, he became involved in the land transaction with the defendant following the death of his brother, Carl Spencer, on October 27, 1998. He submitted an affidavit to the Supreme Court supporting the defendant's application for vesting, which records the details of the agreement and the payment made, as described by the defendant in her evidence. The claimant now says that the receipt for payment of $150,000.00 produced by the defendant was not written by Carl Spencer, and he called expert evidence to refute its provenance. The claimant's affidavit evidence of his participation shows that he wanted the defendant to formalise the transaction between herself and Carl Spencer.

[50] No basis exists to find that Vacciana & Whittingham failed to follow the claimant's instructions. Otherwise, the claimant could have taken other steps before trial, but did not.

[51] The evidence shows that the Registrar of Titles refused the defendant's application to bring the land under section 155 of the Act and advised her to apply through the courts under section 135 or sections 85-87. On June 16, 2010, the defendant filed a Fixed Date Claim Form seeking to vest title on the basis that she had purchased lots 1, 2, and 3 from Carl Spencer. Edwards, J (as she then was) granted the application, which was supported by the claimant's affidavit.

[52] The claimant now seeks to distance himself from that affidavit, despite having believed at the time, for there is no evidence that he did not, that the defendant had purchased the property. He did not explain why he agreed to help her, why he took her to his own attorneys, or why he made the affidavit if that was not the case,

and, more importantly, why he was willing to perjure himself in support of the vesting application. The weight to be given to his affidavit depends on the circumstances under which he made it, as the claimant never disputed or corrected it and it is consistent with other evidence in this case.

[53] The defendant's evidence that the claimant took her to his attorneys was unchallenged, and it was not put to her that she went on her own or went to that firm at another person's behest. This amounts to an admission that the claimant had a reason to take the defendant to his law firm for her vesting application, and that the affidavit did not arise in isolation but formed part of a process the claimant had assisted with from the outset. It can be inferred that he did so because the claimant could not transfer the land on his own.

[54] It can be inferred that the affidavit bearing his signature was prepared on his instructions for the specific purpose of dealing with the land, because his brother had died without transferring the title. Even at trial, the claimant did not say that the firm had acted contrary to his instructions or had attributed a false document to him. I find that the affidavit formed part of his active participation in the application.

[55] Further, and most incredibly, the claimant testified at trial that he did not know what he had signed because he could not read. However, no evidence supported this claim. The claimant raised no issue of illiteracy when he was being sworn in. He was shown his witness statement, which he read, adopted, and relied on as his evidence-in-chief. The issue of illiteracy arose only when he was challenged in cross-examination, as neither his affidavit nor his witness statement contains any certification of his illiteracy, and different attorneys prepared them many years apart, the court finds this claim of illiteracy to be a recent fabrication and rejects it outright.

[56] In addition, the defendant said that, after Carl Spencer's death, she paid the claimant a further $550,000.00 in cash and by cheque drawn on her late spouse,

Roy Jackson's account. She relies on a receipt that she said the claimant issued after telling her that he had found papers indicating Carl Spencer had sold the land for $600,000.00. The defendant paid the difference because she believed she was receiving more land than the sale price was worth. This evidence was unchallenged.

[57] I consider the evidence of a $550,000.00 receipt to be evidence of dishonesty by both parties because the defendant knew the claimant's receipt was used fraudulently to support her payment to Carl Spencer, yet she also relied on it to support her vesting application. She must have known that the law firm prepared the vesting application precisely because the claimant could not sell or otherwise deal with the land.

[58] The claimant was not entitled to sell the land belonging to Carl Spencer's estate. A payment made to him requires an explanation, as the land Carl had not sold remained part of his estate. The payment was not the balance purchase price, as no evidence shows the sale price exceeded $200,000.00. The claimant's affidavit also contains no evidence that he received any payment.

[59] The vesting application was granted by Edwards, J (as she then was) on December 21, 2012. The claimant obtained a grant ad colligenda bona by Lindo, J on September 17, 2019; it is the only grant before the court. This evidence means that the claimant, having no authority to convey the land himself, for there is no evidence that he had any agreement with the defendant, agreed to assist the defendant to obtain title under section 135 of the Registration of Titles Act, as she has contended.

[60] I find that the claimant demanded $550,000.00 from the defendant as payment for the assistance he rendered to enable her to obtain title to the land, and I further find that this sum was paid to him to bring her to the attorneys so she could have the vesting application prepared. This constituted the price of the transaction

between the parties and a financial benefit to the claimant. This is clear evidence of dishonesty and misrepresentation of facts presented at trial, and I so find.

[61] This court is asked to set aside the order vesting the land in the defendant, but there is no basis in fact or law for doing so. The claimant was not Carl Spencer's personal representative. If he had been, there would have been no need to apply to vest the land in the defendant to complete the sale between Carl Spencer and the defendant. In that capacity, the claimant could simply have applied to be registered by transmission and then transferred the land in his capacity as personal representative, but there is no such evidence. Nor would there have been any need for the Registrar of Titles to request a court order.

[62] I find that the claimant could not confer a right onto the defendant a right to the remainder, he had no authority to sell it for the estate, a payment to him could not grant him the authority to bind the estate or to part with the land.

[63] On the evidence before the Court, the orders of Edwards, J vested the land registered to Carl Spencer, part of Glenmuir, formerly part of Denbigh, in the parish of Clarendon, being the land comprised in the Certificate of Title registered at Volume 1174 Folio 436. The claimant had full knowledge of that, for no complaint has been made against the law firm, and I have already rejected his claim of illiteracy. Each side profited from their dishonesty; therefore, the Court order stands.

[64] Lawrence Miller's evidence is rife with hearsay and is self-serving. His only assistance to the court is to show the extent of the dishonesty in this claim: the defendant went along with issuing a receipt for $150,000.00, which must have been generated after Carl Spencer’s death. Accordingly, I reject her veiled attempt to plead innocence. The claimant benefited financially from a payment he has not challenged and was not entitled to receive, and I so find.

[65] Fraud must be specifically pleaded and proved, which the claimant has failed to do. This failure of proof concerns the fraud required to obtain the remedies

claimed. It does not alter my findings regarding the false receipt, the claimant's financial benefit, or the defendant's knowing participation in its use.

Conclusion

[66] I have found that, before his death, Carl Spencer entered into a genuine sale and that the defendant paid him $150,000.00 toward the agreed price of $200,000.00, for which he gave her no receipt. The claimant acknowledged the transaction in his affidavit. His present assertion that no sale took place is inconsistent with that affidavit and his conduct in assisting the defendant to obtain title. For the reasons already given, I reject that assertion.

[67] I have also found that Carl Spencer did not write the receipt, that the claimant took part in its creation and use, and that the defendant knowingly relied on it. The additional payment of $550,000.00 was not shown to be the unpaid balance of the purchase price agreed with Carl Spencer. Rather, it was a financial benefit the claimant obtained in a later transaction between the parties. He had no authority to sell land belonging to the estate. The evidence was rife with dishonesty by both sides.

[68] Whether the vesting judgment was obtained by fraud continues to depend on the effect of the dishonest evidence on Edwards, J's decision. The claimant's participation, the genuine sale, and the payment to him did not assist the Court. My conclusion that the claim fails rests on the finding that the fraud required to obtain the relief sought has not been proved. This does not constitute approval of the receipt or the parties' conduct.

[69] My finding that a sale took place does not mean that the defendant bought all the land owned by Carl Spencer. The claimant's affidavit identified lots 1, 2 and 3, but the evidence concerning lot 4 and the parent title must also be considered. Conversely, declaring that the defendant holds all the registered property on trust for the estate would not reflect the genuine purchase she has made. The claimant

has not established an entitlement to the alternative declaration in the terms sought.

[70] The result is that the defendant must hold the remainder of the land on trust for the due administration of Carl Spencer's estate, subject to any existing rights in that land. It is not open to her to treat the property as acquired for her own benefit even though registration gives her legal title. That ownership does not prevent the Court from enforcing an obligation arising from her own dealings with the land. Given how the defendant conducted herself in this matter and the findings made by this Court, it would be inequitable for her to use the registration to treat the remainder of the estate property as her own. She must therefore account for it when the estate is being administered.

[71] The trust does not give the estate a right to disregard existing claims to the remainder, such as Mr Pearson's legal rights or those of any other person not before the Court, and these rights are preserved. Holding that the land for the estate means that it must be administered subject to those rights. The relief is therefore confined to the remainder of the land; any separation or transfer must involve a person with the necessary legal authority to act on behalf of the estate property.

[72] For the reasons set out above, I refuse the declarations sought regarding the procurement of the judgment by fraud and the defendant's entitlement to the vesting order. I also refuse the application to set aside the order made on 21 December 2012 in Claim No. 2010 HCV 02851, to cancel the certificate of title registered at Volume 1491 Folio 966, and to restore the property formerly registered at Volume 1174 Folio 436.

[73] The claimant has not established a basis to restrain the Clarendon Municipal Corporation from issuing a certificate of completion relating to the subdivision approval granted on 11 January 2018. That relief is refused. The request for disclosure of the documents in Application for Vesting No. 1581093 supported the

challenge to the vesting and registration. Having determined the claim on the evidence before the court, I make no further disclosure order.

[74] The claim is therefore dismissed. This conclusion does not determine the rights of Mr Stephen Pearson, Mr Lawrence Miller, or any other purchaser in proceedings where those persons or their property rights are not before the court.

Costs

[75] The defendant has succeeded in resisting the claim. Under rule 64.6(1) of the Civil Procedure Rules, the usual order is that the unsuccessful party pays the successful party's costs. Rules 64.6(2)–(4) permit the court to make a different order, including no order as to costs, having regard to all the circumstances and the parties' conduct (see **Darnel Fritz v John Collins**).[5]

Orders

[76] The court makes the following orders:

1. The claim is dismissed.
2. Judgment is entered for the defendant.
3. The defendant holds in trust the remainder of the land described in the certificate of title registered at Volume 1174, Folio 436, of the Register Book of Title which belongs to the estate of Carl Spencer (deceased).
4. The defendant is required to give an accounting to the personal representative of the estate of Carl Spencer (deceased) upon the due administration the said estate.
5. There is no order as to costs.

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[5] [2021] JMCA Civ 8, at paragraphs [9]– [11]