

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
Action No.2013/CLE/gen/00252

BETWEEN

PAUL RICHARDSON MAJOR

Plaintiff

V.

RAWSON MCDONALD

1st Defendant

AND

RAWSON MCDONALD & CO (A firm)

2nd Defendant

AND

ARTHUR D. HANNA & COMPANY

Third Party

Before: Deputy Registrar Carol Munnings Misiewicz
Hearing Dates: 29 June, 18 August, 13 October, 26 October, and 11 November 2021
Appearances: Mrs. Hope Strachan for the Plaintiff, Mr. Charles Mackay for the Defendants

DECISION

1. In March 2008 the Plaintiff purchased a lot of land in Blueberry Hill Subdivision in the Eastern District of New Providence, after his then attorney, the 1st Defendant through his law firm the 2nd Defendant, advised him that the Vendor's title was free and clear of encumbrances and marketable. As it transpired the purported vendor had no such title to give to the Plaintiff.

2. The Plaintiff was successfully sued by the bona fide owner, and eventually delivered up possession of the property to him. However, between the date of this Plaintiff's purported purchase, and the demand by the rightful owner, the Plaintiff had constructed a duplex on the lot, with the intention on securing to himself income during his imminent retirement.
3. Following a trial before Justice Fraser in this action, the Court found that the Defendants were liable in damages to the Plaintiff for the sale that went wrong, and the matter was referred to a registrar for the damages to be assessed.
4. Counsel for the Defendants has sought to argue before me, that the Defendants are not liable to the Plaintiff for any amount "on the basis the Plaintiff's action for breach of contract has been shown not to be sustainable in that it was never pleaded." (*Per paragraph 19 of the Defendants Submissions dated 9th November 2021.*)
5. In his Supplemental Submissions (dated 11th November 2021) Mr. Mackay argued (para.3) that "Failure to plead a breach of contract has led to the position that the Court had no jurisdiction to hold that the Defendants were in breach of a contract and equally the Registrar has no jurisdiction to assess damages in respect of which no cause of action can be shown." He cited the case of **Fookes v Slaytor [1979] 1 All ER 137** in support. However, this case is clearly distinguishable because it was an appeal to the Court of Appeal of England against a finding of the trial judge on contributory negligence in the absence of a pleading by the defendant in respect of it. This was a decision of a higher court pointing out the error of a court of inferior jurisdiction.
6. Mr. Mackay further argued (in his Supplemental Submissions at paragraph 4) that a point of jurisdiction could be raised at any time and that it could never be too late to raise such a point, and he cited **Chief Kwame Asante v Chief Kwame Tawia (1949) WN 40** in support. That was a decision of the Privy Council on appeal from the West African Court of Appeal. An issue had been raised about whether the judges of a court below were qualified to sit and whether it had become too late to raise the point. Lord Simonds, delivering the judgment, said, inter alia:

“If it appeared **to an appellate court that an order against which an appeal was brought** had been made without jurisdiction, it could never be too late to admit and give effect to the plea that the order was a nullity.” (My emphasis.)

7. Counsel for the Defendants also submitted, that since the Plaintiff had said in evidence that he did not have a contract with the Defendants, that this Court could not assess the damages arising out of the failed performance of the Defendants’ retainer, since there was no contract between the parties. This argument flies in the face of the Judgment by Justice Fraser, who found as follows (at paragraph 42 of her Judgment dated 6th March 2017):

“The Defendant through its agent failed to do a proper search of the registry of records and such failure has caused the Plaintiff to suffer loss and damages. Therefore, even though the Plaintiff has not established that there was no misconduct or fraudulent process or gross ignorance on the part of the Defendant, **the Plaintiff has established that there was a breach of contract by the First Defendant** when he failed to conduct a proper search which would have disclosed the first recorded transaction in the Registry of Records and which the Defendant is deemed to have notice of.” (My emphasis.)

8. If the Defendants had an issue with the decision of Justice Fraser, the appropriate course of action would have been to file an appeal to the Court of Appeal as **Fookes v Slaytor** and the **Chief Kwame Asante** cases show. Instead he has sought to raise points that are only justiciable by an appellate court before me, a Registrar, a court of inferior jurisdiction to a Supreme Court Justice.
9. These are the main grounds that the Defendants sought to raise on the assessment. They all fail. The argument that the Plaintiff was or is not entitled to the value of the property he purchased with the duplex constructed on it because there was no contract between the parties must also fail, in light of the finding by Justice Fraser in her Judgment cited above.
10. There was a feeble attempt to question the quantum of damages claimed in respect of the value of the land. The Defendants did not contest the Plaintiff’s claim for legal fees on the Lot Purchase or for his defending the Ryan Moss claim.

11. I accept the Plaintiff's evidence as to the value of the property, which was provided through the testimony of a licenced appraiser, namely Andrew Carey. I also accept the items of loss and damage in respect of the costs associated with the Purchase, the Costs of Defending a Court action by Ryan Moss. I will not allow the Loss of Rental Income from the Property either for the pre-Writ or the Post filing of the Writ period, as these represent the profit the Plaintiff would have made from the Duplex, or alternatively are too remote to be recoverable.

12. Accordingly I assess the Plaintiff's damages as follows:

Appraised value of Lot 2	\$226,500.00
Legal fees on the Lot Purchase	\$5,977.00
Legal fees to defend action by Ryan Moss	\$7,905.00
TOTAL	\$232,556.50.

13. The judge awarded the Plaintiff fifty percent of his costs of the action, which would of course include the assessment, to be taxed if not agreed.

Dated the 2nd day of December, AD 2021

Carol D. Misiewicz

**Carol Munnings Misiewicz
Deputy Registrar**