

IN THE COMMONWEALTH OF THE BAHAMS

IN THE SUPREME COURT

2017/ CLE/GEN/00541

2021/CLE/GEN 00434

BETWEEN

PAUL ROLLE

Claimant

AND

ENA ROLLE

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr. Carlton Martin for the Claimant
Mr. Harvey Tynes, KC and Mrs Tanisha Tynes Cambridge with
him for the Defendant

Hearing Date: 14th December, 2023, 8th and 25th March, 2024

Submissions received: 27th May, 2024; 14th June, 2024; 23rd July, 2024

Oral submissions: 25th July, 2024

*Civil – father conveyed properties twice – first to his daughter and second to an unincorporated company
– unincorporated company recorded first - where does the title lie – Section 22 Companies Act Chapter
308 - Section 10 Registration of Records Act, Chapter 187*

RULING

Darville Gomez, J

Background and History

[1.] This dispute has been in the court since 2010. It has been litigated up to the Privy Council.

- [2.] The original action was Common Law and Equity Action Number 625 of 2010. It was an action brought by Rolle Family Company Limited (“the Company”). Paul Rolle (“Paul”), who is the claimant in this present action, is the beneficial owner of the shares of the Company and the President and a director of the Company. In that action, the Company brought an action against Ena Rolle (“Ena”) who is also the defendant in this action. Paul himself was not a party to that action. In that action the Company claimed against Ena that it was the owner of two parcels in Bimini. It is the same two parcels of land in contention in one of the instant actions, however, a third parcel of land is also in dispute.
- [3.] In that original action the claim by the Company was dismissed. Paul now brings these two subsequent actions in his own name.
- [4.] These consolidated actions involve three parcels of land on the island of Bimini, one of the islands in the Bahamas; (i) Lot no. 85 Bailey Town; (ii) a portion of Allotment 20 Alice Town and (iii) Lot No. 82 Bailey Town. The parties are siblings through their late father, Emmanuel Rolle. These two actions were commenced after the judgment of the Privy Council in the case of **Rolle Family and Company Limited v Ena Rolle (2017) UKPC 35**.
- [5.] After the said judgment of the Claimant commenced by Originating Summons Common Law and equity action number 541 of 2017 (the “first action”) with respect to lot No. 82 Bailey Town and sought a declaration that he was the owner in fee simple.
- [6.] Then, he commenced Common Law and Equity action No. 434 of 2021 by Originating Summons filed on 28th April, 2021 (the “second action”) against the Defendant for an entitlement to (i) lot no. 85 Bailey Town; (ii) a portion of Allotment 20 Alice Town; and, (iii) damages of \$30,000 for trespass and damages for loss of use of the said lots. These two lots were the subject of the Privy Council Judgment.
- [7.] The Defendant has denied these claims and asserted ownership to these three lots based on recorded conveyances.
- [8.] These two actions were consolidated by an Order of Justice Brathwaite on 24th May, 2023.
- [9.] I have extracted a summary of the judgment of the Privy Council on 20th November, 2017 since both actions arise from it. I did not include the detailed reasoning given on Escrow or Section 22 of the Companies Act which I will address later in my decision. I recite below from Lord Sumption who gave the majority decision, the summary and the consequences which have some bearing on the issue that this court must consider:

- “1. *This appeal arises out of a family dispute about title to two plots of land on Bimini, a group of islands in the Commonwealth of the Bahamas.*
2. *The facts can be shortly stated. On 24 May 2006, Emanuel Rolle conveyed three plots of land on Bimini to his daughter Ena by deed of gift. Some three and a half months later, on 8 September 2006, he executed two conveyances purporting to*

convey two of those plots, Lot 85 and a portion of allotment no 20, to the appellant company, Rolle Family & Co Ltd, for a consideration of US\$100 each. The company is controlled by his son Paul, who is the majority shareholder and its President and director.

3. *Under section 10 of the Registration of Records Act, Cap 187, successive conveyances of the same land take priority in the order that they are lodged and accepted for record in the Bahamas Registry of Records. On 22 May 2007, stamp duty was paid on conveyances in favour of the company, and on the following day they were lodged and accepted for registration in the Registry. Ena stamped and lodged the deed of gift in her own favour eight weeks later on 18 July 2007. It follows that if the conveyances in favour of the company were valid, it has title in priority to Ena.*
4. *A conveyance like any other deed must be signed sealed and delivered in order to take effect. Both deeds in favour of the company were expressed to have been signed, sealed and delivered on the date of execution, 8 September 2006. The problem arises*
5. *The company seeks to avoid this result in two ways. First, it submits that the conveyances of 8 September 2006 were delivered as escrows, conditional on the incorporation of the company and taking effect as valid grants when that condition was satisfied. Secondly, the company relies on section 22 of the Companies Act, Cap 308, which validates pre-incorporation contracts on certain conditions. Both points have had a somewhat chequered procedural history. The company relied exclusively on the second point before the trial judge, who rejected it. In the Court of Appeal, it conceded the second point and relied exclusively on the first, which had been neither pleaded nor argued at trial. The Court was not persuaded and dismissed the appeal. In the result, the company has so far failed on both of its arguments.*

Consequences

15. *It follows that the company does not have title to the two plots purportedly conveyed in September 2006.*
16. *That leaves unresolved the question who does have title. It will not necessarily be Ena, because it is arguable that since the transaction is void at common law and the company cannot claim title by adoption under section 22(2) of the Act, the legal owner is Paul by virtue of section 22(1). Another possibility is that Ena might derive rights from the fact that the failure of the company's claim leaves her as the only claimant on whose behalf any conveyance has been lodged for registration with the Register of Records. The Board is unwilling to express a view on these points because Paul Rolle is not a party to these proceedings and the implications of the Board's conclusions have not been fully addressed in the arguments on this appeal. They would need to be properly considered as between Paul and Ena Rolle in proceedings to which both of them were parties.*
17. *The only question under this head which the Board thinks it right to address arises out of a submission made on behalf of the company to the effect that if Paul Rolle*

has the legal title to the two plots by virtue of section 22(1) he would hold it on trust for the company. The Board cannot accept this, because it is not consistent with the statutory scheme. The scheme makes the company's interest in the transaction dependent on its adoption of the transaction within a reasonable time. Equity cannot intervene to create a trust inconsistent with the statutory principle. "

[10.] The Privy Council's Judgement only related to the two lots. It concluded as follows:

- (i) That Rolle Family Co. Ltd. of which the Claimant is the majority shareholder, President and director does not have title to the two lots purportedly conveyed in September 2006, viz., (i) lot no. 85 Bailey Town and (ii) a portion of Allotment No. 20 Alice Town.
- (ii) that the ownership of these two lots is best considered and determined by proceedings commenced between the parties. They found it arguable that either was possible:
 - (a) That Paul Rolle could be the legal owner by virtue of section 22(1) of the Companies Act.
 - (b) That Ena Rolle derived rights from the failure of the company's claim because her conveyance had been lodged for registration with the Registrar of Records.

The Pleadings

[11.] Despite the fact that both the first and second actions were commenced by originating summonses, the Claimant curiously filed on 12th June, 2023 an Amended Statement of Claim asserting rights to Lot No. 85 Bailey Town and part of Allotment No. 20 Alice Town, Bimini. The Claimant did not in the Amended Statement of Claim assert any right title or interest whatsoever in lot No. 82 Bailey Town, Bimini.

[12.] The Amended Statement of Claim alleged the following:

1. The Plaintiff is and was at all material times the legal and beneficial owner in fee simple and is entitled to possession of the lots hereinafter mentioned and on the basis of the provisions of law as hereinafter mentioned and as set out in the Originating Summons filed herein. The Plaintiff and the Rolle Family and Company Limited have been in continuous and exclusive possession of the subject lots 85 and a portion of Allotment No. 20 for more than twelve (12) years prior to the commencement of this action under the Limitation Act, with the constant interference by the Defendant who has generally occupied and used for her purposes the greater part of such property which is situate at or near to Sherman Lane and Queen's Highway, Alice Town, Bimini.
2. The Plaintiff further claims against the Defendant to be entitled to possession of the land or lots and the subject-matter of the above Privy Council appeal and judgment between Rolle Family and Co. Ltd. v Ena Rolle as therein set out or as specified therein inclusive or by virtue of section 10 of the said Registration Records Act, by virtue of priority obtained by being first in time of recording of

the conveyances to Rolle Family Company Limited referred to in the said Privy Council Decision and section 22(1) of the Companies Act and any other relevant provisions of this Act. The Plaintiff is, and has at all material times been, the majority shareholder and the President and director of the Rolle Family Company Limited and did in fact gave instructions to Emmanuel Rolle to execute the two conveyances in respect of Lot 85 and a portion of Allotment No. 20 described in the conveyances.

3. On the 24th day of May, 2006 Emmanuel N. Rolle conveyed or purportedly conveyed to his daughter and Defendant in this action, Ena L Rolle, by way of a gift to her, certain lots of land. This Conveyance is recorded at the Registry of Records of the Bahamas in Volume 10019 at pages 889 to 892. This document was lodged and accepted for recording on the 18th day of July, 2007. A certified copy of this document will be produced at the trial of this action.
4. On the 8th day of September, 2006 by Conveyances of this date and pursuant to the instructions of the Plaintiff, who is and was at all material times the President of and owner or majority shareholder of the issued shares in such company hereinafter mentioned, to the said Emmanuel Rolle, the said Emmanuel Rolle granted and conveyed to Rolle Family and Company Limited (the Company) two of the same above lots of land which were granted to the Defendant under the said deed of gift, known as Lot 85 and a portion of Allotment No. 22 for a consideration of US\$100 each. The Conveyances of the Company were lodged and accepted for recording at the said Registry of Records on the 23rd day of May, 2007. Certified copies of these Conveyances will be produced at the trial of this action. The Defendant's said Conveyance was lodged and accepted for recording on the 18th day of July, 2007.
5. The Company commenced action in the Supreme Court against the Defendant (inter alia) on the issue of priority of recording and the issue of the conveyances to Company to be incorporated. This action was heard by the Supreme Court and was appealed by the Company to the Court of Appeal and the Privy Council.
6. The Privy Council on the 20th day of November, 2017 found (inter alia) the Defendant is not necessarily the owner because it is arguable that the Plaintiff is the owner under Section 22(1) of the Companies Act, 1992. A copy of the Judgment in the appeal to the Privy Council will be produced and relied on at the trial of this action.
7. The Defendant's interference herein mention and her continual interference is premised upon her belief that she if the legal and beneficial owner of the said lots and in total disregard for the determined rights of the Plaintiff under section 10 of the Registration of Records Act and the said section 22(1) of the Companies Act and the relevant provisions of this Act.
8. The said lots are described in the said Conveyances from the said Emmanuel Rolle to the Company. The Plaintiff and Rolle Family and Company Limited have for a period exceeding 12 years under the Limitation Act, prior to the commencement of this action and at all material times, and from the date of the said Conveyance of the Bailey Town Lot to the Company, used the said Bailey Town Lot for storage

of his cars, and has from such date or time kept continuous, exclusive, open and undisturbed possession of such Lots.

9. The Defendant has repeatedly wrongfully entered upon and used the buildings on the Lot situate in the Settlement of Alice Town. The Plaintiff from as early as September 2006 on the Company's behalf, repeatedly by oral and written means, called on the Defendant to cease her claim to be owner of the said Lots which were conveyed to the Company, and her interference with the said lot that is situate at Alice Town and which said Lot has buildings upon it which were there as at the date of the said conveyance to the Defendant. The Defendant repeatedly refused to discontinue such a claim and interference.
10. As a result of the said conduct and trespass of the Defendant as above stated the Plaintiff has suffered and continue to suffer, loss and damage

AND THE PLAINTIFF claims against the Defendant the following relief:

1. A declaration that the Plaintiff is entitled to possession of the said Lots.
2. Damages for loss of use of the property at Sherman Lane, and on Queen's Highway, Alice Town, Bimini.
3. An injunction restraining the Defendant whether by herself, her servants or agents or howsoever otherwise from entering upon or in any manner interfering with the said lots.
4. Damages for trespass.
5. Further or other relief.
6. Cost, to be taxed if not agreed.

[13.] The Defendant denied the claim and alleged that Emmanuel Rolle conveyed the three parcels of land to her for an estate in fee simple and that they were recorded in the Registry of Records having been lodged and accepted for recording on the 18th day of July, 2007.

[14.] Her Defence filed on 19th October, 2021 alleged as follows:

- "1. The Defendant denies that the Plaintiff is the owner or is entitled to possession of Lot No. 85 and a portion of allotment No. 20 on the Island of Bimini as alleged in paragraphs 1 and 2 of the Statement of Claim or at all.
2. As to paragraph 3 of the Statement of Claim the Defendant admits that on the 24th day of May, 2006 Emmanuel N. Rolle conveyed to the Defendant three parcels of land including Lot No. 85 and a portion of allotment No. 20 for an estate in fee simple and that the Conveyance is recorded in the Registry of Records of The Bahamas in Volume 10019 at pages 889 to 892 having been lodged and accepted for recording on the 18th day of July 2007. Save as aforesaid the Defendant does not admit paragraph 3 of the Statement of Claim.
3. As to paragraph 4 of the Statement of Claim the Defendant admits that on the 8th September, 2006 the said Emmanuel N. Rolle purported to convey to Rolle Family and Company Limited ("the Company") Lot No. 85 and a portion of allotment No. 20 and that the purported Conveyances were lodged and accepted for recording on the 23rd day of May, 2007. However, the Defendant says that the purported Conveyance of Lot No. 85 and a

portion of allotment No. 20 were ineffective to pass title to the Company because on the 8th September, 2006 the Company had not been incorporated.

4. As to paragraphs 5 and 6 of the Statement of Claim the Defendant admits that the Company challenged the Defendant's claim to be the owner of Lot No. 85 and a portion of allotment No. 20 in Common Law & Equity Action No. CLE/gen/00625 of 2010 that the action was pursued by the Company before the Bahamas Court of Appeal and finally before the Judicial Committee of Her Majesty's Privy Council who determined on the 20th November, 2017 that the Company did not hold title to Lot No. 85 and a portion of allotment No. 20. Save as aforesaid the Defendant denies paragraphs 5 and 6 of the Statement of Claim.
5. As to paragraph 7 of the Statement of Claim the Defendant says that the Defendant is the legal and beneficial owner of Lot No. 85 and a portion of allotment No. 20 by virtue of the Conveyance from Emmanuel N. Rolle dated 24th May, 2006. Save as aforesaid the Defendant denies paragraph 7 of the Statement of Claim.
6. Further and in the alternative the Defendant says that she has been in continuous, open and undisturbed possession of Lot No. 85 and a portion of allotment No. 20 conveyed to her from the 24th May, 2006, the date of the Conveyance from Emmanuel N. Rolle until the 28th April, 2021 the date of the commencement of this action and that she has thereby acquired possessory title to Lot No. 85 and a portion of allotment No. 20 by virtue of the provisions of Section 16 (3) and Section 25(1) of the Limitation Act.
7. As to paragraph 8 of the Statement of Claim the Defendant denies that the Plaintiff has been in continuous, exclusive, open and undisturbed possession of Lot No. 85 and a portion of allotment No. 20 for a period exceeding twelve years prior to the commencement of this action as alleged in paragraph 8 of the Statement of Claim or at all.
8. As to the 2nd paragraph numbered "6" in the Statement of Claim the Defendant admits that she has been in continuous, exclusive, open and undisturbed possession of Lot No. 85 and a portion of allotment No. 20 and all buildings erected thereon from time to time since the 24th May, 2006. The Defendant denies that the Plaintiff has any legal or beneficial interest in the said land or any buildings erected thereon or that the Plaintiff has the right to require the Defendant to cease her claim to ownership thereof.
9. As to the 2nd paragraph numbered "7" in the Statement of Claim the Defendant denies that she has trespassed on land belonging to the Plaintiff or that the Plaintiff has suffered loss and damage as alleged therein or at all.
10. The Defendant further denies that the Plaintiff is entitled to the relief prayed for in the Statement of Claim or to any relief. "

[15.] The Claimant filed a Reply on 14th March, 2023 as follows:

- "1. The Plaintiff denies that the Defendant has been in possession of the two lots of land the subject-matters of this action as alleged in paragraph 6 of the Defendant's Defence filed herein on the 28th day of April, 2021, or at all. Further, the Defendant is estopped from making this claim and this and any such claim is res judicata in the Defendant failed to advance such claim in Action No. 0625 of 2010 and if she did it was disposed of in such action.

2. As to paragraph 8 of the Defence, the Plaintiff denies that by the interference of the Defendant with the subject land she obtained a title to it or them or any part of it or them. The Plaintiff repeats that he is the legal and beneficial owner of the subject Lots of land and is entitled to possession of them.”

Analysis and Disposition

First Action – 2017/CLE/GEN/00541

- [16.] In the First Action the Claimant alleged an entitlement to Lot No. 82 Bailey Town, Bimini. However, when he consolidated the First and Second action he failed to include a claim to this lot in his amended Statement of Claim or adduce any evidence at the trial.
- [17.] This failure to do either is not denied by the Claimant.
- [18.] The Defendant has on this basis invited the Court to dismiss this action and award costs to her.
- [19.] In the circumstances, I dismiss the First Action against the Defendant and award her costs.

Second Action – 2021/CLE/GEN/00434

- [20.] The facts are not in dispute. The question to be determined is one of law.
- [21.] On the 24th May, 2006 the late Emmanuel Rolle, the father of both Paul and Ena, made a conveyance of the two lots of land to Ena. Ena is and in fact has been in occupation of part of the premises as she operated a business called Ena’s Take Away from the premises since 2001. This finding was contained in the judgment in the first action and has not been challenged. It is to be noted that in the earlier action the Company claimed that the conveyance to Ena was a nullity as Emmanuel did not sign the May 2006 conveyance. That claim was rejected by the trial judge and that finding was not pursued on appeal to the Court of Appeal.
- [22.] About four months later, the father conveyed the same property to the Company.
- [23.] The May, 2006 conveyance to Ena was lodged for recording at the Registrar General’s Department on the 18th July, 2007.
- [24.] However, the September 2006 conveyance to the Company was lodged for recording at the Registrar General’s Department on the 23rd May, 2007. This was prior to the recording of the May 2006 conveyance to Ena.
- [25.] Ex facie pursuant to the section 10 of the Registration of Records Act the conveyance to the Company would give the company a better title to the land than the earlier conveyance to Ena.
- [26.] This finding was made by the trial judge in the earlier decision and confirmed by the Privy Council in its judgment.

[27.] The issue that gives rise to the problem is that at the time of the 2006 conveyance to the Company, it had not yet been incorporated.

[28.] For reasons set out the Privy Council's decision (which confirmed the judgment of the trial judge) the conveyance to the Company was void. It said:

15. It follows that the company does not have title to the two plots purportedly conveyed in September 2006.

[29.] Given that the September, 2006 conveyance is void, the issue to be determined is where does the present title lie?

[30.] Does it lie in Paul Rolle who made and executed the conveyance on behalf of the Company before it was incorporated or does it lie with Ena to whom Emanuel conveyed the property in May, 2006 before the void conveyance to the Company.

[31.] Section 22 of the Companies Act provides:

22. (1) Except as provided in this section, a person who enters into a written contract in the name of or on behalf of a company before it is incorporated is personally bound by the contract and is entitled to the benefits of the contract.

(2) Within a reasonable time after the company is incorporated, it may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract entered into in its name or on its behalf before it was incorporated.

(3) When a company adopts a contract under subsection (2) —

(a) the company is bound by the contract and is entitled to the benefits thereof as if the company had been in existence at the date of the contract and been a party to it; and

(b) a person who purported to act in the name of the company or on its behalf ceases, except as provided in subsection (4), to be bound by or entitled to the benefits of the contract.

(4) Except as provided in subsection (5), whether or not a written contract made before the incorporation of the company is adopted by the company, a party to the contract may apply to the court for an order under which obligations under the contract may be fixed or being joint or joint and several for apportioning liability between the company and a person who purported to act in the name of the company or on its behalf; and the court may, make any order it thinks fit.

(5) If it is expressly so provided in a written contract, a person who purported to act for or on behalf of a company before it was incorporated is not in any event bound by the contract or entitled to the benefits of the contract.

[32.] In it's judgment, the Board said:

“11. The effect of these provisions is that an instrument which purports to be an agreement but is void because there is no counterparty in existence, is nonetheless deemed to be an agreement for the purpose of binding (i) the person who purported to make it on behalf of the company, and (ii) the company itself if it adopts the transaction in accordance with subsection (2) in place of that person.

12. The first condition which calls for attention on this appeal is that the instrument should purport to be a “written contract”. It is unnecessary to decide whether any deed is to be regarded as a contract for the purpose of the section. The Board is satisfied that the deeds in question on this appeal purported to be written contracts. In the case of Lot 85, there can be no real doubt about this. It provides for the company to assume an executory obligation to observe and perform an exception and reservation in the Crown grant from which the grantor’s title is derived, and the instrument is signed by Paul Rolle, apparently on behalf of the company. The conveyance of allotment no 20 is not executed on behalf of the company, presumably because the company’s only obligation under that transaction was the payment of the consideration of US\$100, which is acknowledged to have been paid. But an agreement may be in writing notwithstanding the absence of a signature. The conveyance of allotment no 20 recites a prior unwritten agreement between the grantor and the grantee for the sale of the land in consideration of US\$100. It then subsumes the terms of that agreement into the deed. It also acknowledges receipt of the US\$100 from the company and thus the satisfaction of the company’s obligation. In the Board’s opinion, the transaction effected by the deed was a bilateral transaction involving mutual obligations. In other words it was a contract.”

[33.] The Board accepted that not all of the conditions of Section 22 had been met and the conveyance to the Company was void. However, the Board left open the question of where the title lay in the circumstances of this case. The Board said:

“16. That leaves unresolved the question who does have title. It will not necessarily be Ena, because it is arguable that since the transaction is void at common law and the company cannot claim title by adoption under section 22(2) of the Act, the legal owner is Paul by virtue of section 22(1). Another possibility is that Ena might derive rights from the fact that the failure of the company’s claim leaves her as the only claimant on whose behalf any conveyance has been lodged for registration with the Register of Records. The Board is unwilling to express a view on these points, because Paul Rolle is not party to these proceedings, and the implications of the Board’s conclusions have not been fully addressed in the arguments on this appeal. They would need to be properly considered as between Paul and Ena Rolle in proceedings to which both of them were parties.”

[34.] In these proceedings Paul and Ena are the parties. I have heard submissions from both Paul and Ena.

[35.] In my judgment, Ena has the better title. At the time of the 2006 Conveyance Emanuel Rolle had already conveyed his interest in the properties to Ena. The fact that it was not recorded nor stamp duty paid did not affect the fact that the title was conveyed to Ena. Emanuel no longer had any title to the property. The conveyance to the company would

have only given the Company a better title by virtue of the Registration of Records Act. But in my judgment that is irrelevant as there was no conveyance to the Company.

- [36.] Section 22 of the Companies Act, may have given Paul, as the person who executed the deed on behalf of the unincorporated company, the rights and obligations against Emmanuel to enforce any agreement made with Emanuel, but at the time Emanuel had no title which he could give to Paul pursuant to any agreement made.
- [37.] If Emmanuel had not already conveyed his interest to Ena, I would accept that Paul is able to enforce the agreement against him pursuant to Section 22 of the Companies Act. But Paul cannot in my judgment enforce the agreement against Emanuel who had already conveyed the property to Ena. This is particularly so in circumstances where Paul and the Company would have known that Ena was in occupation of the land since 2001. The evidence does not show that Paul made any inquiries of Ena as to the basis of her occupation.
- [38.] The fact is, as the Privy Council noted, *“Ena might derive rights from the fact that the failure of the company’s claim leaves her as the only claimant on whose behalf any conveyance has been lodged for registration with the Register of Records.”*
- [39.] For these reasons, I am satisfied that Ena has a better title than Paul. The action by Paul is dismissed and I award costs to Ena.

Conclusion

- [40.] I dismiss Common Law and Equity action numbers 00541 of 2017 and 434 of 2021.
- [41.] I award costs to the Defendant to be summarily assessed in accordance with the Civil Procedure Rules, 2022 unless otherwise agreed between the parties.

Dated this 2nd day of June, 2025



Camille Darville Gomez
Justice