

THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2018/CLE/gen/00469

BETWEEN

TRENT MCINTOSH AND ELOISE CARTWRIGHT
(Executors of the Estate of Alphonso Haywood McIntosh)

Plaintiffs

AND

LEAINER MCINTOSH
(Executor of the Estate of Maxwell McIntosh)

Defendant

Before: **The Honourable Chief Justice Sir Ian R. Winder**

Appearances: **Donavan Gibson for the Plaintiffs**
Cathleen Hassan for the Defendant

22 August 2022, 19 October 2022, 4 December 2025 & 8 December 2025

JUDGMENT

WINDER, CJ

This is the Claim of the Plaintiffs, as Executors of the Estate of Alphonso McIntosh seeking to set aside two conveyances, both dated 25 October 1995 in favor of Maxwell McIntosh. Maxwell McIntosh, also now deceased, was the son of Alphonso McIntosh. Maxwell McIntosh's executor is sued on behalf of his estate.

[1.] The Claim was commenced by Writ of Summons filed on 25 October 2021 where the Plaintiffs sought the following reliefs:

1. A Declaration that Alphonso McIntosh, at the time of his demise, was the fee simple owner of:-
“ALL THAT lot of land situate approximately one-half mile Northeast of New Plymouth Settlement on Green Turtle Cay one of the Abaco Cays in the Commonwealth of The Bahamas forming a portion of the Green Turtle Estates Subdivision and being Lot No. 97”.
2. A Declaration that Alphonso McIntosh, at the time of his demise, was the fee simple owner of:
“ALL THAT piece parcel or lot of land being Lot No. 177a, 177b, and 177c comprising Eleven Thousand six hundred and twenty-two (11,622) square feet situate in New Plymouth in Green Turtle Cay in the Island of Great Abaco”
3. An Order that the Conveyance dated the 25th October 1995 made between Alphonso McIntosh and Maxwell Leon McIntosh recorded in Volume 7040 at pages 276 to 291 be set aside on the grounds that the same are invalid, null and void and forgery;
4. An Order that the Conveyance dated the 25th October 1995 made between Alphonso McIntosh and Maxwell Leon McIntosh recorded in Volume 7040 at pages 308 to 314 be set aside on the grounds that the same are invalid, null and void and a forgery;
5. An injunction restraining the Defendant and/or his servants/or agents from trespassing on the abovementioned properties.
6. A Declaration that the Plaintiff is entitled to vacant possession of the said property or in the alternative, the current market value of the abovementioned properties.

[2.] The Defendant (Leainer) denies the claim. Her defence provides, in part, as follows:

6. Paragraph 5 is admitted. By Conveyance dated 25th day of October, A.D., 1995 and recorded in Volume 7040 at pages 308 to 314 the late Alphonso Haywood McIntosh transferred his legal and beneficial interest in Lots 177a, 177b and 177c situate at New Plymouth in Green Turtle Cay in Great Abaco one of the islands of the Commonwealth of The Bahamas to the late Maxwell Leon McIntosh. In accordance with the provisions of the Conveyancing and Law of Property Act, section 3 (3) the Defendant's twenty-three (23) year undisputed documentary title is sufficient evidence of its truth.
7. Paragraph 6 is admitted. By Conveyance dated 25th day of October, A.D., 1995 and recorded in Volume 7040 at pages 276 to 291 the late Alphonso Haywood McIntosh transferred his legal and beneficial interest in Lot No. 97 situate on Green Turtle Cay Estates Subdivision in Green Turtle Cay in Great Abaco one of the Islands of the Commonwealth of The Bahamas to the late Maxwell Leon McIntosh. In accordance with the provisions of the Conveyancing and Law of Property Act, section 3 (3) the Defendant's twenty-three (23) year undisputed documentary title is sufficient evidence of it's truth.
8. Paragraph 7 is denied. On or about the 25th day of October, A.D., 2019, the late Alphonso Haywood McIntosh also transferred his legal and beneficial interest in Lot No. 98 situate Green Turtle Cay Estates Subdivision in Green Turtle Cay in Great Abaco one of the Islands of the Commonwealth of The Bahamas to one of the Plaintiff's Eloise Cartwright. When the Conveyances were done, all of the parties were aware of the same. The said Conveyance to Eloise Cartwright, however, is not alleged to be forgery.
9. Further, in relation to Lots 177a, 177b, and 177c situate New Plymouth aforesaid, the Plaintiffs have knowledge of the fact that the two storey building erected on the same that was controlled by the late Alphonso Haywood McIntosh ceased being controlled by him many years ago. Thereafter, the late Maxwell Leon McIntosh controlled the property. The late Maxwell Leon McIntosh who put a washhouse downstairs in the building and operated the washhouse. The late Maxwell Leon McIntosh also solicited and negotiated a tenancy agreement with Chances for a portion of the downstairs building, which tenancy continues. The late Maxwell Leon McIntosh acted as an owner of the properties while he was alive, without any interference or dispute by neither the late Alphonso Haywood McIntosh nor the Plaintiffs nor any other person.

[3.] At trial, the Plaintiffs called Eloise Cartwright (Cartwright), as their witness of fact, and Curt Bagget (Bagget), who gave expert evidence. Leainer gave evidence and called Particia McIntosh (Patricia) and Philip Lundy (Lundy) as factual witnesses. Dianne Peterson (Peterson) was called by Leainer as an expert witness.

The Evidence

Cartwright

[4.] Cartwright gave evidence that she is one of the children of Alphonso McIntosh and was an executor of his Will. She stated that the action was commenced because she and her siblings noticed that certain signatures on conveyance documents relating to their father's land did not look like their father's signature. This concern was shared among all seven siblings.

[5.] Cartwright testified that she did not look at any particular document in detail and could not recall seeing specific documents, such as the conveyance for Lot 97 Green Turtle Cay, prior to the hearing. She stated that her concern was based on a general impression when the family was probating their father's estate after the death of her brother Maxwell in 2017.

[6.] Cartwright acknowledged that she received a conveyance for Lot 98 in the Green Turtle Estates Subdivision from Maxwell McIntosh, but she did not recall reading the documents at the time of signing. She stated that she was called by a lawyer, Mr. Ingraham, who told her that her brother Maxwell had decided to give her the property that their father had left for her. She signed the documents as instructed, without Maxwell being present, and did not question the transaction at the time. She was aware that her father had left a Will and that she was to receive Lot 98 under it. She stated that she did not question the conveyance at the time because she believed it was in accordance with her father's wishes as set out in the Will.

[7.] When challenged about the truthfulness of her account, Cartwright insisted that she was telling the truth and had no reason to lie. She maintained that she did not realize the significance of the conveyance for Lot 98 at the time and that if she had, she would have included it in the challenge to the other conveyances. She stated that she had no objection to the Court making a determination on the validity of the conveyance for Lot 98 as well. Cartwright confirmed that probate of her father's estate did not begin until after Maxwell's death in 2017, even though her father died in 2005. She explained that she had repeatedly asked Maxwell, who was also an executor, about dealing with the Will, but probate was delayed.

Baggett

[8.] Baggett gave expert evidence on behalf of the Plaintiffs. Baggett was deemed an expert and his report was received into evidence. Mr. Baggett was accepted by the Court as an expert in document examination without objection. He prepared two initial expert reports (dated March 24, 2018 and April 9, 2018), and two rebuttal/answer reports (both dated February 23, 2022) in response to the Leainer's expert, Peterson. Baggett did not receive or examine original documents; his analysis was based on copies.

[9.] Baggett evidence was that he received copies of three (3) questioned signatures of Alphonso McIntosh, in the form of the disputed conveyances, which were labeled as Q-1, Q-2 and Q-3. He

was also provided with copies of what was purported to be six (6) known signatures of Alphonso McIntosh which were labeled (K-1 through K-6).

[10.] Baggett concluded that the signature of Alphonso McIntosh on the questioned document (Q-1) was not authored by the same person as the purported known signatures (K-1 through K-6). He opined that the signature was forged. He made no assertion as to whether the K signatures were genuinely those of Alphonso McIntosh, only that the same person did not sign both the K and Q documents. He also examined additional questioned signatures (Q-2 and Q-3) and reached the same conclusion: the person who wrote the K signatures did not write the Q signatures. He also stated that factors such as age or health (unless involving brain damage, drugs, or physical injury) do not significantly alter handwriting, and he was not provided with any relevant health background for Alphonso McIntosh. Baggett used the term "forged" in his report, explaining that it is his professional opinion and standard practice in his field to do so.

[11.] Leainer gave evidence that she is widow of Maxwell McIntosh and the administrator of his estate. She is aware of the nature of the dispute regarding the authenticity of signatures on certain conveyance documents. She was not present at the lawyer's office when the property was transferred, nor did she witness the signing of any documents by Alphonso or Maxwell. Her knowledge is based on family discussions and what was relayed to her by others.

[12.] Leainer stated that she was privy to the wishes of Alphonso McIntosh, as he would discuss property matters with her and other family members. According to her, Alphonso was often distraught about disputes among his children regarding the property and expressed a desire to resolve the disputes by putting the property in the names of Maxwell and Trent.

[13.] Alphonso was, at that time, intending to remarry, and the family was very unhappy with his decision as they felt that his new wife would become entitled to a share in the property. As a solution it was Alphonso's decision to transfer the property of Maxwell as he trusted Maxwell to share the property with his siblings. However, after it was discovered that Alphonso had transferred the property to Maxwell, matters became even more contentious between the siblings, and their father.

Patricia

[14.] Patricia gave evidence that she is the widow of the late Alphonso McIntosh. She lives in Deals, Long Island, Bahamas. Patricia stated that she accompanied her husband Alphonso and Maxwell to the law firm of Lundy & Co. in Marsh Harbour on the day the conveyance documents were signed (25th October 1995, just before she got married). She described traveling from the Cay by ferry, getting a car, and going to the law office together. Patricia said she sat in the waiting room until she was called into Lundy's office by the secretary. She was present in the office with her husband and Maxwell when the conveyance was presented and signed. She stated that Alphonso

signed the conveyance in her presence, and Maxwell was also present and signed. She recalled that the secretary, whom she believed to be Cindy Delancy, was present as a witness.

[15.] Patricia was questioned about the sequence of signing and the presence of witnesses. She initially said she thought the secretary was present, but upon comparing signatures in the documents, she was not certain if it was indeed Ms. Delancy who witnessed her and her husband's signatures. She confirmed that all documents were signed on the same day, 25 October 1995, and that there was only one trip to the law office. She recalled signing one document herself (to sign out her dower) and believed her husband and Maxwell each signed one document as well.

[16.] Patricia confirmed that there were ongoing disputes and confusion among Alphonso's children regarding the property, both before and after her marriage to Alphonso. She stated that Alphonso was in his sound mind when he signed the documents and that she had no interest in the property herself, as she had her own property on Long Island. She confirmed that her knowledge of the disputes came both from what Alphonso told her and from witnessing arguments between Alphonso and his children about the property.

Lundy

[17.] Attorney Lundy gave evidence that he was established in his law practice as a full-time practitioner from January 1993 through sometime in 2002 in Marsh Harbour. Shortly after he established his law practice in 1993, he met Alphonso McIntosh of Green Turtle Cay, who became his client.

[18.] Sometime in October 1995, Alphonso McIntosh instructed him to prepare several documents. Alphonso McIntosh attended his office and brought with him his fiancée Patricia Deal, whom he said was from Long Island.

[19.] Alphonso McIntosh, who was elderly and preparing to remarry, was concerned that his new wife might acquire a dower interest in his property upon marriage. To address his children's concerns and to ensure the property would not go to his new wife, Alphonso McIntosh decided to convey the properties to his son Maxwell, whom he considered the most mature and trustworthy of his children. Lundy stated that this decision was a result of a series of conversations with Alphonso McIntosh, not a single discussion, and that Maxwell was supportive of his father's decision to remarry, unlike some of the other children. Lundy did not recall whether Alphonso McIntosh had a will, nor did he recall speaking to any of the other children or to Cartwright about the conveyance. He also did not recall advising Cartwright that eight children could not hold property together. The main concern throughout was to prevent the new wife from obtaining an interest in the property, and the conveyance to Maxwell was seen as a foregone conclusion after much discussion and consideration.

[20.] Lundy said that on 24 October 1995, Alphonso McIntosh and Patricia attended his office, and both signed the Deed which contained the pre-nuptial agreement in front of him. He witnessed their signatures at that time. The Conveyances were being prepared, but were not ready, so he advised Alphonso McIntosh to return the next day to sign the Conveyances. On 25 October 1995, Alphonso McIntosh and Maxwell McIntosh attended his office, and both signed the 3 Conveyances he prepared pursuant to the instructions of Alphonso McIntosh. Alphonso McIntosh and Maxwell McIntosh both signed in the presence of both his secretary, Cindy Delaney, and himself.

[21.] Lundy's evidence was that, in his opinion, at the date of the transfer of the properties from Alphonso McIntosh to Maxwell McIntosh, Alphonso McIntosh was in his right mind and was in full understanding of the legal implications of transferring the properties by way of Conveyance to Maxwell McIntosh. Alphonso McIntosh continued to be his client up to the date when he moved his law practice to the New Providence. He knew Alphonso McIntosh to be a clear minded and intentional man.

Peterson

[22.] Dianne Peterson gave expert evidence on behalf of Leainer. She provided an initial report (January 21, 2022) and a rebuttal report (January 27, 2022). Peterson criticized Baggett for not defining the scope of his examination, not listing the titles or dates of the known or comparison documents, not specifying whether he examined originals or photocopies, and not arranging documents in chronological order. She stated in her report that she could not form an opinion on the authenticity of the signatures. Specifically, she stated:

"The comprehensive examination revealed similar and dissimilar handwriting characteristics between the known and questioned signatures of Alphonso McIntosh. The K6 signature was the only signature that had an adequate resolution quality. The other known signatures have deteriorated resolution, resulting in not being able to adequately examine the line quality, pressure patterns, rhythm, initial and terminal strokes, letter forms, types of connectors, method of construction, writing speed, legibility, and pattern formation. With these outstanding issues it is not fair to base an opinion on the size and proportions, utilization of space and spatial alignment of the handwriting alone. Thus, the writer's identification cannot be made"

The issues

[23.] The issue for determination in this dispute is whether the disputed conveyances are authentic and whether they ought to be set aside on the grounds that they are forgeries and therefore invalid.

Law, analysis and discussion

[24.] This is not a claim for declarations as to whether Maxwell McIntosh and now his estate holds property on any trust. This is also not a claim of unsoundness of mind or whether the transfers were the subject of some undue influence. The Plaintiffs' case is that the conveyances are forgeries, signed by someone other than Alphonso McIntosh but purporting to be his signatures.

[25.] It is perhaps appropriate that I begin with an assessment of the evidence which I have heard and seen. Ultimately the resolution of this dispute will be determined based upon which of the two versions of the facts is accepted.

[26.] Having heard all the witnesses, considered the evidence provided in support of their testimonies, and observed their demeanor as they gave evidence, I have no hesitation in indicating that I preferred the evidence of the Leainer's witnesses to that of Plaintiffs'.

[27.] Baggett concluded that the questioned signatures were forgeries, based on differences with the known signatures, but did not opine on the authenticity of the known signatures themselves. Peterson criticized the methodology and reporting of Baggett and stated she could not reach a definitive opinion on the authenticity of the signatures. The expert evidence thus presents a direct conflict where Baggett asserts forgery based on his analysis, while Peterson challenges the sufficiency and clarity of his analysis and refrains from making a positive finding herself.

[28.] I accept the submissions of Leainer as to the standard of proof to be attained in a claim for forgery. She stated in her submissions as follows:

The standard for proving forgery requires cogent and convincing evidence. In *Virgil III v Smith BS 2016 SC 62*, Madam Justice Ms. Rhonda Bain (as she then was) cited the case of *Salton v Sala & Another 2015 E.W.H.C. 1835*, where at page 96 she quoted Miss Penelope Reed QC, who stated the following about forgery:

"An allegation of forgery is a very serious one to make. The burden of proof remains on the balance of probabilities. However, it is a heavy burden to discharge because it is so serious an allegation to make and because of the inherent improbability of the event having taking place."

[29.] I am not satisfied, on a balance of probabilities that the Plaintiffs had proven that the conveyances were forgeries. In my view, the evidence of Peterson was more persuasive than that of Baggett, particularly since I believed that Lundy and Patricia witnessed the signature of Alphonso McIntosh. Their evidence was clear that they were present when Alphonso McIntosh executed the conveyances which were drawn up by Lundy, upon instructions.

Conclusion

[30.] In all the circumstances therefore the Plaintiffs' claim is dismissed with costs, such costs to be assessed in default of agreement.

Dated this 5th day of January 2026

A handwritten signature in black ink, appearing to read "I. R. Winder".

Sir Ian R. Winder

Chief Justice