

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL 79/2000

**BEFORE: THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE WALKER, J.A.
THE HON. MR. JUSTICE LANGRIN, J.A.**

BETWEEN: VEHICLES & SUPPLIES 1ST APPELLANT

**AND: VEHICLES & SUPPLIES
(INDUSTRIAL DIVISION)
LIMITED 2ND APPELLANT**

**FINANCIAL INSTITUTIONS
SERVICES LIMITED RESPONDENT**

**Raphael Codlin for the appellants instructed by
Raphael Codlin and Co.**

**Michael Hylton Q.C. Solicitor General and Debbie
Fraser for the respondent instructed by Valerie Alexander**

March 13, 14, 15, 16, 2001 & December 20, 2004

DOWNER, J.A.

The appellants' claim against the respondent Financial Institutions Services Ltd., were dismissed by Karl Harrison, J. in a summary judgment the order of which reads:

"1. The Defendants have no interest legal or equitable in the commercial premises known as lots 1, 2 and 15, Blaise Industrial Park, 69-75 Constant Spring Road, Kingston 10, registered respectively at Volume 1239 Folio 499, Volume 1239 Folio 500,

Volume 1239 Folio 513 of the Register Book of Titles.

2. The Defendants do forthwith deliver possession of the said premises to the Plaintiff.
3. The Defendants pay to the Plaintiff mesne profits to be assessed.
4. The Defendants pay the costs of this application and order.
5. There be Certificate for two counsel.
6. Leave to Appeal granted."

On appeal, Mr. Codlin for the appellants has argued that there was before the learned judge an arguable defence and that the issues should be determined at a full trial. The Solicitor-General on the other hand has contended that there can be no answer to the respondent's reliance on Sec. 71 of the Registration of Titles Act.

The respondent, Financial Services Ltd. obtained the titles by virtue of an order in the Supreme Court, which enabled it to pray in aid the registered titles in respect of the parcels of land in issue. It was in those circumstances that Sec. 71 of the aforesaid Act was cited. It reads:

"Except in the case of fraud, no person contracting or dealing with, or taking or proposing to take a transfer, from the proprietor of any registered land, lease, mortgage or charge, shall be required or in any manner concerned to enquire or ascertain the circumstances under, or the consideration for, which such proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase or consideration money, **or shall be affected by notice, actual or constructive of any**

trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not itself be imputed as fraud." [Emphasis supplied]

It may be that the appellants have a good case based on the counter-claim which they may wish to pursue. It would be a claim in money terms but such claim does not run with the land. If such a claim is vindicated in the Supreme Court it could be conveniently heard together with the order for assessment of the mesne profits.

In the light of the foregoing, the appeal is dismissed, the order below is affirmed and the agreed or taxed costs must go to the respondent. The reasons which were delivered orally are now reduced to writing as promised.

WALKER, J.A.

I agree.

LANGRIN, J.A.

I agree.