



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE GC88 of 2022

IN THE MATTER OF S. 124 REGISTERED LAND ACT (2018 REVISION) AND GCR O.29

AND IN THE MATTER OF THE ESTATE OF OLICE ESTERMAE SMITH, DECEASED

BETWEEN

**(1) HILARY SHENIKA FREDERICK
(2) MONICA VERONICA SMITH**

PLAINTIFFS

AND

CHRISTOBEL PATHRA SMITH

DEFENDANT

IN CHAMBERS AS OPEN COURT

**Appearances: Mr Clayton Phuran for the Plaintiffs
Mr Philip Ebanks for the Defendant**

Before: Hon. Justice Alistair Walters (Actg.)

Hearing date: 28 February 2023

Draft circulated: 18 April 2023

Judgment delivered: 27 April 2023

HEADNOTE

Requirements for completing transfer of land under Registered Land Act. Whether gift of land imperfect. Whether imperfect gift capable of perfection by Court.

230427 Hilary S. Frederick and Anor- v- Christobel P Smith - Judgment

JUDGMENT

1. These proceedings were commenced by way of a writ issued on 21 April 2022. The parties are all related and the disputed centres on a property registered at the Cayman Islands Land Registry as Block 4B, Parcel 322 (the “Property”).
2. The First Plaintiff currently resides at the Property with:
 - 2.1 her 8 year old son;
 - 2.2 her sister, Claudia Smith;
 - 2.3 the Second Plaintiff who is her mother; and,
 - 2.4 the Second Plaintiff’s partner.
3. The First Plaintiff is a granddaughter of the Deceased (see below). The Defendant is also a daughter of the Deceased, sister of the Second Plaintiff and the First Plaintiff’s aunt.
4. The Property was formerly owned by Olice Estermae Smith (the “Deceased”) who was the mother of the Second Plaintiff and the Defendant. The Deceased died intestate on 25 December 2015.
5. It is alleged in the Statement of Claim that on 18 June 2012 the Deceased and the First Plaintiff executed a Form RL1¹ by which the Deceased purported to transfer title to the Property from her sole name into the joint names of herself and the First Plaintiff (the “Transfer”). The Form RL1 appears to have been signed by the Deceased and the First Plaintiff and witnessed by Ms Darlene Owens-Elliott JP. The consideration for the transfer was expressed to be “*Natural love and affection for my granddaughter*”.
6. The First Plaintiff took no action to register the Transfer. As mentioned above, the Deceased died on 25 December 2015. In or about August 2020 the Defendant applied for Letters of Administration in relation to the estate of the Deceased. Letters of Administration were granted on 6 November 2020. On 20 January 2021 the Proprietorship Section of the Land Register for the Property was updated to show the Defendant as the registered proprietor in her capacity as Administratrix of the estate of the Deceased.

¹ At that time the relevant law was the Registered Land Law, now s.83 of the Registered Land Act (2018 Revision) and Third Schedule to the Registered Land Rules (2018 Revision), the form being the same.

7. On 19 February 2021, the Defendant issued notices to the First and Second Plaintiffs seeking to evict them from the Property on the basis that the Defendant was the owner of the Property because the Deceased's estate had been "awarded" to her.
8. It seems that proceedings were issued by the Plaintiffs in GC Cause 53 of 2021 in which various injunctions were granted restraining the Defendant from approaching the Property or evicting or interfering with the Plaintiffs. Those injunctions were discharged in February 2022.
9. The Statement of Claim seeks:
 - 9.1 a declaration that the Transfer is valid;
 - 9.2 rectification of the Land Register for the Property to restore the Deceased as the registered proprietor;
 - 9.3 in the alternative, an order removing the Defendant as Administratrix due to her misconduct.
10. The position of the Defendant is that the reason why the First Plaintiff did not register the Transfer is because the Deceased changed her mind about giving effect to the Transfer. The Plaintiff's claim is denied as is misconduct as Administratrix.

Evidence

11. The First Plaintiff has sworn an affidavit dated 1 November 2022. In so far as it expands on what is set out above, the relevant parts of that can be summarized as follows:
 - 11.1 She confirms that she attended with the Deceased before Darlene-Owens-Elliott, JP on 18 June 2012 in order to sign the Transfer. She goes on to say that the effect of the Transfer was that the Deceased transferred to her all of the Deceased's equitable and legal interest in the Property.
 - 11.2 The First Plaintiff says that a few months before the Deceased died she found out that the Defendant had taken the Deceased to meet with another JP in order to execute another Form RL1 to transfer title to the Property into the joint names of the Deceased and the

Defendant as joint proprietors². The form is dated 23 September 2015 but the copy provided does not bear an obvious signature of the Deceased. In any event, when the First Plaintiff says that she found out about the later Form RL1 she says that she obtained a letter dated 1 February 2016 from the Deceased's GP which stated that the Deceased's medical records recorded on 20 March 2015 and on 30 September 2015 that she was suffering from dementia. The First Plaintiff says that she sent that letter to the Land Registry which prevented the transfer of the Property into the joint names of the Deceased and the Defendant.

- 11.3 The First Plaintiff says that initially in conjunction with the Deceased she was responsible for the up keep of the Property. After the death of the Deceased she says that she has been the sole person responsible for its upkeep. Despite what is mentioned above, she says that she thought that the Transfer had transferred equitable and legal title in the Property to them jointly. She goes on to say that she borrowed money by way of a personal loan to carry out renovations to the Property and that when she realized that she did need to get the Transfer registered with the Land Registry the penalties for late filing were very high and she could not afford them.
12. The Second Plaintiff swore an affidavit dated 18 March 2022 which sets out a more detailed background in relation to the relationship between the Deceased and the parties. There is clearly a significant level of bad feeling and distrust between the Plaintiffs and Defendant. The Second Plaintiff says that the Deceased signed the Transfer just after the First Plaintiff's 18th birthday. She says that she believes that it was the Deceased's intention for the Property to be transferred on her death to the First Plaintiff and also to the First Plaintiff's sister Claudia. Claudia was not 18 when the Transfer was signed so was not named on it. The Second Plaintiff says that she believes that the Deceased was of sound mind when the Transfer was signed.

² A copy of this was exhibited as "CS-3" to the affidavit of the Defendant dated 20 March 2023, prepared after the hearing on 28 February 2023. This was prepared in conjunction with further written submission from both counsel in relation to a question about the process involved in the transfer of title to registered land. Because the affidavit was not before the court at the hearing I have not placed any weight on it.

13. A further affidavit dated 23 November 2022 was sworn in support of the Plaintiff's claim by Juliet Facey which again focuses on her recollection of the interrelationship between the parties, but in my view does not add much to the substantive issues in the case.
14. The JP who witnessed the signature on the Transfer swore an affidavit dated 21 March 2022 confirming that the parties did appear before her and that the Deceased seemed to be of sound mind and appeared to understand the effect of the Transfer.
15. Finally on behalf of the Plaintiffs an affidavit dated 2 February 2023 was sworn by Krishelle Edwards, the Defendant's daughter. Again, much of the affidavit deals with the relationship between the parties but Ms Edwards does explain that she believes that it was the intention of the Deceased to transfer the Property into the name of the First Plaintiff (and her sister Claudia) in order to prevent arguments over the Property after her death.

Relevant law

16. Dispositions of land in the Cayman Islands are governed by the Registered Land Act (2018 Revision) the "Act"). Pursuant to s.3:
"Reconciliation with other laws
3. *Except as otherwise provided in this Law, no other law and no practice or procedure relating to land shall apply to land registered under this Law so far as it is inconsistent with this Law: Provided that, except where a contrary intention appears, nothing in this Law shall be construed as permitting any dealing which is forbidden by express provisions of any other law or as overriding any other law requiring the consent or approval of any authority to any dealing."*
17. The effect of registration with absolute title is dealt with by s.23 which states that:
"Subject to section 27, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever but subject —
(a) to the leases, charges and other incumbrances and to the conditions and restrictions, if any, shown in the register; and
(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register:

Provided that —

- (i) *nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee; and*
- (ii) *the registration of any person under this Law shall not confer on him any right to any mineral oils unless the same are expressly referred to in the register.”*

18. In relation to subsequent dealings with land s.37 provides that:

“(1) No land, lease or charge registered under this Law shall be capable of being disposed of except in accordance with this Law, and every attempt to dispose of such land, lease or charge otherwise than in accordance with this Law shall be ineffectual to create, extinguish, transfer, vary or affect any estate, right or interest in the land, lease or charge.

(2) Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract, but no action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged or by some other person thereunto by him lawfully authorised:

Provided that such an action shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract —

- (a) has in part performance of the contract, taken possession of the property or any part thereof; or*
- (b) being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.”*

19. In *Paradise Manor Ltd v Bank of Nova Scotia*³, Court of Appeal set out the effect of s.37⁴:

“”Disposition” defined in s.2 to mean “any act inter vivos by a proprietor whereby his rights in or over his land, lease or charge are affected, but does not include an agreement to transfer lease or charge...”

By applying the definition of “disposition” to s.37, the meaning that emerges is that no right of a proprietor in or over his land, lease or charge registered under the law shall be capable of being affected in accordance with the [Registered Land] Law and the system of registration established by it. This does not prevent a proprietor from entering into an agreement to transfer, lease or charge registered land but where such an agreement is unregistered or is otherwise not in accordance with the Law it can only operate as a contract. Any attempt to affect the right of the proprietor otherwise in accordance with the Law is ineffectual for that purpose.”⁵

³ [1984-85] CILR 437.

⁴ Page 480.

⁵ See also the Court of Appeal decision in *Mums Incorporated v Cayman Capital Trust Co BV* [2000 CILR 131]. The First Plaintiff referred to the Privy Council decision in the case of *Abigail v Lapin* [1934] All ER 720 which dealt with the postponement of an original owner’s equity in the context of the system of registration of title established by the

20. The process of transfer is set out in s.83:

- “(1) A proprietor, by an instrument in the prescribed form⁶, may transfer his land, lease or charge to any person with or without consideration.*
(2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or charge and by filing the instrument.
(3) The transferee of a charge may require the chargor to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer.”

21. As alluded to earlier, there is a time within which transfer must be registered so as to avoid incurring a penalty. This is set out in s.39:

- “(1) All instruments shall be presented for registration within forty-five days of the signature of the first, or the only, named party therein.*
(2) Where an instrument is presented for registration after the period specified in subsection (1), there shall be payable, in addition to the registration fee⁷, the late registration fee.
(3) The late registration fee referred to in subsection (2) shall be —
(a) an amount equal to the registration fee; and
(b) payable in respect of each period of forty-five days following the end of the period referred to in subsection (1).”

22. There is also a Land Registry Procedure Manual⁸ (the “Manual”) published by the Registrar of Lands which sets out the background to the current system of registration of land in the Cayman Islands and explains the various provisions of the Registered Land Act and the procedure required by the Land Registry for the different steps that can be taken in relation to dispositions of land. I will come back to this in more detail below.

23. Also of relevance is the Succession Act (2021 Revision) which provides for the process of granting probate and letters of administration as well as how the estates of someone dying intestate will vest. S.29 deals with this in detail providing that:

- “29. (1) The residuary estate of an intestate, not being an entailed interest, shall be distributed in the manner or held on the trusts mentioned in this section namely —*

Real Property Act, 1990, of New South Wales. It seems to me that in light of *Paradise* and *Mums*, this case is of little relevance to the current proceedings.

⁶ In this case Form LR1.

⁷ In this case, filing the Transfer would have incurred a fee of CI\$50 (Fourth Schedule, Land Registrations Rules (2018 Revision)). The penalties would be a multiple of CI\$50.

⁸ <https://www.caymanlandinfo.ky/Portals/0/Repository/Land%20Registry%20Procedure%20Manual%20v1-0.e497c23d-96eb-497a-bc9d-91ab431984aa.pdf>

(a) if the intestate leaves a husband, wife or civil partner and issue, the surviving spouse or civil partner shall take the personal chattels absolutely, and in addition the residuary estate of the intestate (other than personal chattels) shall stand charged with the payment of a net sum of twenty thousand dollars or a sum equal to fifty per centum of the net value of the estate (which ever may be the greater), to the surviving spouse or civil partner with interest thereon from the date of death at the rate of five per centum per annum until paid or appropriated, and subject to providing for such sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held upon trust on the statutory trusts for the issue of the intestate, but if those trusts fail or determine in the lifetime of the surviving spouse or civil partner, then upon trust for the surviving spouse or civil partner for the residue of that person's life;
 ...”

In this case, the Deceased died intestate leaving no husband or civil partner but did leave issue; namely, the Second Plaintiff and the Defendant which means if the Transfer is of no effect then they inherit the Property jointly in equal shares.

24. The Defendant's counsel raised an initial issue based on the effect of s.29 above. That was the conflict of interest faced by counsel for the Plaintiffs who was advancing two separate and conflicting cases. On behalf of the First Plaintiff, it is argued that the Property was transferred to her. On behalf of the Second Plaintiff it is argued that if the Transfer is found to be of no effect she will inherit an equal share of the Property along with the Defendant. She also seeks the removal of the Defendant as Administratrix. At the hearing Mr Phuran accepted that on the face there is an apparent conflict. He indicated to the court that there was a deed of waiver of conflict signed between the 1st and 2nd Plaintiff. However, he accepted that he would only make oral submissions on behalf of the 1st Plaintiff.

Legal submissions on behalf of the Plaintiffs

25. It is submitted that the Deceased fully intended by way of the Transfer to give a share of the Property to the First Plaintiff and intended that upon her death the remaining share would also go to the First Plaintiff. Reference is made to the case of *Moishe Meisels v. Menachem Lichtman & Ors*⁹ which involved a dispute over a charitable donation made by the Claimant to the Defendants. In relation to gifts, the following was stated:

⁹ [2008] EWHC 661.

230427 Hilary S. Frederick and Anor- v- Christobel P Smith - Judgment

“71. Clearly people frequently make gifts to charities and the Defendants can point out that very large sums by way of gift have been made to this charity. However, charitable gifts are not usually made as part of an agreement with mutual obligations, and where someone donates to charity there is not usually a dispute as to what the donor's intentions were. Where there is a dispute it seems to me that it is the intentions of the donor that will be crucial, rather than the more familiar exercise of ascertaining the intentions of both parties in construing the agreement.

72. Mr. Hornett's written reply helpfully refers me to Halsbury's Laws of England 4th Edition (2004) vol 20(1) that address the topic of "Gifts Made Between Living Persons" at Paragraph [1] p. 3. :

"A gift made between living persons...may be defined shortly as the transfer of any property from one person to another gratuitously while the donor is alive and not in expectation of death. It is an act whereby something is voluntarily transferred from the true owner in possession to another person with the full intention that the thing shall not return to the donor. A gift appears to be effective when the donor intends to make it a gift and the recipient takes the thing given and keeps it knowing that he has done so. The mere fact that the recipient regards the thing given as a loan and intends so to treat it does not by not itself prevent the transaction from being effective as a gift".

26. It is argued that the intention of the Deceased was clear in this case and that the Transfer gave effect to that gift.
27. Reference is also made to the case of *Milroy v Lord*¹⁰. In that case the plaintiff executed a voluntary deed (also on account of love and affection) purporting to assign 50 of his shares in the Bank of Louisiana to the defendant. The shares were transferable only by entry in the books of the bank; but no such transfer was ever made. As Lord Justice Turner said¹¹:

“Under the circumstances of this case it would be difficult not to feel a strong disposition to give effect to the settlement to the fullest extent, and I certainly have spared no pains to find the means of doing so, consistently with what I apprehend to be the law of the Court; but, after full and anxious consideration, I find myself unable to do so. I take the law of this Court to be well settled, that, in order to render a voluntary settlement valid and effectual, the settler must have done

¹⁰ (1862) Ch 763.

¹¹ At 274.

everything which, according to the nature of the property compromised in the settlement, was necessary to be done in order to transfer the property and render the settlement binding upon him. He may of course do this by actually transferring the property to the persons for whom he intends to provide, and the provision will then be effectual, and it will be equally effectual if he transfers property to a trustee for the purposes of the settlement, or declares that he himself holds it in trust for those purposes; and if the property be personal, the trust may, as I apprehend, be declared either in writing or by parol; but, in order to render the settlement binding, one or other of these modes must, as I understand the law of this Court, be resorted to, for there is no equity in this Court to perfect and imperfect gift.”

28. For reasons that I will come back to, this case is not necessarily of assistance to the First Plaintiff despite having been cited by her counsel. In his written submissions he states that the First Plaintiff was given the Transfer and advised by the JP to attend the Lands and Survey department the following week to lodge it. He says that she was further advised of the cost to have this done but, being an 18 year old, did not have the knowledge to appreciate the effect of registration and as such she failed to go to the Lands and Survey department to get that done. However, much turns on whether the intended dealing with the Property as evidenced by the Transfer was a perfect or imperfect gift.
29. The alternative argument that had been put forward by the Plaintiffs’ counsel was on behalf of the Second Plaintiff and refers to s.8 of the Succession Act which states that:

“The Court may, on the petition of any beneficially interested person, remove any personal representative found responsible for neglect or misconduct in the management or administration of the estate and may appoint another suitable person and that person’s place.”

Reference is made to the case of *Harris & Ors v Earwicker & Ors*¹² which sets out a summary of the principles in underlying applications to remove personal representatives under English law. Its application in the Cayman Islands was considered by Kawaley J. in *Uzzell & Ors v Wong Sam*¹³. More generally, Kawaley J. said:

¹² [2005] EWHC 1915 (ch).

¹³ Unreported 7 August 2020 FSD 86 of 2020 at para 9.

“18 *The core concern of the court is what is in the best interests of the beneficiaries looking at their interests as a whole. The power of the court is not dependent on making adverse findings of fact, and it is not necessary for the claimant to prove wrongdoing. It will often suffice for the court to conclude the parties made out a good arguable case about the issues that are raised....*

20 *... Plainly it will rarely suffice for the claimant, whether a beneficiary, executor or trustee, merely to say that they have fallen out with the personal representatives or trustees and or that some action or behaviour is unsatisfactory. The personal representatives or trustees should not be held hostage to allegations which may simply be mischievous. On the other hand, if, when the personal representative's or trustee's response is considered, the court has real concerns about the welfare of the beneficiaries, the court is likely to exercise its powers without determining disputed issues of fact. What it then does in the exercise of those powers will, of course, depend on the circumstances of the case.”*

30. Counsel for the Second Plaintiff had argued that the Defendant should be removed as Administratrix on the grounds of misconduct. For the reasons set out above (conflict of interest) this argument was not advanced at the hearing although was covered in written submissions and other than outlining it above, I consider it no further.

Legal submissions on behalf of the Defendant

31. The Defendant accepts that as Administratrix, she holds the Property subject to a statutory trust in accordance with s.31 Succession Act and if that remains the position she accepts that the Property is held by her on her behalf and on behalf of the Second Plaintiff.
32. It is accepted by the Defendant that the Deceased had power to transfer the Property into the joint names of herself and the First Plaintiff. However, it is argued that the First Plaintiff had ample time and opportunity to register the Transfer but failed to do so and the fact that the Transfer was not registered with the Land Registry suggests that the Deceased changed her mind.
33. Reference is made to the case of *Macleod v Canada Trust Company, executor of the estate of Hattie Montgomery, deceased*¹⁴. In that case, on 29th of March 1973 Hattie Montgomery executed a transfer in favour of the respondent. It was a gift, no consideration was intended to be paid for it. A life interest to the deceased was reserved. The transfer document was delivered to the respondent as soon as executed. Ms Montgomery promised to have the duplicate title turned over to the

¹⁴ Court of Appeal of Alberta 1979 ABCA 339.

respondent but this promise was never kept. The respondent was unable to register the transfer as she was not given the duplicate title, it at the time being in the possession of the deceased's then solicitor. No explanation as to why the title was not collected by the respondent or why it is not sent onto her was given. The trial judge found that the respondent had an interest in the land and ordered the duplicate title be delivered to her or failing that the Registrar register the transfer without the duplicate. The Court of Appeal said as follows:

"[9] The issue in this appeal is quite straightforward. Does the execution of the transfer with its delivery to the respondent in the circumstances of the present case but without delivery of the duplicate title, although delivery as promised, constitute a complete or an incomplete gift?"

[10] In arguing that the gift was incomplete, counsel for the appellant relies on s. 56 of The Land Titles Act, R.S.A 1970, c.198.

"56. After a certificate of title has been granted for any land, no instrument is effectual to pass any estate or interest in that land (except a leasehold interest for three years or for a less period) or surrender that land liable as security for the payment of money, unless the instrument is executed in accordance with the provisions of this Act and is duly registered thereunder, but upon the registration of any such instrument in the manner hereinbefore prescribed the estate or interest specified therein passes or, as the case may be, the land becomes liable as security in the manner and subject to the covenants, conditions and contingencies set forth in specified in the instrument or by this Act declared to be implied in instruments of a like nature."

[11] It is suggested that the legal estate never passed to the respondent because the transfer was never registered. We are not dealing here with third-party interests or persons relying on the state of title but, rather with whether what has been done or carried out was sufficiently complete, there being no delivery of the duplicate title, the only thing left to be done to permit actual registration, to permit the Court to say the gift was complete.

[12] At common law upon a document being executed if the intention was that it should take effect immediately then the mere fact that it had not been passed into the possession of the beneficiary does not render it any less binding: Xenos v Wickham, (1866) L.R. 2 H.L. 296."

34. Having considered various authorities and adopting a similar approach to that taken in *Milroy v Lord*, the Court of Appeal concluded as follows:

230427 Hilary S. Frederick and Anor- v- Christobel P Smith - Judgment

“[31] ... To complete a gift effectively, the donor is obliged to do what can be done. In Alberta, in order for a transfer to be registered, that transfer has to be accompanied by a Duplicate Certificate of Title, unless the Title is already lodged at the Land Titles Office; or, alternatively, unless there is proof that the Duplicate Certificate of Title has been lost or destroyed. In my opinion, the delivery of the transfer, as well as the Duplicate Certificate of Title, was required to complete the gift in this case. The Duplicate Certificate of Title was not delivered. It lay in the would-be donor’s power, by instructions to her solicitors, to complete the gift. There is no evidence that she gave such instructions. Equity will not force a volunteer to complete that which is incomplete. Had the Duplicate Certificate of Title been lodged at the Land Titles Office, as in the case of mortgaged lands, the delivery of the transfer would have complete the gift, as the donor would have done everything that could be done to perfect the gift. This is not so in the case at bar. The gift was not completed.”

35. The Defendant argues that the Transfer was not complete and no interest in the Property passed into the joint names of the Deceased and First Plaintiff.

The Form RL1 and the Land Registry Procedure

36. During the course of the hearing, the Manual was referred to in the context of the procedure required to be followed to register a transfer of title to property. Counsel were given the opportunity after the hearing to review the Manual and provide any further submissions on its application and relevance. Mr Ebanks made contact with Ms Sophia Williams, the Registrar of Lands and posed various questions to her about Land Registry procedure the answers to which I refer below.
37. The consideration in the Transfer was expressed to be *“natural love and affection”*. In the Schedule to the Stamp Duty Act (2019 Revision) the rate of duty for transfers for natural love and affection is set out as follows:

“CONVEYANCE OR TRANSFER of any immovable property —

...

(9) There is a charge to duty in the sum of fifty dollars in the case of —

- (a) a conveyance or transfer expressed to be for natural love and affection between a parent and a child or between spouses; or*
- (b) a conveyance or transfer expressed to be for natural love and affection between children born of the same parent, or between a grandparent and a grandchild,*

where it has been certified by the Commissioner¹⁵ to be a conveyance or transfer in respect of which he is satisfied that the provisions of this paragraph may properly apply.”

38. In relation to transfer for natural love and affection the Manual provides as follows:

“5.3.1.4 Two-step Transfer for Natural Love & Affection

...

The transfer form must state that it is made 'in consideration of natural love and affection for my [niece, nephew, etc, as appropriate]', stating the family relationship between the transferor and transferee. The applicant must provide evidence of:

(a) the family relationship between the transferor and the intermediate family member; and

(b) the family relationship between the intermediate family member and the transferee. Often the relevant birth certificates or marriage certificates showing the relationship will be satisfactory evidence, or a statutory declaration if they are not available. Where there has been a change of name, evidence of the change must be supplied. Because the transfer is treated for stamp duty purposes as if it had passed first to the intermediate family member and then to the final transferee, the applicant must pay fixed stamp duty of \$50 on each of these two steps. However, only a single land registry fee of \$50 is payable for the registration of the transfer”.

39. The Registrar confirmed to Mr Ebanks that where there is a transfer for natural love and affection, the usual requirement is that a statutory declaration is submitted with the transfer document. She said that this requirement was implemented at the request of the Minister of Finance who has responsibility for the collection of stamp duty. The Minister of Finance is responsible to certify the qualification for natural love and affection. Ms Williams further confirmed that if a statutory declaration is not produced the applicants can approach the Ministry for the waiver of duty. The form of declaration is set out below¹⁶:

REGISTRATION SECTION	BLOCK	PARCEL
<i>I/We, (Name)</i> _____		
<i>Of (Address)</i> _____		

¹⁵ Appointed under s.4 of the Stamp Duty Act.

¹⁶ From <https://www.caymanlandinfo.ky/Document-Library> .

230427 Hilary S. Frederick and Anor- v- Christobel P Smith - Judgment

do solemnly and sincerely declare as follows:-

1. *That I/we are/am the registered proprietor(s) of lands mentioned above*
2. *That I/we are/am desirous of transferring the lands to _____ (name of Transferee) solely by way of gift.*
3. *That _____ (name of Transferee) is/are my _____ (state relationship).*

DATED the _____ day of _____ 20

AND I/WE make this solemn declaration conscientiously believing the same to be true under and by virtue of the Voluntary Declarations Law

Taken and Acknowledged

By the said

Name of Transferor

Signature

Justice of the Peace/Notary Public

To be completed by the Justice of the Peace/Notary Public

Appeared before me at _____

on the _____ day of _____, _____ the Transferor to this instrument, and declared that he/she voluntarily signed the Transfer instrument in his/her/their own handwriting and that he/she was of sound mind. That the Instrument was read over and explained to him or her and who expressed themselves as understanding the nature and effects of the contents.

Justice of the Peace/Notary Public

40. As in this case, where there is not a contract for the sale of the land in question, Ms Williams advised Mr Ebanks that applicants are required to produce a Declaration on Conveyance of Preceding Agreement which is requested in such circumstances by the Valuation and Estates Office which is part of the Lands and Survey Department. This form reads as follows:

“Stamp Duty Law (2007 Revision) Declaration on Conveyance of Preceding Agreement

Block

230427 Hilary S. Frederick and Anor- v- Christobel P Smith - Judgment

Parcel

Vendor

Purchaser

I [] as purchaser of the Block and Parcel number noted above hereby declare that this Conveyance/Transfer of Land is executed without prior written agreement between the Vendor and Purchaser.

...”

- 41. The Manual states that for transfers to joint owners, the following approach must be adopted:

4.4.3 Transfers to Proprietors in Common

When transfer is made to two or more persons in common, the name and address and share of the first proprietor is entered, and the three items are given one entry number. The process is then repeated for each of the remaining proprietors in common.

4.4.4 Transfer to Joint Proprietors

When a transfer is made to two or more persons jointly, their names and addresses follow on from each other, and the word ‘and’ is entered before the last name. The names of the joint proprietors are written in full even if they share the same surname. For example, ‘John Brown and Mary Brown’ is correct, but not ‘John and Mary Brown’. The words ‘as joint proprietors’ is entered after the last name. The whole entry is given a single entry number.”

- 42. In relation to the question of the parties identifying the form of ownership¹⁷, the Registrar again referred to the Manual. Paragraph 3.2.1 deals with the procedure followed when documents are initially submitted to the Land Registry:

3.2.1 Procedure

The instrument is passed to the staff who carry out the process of compliance checking. The checking staff examine the instrument for compliance with legal requirements and ensure that there is nothing to prevent the registration of the instrument in accordance with the RLL.

If a major compliance problem is encountered, the instrument is not accepted, no instrument number is allocated, and an electronic Temporary Note is made indicating that the application is to be rejected for the reason specified. Major compliance problems include: the omission to present a necessary consent to dealing; the omission to obtain a necessary discharge or release of an

¹⁷ A requirement of s.99 of the Act.

230427 Hilary S. Frederick and Anor- v- Christobel P Smith - Judgment

incumbrance which prevents the dealing; the absence of a necessary signature on the instrument; and the failure to supply an outstanding land certificate.

If a minor compliance problem is encountered, the instrument may be accepted and an instrument number allocated. An electronic Temporary Note is made indicating that the application is to be returned to the applicant for the reason specified. But in this case, the instrument will still continue on to the Valuation & Estates Office and the Finance Section before the instrument is returned to the applicant. This is designed to ensure that all the problems with the submitted application can be identified at one time, and reduces the likelihood of having to return the instrument to the applicant several times in sequence as further flaws are discovered. Because of the possibility of instruments being lost in transit, the number of times the instruments are returned to the applicant is kept at a minimum. After the instrument has passed through the Valuation & Estate Office and the Finance Section, it will be returned to the applicant by the Admin Section, who also send a copy of the Documents Submission Record to the checking staff for filing.

Minor compliance problems include the failure to complete a certificate of identification, or a failure to state whether prospective co-owners will hold jointly or in common. (emphasis added)

43. The Registrar of Lands confirmed to Mr Ebanks that the Manual requires that on the transfer of land at least one original Form RL1 is required with wet ink signatures and a duplicate¹⁸.

Review of the Transfer and relevant law and procedure

44. When considering whether the Transfer was capable of being registered with the Land Registry and the transfer of title to the Property completed, it is first important to look at the Form RL1 used in this case. The form itself has the following wording:

“ ...

HEREBY TRANSFER

To OLIS ESTHER MAE SMITH AND HILARY SHENIKA FREDERICK

*of WEST BAY P.O. GENERAL DELIVERY KY1 1300*¹⁹

the land comprised in the above title.

The Transferees declare that they hold the combined/undivided share(s) as proprietors in common in the following undivided shares:

¹⁸ Manual paragraph 5.3.1.

¹⁹ Emphasis added – handwritten.

(or as Joint Proprietors)

...”

45. The form does not include the words “*as Joint Proprietors*” immediately after the names of the Deceased and the First Plaintiff as is required by the Manual and it seems that this would be treated as a minor compliance issue ultimately leading to the Transfer being returned to the Deceased and First Plaintiff.
46. In view of the transfer being for “*natural love and affection*” and taking into account what Ms Williams has said, it would seem reasonable to assume that the Deceased and First Plaintiff would have had to complete a statutory declaration as outlined above.
47. It also seems likely that they would have had to have completed a Declaration on Conveyance of Preceding Agreement.
48. Taking account the relevant case law referred to above, the question is whether there was a completed gift by the Deceased to the First Plaintiff of a joint interest in the Property. Despite the apparent intention of the Deceased at the time, the First Plaintiff took no steps to try to register the Transfer. If she had and the issues raised above (confirmation that transferees to be joint tenants, completion of Statutory Declaration and Declaration on Conveyance of Preceding Agreement) had been encountered then they could have been dealt with. Once the Deceased ceased to have capacity and subsequently died, this became impossible. On that basis, following the approach in *Milroy v Lord* and *Macleod v Canada Trust Company* it seems to me that despite the family disagreements that have arisen, there was not a completed gift by the Deceased to the First Plaintiff of a joint interest in the Property. Furthermore, in the circumstances, the court does not have jurisdiction to make any order completing the gift. To do so would in my view be ineffectual²⁰ as being contrary to s.3 of the Act and a disposition inconsistent with the Act.
49. In relation to the specific relief claimed by the First Plaintiff:
 - 49.1 The application for a declaration that the Transfer is valid is dismissed.

²⁰ See *Paradise* p. 480 (line 20) and *Mums* p.135 (line 45).

- 49.2 The application for an order rectifying the Land Register for the Property to restore the Deceased as the registered proprietor is also dismissed.
50. The position remains therefore that the Defendant is the registered proprietor of the Property holding it on a statutory trust for herself and the Second Plaintiff.

Costs

The parties may make submissions as to costs, but my preliminary view is that there should be no order as to costs. There does appear to have been an attempt by the Deceased to transfer the Property to the First Plaintiff as a joint proprietor and, as has been explained above, that process was not completed. Despite this apparent intention, the Defendant has been successful with her argument that she is the correct registered proprietor of the Property as statutory trustee. However, her previous conduct including attempts to evict the Plaintiffs from the Property were not necessarily consistent with her duties as Administratrix and have, to an extent precipitated these proceedings. In the circumstances, I do not think that it would be fair to order the First and/or Second Plaintiffs to pay the costs of the Defendant.



Hon. Justice Alistair Walters
Acting Judge of the Grand Court