

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF THE
CO-OPERATIVE REPUBLIC GUYANA**

**CCJ Appeal No CV 14 of 2007
GY Civil Appeal No 74 of 2003**

BETWEEN

JASSODA RAMKISHUN

Executrix of the Estate of Sukhree, deceased, pursuant to a Grant of Probate No 102 of 2004 and substituted by Order of Court dated the 27th day of February 2004

APPELLANT

AND

CONRAD ASHFORD FUNG-KEE-FUNG

individually and in his capacity as the Administrator Ad Litem of the Estate of Letitia Fung-Kee-Fung, deceased, Michael Fung-Kee-Fung and Elaine Brooker, deceased, pursuant to Order of Court dated the 7th day of February 2003

DOREEN ELIZABETH DEANE

LEILA GLENDON

RESPONDENTS

EXECUTIVE SUMMARY

- [1] The Honourable Mr. Justice Nelson concurred in the result of the appeal. He considered that the problem before the Court arose from an apparent contradiction between section 3 of the Civil Law of Guyana Act, Cap 6:01, which abrogated Roman-Dutch law as well as the English common law of real property, and the third proviso of section 3 of the same Act, which allowed specific performance in the case of real property “on the same principles on which it is granted in England in the case of contracts relating to land or to interests in land”. In the judge’s view the phrase “in the case of contracts relating to land or to interests in land” was merely descriptive of a category of contract for which English law would grant specific performance.

Another category might be the sale and purchase of unique chattels. Thus, the drafters did not intend to re-introduce through the back door the complicated régime of equitable estates and interests. Specific performance would be awarded on the same principles as applied in English law in the categories recognized by English law. One of those principles was that specific performance would be available against a person who took the land from the owner without providing any consideration. Specific performance was therefore available against the heirs of the vendor. The only remaining question was whether since the vendor's successors in title, who were volunteers, had already passed transport and were on the register, their title was indefeasible.

- [2] Nelson JCCJ considered after surveying conflicting decisions in Australia, where the register was everything, that the indefeasibility of the register in the more flexible Deeds Registry system of Guyana was a matter of policy. Public confidence in the certainty and security of title in the Deeds Registry system would not be eroded by allowing specific performance against a transport holder or registered proprietor who had given no value, given the findings of fact accepted by the Court of Appeal.
- [3] Nelson JCCJ agreed that on the facts found the conduct of Letitia and Ashford could conceivably fall within an expanded definition of fraud based on English authorities but that no fraud was established in the respect of the Respondents collectively.