

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.11 of 1991

BETWEEN:

1. PETER JN MARIE
2. CLOTILDA JN MARIE

Appellants

and

1. LAURIMA LOWRIE
2. J.C. COLLYMORE LTD

Respondents

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. Justice Byron J.A.
The Honourable Miss Justice Joseph J.A. (Ag.)

Appearances: Mr. Dexter Theodore for the Appellants
Miss Joan Slack for the second Respondent

1992: May 27, 29.
Oct. 26

JUDGMENT

BYRON J.A.

This is an appeal against the decision of Matthew J. in which he ordered that the deed of sale between the appellants and the first Respondent be registered.

That decision was made on an originating summons issued by the appellants in which they prayed in brief for the following relief:

- i) a Declaration that a caution entered by the second respondent ought not to have been so entered because it was contrary to the terms of a previous caution entered by the appellants, and an order for its removal.
- ii) "Alternatively" a declaration that the registration of the deed of sale between the appellants and first respondent was wrongly refused.
- iii) "In the further alternative" an order for the registration of the said deed of sale."

It seems therefore that the appellant obtained the exact relief for which he prayed, and this appeal is therefore pointless and unnecessary.

The background facts are that on August 29, 1987, the appellants agreed to purchase a parcel of land from the first

respondent. The agreement was registered on 21st September 1987 and on the same date the appellants lodged a caution at the Land Registry as purchasers under the said agreement for sale.

On 14th March 1989 the second respondent obtained a judgment for \$69,040.00 against the first respondent. The judgment was registered on the 17th March 1989. On 26th January 1990 the second respondent lodged a caution against the said parcel of land as judgment creditor.

On 30th October 1989 a deed of sale was executed in respect of the said parcel of land between the first respondent, (as vendor) and the appellants (as purchasers).

On 6th February 1990 the appellants applied to the Registrar of Lands to register the deed of sale. The Registrar refused to so register it on the ground that the caution of the second respondent forbade the registration of dispositions of the land and making entries affecting the same.

It is the contention of the appellants that the caution of the second respondent should never have been entertained because it was an entry affecting the land prohibited by the earlier caution of the appellant and should be removed.

The appeal raises issues which are purely academic because the judge indicated that in his opinion the caution entered by the second respondent ought not to have been so entered but decided not to make any order for its removal. He gave full effect to the appellant's claim however, by ordering that the deed should nonetheless be registered.

The Land Registration Act 1984 provides as follows:

Section 86 (1) "Any person who -

- (a) claims any unregistrable interest whatsoever in land or a lease or a hypothec;

may lodge a caution with the registrar forbidding the registration of dispositions of the land, lease or hypothec concerned and the making of entries affecting the same."

Section 87 (2)

"So long as a caution remains registered, no disposition which is inconsistent with it shall be registered except with the consent of a cautioner or by order of the Court."

I do not agree with Counsel for the appellants' argument that one of the effects of lodging a caution is to forbid the lodging of subsequent cautions because they are entries affecting the land.

In the first place there is a definite linguistic difference between "lodging" a caution and registering a disposition or making an entry affecting the same.

In the second place the section gives a right to "any person who claims" certain interests to lodge the caution and it is obvious that an interpretation which limits the section to the first person who claims will contravene the patent intention of the legislature.

In the third place section 89 of the said Act provides as follows:

"The Registrar may refuse to accept a further caution by the same person or anyone on his behalf in relation to the same matter as a previous caution."

This section expressly provides for the Registrar's refusal to accept a second caution by the same person in relation to the same matter. The necessary implication of that provision is that more than one caution can be lodged in respect of the same parcel of land, by different persons. It follows therefore that there is no general rule that the lodging of one caution forbids the lodging of further cautions.

Looking at the scheme of the legislation a caution does not confer any interest on the cautioner. It is based on an interest which the cautioner claims to have. It does not provide any priority for the cautioner. It provides machinery whereby any person who claims certain interests will have an opportunity to object to the registration of any disposition or the making of entries affecting the same. It would seem to me that an interpretation which forbids the registration of subsequent cautions would be inconsistent with the apparent purpose of the legislation.

In this case the appellants had an interest to protect under their agreement to purchase. They were entitled to ensure that their right to eventual ownership was not negated by the vendor until legal title was vested in them by registration as proprietor in accordance with section 23 of the Act.

The judgment creditor also had an interest to protect. He became entitled to a judicial hypothec by virtue of Article 1923 of

the Civil Code which by section 28(e) of the Registered Land Act 1984 is an overriding interest on the land.

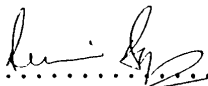
As this was not a further caution by the same person in relation to the same matter there was no discretionary power to refuse to accept it in accordance with section 89 (supra).

In my view the Registrar of Lands was quite right to accept the second caution and to give effect to it. I can see no reason therefore why the caution should be removed, as it was based on a legal interest which has not been discharged and which attaches to the land.

The order of the Court for the deed of sale to be registered, which in any event, was an alternative remedy, certainly makes it unnecessary for a declaration that the registration of the deed of sale had been wrongly refused.

In the circumstances therefore, not only were the appellants granted one of the alternatives for which they claimed, in my view they were not entitled to the relief they claimed on the other alternatives.

I would therefore dismiss the appeal with costs to the second respondent.


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C.M.D. BYRON
Justice of Appeal


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V.F. FLOISSAC
Chief Justice

I concur.


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M. JOSEPH
Justice of Appeal (Ag.)

I concur.