

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 9 of 1990

BETWEEN:

UNIQUE INVESTMENT LIMITED - Appellant  
and  
MARIE BERNADETTE ST. ROMAIN - Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice  
The Honourable Mr. Justice Bishop  
The Honourable Mr. Justice Mde.

Appearances: D. Theodore for Appellant  
O. Larcher for Respondent

1990: May 29  
Oct 22

JUDGMENT

BISHOP, J.A.

On the 12th January, 1990, Notice of Appeal was filed on behalf of Unique Investment Limited, expressing dissatisfaction with the following part of the decision contained in the judgment of Matthew J. dated 29th November, 1989:

"The declaration that the defendant is the owner and entitled to possession of the leased area."

The "leased area" was not specifically identified in the declaration, as in my view ought to have been done if persons other than the parties before the Court were to be properly informed.

Among unsatisfactory features of the Record of Appeal was the absence of the Order of the trial Judge.

The gravamen of the complaint involved the interpretation to be given to a deed of sale executed on the 12th September, 1986, between the appellant company and Marie Bernadette St. Romain, the respondent. It is necessary therefore for us to consider that deed in the light of the pertinent facts and circumstances, in order to determine what was stated as the intention of the parties to the deed.

/On the.....

On the 14th January, 1953 a deed of sale between <sup>6</sup>Lieutenant Anthony Frank Nottage, as vendor, and Marie Bernadette St. Romain, as purchaser, was executed before a Notary Royal. It was registered on 26th January, 1953 in Volume 93 No. 60424. By that deed (exhibited in the Court below) the vendor sold and conveyed free and clear of all encumbrances, and the purchaser so accepted the immovable property described in the Schedule as follows:

"All that piece parcel or lot of land dismembered from the vendor's share to and in a larger lot situate in the vicinity of the town of Castries, the whole measuring three hundred and thirteen feet frontage along Chaussee Road which bounds it on the East, by one hundred and four feet along Riverside Road which bounds it on the South, West by Coral Street and North by Grass Street. The dismembered portion measures sixty feet frontage along Chaussee Road by thirty along Grass Street and is further bounded on the South and West by the remainder of the said lands. Together with all appurtenances and dependencies thereof."

There was no reference to a plan, and there was no doubt then or subsequently as to where or what was the property mentioned.

On the 25th June, 1953 and before the same Notary Royal as in the above deed, Lieutenant Anthony Frank Nottage (vendor) and Marie Bernadette St. Romain (purchaser) executed another deed of sale. As I understood the handwritten document exhibited at the trial, it was registered on the 17th July, 1953. By that deed the vendor sold and conveyed free and clear of all encumbrances and the purchaser accepted, the immovable property described in the Schedule thereto as follows:

"All that piece parcel or lot of land dismembered from the vendor's share to and in a larger lot situate in the vicinity of the town of Castries, the whole measuring three hundred and thirteen feet frontage along Chaussee Road which bounds it on the East by one hundred and four feet along Riverside Road which bounds it on the South, West by Coral Street and North by Grass Street. The dismembered portion measures ten feet along Grass Street which bounds it on the North side by sixty feet in depth, and is further bounded on the East by the lot of the purchaser and on the South and West by the remainder of the vendor's land."

There was no reference to a plan, and again there was no complaint about the identification of the property involved.

For the next three years or so these deeds represented separate sales of two adjacent properties, the descriptions of which were not regarded as either incomplete or vague; and, by being registered deeds, there was notice to the world of the transactions.

/On the 4th....

Matthew J. believed that Augustin Alexander was interested in purchasing only the property part of which he was renting. In other words, in effect he found as a fact that the transaction concerned only one property belonging to the respondent. In the words of the learned Judge:

"There is no doubt in my mind that what the parties intended to convey the one to the other was the two-storey building and the land more accurately described by the first deed obtained by the defendant on June 14, 1953." (I think it is 'January' and not 'June'.)

In dealing with the descriptions disclosed in the said deed, the learned Judge found that "the plan far from describing the land 'more particularly', introduced confusion and error which has resulted in this case"; and that "the property was not contracted to be bought by the plan. The plan could not be drawn on the ground at the time of purchase". He stated further:

"At the date of the execution of the deed, the plaintiff could not identify a portion of land containing 2564 square feet together with the building erected thereon and all other the appurtenances and dependencies thereof."

After considering the authorities cited, in particular the case EASTWOOD V ASHTON (1815) A.C. 900, the learned Judge said:

"In this case the first description in the deed was sufficient to convey the property as it had done in several previous transactions and the reference to the 'deed' (I think this should be 'plan') was a slip by the conveyancer which was not intended by any of the parties to the transaction. The plan, in my view, confused the issue rather than made it clear."

Learned Counsel for the appellant submitted to us that the appellant purchased a portion of land by virtue of a deed which described that land in three ways, namely, by dimension, by reference to boundaries and by reference to a plan. Since the first two ways were incomplete and vague, it became necessary to resort to the third way so as to ascertain what portion of land was being purchased. In so far as the dimensions were concerned, learned Counsel contended that they were incomplete because there was no indication of the dimensions of the Western and Southern boundaries, and because the expression "more or less" was used in respect of the dimensions given for the Eastern and Northern boundaries, thereby also rendering them vague or indeterminate. As for the description by reference to boundaries, Counsel contended that it was vague, as evidenced by the use of the phrase "or howsoever otherwise the same may be bounded". Counsel contended that the description by reference to a plan supplied 'exactitude' as the draftsman had earlier used the expression "more or less".

Mr. Theodore submitted further that (a) there was no evidence whatever to support the finding by the learned Judge that reference to the plan was a slip by the conveyancer and (b) it was erroneous to say that the plan confused

/rather than.....

rather than clarified the issue. Counsel asked this Court to find that the plan was definite and that it prevailed over the other descriptions, especially when it was clear that the deed was referring to a plan lodged in 1956 - some thirty years or so before the deed was executed - and that plan showed an area of 2564 square feet.

Learned Counsel relied upon judgments in the cases EASTWOOD V ASHTON (1915) A.C. 900 and WALLINGTON V TOWNSEND (1939) 1 Ch. 588.

Learned Counsel for the respondent submitted that from a consideration of previous transactions with the land which the respondent bought in January and June of 1953, and of the evidence given on oath by Augustin Alexander and Marie Bernadette St. Romain, it was clear that the land which the respondent intended to sell and the appellant company intended to buy, and for which the deed was executed in September, 1986 was the land at No. 21 Grass Street or the Grass Street property, as described in the transaction cited as the 'title' to the deed in question. Mr. Larcher emphasised the "consistency of the schedules in the deeds of sale" in earlier transactions, that the managing director of the appellant company had stated on oath that he was "satisfied with 30 feet by 60 feet", and that it was "the property at No. 21 Grass Street" which the respondent told him she was prepared to sell. Learned Counsel submitted that there was no doubt in the mind of the appellant company's managing director what he purchased at the time he purchased - it was the Grass Street property.

Counsel asked this Court to hold that EASTWOOD'S case could be readily distinguished from the instant case in which there was no need to resort to the plan - as there was in EASTWOOD V ASHTON - to ascertain what and where the property was that was sold.

Counsel cited the following part of paragraph 698 of Vol. 11 of the 3rd edition of Halsbury's Laws of England, part of which the learned trial Judge quoted in his judgment:

"Frequently when property is conveyed it is described both by words and by reference to a plan, and this should be done when practicable so that the plan may be looked at for the purpose of explaining the language of the parcels; but it is imprudent to rely upon a plan alone as the sole description, since slight errors in the drawing may have serious consequences; moreover a complete and unambiguous description in a deed will prevail over a plan. A description which is sufficient without reference to a plan may be enough....."

This Court has been invited to decide whether the language used in the Schedule of the Deed of Sale dated 12th September, 1986 to describe the property was so vague, incomplete or ambiguous as to make it necessary to refer to the Plan of Survey in order to ascertain, with certainty, what the  
/parties to.....

parties to the deed intended to be sold and purchased. If the language used was adequate, complete and unambiguous then the description would prevail without the need to refer to the plan. The passage quoted from Halsbury's Laws of England (supra) advised, inter alia, that it was unwise to rely on a plan exclusively. As I understood Counsel for the appellant, he contended that only the plan in the deed before us was definite and accurate and it ought thus to be relied upon to the exclusion of every other description in the schedule.

As I read it, the Schedule in question provided a description - one that had been used in previous sales - and then later informed, in effect, that if there was any difficulty or doubt over what was intended, then the portion of land could be determined by using the Plan of Survey (which more particularly described it) for further guidance.

The expression "more or less" is a saving expression often used by conveyancers. It does not, in my opinion, render ambiguous or void any measurement to which it is attached. In the instant case, the words were used to accommodate a small difference one way or the other in the particular measurement. Thus, an amount of 40 or 44 feet was not covered by the statement "thirty (30) feet more or less". Indeed if I were compelled to fix a limit that was covered by the use of the expression in the instant situation, I would say two feet beyond or two feet short of thirty (30) feet.

I am unable to agree with learned Counsel for the appellant that the expression "more or less" as used in the Schedule under consideration, rendered the description vague or indeterminate or ambiguous, so as to make it necessary to resort to the Plan of Survey for further guidance as to what property was meant.

With respect, I am also unable to agree that the description in the Schedule was incomplete to the extent that the property intended was unascertainable or could not be known with certainty in the absence of consideration of the Plan of Survey.

In EASTWOOD V ASHTON (1915) A.C. 900 the land to be conveyed was described by the provisions in four guides to its identification: (1) by the name which the premises bore, (2) by the acreage, (3) by the names of those who respectively occupied part thereof and the remainder thereof and (4) by delineation and tint on a Plan indorsed on the deed. Each of the first three guides was analysed by four or five law lords, and rejected for one reason or another - being of no assistance or vague or defective or uncertain and inadequate. Only the fourth guide was found to be accurate and beyond question, and so it was this guide that was preferred as conveying what was intended. This was pointed out by Matthew J.

/Eastwood v. Ashton case.....

EASTWOOD'S case can be distinguished from the instant case in which the description used did not require reference to the Plan of Survey to resolve or clarify any difference or discrepancy.

WALLINGTON V TOWNSEND (supra) did not advance the appellant's cause. In that case the Court was invited to construe a contract and plan in order to say whether a strip of land was included in the property agreed to be sold to the plaintiff. The defendant signed the contract, having neither read it nor looked at the plan. She had not intended to sell the disputed strip or any part of it, though the plaintiff had intended to buy a part of it. The plaintiff thought that the defendant was selling part of it. However, when the defendant discovered that there was a mistake in the plan she refused to complete the transaction. The plaintiff, however, wished to complete on the basis that the boundary of the property was that shown on the plan. The defendant filed a claim for a declaration that the disputed strip was not included in the contract or alternatively for rectification. Her claim failed because on true construction of the contract and plan, the disputed strip of land was included in the contract, and the defendant had not proved that the parties were ad idem and had a common intention which they had not carried out, therefore she was not entitled to rectification.

With respect, I have been unable to derive any assistance from this case in my construction of the deed in this appeal.

Matthew J. rejected the Plan of Survey by Ornan Monplaisir on the ground that it was confusing rather than clarifying the issue. I did not consider it necessary to be further guided by that Plan, which, as I said before, was meant to serve as further assistance, if any was required. I agree with the learned Judge that the words of the other description provided by the Schedule were sufficient to indicate with certainty what the parties to the deed intended to be conveyed. Therefore, to answer the question posed earlier, I say: the language used in the Deed of Sale of 12th September, 1986 to describe the property was neither vague, nor incomplete nor indeterminate nor ambiguous, so as to make it necessary to refer to the Plan of Survey lodged on 4th August, 1956, to ascertain with certainty what the parties meant to sell and to purchase. It was the immovable property described (together with the building thereon), and it did not include the area known as the Soya Centre or the area described in the Deed of Sale dated 25th June, 1953 which, incidentally, made no reference to a plan to determine it with certainty; or any other area of land.

By way of relief this Court was asked to declare "that the appellant company is the owner and entitled to possession of the leased area".

/According to.....

According to the pleading (paragraph 5 of the Statement of Claim) the leased area was described as "shown shaded with lines on a subsequent Plan of Survey by Earl Cenac, licensed land surveyor, dated 25th October, 1986 and recorded in the survey office on 14th November, 1986 as Record No. 334/86 and as Drawing No. C6913B".

For the reasons explained I would refuse the declaration sought and I would dismiss this appeal with costs.

Before I leave this appeal, I wish to point out that in addition to the failure to comply with Order 42, Rule 5 of the Rules of the Supreme Court, there was also significant non-compliance with Rule 22 of the Court of Appeal Rules 1968 which, so far as I have been able to determine, is not among the rules revoked by S.R.O. 10 of 1968 (see Schedule 3 of the Rules of the Supreme Court, 1970), or any other provision.

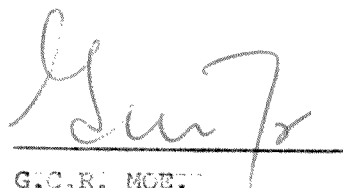
I trust that those persons who have to prepare and present Records for this Court will seek to follow the above and other pertinent rules more closely, as by so doing it will indicate - among other things - a greater concern for the Court, more especially in the light of the volume of work that the Court is called upon to do, in eight islands, at no fewer than 18 sittings every year.



E.H.A. BISHOP,  
Justice of Appeal



L.L. ROBOTHAM,  
Chief Justice



G.C.R. MOET,  
Justice of Appeal