

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2012/0074

BETWEEN:

**DESMOND DUVAL
HILARIA DUVAL**

Claimants

And

**THERESA JOHANNES
ANGUS JN BAPTISTE
BERTHA JN BAPTISTE**

Defendants

CONSOLIDATED WITH:

CLAIM NO. SLUHCV2013/0233

BETWEEN:

JOSEPH DUVAL

Claimant

And

**THERESA JOHANNES
ANGUS JN BAPTISTE
BERTHA JN BAPTISTE**

Defendants

Appearances:

Mr. Horace Fraser of Counsel for the Claimants

Mr. Camillus Wayne Harrow appearing amicus for third and second Defendants

2nd Defendant absent and unrepresented

2023: February 21;
2026: March 6

JUDGMENT

- [1] **INNOCENT, J.:** In both claims, the claimants sought declarations that they were entitled to the legal ownership of immovable property registered as Block 0231B Parcel 623 ('Parcel 623') and Block 0231B Parcel 624 ('Parcel 624') respectively.
- [2] Mr. Desmond Duval and Mrs. Hilaria Duval (the Duvals') also sought an order declaring that a certain deed of sale executed by Mr. Cecil Johannes and Mrs. Theresa Johannes (Mrs. Johannes') on 29th December 2009 which had the effect of conveying title to Parcel 623 to Mr. Angus Jn Baptiste ('Mr. Jn Baptiste') and Mrs. Bertha Jn Baptiste (Mrs. Jn Baptiste') jointly referred to as the Jn Baptistes' could not have effectively conveyed title to Parcel 623 to the Jn Baptistes'.
- [3] The Duvals' alleged that prior to Ms. Josephine Jongue's (Ms. 'Jongue') death, on or about 21st October 1996 he entered into an agreement with Ms. Jongue for the purchase of Parcel 623 at the price of \$68,000.00. He claimed to have paid a deposit on the purchase price in the sum of \$3,500.00 and thereafter paid the balance of the purchase price by several instalments over a period of time. The Duvals further alleged that subsequent to Ms. Jongue's death they made instalment payments towards the purchase of Parcel 623 to Ms. Mona Victor ('Ms. Victor') whom he claimed was at the time Ms. Jongue's agent and subsequently her executrix.
- [4] The Duvals also further alleged that Ms. Jongue's rights title and interest in Parcel 623 passed to her personal representatives upon her death with the "understanding and agreement" that title to Parcel 623 would be conveyed to him.
- [5] It was also part of Duvals' pleaded case that upon payment of the deposit they entered into possession of Parcel 623 and exercised rights of ownership thereon which included execution of a lease agreement by virtue of all of which they claimed to have acquired an equitable interest equivalent to an overriding interest over Parcel 623.

- [6] On the foregoing premises, the Duvals took the view that the conveyance to the Johannes' was null and void and could not have conveyed title to Parcel 518 to them otherwise than subject to their overriding interest in the property.
- [7] The Duvals pleaded that the Johannes' conveyed title to Parcel 623 to them by Deed of Sale executed on 30th March 2010. They claimed that this conveyance could not be registered because of the prior conveyance to the Jn Baptistes'. It appeared that the Duvals relied on the conveyance executed on 30th March 2010 in support of their contention that the conveyance of Parcel 518 to Mr. Johannes was subject to the understanding that Parcel 623 would be subsequently conveyed to him.
- [8] The claimants also sought to have the conveyance to the Jn Baptistes' set aside on the same grounds as that executed in favour of Mr. Johannes.
- [9] The Duvals also relied on positive prescription in support of their claim and pleaded that they had acquired title to Parcel 623 in good faith and having been in possession of the same from 1986. It did not appear that the Duvals pursued this aspect of their case with any degree of force.
- [10] The Duvals also sought damages for loss of bargain and rectification of the land register for Parcel 623 to reflect that they were the proprietors with absolute title to Parcel 623. In an amended statement of claim, the Duvals included a claim founded upon prescription pursuant to Articles 2112 – 2118 of the Civil Code.
- [11] Notwithstanding the similarity in the claims made by the Duvals and Mr. Joseph Duval, the separate claims are deserving of separate treatment as they appear to be founded and premised on substantially different factual circumstances. However, the legal principles appear to be similar in each case. Therefore, the resolution of these legal issues seem entirely dispositive of each case.
- [12] Mr. Joseph Duval ('Joseph Duval') sought a declaration that he is entitled to the legal ownership of 40,000 square feet of the immoveable property registered as Parcel 624. He also sought an order for the improbation or setting aside of the

deed of sale executed by the Johannes' by which they conveyed title to Parcel 624 to the Jn Baptistes'; or alternatively, that the deed of sale was null and void and ineffective to transfer or convey title to the Jn Baptistes'. He also sought an order for the rectification of the Land Register as it pertained to Parcel 624 and the mutation or partitioning of Parcel 624 to demarcate his interest in Parcel 624. Joseph Duval also claimed damages for loss of bargain.

[13] Although Joseph Duval relied on the alleged agreement made between the Duvals and Ms. Jongue for the acquisition by the former of Parcels 623 and 624 pleaded in support of his claim that "it was understood between the parties that they were also going to enter into an agreement with respect to the purchase and sale of Parcel 624 sometime later."

[14] The embodiment of Joseph Duval's claim to entitlement to Parcel 624 appeared at paragraph 3 of his amended statement of claim where he pleaded that with the agreement of his brother Mr. Duval, who changed his mind about purchasing Parcel 624, he entered into an agreement with Ms. Jongue in December 1997 for the purchase of 40,000 square feet of land to be dismembered from Parcel 624 for the sum of \$90,000.00.

[15] According to Joseph Duval's pleaded case, it was an expressed term of the agreement that he would pay the full purchase price by instalments. Therefore, according to him he paid the first instalment in the sum of \$3,500.00 on 31st December 1997 and thereafter he paid the full purchase price by several instalments. Joseph Duval alleged that the instalments were transferred to Ms. Jongue and after her demise to Ms. Victor in her capacity as executrix of Ms. Jongue's estate.

[16] He further alleged that Ms. Victor had personal knowledge of the intended sale to him of Parcel 624, the agreement for the same having been executed at her residence. He also pleaded that at the time the agreement for sale was executed Mr. and Mrs. Johannes were aware of the existence of the agreement and were therefore estopped from denying knowledge of the same. It is worthy to note at

this stage that no agreement for sale as described by Mr. Joseph Duval was presented to the court as evidence in the course of the proceedings. In fact, the pleadings contained no particulars of this purported written agreement for sale.

[17] Joseph Duval claimed that he had taken immediate possession of the land and had commissioned the survey of the 40,000 square foot dismemberment of the land which was executed by Mr. L. Chastanet, a licensed land surveyor, with Ms. Victor's consent. According to Joseph Duval's pleaded case, the intention was that upon the mutation of Parcel 344, Parcel 518 would have been conveyed to him.

[18] It was also Joseph Duval's claim that at the time of Ms. Jongue's death the bequest made to Ms. Victor and others of 40,000 square feet of land and formerly known as Parcel 518, failed because the sale to him had already been executed and he had already taken possession of Parcel 518. Accordingly, the transfer of title to the aforesaid persons by way of designation and vesting deed was null and void.

[19] Joseph Duval also claimed that the conveyance of Parcel 624 by the Johannes' to the Jn Baptiste was fraudulent, null and void and ineffective to transfer title to the 40,000 square feet already sold to him by reason of the invalidity of the deed of sale executed by Ms. Victor in favour of the Johannes'. He also pleaded in the alternative, that the sale by Ms. Victor to the Johannes' was not intended to include the 40,000 square feet of land that he purchased; and accordingly, the conveyance to the Johannes was either a mistake or that the deed of sale contained an incorrect description of the property conveyed. It is noteworthy, that the pleadings contained no particulars of the fraud, error or mistake alleged to ground any claim for rectification pursuant to section 98 of the Land Registration Act ('LRA').

[20] Joseph Duval further contended that in consequence of all of the above, he held an overriding interest in 40,000 square feet of land comprising Parcel 624 and that he had also prescribed ownership of the said parcel of land having acquired same in good faith and having been in possession of the land from 1997.

- [21] The Johannes' and the Jn Baptistes' denied each and every allegation made by each of the claimants in their entirety.
- [22] Title to Parcel 344 was originally registered in the name of Ms. Jongue. Parcel 344 was later subdivided and mutated into Parcels 517 and 518.
- [23] Ms. Jongue died on 2nd December 2001 having left a last will and testament in notarial form which was executed on 24th November 1993 wherein she appointed Ms. Victor Ms. Victor executrix of her last will and testament.
- [24] Ms. Jongue's last will and testament was admitted to probate on 25th February 2002. Upon Ms. Jongue's death title to Parcel 344 passed to her personal representatives. By designation and vesting deed executed on 28th March 2002 title to Parcel 344 became vested in the beneficiaries named under the last will and testament of Ms. Jongue, namely, Ainsley Leonce, Lyla Pierre and Ms. Victor.
- [25] Parcel 344 was later subdivided and mutated into Parcels 517 and 518. Parcel 518 being the remainder of Parcel 344 became registered in the name of Ms. Victor.
- [26] Ms. Victor sold all her rights title and interest in Parcel 518 to Mr. Johannes as appeared by Deed of Sale executed on 4th August 2003 for the sum of \$30,000.00. The Land Register for Parcel 518 was subsequently rectified to include Mrs. Johannes as proprietor in community with Mr. Johannes.
- [27] Parcel 518 was subsequently subdivided and mutated to form Parcels 623 and 624. The Johannes' conveyed all their rights title and interest in Parcels 623 and 624 to the Jn Baptistes' as appears by Deed of Sale executed on 29th December 2009 for the sum of \$250,000.00.

[28] By Deed of Sale executed on 30th March 2010, the Johannes' purported to convey Parcel 623 to the Duvals by Deed of Sale. The Duvals attempted to register this Deed of Sale at the Land Registry on 21st April 2010. However, it was discovered that a Deed of Sale in respect of Parcel 623 and executed by the Johannes' in favour of the Jn Baptistes' on 29th December 2009 had already been registered.

[29] The following issues arise in the present case:

- (1) whether there was any agreement for sale made between Ms. Jongue and the Duvals or made between Ms. Victor and Joseph Duval;
- (2) whether the claimants or either of them were entitled to the protection provided for by Articles 2112 – 2118 of the Civil Code.
- (3) whether the claimants or either of them had acquired an equitable interest in the subject properties that amounted to an overriding interest for the purposes of section 28(g) of the LRA;
- (4) Whether the Jn Baptistes' were purchasers for value without notice.

[30] The claimants' primary contention was premised on the assertion that there was in existence an agreement for sale between Ms. Jongue, Ms. Victor and the claimants and in addition, Ms. Victor had agreed with Mr. Johannes that upon the conveyance to him of parcel 518 he would in turn convey the 40,000 square foot plot which comprised part of the mutated parcel 518 now parcel 624 to Mr. Joseph Duval.

[31] It was also the claimants' position that the failure of the Johannes' to execute a deed of sale in favour of the Duvals timeously did not invalidate the existence of an agreement for sale.

[32] The claimants appeared to have conceded that the receipts upon which they relied although incapable of conveying title to them was evidence of the purchase price having been paid or acts in furtherance of the performance of the agreement for sale and the existence of an agreement for sale.

- [33] According to the claimants, the payment of the purchase price coupled with the taking possession and the actual occupation of the disputed land amounted to sufficient acts of part performance. On the basis of this latter proposition, the claimants sought refuge in the provisions of section 37(2) of the LRA.
- [34] The second limb of the claimants' argument was premised on the principles of equity incorporated into our law by the provisions of Article 917A of the Civil Code. In support of their argument, the claimants relied on the decision in **Jagdeo Sookraj v Buddhu Samaroo**¹ for the proposition that a purchaser who enters into a specifically enforceable contract for sale of land acquires an equitable interest in the land and retains that interest for as long as the contract remains enforceable.
- [35] The question concerns the nature of the equitable interest that the purchaser is entitled to. This was explained in **Jagdeo v Samaroo** where their Lordships held, inter alia that on making pre-completion payments on account of the price, the purchaser acquires also an equitable lien on the land to secure their repayment, subject to any forfeiture of the deposit should the sale fall through.²
- [36] The court has considered and accepts that the deposits paid towards the purchase price may very well exist as an equitable charge against the disputed property. However, is it sufficient to bind a purchaser for value without notice or operate as an overriding interests? The court thinks it doubtful in the context of the present case and in light of the relevant provisions of the LRA which are discussed below. Moreover, as will be seen later on, the Jn Baptistes' could not be presumed to have had knowledge of any existing agreements for sale in favour of the claimants.
- [37] It is clear that the strength of the preceding argument mounted by the claimants is dependent on a finding that there existed or there was in existence an enforceable agreement for sale.

¹ Privy Council Appeal No. 60 of 2022 at para 16

² At para 15

- [38] Thereafter, the claimants appeared to have relied on a submission which appeared concessionary in its terms. The claimants took the position that the equitable interest which they claimed in the disputed land while good as against the estate of Ms. Jongue and Ms. Victor in her capacity as executrix was insufficient by itself to defeat the registered interest of the Jn Baptistes'. It is noteworthy that the claimants made no claim against the estate of Ms. Jongue, her estate or any of the beneficiaries under her will.
- [39] An additional argument advanced by the claimants, although tangential, was that the bequest in Ms. Jongue's will to Ms. Victor failed as Ms. Jongue had already disposed of the disputed land prior to the execution and probate of her will. By extension, the Duvals also took the view that Ms. Victor as administratrix of Ms. Jongue's estate had knowledge of the agreement for sale to them and was also aware of the payments towards the purchase price.
- [40] The foregoing allusion appears from the evidence of Mr. Duval where he stated in essence that it was upon the instructions of Ms. Victor that the Johannes' purported to convey parcel 623 to him and his wife. He stated that it was sometime in January 2010 at a meeting convened with him, his wife, Ms. Kangal, Joseph Duval and Ms. Victor that Ms. Victor informed Mr. Johannes that the Duvals had completed payment of the purchase price for parcels 623 and 624.³
- [41] The court finds the foregoing piece of evidence remarkable considering that Ms. Victor had previously vested parcel 518 in her name and conveyed her interest therein to Mr. Johannes. The court also finds this evidence seemingly odd bearing in mind that Ms. Victor had conveyed then parcel 518 to the Johannes prior to January 2010. Clearly, Ms. Victor must have been aware of this previous transaction in January 2010 which effectually conveyed title to the Johannes'.
- [42] Given the tenor of Mr. Duval's evidence there appears to be the veiled suggestion that somehow the former parcel 518 had been conveyed to the Johannes' in trust

³ Para 12 witness summary

for the Duvals or that there had been some agreement between the parties that the Johannes' would re-convey the disputed land to the Duvals on completion of the payment of the purchase price.⁴ The confusing circumstances are amplified by the fact that the Johannes' having already sold parcels 623 and 624 to the Jn Baptistes' in December 2009 executed a deed of sale in favour of the Duvals in March 2010.

[43] The Jn Baptistes' vehemently objected to the claimants' assertions relative to the existence of any agreements for sale entered into between Mr. Joseph Duval and Ms. Jongue and her successor in title or between Ms. Jongue, or her successors in title and the Duvals.

[44] The Jn Baptistes' also took issue with the claimants' reliance on receipts of bank wire transfers as evidence of the full purchase price having been paid by either Mr. Joseph Duval or the Duvals. They argued that the bank wire transfers and or the receipts thereof made no discrete and specific reference to the subject of the sale of the disputed land.

[45] The Jn Baptistes' also took the point that in fact, the receipts presented as evidence at the trial only totaled sums well below the purported agreed price for the disputed land. In addition, the Jn Baptistes' also observed that the purchase price stated on the unregistered deed of sale was \$68,000.00. There appeared to be no document or receipt evidencing the payment of the balance of the stated purchase price of \$68,000.00 save and except the acknowledgement in the unregistered deed of sale signed by the Johannes'.

[46] The Jn Baptistes' also challenged the claimants' allusion to the existence of an agreement for sale made between the Johannes' and Mr. Joseph Duval wherein Mr. Johannes' agreed to re-convey a portion of parcel 518 now parcel 624 to Mr. Joseph Duval after the former had acquired title thereto.

Agreement for sale

⁴ Para 17 witness summary Cecil Duval

[47] The question of whether there was an agreement for the sale of several portions of parcel 518 made between either Ms. Jongue and the Duvals or Ms. Victor and Joseph Duval falls to be determined within the context of section 37 of the LRA. Section 37 of the LRA provides:

- “(1) No land, lease or hypothec registered under this Act shall be capable of being disposed of except in accordance with this Act, and every attempt to dispose of such land, lease or hypothec otherwise than in accordance with this Act shall be ineffectual to create, extinguish, transfer, vary or affect any right or interest in the land, lease or hypothec.
- (2) This section shall not 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 or her lawfully authorised.

However, 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 or her part of a contract—

- (i) has in part performance of the contract taken possession of the property or any part thereof,
- (ii) or being already in possession, continues in possession in part performance of the contract and has done some other act which is exclusively referable to and in furtherance of the contract.

[48] The claimants while conceding the absence of a written agreement, memorandum or note signed by the parties in accordance with section 37(2) of the LRA appeared to have buttressed their case purely on the basis of the proviso to section 37.

[49] The evidence relied on by the Duvals was that on 21st October 1996, they entered into an agreement for sale with Ms. Jongue for the purchase of parcel 623 (it is worthy to note that parcel 623 was not in existence at that time) for the sum of \$68,000.00. They paid an initial deposit of \$3,500.00 and the balance of the agreed purchase price by wire transfers.

[50] Mr. Duval testified at the trial. He was cross-examined relative to the circumstances surrounding the execution of the unregistered deed of sale. Essentially, he testified that he recalled sometime in January 2010, he attended a meeting at a lawyer's office in Castries. He recalled the lawyer being present was Ms. Shillingford. He said that Mr. Foster was not present. He recalled Ms. Victor being present at the meeting. He also testified that he recalled Ms. Victor saying that the Duvals had already paid all the money for the land. He testified that Ms. Shillingford executed an agreement for sale of the land. He said that Ms. Shillingford signed the agreement for sale. It is noteworthy that no evidence of the agreement for sale referred to by Mr. Duval was presented at the trial. Given the tenor of Mr. Duval's evidence and the evidence of the unregistered Deed of Sale, it may rightly be concluded that what Mr. Duval was referring to as an "agreement for sale" was in fact the unregistered Deed of Sale.

[51] Mr. Duval testified that in 2010 he signed a Deed of Sale for the land and that the deed of sale was prepared at Ms. Shillingford's office. He said that at the time that he signed the Deed of Sale he had sight of the land register for the land. He said that when he examined the land register he saw the names of the Johannes'. He reaffirmed that in 2010 the name on the register was that of Mr. Johannes. He testified that he was not aware that the Deed of Sale by the Johannes to the Jn Baptistes' was executed on 29th December 2009.

[52] Mr. Duval was cross-examined relative to the payment of the purchase price for the disputed land. He said that the payments were made directly to Ms. Jongue. He testified that he has the receipts wherein he made payments to her. However, he said that the receipts did not indicate that the payments were for the purchase of land. Mr. Duval accepted that at the time that he entered into the agreement for sale he had not obtained legal advice to place a caution on the land. He also testified that he had no documentary proof from his bankers chronicling the transfers to Ms. Jongue. He also agreed that he had sent money to other persons

with instructions to pay Ms. Jongue. He also agreed that those persons had not informed him of the method by which the payments to Ms. Jongue were made.

[53] The Duvals also relied on the testimony of Ms. Vercillia Kangal ('Ms. Kangal') who was Mr. Foster's secretary at the material time. She said that she recalled a meeting in January 2010 held at Ms. Victor's residence at Broglie Street. According to Ms. Kangal, at that time Mr. Johannes was one of the owners of the land. She said that there was no lawyer present at that meeting. She said that at the time neither Mr. Foster nor Ms. Shillingford were present at the meeting. She said essentially that the meeting concerned discussions regarding the business of the land. She said that she was not representing Mr. Foster. She claimed that Ms. Victor wanted to see the Duvals. Ms. Kangal said that at this meeting Ms. Victor said that the Duvals had already paid \$68,000.00.

[54] Ms. Kangal was cross-examined relative to whether she had seen any proof of the payment of \$68,000.00 by the Duvals. She replied that Mr. Foster had a copy of the receipt in his office that was contained in the Duvals' file and that everything related to the Duvals was contained in a file kept at Mr. Foster's office. She insisted that the receipts were kept in a file at Mr. Foster's office. She said that it was not difficult to prepare the deed of sale to the Duvals because the receipts showed the amount of money that Mr. Duval had paid to Ms. Victor.⁵

[55] However, it is noteworthy that in her witness statement Ms. Kangal stated that the money by bank transfer came from St. Croix to Scotia Bank in Saint Lucia. She said that the Duvals sent her copies of some of the receipts showing that payment was done.

[56] She testified that she accompanied them and subsequently, Mr. Foster had a meeting with Mr. Johannes. She testified that the deed of sale to the Duvals was signed in March 2010. Ms. Kangal testified that in April 2010 she attended at the

⁵ At para 5 witness statement

Land Registry to register the deed of sale. The deed of sale had been notarized by Ms. Shillingford.

- [57] Ms. Kangal testified that Mr. Foster was the one who had executed a change of proprietorship relative to the land as the land had already been surveyed for the Duvals. She said that “everything was ok” at the time that the change of proprietor was done. She agreed that the land was subdivided. She was in no position to say who instructed the surveyor to survey the land. She claimed that the only thing that she knew was that the survey was undertaken by Mr. Chastanet from Soufriere and Mr. Hippolyte.
- [58] In the court’s view, there appears to be no reasonable explanation emanating from the evidence relative to the reason why Ms. Victor would have instructed the Johannes’ to convey parcels 623 and 624 to the Duvals when she had conveyed it to the Johannes’ and the Johannes’ would have been well aware that they had sold the disputed land to the Jn Baptistes’. The Johannes’ clearly at that point had no title to convey to the Duvals. No explanation relative to these matters were explored by any of the parties at the trial.
- [59] Mr. Duval’s explanation given for the delay in the execution and registration of the conveyance of parcel 623 to them by Ms. Victor was that his then lawyer Mr. Foster had misplaced the papers.
- [55] The Johannes’ gave an explanation for their having executed the deed in favour of the Duvals in 2010. This explanation is contained in their written evidence.⁶ Essentially, the explanation given was that they were forced to execute the deed of sale to the Duvals under duress and that they were unaware of what they had signed. It also appeared from the Johannes’ written evidence that there were many informalities surrounding the execution of the deed. In particular, that the deed was not signed by them in the presence of the executing notary but was executed in the presence of Ms. Kangal. However, neither Mr. Johannes nor Mrs.

⁶ At paras 20-29 witness statement

Johannes testified at the trial. Therefore, the Johannes' version of events surrounding the execution of the deed was not explored in depth at the trial in cross-examination.

[56] The court thinks that the evidence recited above is deserving of some measure of commentary. It appears from the evidence, in particular that of Ms. Kangal and Mr. Duval that any fault in failing to prepare the deed of sale and to have the same executed laid at the feet of the attorneys having conduct of the sale. It also appeared from the evidence that some of the receipts for payments allegedly made by the Duvals were unavailable again attributable to the fault of the attorneys instructed by the Duvals. Although tangential, it appears that there was some negligence on the part of the attorneys if the evidence leading to such a conclusion is accepted. In any event, the court finds it more than passing strange that the Duvals did not seek to protect their interest by registering a caution or caveat against the disputed land.

[57] In any event, the aforementioned digression is unwarranted as the provenance of the unregistered deed of sale is not an issue that is dispositive of any question arising in the present case. The simple point being that at the material time the Johannes' had no title to convey parcel 623 to the Duvals. The comments hereinbefore made are purely commentary relative to the conduct of the claimants and their attorney.

[58] In **Eudes Douglas Bourne v Beverly Ann Boriel**⁷ the defendant had applied to strike out the claimant's case on the ground that it disclosed no reasonable cause of action. The basis of the application was founded on section 37(2) of the LRA. The court held, relying on the decision in **Dahlia Ltd v Four Millbank Nominees Ltd & Another**⁸ that by virtue of section 37 (2) of the LRA, in the absence of an agreement in writing note or memorandum thereof, the claimant could not maintain an action for a disposition of an interest in land which in effect was what the claimant sought specific performance of.

⁷ [2009] ECSCJ No. 262

⁸[1978] 1 Ch 231

- [59] The court in **Bourne v Boriel** reasoned that although a contract was not for the sale of land or an interest in land it was a contract concerning the disposition of an interest in land therefore section 40 (1) of the Law of Property Act 1925 which is similar to section 37 (2) of the LRA applied and the statement of claim as against the defendants was struck out as disclosing no cause of action in that there was no note or memorandum of the agreement sufficient to satisfy section 40 (1) of the Law of Property Act 1925.
- [60] The Jn Baptistes' appeared to have relied on the decision in **Bourne v Boriel** in support of their position that there was no enforceable agreement for sale. In particular, it seemed that the posture adopted by the Jn Baptistes' was that even if there was an agreement for sale, they were not bound by it and that it did not in any way affect their registered interest in the disputed land as they had no notice of the existence of this agreement. The position adopted by the Jn Baptistes' was that the claimants were only entitled to claim specific performance against the estate of Ms. Jongue.
- [61] In the court's view, the claimants were not capable of relying purely on the receipts to establish any equitable interest in the disputed land. It is indisputable that the receipts have absolutely no value as a document of transfer of the legal interest in the disputed land. What they are capable of doing, however, is to provide evidence that the purchase price or part thereof was paid for the disputed land.
- [62] However, the receipts provided to substantiate payment of the purchase price fell woefully short of establishing this. The receipts in question did not establish that the purchase price was paid in full. All they substantiate without more is the fact that payments were made to Ms. Jongue and Ms. Victor. There should have been some other cogent evidence that was capable of supporting the existence of the agreements for sale. In the premises, the court on that basis alone had no difficulty in disbelieving that the transaction did take place.

- [63] What was the evidential value of the receipts in this case? In fine, the receipts by themselves did not validate the existence of the transaction, which it purported to evidence. In the court's view, the receipts by themselves, taken at their highest, were no more than evidence of part payment. In addition, by Mr. Duval's own admission, the receipts did not acknowledge that the payments were part payments towards the purchase price of the disputed land.
- [64] The court understood that as part of their respective claims the claimants relied on the coexistence of the receipts and the fact that surveys had been undertaken by Josephine Jongue for Mr. Duval in February 1996 and an un-lodged survey plan by Mr. Chastanet in 2002 and approved by the Development Control Authority showing a proposed subdivision of the disputed land for Mona Victor and others for Joseph Duval. The area of land shown in the latter survey measured 40,000 square feet.
- [64] The claimants have asked the court to draw the inference from the matters recited above that there was in existence an agreement for sale between Josephine Jongue and Desmond Duval and an agreement for sale between Mona Victor and Joseph Duval. In drawing this inference, the claimants relied on their own evidence and that of Ms. Kangal. It would seem that the claimants' argument concerning the existence of an agreement for sale is derived from the provisions of section 37(2) of the LRA in particular section 37(2) (ii) of the LRA. In other words, that the part payments and the surveys amounted to acts which were exclusively referable to and in furtherance of the contract.
- [65] The light of the foregoing discussion the court is inclined to draw this inference based on the evidence presented to the court at the trial. Therefore, the court is inclined to find that there was evidence pointing to the existence of a specifically enforceable contract for sale of the disputed land between Josephine Jongue and Desmond Duval and between Mona Victor and Joseph Duval.
- [66] Having so found, the next question for the court is whether the claimants can rely on the two limbs of the proviso to section 37(2) of the LRA.

- [67] Now the question of the Duvals' possession and actual occupation of parcels 623 and 624 formerly parcel 518 was a live issue at the trial. The question of immediate possession and actual occupation are relevant in determining the issues touching and concerning sections 37(2) and 28 (g) of the LRA raised by the claimants.
- [68] Mr. Duval's evidence was that after he and his wife had paid the initial deposit to Ms. Jongue they took immediate possession of the disputed land. According to Mr. Duval there was a small wooden house on the land presumably occupied by Ms. Sheila Emmanuel ('Ms. Emmanuel'). He said that they entered into an agreement with Ms. Emmanuel and her family to occupy the land until they were ready to construct their house. Mr. Duval's evidence was that Ms. Emmanuel paid rental for the occupation of the land and that after her death her family continued to occupy the land. The Duvals claimed that Ms. Emmanuel acted as custodian of the land and cleaned, planted and sold crops the proceeds of the sale of those crops were deposited at the bank. In fine, the Duvals' evidence was that from the year 1996 they had maintained a presence of parcel 623 and that the Jn Baptistes were well aware of Ms. Emmanuel's occupation on their behalf.
- [69] The foregoing evidence given by Mr. Duval did not appear to be supported in any material respect by any other evidence. In large measure it appeared to conflict with the other evidence presented in the case.
- [70] Mr. Jn Baptiste was cross-examined extensively relative to this issue. He testified that prior to December 2009 he lived on parcel 624 and that he began living on parcel 624 about the year 2006. He said that he knew the Johannes before 2009 because they were his landlords. He also said that prior to 2009 he had known Ms. Emmanuel. He said that it was correct that Ms. Emmanuel was living on parcel 623. He denied that he did not have any personal knowledge of how Ms. Emmanuel came to live on parcel 623. He later recanted and said that he had no personal knowledge of any arrangement whereby Ms. Emmanuel came to be on parcel 623. Mr. Jn Baptiste claimed that he was in a position to dispute the

proposition that Mr. Duval gave Ms. Emmanuel permission to be on parcel 623.

[71] According to Mr. Jn Baptiste, he was aware that all dealings with the disputed land was under the authority of the Johannes' as owners thereof; all he knew was that the Johannes' were the registered owners of the disputed land. He knew nothing else other than that.

[72] He said that he conducted "due diligence" relative to the land. He searched for survey plans for the land and he came across a survey by Mr. Hippolyte but he did not come across a survey done by Mr. Chastanet of a parcel of land 40,000 square feet dismembered from parcel 624 made at the instance of Ms. Victor for Mr. Joseph Duval. He testified that the survey plan that he had sight of was done on behalf of Ms. Jongue. He did not know whether it was for Mr. Duval.

[73] Mr. Jn Baptiste was questioned relative to matters concerning his knowledge that a survey of the disputed land had been undertaken on behalf of the claimants and his knowledge that the claimants were in possession and occupied the disputed land and were in the process of acquiring title thereto. He said that he knew Mr. Chastanet but that Mr. Chastanet is not a licensed land surveyor. According to Mr. Jn Baptiste, he and Mr. Chastanet are very good friends. He said that he knew that Mr. Hippolyte signs his work for him.

[74] Mr. Jn Baptiste was shown a copy of a survey plan drawn by Mr. Chastanet in the course of cross-examination. He agreed that based on the plan of survey shown to him it would appear that Mr. Chastanet had done some work for the Duvals. Mr. Jn Baptiste testified that he did not have any conversation with Mr. Chastanet about the disputed land prior to the purchase of the disputed land. He said that he did not recall having a direct conversation with Mr. Chastanet concerning the purchase of land from anyone.

- [75] Mr. Jn Baptiste testified that he did not see Mr. Chastanet on the land executing any survey work. He said that apart from not having seen Mr. Chastanet on the land, Mr. Chastanet did not tell him that he was conducting a survey for the Duvals. Mr. Jn Baptiste remained adamant that he had no knowledge prior to his acquisition of title to parcels 623 and 624 that the Duvals had an interest in the disputed land.
- [76] Mr. Jn Baptiste was referred to a plan of survey.⁹ He claimed not to have come across that plan of survey at the Land Registry. He identified a plan of survey made at the instance of Ms. Victor for Mr. Joseph Duval. He testified that this was the first time that he was seeing that plan of survey. When questioned relative to the unregistered Deed of Sale, Mr. Jn Baptiste stated that he found it strange that Ms. Victor would have executed a deed in favour of the Duvals in 2010.
- [77] In furtherance of their case that the claimants had taken possession and were in actual occupation of the disputed land, the circumstances surrounding the erection of a fence along parcel 623 was put to Mr. Jn Baptiste in cross-examination. Mr. Jn Baptiste admitted that a fence was being constructed by the Duval's agent one Mr. Gidharry. He testified that he had written to Mr. Gidharry and had also filed a claim to have the fence removed. He said that in March 2012 he filed a claim for an injunction preventing Mr. Gidharry from continuing with the construction of the fence.
- [78] It appears from Mr. Jn Baptiste's testimony that he became aware that Mr. Gidharry was acting pursuant to a power of attorney granted to him by the Duvals and that he was constructing the fence on their behalf in the course of the abovementioned proceedings. It appears from the record that Mr. Gidharry held a general power of attorney dated 4th January 2012 granted to him by the Duvals.

⁹ Trial Bundle 3 p. 21

- [79] The claimants' case that they had taken possession and were in actual occupation of the disputed land was put to Mrs. Jn Baptiste in cross-examination. The claimants' assertion was that they had planted fruit trees on the disputed land which they held out as evidence of their possession and actual occupation of the disputed land. Mrs. Jn Baptiste testified that there were countless fruit trees on parcel 623. She was unable to give an exact figure. She said that they found those trees on the disputed land but they had planted some as well.
- [80] Unfortunately, by the time that this matter came on for trial Mr. Cecil Johannes had gone to the great beyond. Prior to his death Mr. Johannes had filed a witness statement. Mr. Johannes statement was in large measure similar to the evidence given by his wife Theresa Johannes. Neither Mr. Johannes nor Mrs. Johannes testified at the trial. They did not attend the trial and were both unrepresented by counsel. In fact no representative party had been appointed in Mr. Johannes place. At some point prior to the matter coming on for trial Mr. Johannes had been removed as a party to the proceedings.
- [81] It appeared from the evidence that sometime in August 1992, the Duvals had purchased what they described as their first piece of land from Ms. Jongue. That parcel of land was registered as Block 0231B Parcel 329 which they purchased for the sum of \$58,000.00.¹⁰ The Duvals' evidence was that sometime in 1996 they purchased a second parcel of land from Ms. Jongue which they identify as now registered as parcel 623 for the sum of \$68,000.00 which they paid by way of initial deposit and subsequent instalments.¹¹ Parcels 329 and 623 appear to share a common boundary as appears by the Plan of Survey dated 8th February 1996 made by Josephine Jongue for Desmond Duval.
- [82] According to Mr. Duval's written evidence, after they had paid the deposit for parcel 623 to Ms. Jongue they took immediate possession of parcel 623. The evidence relative to immediate possession and occupation of parcel 623 was that

¹⁰ Para 4 witness summary Desmond Duval

¹¹ Para 5 infra

they had permitted Ms. Emmanuel to remain on the land until they were ready to construct their home and that Ms. Emmanuel had been paying them an annual rental.¹²

[83] The Duvals' also asserted their immediate possession and occupation on the basis that they had planted crops on the land for which Ms. Emmanuel was responsible for caring and nurturing and selling the produce from such cultivation. Essentially, the Duvals were asserting that they had benefited from the rents and profits of the disputed parcel 623.¹³

[84] It appeared from the evidence of the Duvals that they had caused the disputed parcel 623 to be surveyed on two occasions.¹⁴

[85] Contrary to the assertions made by the Duvals relative to their having taken immediate possession of and being in actual occupation of the disputed land, in particular as it related to the occupation of the land by Ms. Emmanuel, the Johannes' each stated that when the disputed land was purchased Ms. Emmanuel was working on it and was living in a small plywood house. Ms. Emmanuel had been put there to work by Ms. Jongue and at Ms. Jongue's death she was permitted to remain there. It appears also that when the Johannes' acquired title to the disputed land Ms. Emmanuel continued to reside there with her family up to the time that the disputed property was sold to the Jn Baptistes'.

[86] It appears that the claimants' reliance on possession and occupation of the disputed land as owners also arises within the context of Articles 2112 – 2118 and their claim to an overriding interest in the disputed land. The court will briefly examine this issue here purely for the sake of exposition; however, this aspect of the case will be discussed in more detail later on in this judgment.

¹² Para 6 *infra*

¹³ Para 14 *infra*

¹⁴ Para 8 *infra*; Exhibits D.D 5-6

[87] The court has been directed to the decision in **Joan Bernadette Maingot Executrix of the estate of Rose Mary Maingot, deceased v Monica Devaux**¹⁵

where Saunders J said:

“It is often overlooked that the factual premise for the availability of the defence of prescription is not a mere reckoning of the length of time a person has been in occupation. In considering this defence, the quality or character of the possession is as important as the length of years for which the person has been in occupation of the immovable. Article 2057 states:

“For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor”¹⁶

[88] Purely for the sake of argument, assuming that the Johannes’ had acquired title to the disputed land on behalf of the Duvals with the understanding that it would subsequently be transferred to them, as the Duvals have asserted, it follows that the Johannes’ would have been in possession on behalf of the Duvals, therefore the Duval’s plea of prescription would inevitably fail.¹⁷

[89] Therefore, having examined the Duval’s assertions relative to the question of possession and actual occupation based on Ms. Emmanuel’s tenancy of the disputed property, it seems unclear precisely how Ms. Emmanuel came into occupation of the disputed land.

[90] However, the court is not inclined to accept the assertions made by the Duvals relative to Ms. Emmanuel’s occupation of the disputed land. The undisputed evidence is that Ms. Emmanuel occupied part of the disputed land even prior to Ms. Jongue’s death and even at the time that the Duvals claimed to have entered into an agreement to purchase the disputed land. It is also not disputed that prior to Ms. Jongue’s death and at the time of the alleged agreement to purchase by the Duvals, the claimants all resided overseas.

¹⁵[2003] ECSCJ No. 242

¹⁶ *Infra* at para 15

¹⁷ Articles 2058, 2059 and 2067 Civil Code

- [91] In the circumstances, the court is unable to find that permission was given to Ms. Emmanuel by the Duvals to occupy the disputed land on their behalf and that this amounted to an act of ownership, possession and actual occupation by the Duvals or that they were in receipt of the rents and profits thereof. There simply was no cogent evidence presented of any lease arrangement or of the claimants' actual occupation.
- [92] The court also had immense difficulty accepting that the matters referred to in the claimants' evidence support their contention that they took immediate possession of the disputed property and were in actual occupation thereof. As the court has already noted that the Duvals did not maintain a physical presence in Saint Lucia. In fact they all resided in the USVI. Therefore, it is inconceivable that they maintained any physical presence on the disputed land.
- [93] In addition, the court does not accept that merely undertaking a survey of a portion of land for an on behalf of a prospective purchaser is sufficient by itself without more to establish an agreement for sale. It would appear that the claimants' argument was premised on the likely inference to be drawn from the conjoint operation of the surveys having been undertaken and the instalments made, as they claimed, went towards the price of the disputed land provided proof that there was in existence an agreement for sale.
- [94] However, the court is unable to conclude that the evidence relied on by the claimants can lead ineluctably to the conclusion that the claimants had in part performance of the contract taken possession of the property or any part thereof, or that they had already been in possession, and continued in possession in part performance of the contract and had done some other act which was exclusively referable to and in furtherance of the contract. In the circumstances, the court is of the view that the claimants are not availed by the proviso to section 37 of the LRA. In any event, even if the court were to find that the Duvals had a specifically enforceable agreement for sale, it would seem that the agreement for sale would

not have amounted to a written title for the purposes of Article 2112 of the Civil Code.

Prescription

- [95] It appears that the Duvals have accepted, quite rightly in the court's view, that they are unable to defeat the Jn Baptistes' title to the disputed property by the unregistered Deed of Sale. This appears to be the case, since the Deed of Sale to the Jn Baptistes' was registered first in time. Clearly, the Duvals would have been proscribed from relying on the Deed of Sale by virtue of the operation of Article 1973 of the Civil Code¹⁸ which provides that:

"When two or more persons receive deeds of conveyance of a property from the same grantor he who first registers his deed has the preference."

- [96] Therefore, the Duvals were forced to advance their claim on the basis of Articles 2112 to 2118 of the Civil Code. Article 2112 provides:

"He who acquires a corporeal immovable in good faith under a written title prescribes the ownership thereof and liberates himself from the servitudes, charges, and hypothecs upon it by an effective possession in virtue of such title during ten years."

- [97] The question that arises is whether the Duvals can successfully invoke the provisions of Articles 2112 – 2118 of the Civil Code. In order to succeed, the Duvals will have to prove on a balance of probabilities that they acquired the disputed land (1) in good faith; (2) under a written title; and (3) they had effective possession in virtue of such title during ten years.

- [98] Under this limb the claimants sought to avail themselves of prescription provided for by Articles 2112 – 2118 of the Civil Code. In fine, the claimants argued that having entered into the respective agreements for sale of the disputed land, in good faith, in 1996 and 1997 respectively, a period well over 10 years, and prior to the acquisition of title by the Jn Baptistes', meant that their title was merely void for informality and that since the receipts were incapable of conveying title they had prescribed title by virtue of Articles 2112 – 2118 of the Code.

¹⁸ Chap 4:01 of the Revised Edition of the Laws of Saint Lucia

[99] In support of the foregoing argument advanced by the respective claimants, reliance was placed on the decision in **Carlos C.K. Dusauzay and others v Tony Boriel and another**¹⁹

[100] It has been held that the evident object of Articles 2112 to 2118 of the Civil Code under the caption "prescription by subsequent purchasers" is to protect a subsequent purchaser who acquired land (i.e. entered into prescriptive possession of land as owner thereof) in good faith under a void written title and continued in prescriptive possession for at least 10 years. The protection is against a previous purchaser or owner who has a valid legal title to the land.²⁰

[101] In **St. Rose v Lafitte**, the court below had held that the appellant could not invoke the provisions of Article 2112 because his title was totally void and that he had not acquired the land in good faith. The Court of Appeal held that the appellant's title was not void by reason of informality. The title was a registered notarial Deed of Sale which would have been effective to transfer the disputed land to the appellant if the vendor was the owner of the land at the time of execution of the Deed of Sale. The appellant was therefore not precluded by Article 2115 from invoking Article 2112. **St. Rose v Lafitte** stands in contradistinction to the present case.

[102] Sir Vincent Floissac CJ explained the operation of Articles 2112 to 2118 of the Code in **Joseph St. Rose v Brice Lafitte** in the following manner:

"Articles 2112 to 2118 presuppose that the subsequent purchaser's title is void by reason of the invalidating principle "Nemo dat quod non habet". This invalidating principle is enshrined in Article 1397 of the Code which provides that:

"The sale of a thing which does not belong to the seller is null, subject to the exceptions declared in the three next following articles. The buyer may recover damages from the seller, if he were ignorant that the thing sold did not belong to the seller."

It is because the subsequent purchaser's title is void that he needs the protection granted by Article 2112. If the subsequent purchaser's title is

¹⁹ [1989] ECSCJ No. 6

²⁰ Joseph St. Rose v Brice Lafitte [1992] ECSCJ No. 4 per Floissac CJ at para 9

valid, there is no need for him to rely on Article 2112 or prescriptive possession.

Articles 2112 to 2118 also presuppose that the subsequent purchaser's title is void only by reason of the invalidating principle. These articles are evidently not intended to be applicable to a case where the subsequent purchaser's title is in a form which renders it incapable of conferring ownership and would have been void for this purpose even if the vendor were the legal owner of the land which he purported to sell to the subsequent purchaser.”²¹

- [103] The meaning of the word title used in the preceding articles of the Code were explained by Floissac CJ in the following manner:

“It is important in applying this provision to have regard to the definition of "title" in art 1(61):-

"The word 'title' is used with reference to property to denote either the act or contract upon which the right to such property is founded, or the document which is the principal evidence of such act or contract, the meaning applicable in any particular case being determined by the context."

This meaning contrasts with the normal meanings of title in English law, namely the abstract notion of ownership or a lesser right in property or the whole of the facts (including documents) relied upon to establish such a right. "Title" in the St. Lucia Civil Code has a somewhat narrower meaning, namely the act or document upon which right to the property is immediately founded. In the case of a purchaser, it means the deed of sale between the vendor and himself, but does not include the earlier acts or deeds required to prove that the vendor had a title in the broader sense.

- [104] In **Vitalis v Sanchez**, the Court of Appeal held that the deed of sale was a “written title” and that as there was now no challenge to the good faith of the respondent or his possession of the land for a period well in excess of ten years, he had acquired ownership by prescription.

- [105] Article 2115 of the Code provides:

“A title which is null by reason of informality cannot serve as a ground for prescription by ten years.”

²¹ At paras 10 – 12

[106] The meaning of the preceding article of the Code was explained in **St. Rose v Lafitte** by Floissac CJ where he said:

“I therefore hold that a subsequent purchaser's title is null by reason of informality within the meaning of Article 2115 of the Civil Code of Saint Lucia, if the title is void not merely because the vendor had no right to transfer ownership of the land to the subsequent purchaser but because, by reason of its nature or form, the title was legally incapable of transferring such ownership.”²²

[107] The court in **St. Rose v Lafitte** held that the appellant's title was not null by reason of informality. The courts reason was that the title was a registered notarial deed of sale which would have been effective to transfer the disputed parcel of land to the appellant, if the vendor was the owner of the land at the time of the execution of the deed of sale. The court concluded that the appellant was therefore not precluded by Article 2115 from invoking Article 2112.²³

[108] Is it the case that the Duvals are precluded from invoking Article 2112? The court would answer this question in the affirmative for the reasons which follow and based also on the preceding discussion relative to the judicial interpretation of the provisions of Articles 2112 et seq. of the Civil Code.

[109] In the case of **Vitalis v Sanchez** it was held that the protection granted to a subsequent purchaser by Articles 2112 to 2118 is against a previous purchaser or owner whose title was duly registered before the title of the subsequent purchaser. If the subsequent purchaser's title was registered before the title of the previous purchaser or owner, the subsequent purchaser is protected by Article 1973 and has no need to resort to Articles 2112 to 2118. If the presumption of ignorance and good faith can be rebutted by knowledge and bad faith imputed solely on the ground of the prior registration of the title of the previous purchaser or owner.

[110] In **Vitalis v Sanchez** it was argued before the Court of Appeal that the deed of sale was “null by reason of informality” because the purported vendors had no title. The Court of Appeal held that this was precisely the situation in which art 2112 was intended to apply. Its purpose was to enable a relatively short period of

²² At para 15

²³ At para 16

prescription to cure, in favour of a purchaser in good faith, a defect arising from the lack of title (in the broader sense) of his vendor. The learned judges of the Court of Appeal explained that the words "by reason of informality" had to be construed in the context of the St. Lucia system for the registration of real rights which is contained in the Eighteenth Book of the Civil Code. The first Article of Chapter First ("General Provisions") states the general rule:-

"1967. Registration gives effect to real rights and establishes their order of priority ..."

Chapter Second is headed "Rules Particular to Different Titles by which Real Rights are Acquired" and contains special rules for title to immovables:-

"1980. All acts inter vivos conveying the ownership, nuda proprietas or usufruct of an immovable must be registered at length or by an abstract hereinafter called a memorial.

In default of such registration, the title of conveyance cannot be invoked against any third party who has purchased the same property or received an onerous gift of it from the same vendor or donor for a valuable consideration and whose title is registered ...

Remembering always that the learned Chief Justice is using the word "title" as defined in the Code, namely as meaning the deed of sale or other act or instrument under which the purchaser holds, their Lordships would respectfully adopt this statement of the law.

[111] In **Vitalis v Sanchez**, the Court of Appeal held that the deed of sale was formally defective because the title of the heirs at law of Vitalis Vitalis had not been registered in accordance with the proviso to Article 1980. Their Lordships said:

The proviso, it will be recalled, says that:-

"... all acts inter vivos purporting to convey the ownership...of an immovable shall be null and void unless prior to the execution of such acts the title of the person or persons purporting to make such conveyance shall have been registered."

Their Lordships went on further to say:

"This provision reflects the general principle embodied in art 1967, namely that "registration gives effect to real rights". But the nullity of the deed is

not in their Lordships' opinion "by reason of informality". It is for lack of a proper registered title to convey. In this case the deed of sale was ineffective for the even better reason that the heirs at law had no title whatever, whether on or off the register. But this, as *Joseph St. Rose v Lafitte* decided and Mr. Briggs accepts, did not make the deed of sale null by reason of informality. It would in their Lordships' view be illogical if art 2112 did not apply to a purchaser from a vendor with an unregistered title but did apply to a purchase from a vendor with no title at all."

[112] Did the Duvals acquire or possess the disputed land in good faith? This question is relevant to the issue of whether the Jn Baptistes' had acquired the disputed land subject to the overriding interest of the claimants and whether the claimants can avail themselves of the provisions of Article 2112.

[113] The foregoing issue was discussed in the case of **St. Rose v Lafitte**. Their Lordships' reasoning there was that:

"Article 2112 applies only to a subsequent purchaser who acquired land in good faith. Article 367 of the Civil Code provides that:

"A possessor is in good faith when he possesses in virtue of a title the defects of which as well as the happening of the resolutive cause which puts an end to it are unknown to him. Such good faith ceases only from the moment that these defects or the resolutive cause are made known to him by proceedings at law."

According to Article 367, ignorance is the procreator of good faith. In the context of the acquisition of land, the words "good faith" are descriptive of a state of mind which has long been juridically equated to honest belief. Therefore, in the case of a subsequent purchaser of land, "good faith" means the purchaser's honest belief that his title was valid and effective for the purpose of transferring the ownership of the land to him and that he had become the owner of the land by virtue of his title.

According to Article 2066 of the Civil Code: "good faith is always presumed. He who alleges bad faith must prove it." If ignorance is explicitly the procreator of good faith or honest belief, knowledge (which is the antonym of ignorance) is implicitly the procreator of bad faith or disbelief.

The onus was therefore on the respondent to rebut the codal or statutory presumption of good faith by proving (on balance of probabilities) that the appellant acquired the disputed parcel of land in bad faith in that he knew that Dorothy Mitchell had no right or did not believe that Dorothy Mitchell had the right to sell the disputed parcel of land to him."

[114] In considering the decision of the court below relative to the question of good faith, their Lordships said:

"The learned judge imputed such knowledge and resulting bad faith to the appellant and did so by reason of the prior registration of the respondent's previous Deed of Sale. The learned judge said:

"Moreover from June 21, 1967, the Defendant's deed with the description of the land was registered and that was notice to all the world that the Defendant was claiming the land to be his. In my judgment the Plaintiff cannot under these circumstances say that he acquired in good faith."

I therefore endorse the learned judge's conclusion that the appellant did not acquire the disputed parcel of land in good faith and therefore cannot claim ownership thereof by prescription under Article 2112 of the Civil Code of Saint Lucia."

[115] Section 30 of the LRA states that every proprietor acquiring any land, lease or hypothec shall be deemed to have had notice of every entry in the register relating to the land, lease or hypothec.

[116] Section 38 of the LRA makes provision for the protection of persons dealing in registered land and provides:

"(1) A person dealing or proposing to deal for consideration with a proprietor shall not be required or in any way concerned—

(a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered;

(b) to see to the application of any consideration or any part thereof; or

(c) to search any register kept under the provisions of Book Eighteenth of the Civil Code.

(2) Where the proprietor of land, a lease or a hypothec is a trustee he or she shall in dealing therewith be deemed to be the proprietor thereof, and no disposition by such trustee to a purchaser in good faith and for consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.

(3) Nothing contained in this section shall relieve a purchaser in good faith and for consideration of his or her obligation to search the Registry.

[117] In the court's view, having regard to the evidence in the present case, the claimants cannot be held to have acquired title in good faith and therefore cannot claim ownership by prescription under Article 2112. The court finds that the claimants' good faith is rebutted by the claimant's knowledge and bad faith is imputed on the ground of the prior registration of the Johannes' title and the acquisition of title by the Jn Baptistes'.

[118] In the court's considered view, the claimants must be held to have been affected by notice of the sale to the Jn Baptistes'. Thus making them aware that the Johannes' had no title and therefore there was no basis for the Deed of Sale to them. The claimants cannot be said to have acquired title in good faith under a title which they were aware was invalid. In any event, assuming the existence of a valid and enforceable agreement for sale, the same would not have amounted to title for the purposes of Article 1(61). In addition, Ms. Victor had no title to convey having transferred title to the Johannes'. Further still the claimants had not been in actual occupation of the disputed land.

Overriding interest

[119] However, having made the concessions already highlighted in the foregoing discussion, the claimants relied on the existence of an overriding interest in the disputed land in their favour which they argued the Jn Baptistes' title to the disputed land was subjected to. To that extent the claimants relied on the provisions of section 28 of the LRA in particular section 28(g).

[120] On the basis of the evidence upon which they relied at the trial, the claimants posture was premised on the factual assertion that they had taken immediate possession of the subject parcels and that this act of taking possession and being in actual occupation thereof amounted to or conferred upon them the benefit of an overriding interest therein.

[121] In support of their case, the claimants relied on the decisions in **Corneil Jn Baptiste v Gonzague Richard and Anor**²⁴ and **Spiricor St. Lucia Limited v Attorney General and Anor**.²⁵ On the strength of these authorities, the claimants contended that they had established on the evidence an overriding interest in the disputed land to which the defendants' title was subject. In support of their argument they also relied on the dicta of Denning MR in **Strand Securities v Caswell**.²⁶

[122] Lord Denning delivering the judgment of the court in **Strand Securities** said:

“Section 70(1) (g) is an important provision. Fundamentally its object is to protect a person in actual occupation of land from having his rights lost in the welter of registration. He can stay there and do nothing. Yet he will be protected. No one can buy the land over his head and thereby take away or diminish his rights. It is up to every purchaser before he buys to make inquiry on the premises. If he fails to do so, it is at his own risk. He must take subject to whatever rights the occupier may have. Such is the doctrine of *Hunt v. Luck*, 1901, 1 Chancery Division, p.45, for unregistered land. Section 70(1) (g) carries the same doctrine forward into registered land. But with this difference. Not only is the actual occupier protected, but also the person from whom he holds. It is up to the purchaser to inquire of the occupier, not only about the occupier's own rights, but also about the rights of his immediate superior. The purchaser must ask the occupier; "To whom do you pay your rent?" And the purchaser must inquire what the rights of that person are. If he fails to do so, it is at his own risk for he takes subject to "the rights of every person in actual occupation or in receipt of the rents and profits thereof".”²⁷

[123] Ultimately, the decision and reasoning of the court in **Strand Securities** was based on the finding that the respondent was in actual occupation of the property and that the appellant had notice of his occupation and that in all the circumstances of the case, the lease held by the respondent amounted to an overriding interest.

[124] However, the court in this instance having found that the claimants were not in actual occupation of the disputed land is not prepared to hold on that basis that

²⁴ [2000] ECSCJ No. 234

²⁵ (1997) WIR 123

²⁶ [1965] Ch 958 at 979; [1965] 2 WLR 958

²⁷ At para 970

either an overriding interest existed in their favour or that the Jn Batistes' were obliged to make inquiries or were in any way put on notice of any interest they may have had in the disputed land.

[125] The claimants sought to illicit evidence from the defendants at the trial that apart from having searched the Land Registers for parcels 623 and 624, they were obliged to carry out a physical inspection of the land. They argued that had they done so they would clearly have been put on notice of the claimants' actual occupation and possession of the land; and that in any event, the defendants were well aware.

[126] It was on the preceding basis that the claimants argued that the Jn Baptistes' could not be properly regarded as purchasers for value without notice or that they had no notice of the claimants' overriding interest in the disputed land.

[127] The defendants disputed that the claimants were in actual occupation of the disputed land. In their written submissions, the Jn Baptistes' relied on the case of **Andre Winter and Anor v Charles Richardson**.²⁸ The Jn Baptistes' also maintained that they were purchasers for value without notice and had acted in good faith.

[128] Relative to the claimants' argument that the Jn Baptistes' had not acted in good faith and were not purchasers for value without notice, the Jn Baptistes' prayed in aid the provisions of section 38 of the LRA. They also relied on the decision in **Ramdeo v Heralall**.²⁹ The Jn Baptistes' position was that they were protected by the provisions of section 38 of the LRA.

[129] In **Ramdeo v Heralall**, the purchaser of land from a registered proprietor had failed to lodge a caution against the title of the vendor pursuant to the provisions of the Land Registry Act ('LRA') of Guyana.³⁰ It was held that under the relevant provisions of the LRA the new registered proprietor who had obtained title from the

²⁸ HCVAP 2006/0025 (April 22, 2008) Antigua and Barbuda

²⁹ [2008] CCJ 3 (AJ)

³⁰ Cap. 5:02 (Guyana)

vendor obtained an indefeasible title unless involved in some fraud relating to the transfer. The new proprietor claimed to have been a purchaser for value of the disputed land without notice of the appellant's contract.

[130] The Court of Appeal in **Ramdeo v Heralall** had held that a contract to purchase land does not create any equitable proprietary interest therein capable on general equitable principles of binding third parties other than a bona fide purchaser for value without notice. The Court of Appeal also said that in any event, under the LRA a registered proprietor obtained an absolute defeasible title except in the case of fraud, and fraud could not be imputed to a proprietor merely from his knowledge of the existence of a contractual interest that was not protected on the register. It was held in the court below that for a person to bring an action against a registered proprietor to recover land, such a person needed to be deprived of an existing proprietary interest in land, and a contract to purchase land is not such an interest.

[131] On appeal to the CCJ, the court referred to its intervening decision in **Ramdass v Jairam**³¹ where it held that an equitable proprietary interests in Guyanese immovables (as opposed to movables) could not exist in Guyanese property law. The interest of a purchaser under a contract of sale of an immovable, while affording him the right to sue the landowner for specific performance, is merely a personal right exercisable against the landowner to compel full and absolute title to the land to be transferred to the purchaser: this is a “ius in personam ad rem”. It made no difference that the purchaser had been given vacant possession of the land and had even paid the full purchase price. Moreover, because a contractual purchaser of land has no in rem right imposed on or attached to the land, he cannot have a “registered interest” that can affect the full and absolute title to land vested in the landowner by a transport that was duly registered.

[132] The primary question that the CCJ had to determine in **Ramdeo v Heralall** was whether in a case under the land registration system in Guyana what were the

³¹ [2008] CCJ 6 (AJ); (2008) 72 WIR 270

rights and remedies, if any, of a purchaser in possession prior to completion where the vendor subsequently sells to a second purchaser who becomes a registered proprietor pursuant to the LRA.

[133] In delivering its judgment, and dismissing the appeal, the CCJ held:

“It is to be noted that under s. 69(1)(c) a person contracting to take a transfer of registered land is not to be affected in any way by “any notice of” any instrument, trust, right or interest unregistered or unprotected by caveat, any rule of law or equity to the contrary notwithstanding. “Notice” in equity extends beyond actual notice to constructive notice and imputed notice, the latter being actual or constructive notice of an agent that is imputed to his principal. A purchaser has constructive notice of those matters that would have come to his knowledge if such inspections and inquiries had been made as ought reasonably to have been made in all the circumstances.”³²

[134] The Jn Baptistes’ also relied on the decision in **Midland Bank Trust Co Ltd v Green**³³ in support of the proposition that the claimants had failed to take appropriate steps to safeguard and protect their contractual interest in the disputed land against subsequent purchasers. Therefore, the Jn Baptistes’ argued that in the absence of some fraud on their part, they were entitled to an indefeasible title and that mere knowledge of the contract unprotected by any caution or caveat against the disputed land is not of itself to be imputed as notice or fraud.

[135] Relying on the provisions of section 38(3) of the LRA and the decision in **Vincent Pickering and Anor v Jerry Wilkins and Ors**,³⁴ the Jn Baptistes’ took the view that an innocent purchaser for valuable consideration is under no duty to search behind the entry in the land register to ascertain the circumstances in which title has been obtained or registered subject only to overriding interest as set out in section 28 of the LRA. The court agrees with this submission.

[136] Section 38 of the LRA deals specifically with the protection of persons dealing in registered land; the section reads:

³² At para 30

³³ [1981] AC 5131

³⁴ BVIHCV2007/0008 (November 30, 2009)

“(1) A person dealing or proposing to deal for consideration with a proprietor shall not be required or in any way concerned—

(a) ...;

(b) ...; or

(c) to search any register kept under the provisions of Book Eighteenth of the Civil Code.

(2) Where the proprietor of land, a lease or a hypothec is a trustee he or she shall in dealing therewith be deemed to be the proprietor thereof, and no disposition by such trustee to a purchaser in good faith and for consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.

(3) Nothing contained in this section shall relieve a purchaser in good faith and for consideration of his or her obligation to search the Registry.”

[137] Section 30 of the LRA stipulates that entries contained in the land register are to constitute actual notice. Section 30 of the LRA states that every proprietor acquiring any land, lease or hypothec shall be deemed to have had notice of every entry in the register relating to the land, lease or hypothec. The Jn Baptistes’ also appeared to have sought refuge in section 30 of the LRA.

[138] It appears that having relied on the provisions of section 38(3) of the LRA, the Jn Baptistes’ took the view that they were not obliged to do anything more than search the land registers for the disputed land. Hence by implication they were not required to be put on enquiry as to whether any person was in actual occupation of the disputed land by visiting the disputed land and making enquiries of any persons found to be in occupation thereof.

[139] However, it may be recalled that Mr. Jn Baptiste’s evidence was that he had lived on the land for some time prior to purchasing the same and that he had in fact constructed a house on parcel 263. Therefore, the inference to be drawn from his evidence was that there was no need to make enquiries beyond what was contained in the land registers since he would have had actual or imputed knowledge of the persons in occupation of the disputed land at the time he became registered as proprietor of the disputed land and for the duration of the

time that he resided there. Again it may be recalled that for a substantial length of time the claimants were resident in the USVI. Therefore, the idea of any such enquiry would have been entirely superfluous in the circumstances.

[140] In **Pickering v Wilkins**, the court there had to decide the question of whether one of the parties to the proceedings was entitled to rely, without further investigation, on the Official Search Certificate provided by the Registrar of Lands or whether they were required to go behind the register. The court, in considering the purport and effect of section 38 of the BVI legislation which is similar to section 38 of the LRA, held that an innocent purchaser for valuable consideration is under no duty to search behind the entry in the land register subject only to overriding interests as set out in section 28 of the Act. The court held that the party was entitled to rely, without further investigation, on the Official Search provided by the Registrar of Lands. The court reasoned that a fundamental characteristic of the registered title system is intended to act as a “mirror” reflecting accurately and incontrovertibly the totality of estates and interest which at any time affect the registered land.³⁵

[141] Having regard to the court’s findings herein relative to the evidence presented at the trial, the court feels no hesitation in declaring that the Jn Baptistes’ were purchasers for value without notice. As such, the Jn Baptistes’ are entitled to be registered as the proprietors of the disputed land with absolute title. It is a fundamental rule of law that a bona fide purchaser of the legal interest in land for valuable consideration without notice has an indefeasible title against the claims adverse to that title. It seems that the equitable doctrine of notice has insignificant relevance to registered land under the LRA or at the very least been reduced to a vanishing point save and except in the circumstances prescribed by section 28 and section 98 of the LRA.³⁶

[142] The Jn Baptistes’ also disputed the claimants’ entitlement to an overriding interest over the disputed land on the ground that the claimants had failed to establish on the evidence presented that they had at the material time taken immediate

³⁵ At paras [28] – [33]; [36] – [48]

³⁶ Section 38 LRA

possession or had been in actual occupation of the disputed land or that they have or had been in receipt of the rents and profits of the disputed land.

[143] Additionally, the Jn Baptistes' took the view that the evidence relied on by the claimants was insufficient to establish an equitable interest in the disputed land. Therefore, according to the defendants, in the absence of an equitable beneficial interest in the disputed land, the claimants could not rely exclusively on actual occupation.

[144] In fine, the defendants submitted that that in order for the claimants to avail themselves of the provisions of section 28(g) of the LRA, it was imperative that the claimants established by cogent evidence the existing equitable interest in the land. In other words, that the claimants were obliged to prove a prior existing right or interest and that neither actual occupation nor the receipt of rents and profits alone could bring them within the ambit of section 28(g) of the LRA.

[145] Section 23 LRA provides that:

“Subject to the provisions of sections 27 and 28 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, hypothecs and other encumbrances 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.”

[146] Section 28 of the LRA provides:

“Overriding interests Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may subsist and affect the same, without their being noted on the register—

(a) servitudes subsisting at the time of first registration under this Act;

(b) ...;

(c) ...;

- (d) leases or agreements for leases for a term not exceeding 2 years;
- (e) any unpaid money which, without reference to registration under this Act, are expressly declared by any law to be a charge upon land;
- (f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;
- (g) the rights of a person in actual occupation of land or in receipt of the income thereof save where inquiry is made of such person and the rights are not disclosed;
- (h) ...;
- (i) community property as described in article 1188 et seq. of the Civil Code;

However, the Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he or she thinks fit.”

[147] Although not cited as authority before the court, the court has sought to divine the meaning of the words “actual occupation” within the context of section 28 (g) of the LRA in light of the decision in **Lloyd’s Bank Plc v Rosset and Anor**.³⁷ It does not appear that the LRA itself defines the meaning of the words “actual occupation”. The court has also referred to the above-cited authority in determining the question of whether notice to a purchaser is different in nature in the case of registered land compared to unregistered land. In particular, whether the enquiries which a purchaser is obliged to make are any different in the case of registered land.

[148] In **Lloyd’s Bank Plc v Rosset**, the court gave some insight into the provisions of section 70(1) (g) of the UK legislation which is similar in many respects to section 28 (g) of the LRA. Their Lordships said:

“The register is intended to be a substitute for the title deeds. The register is not intended to record, as a matter of course, interests which would not normally be recorded on the title deeds in unregistered conveyancing. Hence the general description of overriding interests by Cross J. in *National Provincial Bank Ltd. v. Hastings Car Mart Ltd.* (1964) Ch. 9, 15:

“Overriding interests are, speaking generally, matters which are not usually shown on title deeds or mentioned in abstracts of title and as to which, in consequence, it is not possible to form a trustworthy record on the register. As to such matters, persons dealing with registered land must obtain information outside the

³⁷ [1989] Ch 350; [1988] 3 All ER 915

register in the same manner and from the same sources as people dealing with unregistered land would obtain it."

Against that background it seems to me that the natural construction of section 20(1) is that paragraph (b), as much as paragraph (a), is referring to the point of time at which the disposition in question is registered. Section 20 is concerned with the effect of registration. The effect of registration is to confer the relevant legal estate on the transferee or grantee subject (a) to any entries on the register and (b) to any interests which may be subsisting but whose protection is not dependent upon their being entered on the register (viz., overriding interests). In both instances section 20(1) is focusing on the position at the time of registration. That construction gives rise to an acute difficulty over paragraph (g). Paragraph (g) is a statutory application to registered land of the well-known principle protecting the rights of persons in actual occupation (see, for example, Lord Wilberforce in *National Provincial Bank Ltd. v. Hastings Car Mart Ltd.* (1965) AC 1175, 1259). That principle is the one discussed in *Hunt v. Luck* (1901) 1 Ch 45, 51, on appeal (1902) 1 Ch 428. Vaughan Williams L.J. observed (at page 433):

"It means that, if a purchaser or a mortgagee has notice that the vendor or mortgagor is not in possession of the property, he must make inquiries of the person in possession - of the tenant who is in possession - and find out from him what his rights are, and, if he does not choose to do that, then whatever title he acquires as purchaser or mortgagee will be subject to the title or right of the tenant in possession."

That principle, of course, is concerned with the rights of a person who is in occupation of the land at the time when the purchaser or mortgagee acquires his estate or interest. The purchaser or mortgagee is expected to inspect the property and to make enquiries of the occupant as to his rights. If he fails to do so he is nonetheless affected with notice of the occupant's rights just as much as if he had been told of those rights in response to his enquiries. Conversely, he is not affected by notice of rights which an occupant fails to disclose in answer to enquiry from a purchaser or mortgagee.

The difficulty which exists over paragraph (g) arises because of the interval between execution of a transfer or mortgage and registration. Once the transfer or mortgage has been executed the die has been cast. The purchaser or mortgagee may have done all he should have done. He has searched the register. He has inspected the property and made enquiry of the occupant. He then parted with his money against a duly-executed instrument. Thereafter, within days or maybe hours, someone moves into the property, and he or she is there when the transfer or mortgage is duly presented to the land registry for registration.

The official search of the purchaser or mortgagee will not help him, because that only gives him priority over entries made on the register and, as already observed, overriding interests do not need to be entered on the register. If section 20(1)(b) is to be construed as having the effect that in such a case the estate of the purchaser or mortgagee takes effect subject to the interest of the newly-arrived occupant, the result, self-evidently, would be a conveyancing absurdity. I am unable to accept that Parliament can have intended that the Land Registration Act should have that effect.

But to determine whether or not an interest of one of the defined classes is subsisting at the date of registration one has to look outside the register. When one looks at paragraph (g) one finds a provision intended to protect the rights of those in actual occupation, or in receipt of the rents and profits. Paragraph (g) is designed to protect occupants against estates or interests acquired whilst they are in actual occupation. As Lord Wilberforce said in *National Provincial Bank Ltd. v. Hastings Car Mart Ltd.* (1965) AC 1175, 1260:

"... all that section 70(1)(g) of the Land Registration Act, 1925, does is to adapt the system of registration, and the modified form of inquiry which is appropriate to that system, to the same kind of right as under the general law would affect a purchaser finding a person in occupation of his land."

Consistently with conveyancing sense and the underlying conveyancing principle which is being carried forward into paragraph (g), it seems to me that paragraph (g) is concerned with persons who are in actual occupation of the land at the time when the estate or interest which is said to be subject to the rights of the occupant was created. For example, on completion of a purchase or a mortgage in the usual way. This is so despite the need for a further step to be taken (registration) before the legal estate will be acquired by the purchaser or mortgagee. In line with this is the exception provided for in paragraph (g). Explicitly, the rights of an occupant are not protected if enquiry is made of him and the rights are not disclosed. That exception, implicitly, contemplates an enquiry by or on behalf of the person whose estate or interest is said to be subject to the rights of the occupant and, again implicitly, an enquiry made before he acquired his estate or interest. Otherwise the provision makes no sort of sense.

If this is right, the pieces of the jigsaw fit together reasonably well. A purchaser or mortgagee inspects and enquires before completion, in the established fashion. Or he fails to do so, at his own risk. He then completes the transaction, taking an executed transfer or mortgage. Whether or not an overriding interest under paragraph (g) subsists so far as his freehold or mortgage is concerned falls to be determined at that moment. If an overriding interest does subsist, then his estate when registered takes subject to that interest. If it does not, then subsequent

entry of a person into occupation before the transfer or mortgage has been registered (and "completed" for the purposes of section 19) does not have the consequence of creating an overriding interest under paragraph (g) in relation to that freehold or mortgage."

[149] Their Lordships also discussed the interpretation to be given to the words "actual occupation", they said:

"In the Boland case Lord Wilberforce (at page 505) explained the significance of the word "actual" in the phrase "actual occupation" as merely emphasising that what is required is physical presence, not some entitlement in law. He referred to the origin of the phrase "actual possession", and commented that in the judgment of the Privy Council in *Bamhart v. Greenshields* (1853) 9 Moo. P.C.C. 18, 34, the expression was used to distinguish the case of a person who was in some kind of legal possession, as by receipt of the rents and profits, from that of a person actually in occupation as tenant. I can see nothing in that exposition inconsistent with the views expressed in *Strand Securities Ltd. v. Caswell* or with those I have sought to state.

[150] The question which arises in the present case is whether, in light of the claimant's pleadings, and the evidence presented at the trial, point to the existence of any right held by the claimants which amounted to any overriding interest consistent with section 28(g) of the LRA.

[151] It has consistently been held by the courts that it is not the actual occupation which gives rise to the right or determines its existence. Actual occupation merely operates as the trigger for the treatment of the right as an overriding interest.³⁸

[152] Section 28(g) of the LRA does not protect the actual occupation; what it protects are the rights of a person in actual occupation. The word "right" is not limited by definition. The equitable interest of a purchaser in possession where title had not been registered should be included among those equitable rights that are treated as an overriding interest.³⁹

[153] Assuming that the claimants had a valid or existing deed of sale or title which had not been registered and had taken actual occupation of the disputed land on the

³⁸ *Abbey National Bank*

³⁹ *Spiricor St. Lucia Limited v Attorney General and Anor; Ulina George v Hillary Charlemagne* Civil Appeal No. 24 of 2001 (April 3, 2023)

assurance of acquiring ownership thereof, clearly they would be entitled to an overriding interest. The money paid by the intending purchaser in possession may be regarded in equity as a charge upon the land. Such equities do bind subsequent purchasers, except where the subsequent purchaser makes an inquiry of the occupier and the occupier does not disclose his rights.

- [154] In the court's considered view, the present case is distinguishable from the case of **George v Charlemagne**⁴⁰ on its facts. In **George v Charlemagne**, the appellant was the registered proprietor of a portion of land of which the respondent claimed to be the proprietor of a portion of the same land. Both claimed to have purchased from the same previous owner within two years of each other. The court below found that the respondent although not having a registered interest had purchased his land first and was in actual possession of it when the appellant acquired her title, hence the respondent was entitled to enjoy the rights of a purchaser in possession. The Court of Appeal held, inter alia, that the respondent although not having procured transfer documents and registering the same, the payment of the purchase price was acknowledged by receipt.
- [155] The facts of the present case do not concern the situation where the right sought to be protected was the same as occurred in **George v Charlemagne**. It is clearly not a situation where the claimants had paid the full purchase price acknowledged by receipt and took possession of the land as owner without registering their interest. In this instance the court is not satisfied that the claimants are owners in possession and therefore protected by section 28(g) of the LRA as having the rights of a person in actual occupation of land as a purchaser where title was not registered.
- [156] The absence of a registered interest upon which the Jn Baptistes' have relied does not have the effect that they desire. The clear intent of section 28 (g) of the LRA is to give legal effect to the rights that people have if they are in actual occupation of the land but their rights are not registered. The court accepts that the effect of this statutory provision is to impose an additional duty on the purchasers of registered

⁴⁰ [2003] ECSCJ No. 234

land. It is not enough to search the land register. They must carry out a search of the land itself to determine whether there is any one in actual possession. The title that they get will be subject to the rights of the person in actual possession.

[157] However, in this instance, the court thinks that this would be too onerous an obligation to impose on the Jn Baptistes' considering the court's earlier findings regarding the claimants' not having acquired any equitable interest in the disputed land and not being in actual occupation or possession thereof. It is uncertain as to whom any inquiries could have been made to ascertain what if any interest the claimants had in the disputed land. The court is therefore satisfied that the Jn Baptistes' had no knowledge of any interest which the claimants may have had in the disputed land.

[158] Section 28(g) of the LRA provides an exception to section 23 of the same Act insofar as it allows for interests and rights not noted in the register to impeach the absolute title of anyone claiming ownership in the register. One such overriding interest is where the person is in actual occupation of the property at the time of registration of the title. To satisfy this requirement, the claimants must show that there is a right coupled with actual occupation. This they have failed to do.

[158] In the premises, and for the preceding reasons, the court finds that the claimants are not entitled to an overriding interest in the disputed land. The Jn Baptistes did not take the conveyance of the disputed land subject to any overriding interest held by the claimants.

[159] The claimants have also made a plea for improbation of the Deeds of Sale which are the subject matter of the dispute. However, the claimants have not pleaded any grounds for such improbation and have not in any event followed the required procedure to trigger the court's jurisdiction to consider these matters. Therefore, the court is unable to make any findings relative to this aspect of the claimant's case and in any event would decline to do so.

[160] In their pleaded case, the claimants have sought orders for the rectification of the land registers relative to parcels 263 and 264 purportedly pursuant to section 98 of

the LRA. It does not appear that the claimants have provided any or any sufficient evidence upon which the court can rely to justify rectification of the land registers in the manner contemplated by the claimants.

[161] Section 98 of the LRA provides:

“(1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents and acquired the land, lease or hypothec for consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his or her act, neglect or default.

[162] The claimants have not particularised in their pleadings or provided any evidence of the fraud or mistake upon which they rely to have the land registers rectified. Also, the claimants have not shown demonstrably that the Jn Baptistes’ had knowledge of the omission, fraud or mistake or substantially contributed to it by their act, neglect and default. In the premises, the court holds that the claimants have provided no basis upon which the court can make the orders sought.

Order

[163] For the reasons that the court has given in this judgment, the claimants are not entitled to the relief claimed; and therefore, their respective claims are dismissed in their entirety with costs to the third and fourth named defendants in both of the consolidated claims. The court in its discretion does not think that the prescribed costs regime is suitable to be applied in the present case given the nature of the subject matter of the claim and its protracted nature. In the premises, the costs awarded is to be assessed if not agreed between the parties within 21 days of the date of this judgment.



Shawn Innocent
High Court Judge

By the Court

Registrar