

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0060

BETWEEN

DAVE CROSBY

CLAIMANT

and

TEVAL THORNE

MARIA LOUISE THORNE

DEFENDANTS

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:

Mr. Michael Wyllie with him Ms. Vynnette Frederick for the claimant.
Ms. Samantha Robertson for the defendants.

2019: Nov. 14

2021: Mar. 31
Jun. 3
2023: Dec. 12
2024: Feb. 5, 7, 8
Feb. 9

JUDGMENT

INTRODUCTION

[1] **Henry, J.:** This is a claim for competing ownership of a certain unspecified portion of land situated at Retreat, Lauders, St. George Parish in the State of Saint Vincent and the Grenadines ('the disputed land'). The claimant Dave Crosby asserts that he is entitled to a declaration that he is the

fee simple owner of the disputed land which he claims to be in possession of as executor of the estate of Eugene Crosby deceased. The defendants Teval Thorne and Mary Louise Thorne contended that they are the paper title owners of portions of the disputed land as beneficiaries of the estate of Mariam Thorne aka Mary Thorne who inherited the disputed land from Amasa Crosby.

BACKGROUND

- [2] Mr. Dave Crosby did not provide a survey or other evidence of the extent of the disputed lands. He claimed that it was owned originally by Amasa Crosby who devised it to Jonathan Crosbie (or Crosby) who in turn devised it to his son and executor of his will Eugene Crosby in common with other beneficiaries, namely his (Jonathan Crosby's) children Egbert, Albert, Edwin, Isolyn, Eulalie and Marie. Dave Crosby pleaded further that Amasa Crosby left other portions of neighbouring lands to Mary Thorne (also known as Miriam Thorne), Aman Benjamin and Jonathan Crosbie.
- [3] Dave Crosby asserted that Amasa Crosby's will was probated on 16th December 1922 by the named executors Eustace Young¹ and Jonathan Crosby², both of whom died without administering the estate. He claimed further that Jonathan Crosby remained in possession of the disputed land and the other devised lands until his death and that by his will he left 2 ½ acres of the disputed lands to his son Eugene Crosby and the remainder comprising approximately 6 acres to his six other children Egbert, Albert, Edwin, Isolyn, Eulalie and Marie in equal shares.
- [4] Mr. Crosby claimed that although Eugene Crosby extracted probate in his father's estate on 25th March 1978, he never distributed the estate. He nonetheless occupied the disputed lands until his death on 23rd March 2007. Meanwhile, Miriam Thorne in her will, named her daughter Inez Thorne as her sole beneficiary. After her mother's death on 2nd April 1947 Inez Thorne waited many years before obtaining Letters of Administration de bonis non³ in the estate of Amasa Crosby.

¹Died on 27th July 1962.

²Died 26th October 1968.

³By Grant of Probate No. 144 of 1998.

[5] Mr. Crosby alleged that in 2001, by Suit No. 265 of 2001, Inez Thorne sued Edwin Crosby and his brother Eugene Crosby claiming a declaration that she is the fee simple owner of the disputed lands and an injunction to restrain them from trespassing on it. He pleaded further that in his Defence, Eugene Crosby contended that Inez Thorne obtained the Letters of Administration de bonis non by misrepresentation and concealment of relevant facts that would have precluded the making of the grant to her. Inez Thorne discontinued the claim on March 15th 2001.

[6] It is Mr. Crosby's case that Mr. Teval Thorne wrongfully entered the disputed lands and premises of Eugene Crosby in the first week of June 2007, wrongfully took possession of the same and has thereby trespassed and continues his trespass on the disputed lands unabated. Mr. Crosby contended that Teval Thorne as attorney on record for Inez Thorne⁴ extracted Letters of Administration in Mary Thorne's estate (Grant No. 185 of 2002) and in his application identified seven acres of the disputed lands as comprising Mary Thorne's estate.

[7] Mr. Crosby contended that the basis for Mr. Thorne's claim to entitlement of seven acres of land is the gift to Mary Thorne in Amasa Crosby's will. He asserted that Mary Thorne was never in occupation of the disputed lands and that at all material times they were occupied by Eugene Crosby and his predecessors in title.

[8] Mr. Crosby claimed further that Teval Thorne purported to convey to himself by Deed of Assent 2209 of 2007, seven acres of the disputed lands and in similar fashion purported to convey to Mary Louise Thorne 1.5244 acres of the said lands by Deed of Gift 3589 of 2008. He contended that in view of the number of beneficiaries named in Amasa Crosby's will and based on the extent of the estate, Teval Thorne should have known that neither Mary Thorne nor her beneficiary Inez Thorne was entitled to the entire seven acres. He claimed further that the grant of Letters of Administration to Teval Thorne was obtained by misrepresentation or concealment of relevant facts.

[9] Mr. Crosby pleaded that both referenced deeds are void or voidable because the root of title is

⁴So constituted by Power of Attorney No. ...of

based on Amasa Crosby's will. Furthermore, the gift to Mary Thorne would fail for uncertainty because the description of the boundaries is too vague and cannot readily be identified. Moreover, Eugene Crosby's estate is entitled to a grant of declaration of possessory title of the disputed lands having regard to the length of time that he and his forebears remained in possession of the disputed lands. He contended that neither Teval Thorne nor Mary Louise Thorne or their predecessors have been in exclusive possession of the disputed lands for the requisite period to entitle them to such a declaration.

[10] Mr. Crosby claimed against Teval Thorne and Mary Louise Thorne possession of the disputed lands, injunctive relief, a declaration that he is the fee simple owner and entitled to apply for a declaration of possessory title of the disputed lands; cancellation of Probate Grant 185 of 2002 to Mr. Thorne; cancellation of Deeds numbered 2209 of 2007 and 3589 of 2008; damages or mesne profits in the amount of \$50,000.00 and costs.

[11] Mr. Teval Thorne and Ms. Mary Louise Thorne denied trespassing on lands belonging to Dave Crosby or Eugene Crosby or their alleged predecessors in title. They countered that they and their predecessors in title have continuously been in undisturbed and exclusive possession of the disputed lands since the 1970s. They pleaded that if Eugene Crosby was ever in possession of the disputed lands he would have done so in his capacity as executor of Amasa Crosby's estate and in trust for the beneficiaries of the estate. Therefore, he and by extension Dave Crosby are estopped from claiming adverse possession of the disputed lands.

[12] The Thornes asserted that Inez Thorne applied for Letters of Administration de bonis non of Amasa Crosby's estate 'so far as it relates to the beneficial interest of her (sic) Miriam Thorne aka Mary Thorne by virtue of a will by Amasa ... Crosbie aka Amasa Crosby deceased.'. They claimed that Inez Thorne went into occupation of the disputed lands between 1970 and 1971 and remained there up to her death and further that Eugene Crosby and Edwin Crosby began laying claim to the disputed lands only in 1999.

[13] The Thornes admitted that Teval Thorne gifted himself a portion of the disputed lands by Deed of

Assent 2209 of 2007 and transferred a part of it comprising 1.5244 acres to Mary Louise Thorne by Deed of Gift No. 3589 of 2008. They counterclaimed against Mr. Crosby for a declaration that they hold a fee simple interest in the disputed lands. They also seek costs.

[14] The matter proceeded to trial on November 14th 2019. Mr. Crosby testified and called one witness Mr. Gorman Lewis. They provided oral testimony in support of Mr. Crosby's claim. Mr. Teval Thorne commenced his oral testimony on that day. During cross-examination on the next hearing date June 3rd 2021, he testified that he applied for Letters of Administration of Amasa Crosby's estate in relation to the property devised to his mother Inez Thorne by her mother Miriam Thorne. However, he identified Grant No. 185 of 2002 as the Probate granted to him in respect of Amasa Crosby's estate. He stated further that his Defence is based solely on the gift of the land described in Amasa Crosby's will.

[15] He testified further that he surveyed the land described in Amasa Crosby's will and subsequently divided it into seven portions. He said that when he did so he had no intention to transfer the parcels of land to the 7 persons named in the Amasa Crosby's will but rather to his siblings. He explained that they are entitled to it because the land belongs to his mother Inez Thorne's who became the owner through her mother Mary Thorne to whom it was gifted in Amasa Crosby's will. Mr. Thorne testified that having read the will and noticed who were named as beneficiaries in the will he did not have to ask about anybody else in the will, rather he only had 'to go and administer about his part of the will that (he) understood', and further 'it states clearly which part is my mother and grandmother own so I administer for that.' He concluded that all of the land belonged to Mary Thorne.

[16] At this juncture in the trial, the court indicated to counsel that there were legal issues which needed their attention as it relates to the purported administration by Teval Thorne of the estate of Amasa Crosby on the basis of Letters of Administration in Miriam Thorne's estate. Counsel requested an adjournment to conduct further research and it was granted to June 30th 2021 for status hearing. The hearing never took place on that date.

[17] The trial was next scheduled to resume on December 12th 2023. However, due the illness of one of the legal practitioners that trial date and the subsequent date were vacated. The matter was adjourned to February 5th – 7th 2024.

[18] During the course of the trial, Mr. Thorne was directed to surrender all associated documents to the Registrar of the High Court. He initially resisted the court's order but eventually complied on December 13th 2023 when he delivered to the Registrar a number of documents that have been retained in the Registrar's custody since that time. Those documents are:

1. Two copies of deed of Assent 2209 of 2007 – Inez Thorne (Administratrix of the Estate of Miriam Thorne AKA Mary Thorne Deceased) and Inez Thorne (Beneficiary of the Estate of Miriam Thorne aka Mary Thorne Deceased to Teval Thorne (Grantee of the Estate of Miriam Thorne aka Mary Thorne Deceased)
2. Letters of Administration 185 of 2002 – In the Estate of Miriam Thorne aka Mary Thorne Deceased.
3. Copy of Letters of Administration 185 of 2002 – In the Estate of Miriam Thorne aka Mary Thorne Deceased.
4. Deed of Gift 3589/2008 – Teval Thorne to Maria Louise Thorne.
5. Copy of Deed of Gift 3589/2008 – Teval Thorne to Maria Louise Thorne.
6. Death Certificate of Inez Bramble.
7. Copy of Death Certificate of Inez Bramble.

[19] On February 5th 2024, another counsel applied for an adjournment due to illness. On the next hearing date (Feb. 7th 2024) the court inquired from counsel whether a Deed was exhibited either to the pleadings or a witness statement as to Amasa Crosby's ownership of the disputed lands. They replied that there was no such exhibit. The court once again invited counsel to make legal submissions on the viability of the parties' respective cases.

ISSUES

[20] The four issues identified by the court are:

1. Whether in the absence of a Deed naming Amasa Crosby as the owner of the disputed lands, the court can grant to the parties the orders sought in their respective statements of case (Root of title issue).
2. What order if any should the court make in relation to a) the continuation by Teval Thorne of the administration of the estate of Miriam Thorne and by extension that of Amasa Crosby which he has alluded to in his testimony; and b) with respect to the title, right or interest stated to be conveyed by Deed of Assent 2209 of 2007 and Deed of Gift 3589 of 2008 (administration and deed issue)?
3. What order if any, should the court make on the claim and counterclaim (disposition issue)?
4. What other orders if any, should the court make including as to costs (costs issue)?

[21] The legal practitioners requested an adjournment to conduct further research. The matter was adjourned to February 8th 2024.

SUBMISSIONS

By the claimant

[22] On Mr. Crosby's behalf, learned counsel submitted that the court cannot grant the orders sought in the respective statements of case which are fundamentally premised on the ownership of the disputed lands by Amasa Crosby. She argued that the court may cancel the Letters of Administration No. 185 of 2002 granted to Mr. Thorne as lawful Attorney for Inez Thorne in relation to the estate of Mariam Thorne and as a consequence also cancel Deed of Assent 2209 of 2007 and Deed of Gift No. 3589 of 2008 on the ground that Miriam Thorne's estate contained no 'corpus', therefore, there was no land to give by deed to any of her heirs. She cited the concept expressed in Latin as *nemo dat quod non habet*– 'no one can give what they do not have'. She submitted that an appropriate order would be that each party bears his or her own costs.

[23] Learned counsel submitted further that no order or declaration can be made as to ownership of the disputed lands without a Deed (presumably naming Amasa Crosby as owner). She added that similarly the claimant cannot succeed with respect to the reliefs sought at paras. 1-3 of its FDCF (possession of the disputed land, injunction and declaration as to fee simple ownership) and he

would therefore will not pursue them. She indicated that the claimant was seeking the reliefs numbered 4 & 5 (cancellation of the deeds).

By the defendants

[24] On the Thornes' behalf, learned counsel accepted that the court cannot grant the reliefs claimed by the respective parties. She added that the boundaries of Amasa Crosby's estate were not particularized and even if particularized would not prove ownership of any property. Counsel submitted that Mr. Crosby does not have a claim. She conceded that Deeds 2209 of 2007 and 3589 of 2008 have no root of title and would accordingly be void *ab initio* and therefore must be cancelled pursuant to the court's inherent jurisdiction.

[25] She accepted that it was not legally possible for Teval Thorne to attempt to access the gift left to Miriam Thorne in Amasa Crosby's will by administering Mary Thorne's will. Learned counsel represented that the reliefs sought by the defendants in their counterclaim would fall away and those claims were therefore being withdrawn. Like counsel for Mr. Crosby, she agreed that each party should be directed bear his or her own costs.

DISCUSSION

Root of title

[26] Central to a resolution of the issues in this case is the question on what root of title are the respective claims founded. In this regard, Mr. Crosby, Teval Thorne and Mary Louise Thorne had to demonstrate that Amasa Crosby was vested with title to the disputed land. They failed to exhibit or set out particulars of such title in their pleaded case or witness statements.

[27] The learning on the significance of the root of title was rehearsed by Webster JA in **Sarah Tannis-Joseph (Executrix of the Estate of Theresa Joseph) and another v Dorothy Abraham**⁵. Referencing **Halsbury's Laws of England**⁶, he opined that 'a good root of title, must, among other things, show that the grantor has the full legal and equitable interest in the property

⁵GDAHCVAP2018/0016 at para.37 (unreported, delivered on February 10th 2021).

⁶Vol. 23, para. 114.

conveyed.’⁷ This principle is partially codified in section 5(1) of the **Registration of Documents Act**⁸. It states:

‘(1) Every document relating to real estate required to be registered under this Act shall, on registration, operate both at law and in equity according to priority of time of registration and the right, title and interest of the person conveying, incumbering or otherwise dealing with such real estate against every other document subsequently registered with respect to such real estate.’

[28] In essence, this provision states the trite principle that a deed conveys to the grantee the title, right or interest of the grantor in the subject property. It follows that a grantor who has no right, title or interest in the property purportedly being conveyed transfers nothing to the named grantee. Root of title also refers to the chain of ownership of the subject property which is usually set out in the habendum in a deed.

[29] The habendums in Deed of Assent 2207 of 2007 and Deed of Gift 3589 of 2008 respectively identify the grantor’s interest as:

‘hereby grant and release to the GRANTEE ALL and SINGULAR...the said hereditaments and every part thereof TO HAVE and TO HOLD the same UNTO and TO the USE of the GRANTEE ... ALL THAT LOT PIECE OR PARCEL OF LAND situate at LAUDERS adjoining Dorsetshire Hill in the State of Saint Vincent and the Grenadines admeasuring seven(7) acres and is butted and bounded as described in the will of the late Amasa Benhanan Crosbie dated 11th December 1922 as “I devise and bequeath unto Mary Thorne a piece of land at Lauders joining with Telemaque Valley – bounded by bamboo trees on a straight line to the road to meet the lands of the late Denis Crosbie then on a straight line to the river to meet with the lands of Rosemont Cropper” this land by admeasurement amounting to seven acres more or less...’ and

‘the DONOR doth hereby grant and convey unto the DONEE ... ALL and SINGULAR the said hereditaments and every part thereof TO HAVE and TO HOLD the same UNTO and TO

⁷At para. 37.

⁸ Cap. 132 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

the USE of the GRANTEE ... ALL THAT LOT PIECE OR PARCEL OF LAND situate at LAUDERS adjoining Dorsetshire Hill in the State of Saint Vincent and the Grenadines being Lot Number Seven (No. 7) and being 1.5244 Acres Sixty Six Thousand Four Hundred and Four Square Feet (66,404 Sq. Ft.) and is butted and bounded on the North by lands of Joanne Bramble (Lot. No. 6) South by one Hamilton on Plan G1679G26/35 and G1906 East by a Twenty (20) Feet Road and on the West by a Gutter as the same is delineated and

described on Plan G2627 of 2008 drawn by Alrick Williams Licensed Land Surveyor...'

[30] In neither case is there any mention of prior ownership of the subject property by reference to a Deed or other root to title. Moreover, relying as they do on Amasa Crosby's so-called ownership, in circumstances where there is no paper title pointing to such ownership, no proper legal foundation has been laid to enable this court to conclude that Teval Thorne or Mary Louise Thorne is entitled to the right, title or interest in the properties described in the Schedules in those Deeds.

[31] More fundamentally, it is trite law that a duly appointed executor or administrator of one estate is not authorized by that grant to administer another estate in respect of which no grant of Probate has been made to him. Therefore, Teval Thorne had no authority in law to purport to administer Amasa Crosby's estate to give effect to the gift to Miriam Thorne. He could not do so because on the evidence, no Probate was granted to him by the Court to undertake such administration. He was mistaken in this regard since the only probate he exhibited was Grant No. 185 of 2002. I have no hesitation therefore in concluding that both deeds are void for those reasons and are liable to be cancelled by the court in exercise of its powers under the **Registration of Documents Act** and pursuant to the probate rules of Court governing administration of estates.

ADMINISTRATION AND DEED ISSUE

[32] In view of the observations made and the conclusions arrived at earlier in this decision, it is clear that neither Mr. Crosby nor Mr. Thorne or Ms. Thorne are entitled to the reliefs sought in their respective claims except as it relates to the cancellation of the referenced deeds. Furthermore, there is absolutely no evidentiary or legal basis on which to find that Dave Crosby, Teval Thorne or

Mary Louise Thorne is the fee simple owner of any part of the disputed land or the land described in Deed of Assent No. 2209 of 2007 or Deed of Gift No. 3589 of 2008.

[33] I therefore find that Dave Crosby, Teval Thorne and Mary Louise Thorne are not the fee simple owners of any part of the disputed land and further that Teval Thorne and Mary Louise Thorne are not entitled to and do not hold any interest, right or title to the lands described respectively in the Schedules to Deed of Assent 2209 of 2007 or Deed of Gift 3589 of 2008.

[34] In similar vein, this is not an appropriate dispute in which to make orders as to entitlement of any party to apply for a declaration of possessory title. The **Possessory Titles Act**⁹ outlines the procedure for such matters and that mechanism should be utilized for that purpose. Another reason is that the requirements prescribed by that Act have not been adhered to in this case.

[35] In addition, it appears that Inez Thorne acting through Teval Thorne might have been premature in applying for Letters of Administration in Miriam Thorne's estate. The evidence reveals that Inez Thorne is now deceased. The appointment of Teval Thorne as her lawful attorney would accordingly have lapsed. In view of the manner in which Teval Thorne purported to administer the estate of Miriam Thorne and Amasa Crosby's, the interest of justice would best be served by making an order for the permanent surrender to the Registrar by Mr. Teval Thorne of the Grant of Letters of Administration 185 of 2002. For those reasons, Dave Crosby's claim is dismissed. Teval Thorne and Mary Louise Thorne's counterclaim is likewise dismissed.

[36] Furthermore, this Court has an interest in ensuring that Probate grants issued in the Probate division are administered fully in accord with applicable laws including rules of court and administrative procedures. This case has raised a number of concerns as to the authority purportedly assumed by Teval Thorne by virtue of Grant No. 185 of 2002. He seemingly and admittedly operated on the basis that the grant authorized him to hive off from the disputed lands, property that he understood to be left to Mary Thorne in the will of Amasa Crosby. He clearly did not appreciate that he was not empowered by the grant to administer Amasa Crosby's estate. He

⁹ Cap. 328 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

nonetheless purported to do so for purposes of securing his mother Mary/Inez Thorne's gift. This was irregular and unlawful.

[37] In accordance with the Court's duty to rigorously monitor and enforce the administration of estates through its probate division, I consider it necessary to refer for the learned Registrar's attention, review and supervision the actions taken by Teval Thorne in the purported administration of Miriam Thorne's estate. In this regard, Mr. Teval Thorne will be required to provide a proper accounting to the Registrar within a specified time period. He will also be required to provide to the Registrar under pain of sanction, any further materials that the Registrar may reasonably require to facilitate completion of the referenced review. I consider that a period of 3 months would be adequate for such purpose, with liberty to apply.

COSTS

[38] None of the parties prevailed in this dispute. Accordingly, they are not entitled to costs and in keeping with the applicable rules of court¹⁰ and their agreement, none is awarded.

DISPOSITION

[39] It is accordingly declared and ordered:

1. Dave Crosby's claim against Teval Thorne and Mary Louise Thorne is dismissed.
2. Teval Thorne's and Mary Louise Thorne's counterclaim against Dave Crosby is dismissed.
3. Deed of Assent 2209 of 2007 and Deed of Gift 3589 of 2008 are cancelled. The Registrar is directed to make an entry in the relevant part of the Deed Register to this effect.
4. The Registrar is directed to retain and keep in safe custody the documents surrendered to the Court by Teval Thorne on December 13th 2023, pursuant to order dated December 12th 2023, until or unless further ordered by the Registrar or a judge of the High Court.
5. Teval Thorne in his capacity as executor of the estate of Inez Thorne deceased is directed to present to the Registrar of Probate in the High Court of Justice on or before May 30th 2024, a full accounting of all actions taken by him purportedly in connection with the administration of the

¹⁰ See CPR 64.6.

estate of Miriam Thorne, Inez Thorne or Amasa Crosby. He is required to provide any such further information or materials that may be required by the Registrar or a judge of the High Court in relation thereto.

6. Pursuant to the powers vested in the Registrar under the Non-contentious Probate Rules¹¹, the Registrar is directed to conduct and complete on or before October 10th 2024, a review of the accounting provided by Teval Thorne under paragraph 5 of this Order to ascertain whether the administration of the respective estate by Teval Thorne complied with all applicable rules, procedures and laws and to make such order as may be necessary to accomplish a satisfactory and legally sound completion¹² of the administration of the respective relevant estate.

7. Each party shall bear his or her own costs.

8. A penal notice in terms of CPR 53.3 is to be attached to this order in relation to the directives issued to Mr. Teval Thorne and contained in paragraph 5.

[40] I wish to thank counsel for their submissions and cooperation in the resolution of this matter.

PENAL NOTICE

Limited to paragraph five (5)

If you fail to comply with the terms of this Order, proceedings may be commenced against you for contempt of Court and you may be liable to be imprisoned.

**Esco L. Henry
HIGH COURT JUDGE**

By the Court

Registrar

¹¹ Also the Administration of Estates Act, Cap. 486 of the Laws of Saint Vincent and the Grenadines and other relevant legislation.

¹² Or appropriate accounting or other legally prescribed or feasible resolution.