

THE EASTERN CARIBBEAN SUPREME COURT
ST VINCENT & THE GRENADINES

IN THE HIGH COURT OF JUSTICE

(CIVIL)

SVGHCV2022/0165 [E PORTAL]

IN THE MATTER OF SECTION 17 (C) OF THE REGISTRATION OF DOCUMENTS ACT CHAPTER
132 OF THE LAWS OF SAINT VINCENT AND THE GRENADINES (REVISED EDITION 2009)

AND

IN THE MATTER OF AN APPLICATION BY SYLVIA ELEANOR GOULD FOR AN ORDER TO
RECTIFY DEED BEARING RECORDATION NUMBER 2736/1996

BETWEEN:-

SYLVIA ELEANOR GOULD

Claimant

and

THE REGISTRAR OF LANDS OF SAINT VINCENT & THE GRENADINES

Defendant

Appearances: Mr Julian Jack of Regency Law Chambers for the Claimant
Gabrielle Myers Crown Counsel of the Attorney General's Chambers for the Defendant

2023 September 14th

RULING

- [1] **STEPHENSON J.:** Before the court is an application for the rectification of an indenture dated the 29th July 1996 between B. A. Arthur & Company Limited by the direction of the National Commercial Bank (SVG) Ltd now trading and known as The National Bank of St Vincent and the Grenadines and the claimant and registered as Deed number 2736 of 1996.

- [2] In order for there to be a rectification the Registrar of Lands would have to prepare a Deed of Rectification pursuant to section 17 of the Registration of Documents Act¹.
- [3] The claimant filed a fixed date claim on the 10th November 2022 for the Deed of recordation to be rectified to read as follows:

*" ALL THAT PIECE OR PARCEL OF LAND situate at Ruthland Vale Layou in the Parish of Sait Patrick in the state of Saint Vincent and The Grenadines being Lot Number 7 and admeasuring **Six Thousand Seventy-eight Square Feet (6,078 sq.ft.)** and abutted and bounded on or towards the North by a 27' foot road the Leeward Highway on or towards the South by a Drain and Lot Number 16 on Survey Plan **P254** on or towards the East by Lot Number:8 on survey plan **P254** on or towards the West by Lot Number: 6 on survey plan **P254** as delineated and shown on the Survey Drawing bearing Drawing Number **P6/126** prepared by Kendon Lavia in the month of May, 2022 and approved and lodged at the Lands and Surveys Department of the State of St Vincent and The Grenadines on the 3rd day of June 2022 or howsoever otherwise the same may be butted bounded known distinguished or described together with all Buildings and Erections thereon and all ways water watercourses rights lights liberties privileges and easements thereto belonging or usually held used or enjoyed therewith or reputed to belong or be appurtenant thereto ..."*

- [4] The claimant contends that the description as appearing on the current deed was inadvertently incorrectly described in that the lot number, admeasurement and boundaries delineating and describing the parcel of land which is owned by the claimant and in her possession as shown in a recent survey plan by Kendon Lavia a licenced land surveyor is at variance with the information contained in the schedule to the deed in writing in her name recorded as deed number 2736 of 1996. The indenture was exhibited to the claimant's affidavit sworn in support of her claim and marked "S.E.G. 1".
- [5] The claimant contends that at the time she purchased the said land and registered same she was unaware of the discrepancy and only became aware of it when she commissioned the aforementioned recent survey to the land. That recent survey was also exhibited in the claimant's affidavit in support and marked "S.E.G. 2".
- [6] It is the claimant's contention that the deed should be rectified to reflect the true size, location, and boundaries to her land.

¹ Chapter 132 of the Laws of Saint Vincent and The Grenadines (Revised Edition 2009)

- [7] Kendon Lavia a duly licensed Land Surveyor in the employ of the Department of Lands and Surveys duly swore an affidavit in support of the application in the case at bar. This deponent averred that his services were retained to investigate the matter of the location of the claimant's property and to draw a new survey plan of the land in order to show the true location of the land and other descriptions of the land such as the size and boundaries.
- [8] Mr Lavia averred that he notified one Mr Verol Lockhart and Kemelia Bruce the owners of the adjoining parcels of land to the claimant's property informing them of his intention to conduct a survey on the claimant's property. This deponent stated that the two owners both signed a waiver of notice and a copy of the waivers were duly exhibited to his affidavit and marked "K.L.1".
- [9] Mr Lavia conducted the survey on the claimant's land, and he verified that the registration of the title of the land in the name of the claimant having being conveyed to her from B.A. Aurthur and Company Limited and registered in the aforementioned deed numbered 2736 of 1996. The deponent also averred that he noted the northeast and south east boundaries of the land as set out in the aforementioned survey plan 254 and that the land was bounded on the west by the Leeward Highway and a drain on the South East.
- [10] Mr Lavia also noted that the plan described the claimant's property as being Lot 9 however based on his survey and upon consultation of the cadastral mapping of the area he found that the land owned and occupied by the claimant should in fact be described as Lot 7 instead of Lot 9. He further stated that from his survey he was able to conclude that the land contained Six Thousand Seventy-Eight square feet (6,078 sq. ft.) and not Six Thousand Eleven Square Feet (6,011 sq.ft.) as recorded in the aforementioned deed.
- [11] Mr Lavia said that based on his survey and the information obtained, he prepared a new survey plan drawing numbered **P6/126** which now supersedes the previous survey plan number **P 254** and noted the correct being Lot 7 instead of the previous Lot 9.
- [12] The application was duly served on the Registrar of Lands Ms Andrea Young who duly filed an affidavit in response informing the court that she neither admitted nor denied the claimant's claim and that in the interest of fairness she stood as a neutral party.

[13] The matter was heard before the court as currently constituted on the 25th May 2023 and it was ordered by consent that the claim be amended to reflect the correct name of the defendant to the claim as the Registrar of Lands.

[14] The claimant was also ordered to serve the application in the case at bar on the registered owners of the lots which bound her property personally and to place a notice of application in a newspaper of national circulation in St Vincent and the Grenadines informing any person who may have an interest in the application to indicate their interest within 14 days of the application.

[15] The defendant was also ordered to file and serve an affidavit in answer to the application and written submissions with leave granted to the claimant to file an affidavit in answer and submissions in response if necessary.

[16] Affidavit of proof of service by publication of the application in the case at bar was duly filed exhibiting the advertisements as ordered. An affidavit of personal service on the adjoining property owners sworn to by Rolton Bobb Bailiff, was duly filed by the claimant on the 29th June 2023 evidencing the service on Verol Lockhart the owner of the land on the North East Boundary of the claimant's land on the 7th June 2023 and on Kemelia Bruce owner of the land on the South West Boundary of the claimant's land on the 8th June 2023.

[17] There has been no objection to the application lodged or filed in the matter.

[18] The defendant duly filed brief written submissions on the 16th June 2023 outlining the powers of the court to grant the order prayed for by the claimant.

[19] Briefly the applicable law was submitted as follows:

- a. Section 17 (c) of the Registration of Documents Act² empowers the court to make the order rectifying any omission or imperfection in any registration.
- b. That the court should act cautiously and jealously guard the power and discretion that it is clothed with. **Re: Verina James -v- Alston Mc Kenzie** ³per Justice Mitchell who quoted at paragraph 21 on his judgment the dicta of Evershed MR in **Whiteside -v-**

²Section 17(c) provides *"For the purposes of this Act and in relation to any registration, the Court may order –*
...
(c) that any omission or imperfection in any registration be rectified."

³SVGHCV2000/0305

Whiteside⁴ in this regard. Evershed MR said *“Rectification is a discretionary remedy which must be cautiously watched and jealously guarded”*.

- c. That in considering whether to correct an omission or imperfection in a deed in **Kenson Wilson -v- The Registrar of the High Court**⁵ Madam Justice Henry noted at paragraph 4 of her judgment that the court will assess *“whether the proposed changes are likely to affect any legal or equitable interest, right or title held by others in the property. Such person or persons must also be given the opportunity to be heard.”*
- d. That where the rights of third parties can be adversely affected and where they have not been given notice of the proposed change the court should avoid granting the order. **Re: Aster Bruce et al -v- The Registrar of the High Court**⁶

[20] Counsel Ms Myers in her submissions drew to the court’s attention that claimant’s application is for substantive amendments to her boundaries which can affect the adjoining owners and in fact any non-contiguous or non-adjoining owners to her land and that in her substantive application the claimant failed to give notice to any adjoining landowners. Well, this was remedied by the applicant who in compliance with the court order not only personally served the adjoining landowners but also advertised her application and filed proof of same. There has been no response and or objection lodged with the court.

[21] This to the court’s mind satisfies any concerns that the Registrar of Lands may have as was reflected in Crown Counsel’s submissions. The claimant having complied with the court’s order has in this court’s view met the evidence threshold required in these proceedings which we must remember is on the balance of probabilities.

[22] Where there is a manifest inaccuracy in the land Registrar it is important that it be rectified. The governing principle of land registration is to ensure and enable landowners and anyone to be aware of their interest in their land. This court is satisfied that the boundaries of the claimant’s land have been formally identified as evidenced by the affidavit and exhibits of the land surveyor.

⁴ [1950] Ch 65

⁵ SVGHCV2019/0163

⁶ SVHhCV2019/0018

[23] It is further noted that there is no objection to the claimant's application, there is no evidence presented to the court that there are any adverse consequences to the order which is being sought. There are no matters of dispute to be resolved by the court and in the circumstances of this case this court is satisfied that it would be just in the circumstances to correct the survey plan and description of the claimant's land to be known as Lot 7 and not lot 9.

[24] It is hereby ordered as follows:

- 1) That SYLVIA ELEANOR GOULD'S application to rectify the schedule to her deed of conveyance is hereby granted.
- 2) The Registrar of Lands pursuant to Section 17(c) of the Registration of Documents Act is hereby directed to prepare the Deed of Rectification of the deed registered number 2736 of 1996 by removing the survey plan bearing number P254 and replacing it with Survey Plan number P6/126 and replacing the schedule with the following description

*“ ALL THAT PIECE OR PARCEL OF LAND situate at Ruthland Vale Layou in the Parish of Saint Patrick in the state of Saint Vincent and The Grenadines being **Lot Number 7** and admeasuring **Six Thousand Seventy-eight Square Feet (6,078 sq. ft.)** and abutted and bounded on or towards the North by the Leeward Highway on or towards the South by a Drain and Lot Number 16 on Survey Plan **P254** on or towards the East by Lot Number:8 on survey plan **P254** on or towards the West by Lot Number: 6 on survey plan **P254** as delineated and shown on the Survey Drawing bearing Drawing Number **P6/126** prepared by Kendon Lavia in the month of May, 2022 and approved and lodged at the Lands and Surveys Department of the State of St Vincent and The Grenadines on the 3rd day of June 2022 or howsoever otherwise the same may be butted bounded known, distinguished or described Together with all Buildings and Erections thereon and all ways, water watercourses rights, lights liberties, privileges and easements thereto belonging or usually held used or enjoyed therewith or reputed to belong or be appurtenant thereto.”*

- 3) That this order with the duly rectified deed be served on the adjoining owners, the Bank of St Vincent and the Grenadines and that there be a single advertisement in a News Paper of national circulation.
- 4) There is no order as to costs.

[25] The court wishes to acknowledge with thanks the submissions filed by the state which assisted the court in its consideration of the application at bar.

M E Birnie Stephenson

BY THE COURT

REGISTRAR