

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
(CAVEAT)

Caveat No. 11 OF 2021

BETWEEN:-

ELPHA SORHAINDO

CAVEATOR

-and-

[1] EVA ALEXANDER

[2] MATTHEW ALEXANDER

(As Joint Tenants)

CAVEATEES

Before: Hon. Madam Justice M E Birnie Stephenson

Appearances:

Zena Moore Dyer of Dyer & Dyer for the Caveator

Carlita Benjamin of Caribois Chambers for the Caveatees

2022: March 7th

2023: March 8th

RULING WITH WRITTEN REASONS

[1] **STEPHENSON J.:** On the 21st January 2021 Eva Alexander and Matthew Alexander applied for first certificate of title for a portion of land comprising 2.036 sq. feet located at Newtown and bounded as follows:

- a. On the North East by Land of the Roman Catholic Church
- b. On the North West by the Land of Hugh Phillip
- c. On the South West by the Land of the Heirs of Ralph Joseph

d. On the South east by land of the heirs of Ralph Joseph and a ravine separating it from the land of the Government of Dominica.

[2] Eva Alexander in her affidavit sworn in support of her application¹ for first certificate of title claimed to have inherited the said parcel of land from her uncle Cressy Bell by virtue of his will which was duly probated and registered in Book of Probates NQ2 Folios 151 – 152.

[3] Eva Alexander further averred in her affidavit that on the 21st December 2021 she signed an assent ²for the land to be conveyed to herself and her son Matthew Alexander as Joint Tenants.

[4] Eva Alexander averred that she knew that the land which she inherited belonged to Cressy Bell who had a small house on the land where he lived until his death in 2010.

[5] Eva Alexander claims that she exercised acts of ownership over the said land by keeping the land clear of grass and keeping away of trespassers. She further averred that to the best of her knowledge there are no disputes regarding ownership of the land.

[6] The application for First certificate of title was supported by affidavits of Long Possession sworn to by Alvin Bernard³ and Desmond Peter⁴.

[7] The affiants Alvin Bernard and Desmond Peter swore identical affidavits where they both averred that they knew the land subject of the application for their entire lives and that they knew it belonged to Cressy Bell who lived in a small house on the land until his death in 2020 and they were informed and verily believed that Eva Alexander inherited the parcel of land from Cressy Bell by virtue of his will which was probated and duly registered. Further, that there were no disputes affecting the ownership of the portion of land and no one else was claiming ownership of the land.

¹ Affidavit of Applicants filed on the 21st January 2021

² Deed of Assent dated the 21 December 2020 and duly filed at the Registry of Deeds on the 31st December 2020 and number 449/2020

³ Affidavit sworn to on the 12th January 2021 and filed on even date

⁴ Affidavit sworn to on the 11th January 2021 and filed on the 12th January 2021

- [8] On 12th March 2021 a caveat against the issue of first certificate of title was entered by Elpha Sorhaindo (The Caveator) claiming that she was entitled to the said land and that she intended to apply for Certificate of Title for the same.
- [9] On 18th November 2021 Eva Alexander and Matthew Alexander (The Caveatees) filed a notice of application pursuant to section 121 of the **Title by Registration Act**⁵ for the caveat to be withdrawn on the grounds that since the presentation of the caveat on the 23 March 2021 the caveator has not filed any documents to prove her interest in the caveated property neither has she filed an application to sustain her caveat. Further, the caveatees contend that the caveat has operated to thwart the issue of first certificate of title to them and that the caveator has done nothing to move the matter forward towards settlement.
- [10] The caveators swore to and filed a joint affidavit in support of their application to withdraw the caveat on the 18th November 2021. Together they aver that they have been informed by their then solicitor Mr Anthony Commodore (now of blessed memory) that the entry of the caveat against the issue of the certificate of title to them has placed the issue before the High Court to be settled by a judge after a hearing.
- [11] The caveatees have further averred that the caveator is required to present evidence in support of her claim to rights and interests in the land and that in the seven months since presentation of the caveat the caveator has failed to do anything and in the circumstances, they are asking that the caveat be withdrawn.
- [12] On the 8th February 2022, the caveator Elpha Sorhaindo filed an affidavit in reply to the affidavit filed by the caveatees where she averred that she is the biological daughter and one of the children of Norman Sorhaindo now deceased and that the property subject to the caveat was owned by and always in the possession of her father and her grandfather Graham Sorhaindo.
- [13] The caveator averred that her father Norman Sorhaindo died intestate in August 2020 leaving 6 children and that as one of the children she is entitled to a share in the said property. The caveator further averred that letters of administration have not been applied for to her deceased father's estate and that it is her intention so to do.

⁵ Chapter 56:50

[14] It is the caveator's contention that the land in question never belonged to Cressy Bell as claimed by the caveatees. The caveator stated that her father had houses on the caveated parcel and Cressy Bell lived in a part of one of the houses on the land and that he did not occupy same as owner of the land.

[15] The caveator contends that she was informed by her father's girlfriend one Frances James and verily believes that the houses on the land were destroyed by fire and further that the caveatees never exercised acts of ownership over the land subject to the caveat. The caveator is asking this court to sustain the caveat until the hearing and trial of the matter.

[16] Sonia Charles of Newtown in the parish of St George filed an affidavit on the 8th February 2022 in support of the caveator's case stating that she along with her husband own the adjoining property to the disputed parcel. Mrs Charles averred that the land which she now owns bounds the disputed property. That her land was previously owned by her father Hugh Phillip and that she was born and brought up on her father's land.

[17] Mrs Charles avers that she knows that the disputed parcel of land was owned by Graham Sorhaindo who is the grand father of the caveator and in support of her averment she exhibits her own Certificate of title which records the disputed parcel of land as belonging to the heirs of Graham Sorhaindo as one of the bounding lots.

[18] Mrs Charles avers that Norman Sorhaindo owned houses on the disputed parcel and that Cressy Bell occupied one of those houses. This deponent further stated that she has always known the land to belong to Graham Sorhaindo and thereafter by Norman Sorhaindo.

CAVEATOR'S SUBMISSION ON POINT IN LIMINE

[19] Counsel Zena More Dyer on behalf of the caveator took a point *in limine*. Counsel filed written submissions in support of her point as follows:

- a. That the caveat filed is in form 2 of the **Title by Registration Act**⁶ (**The Act**) under section 17 of the **Act**⁷. That the application is not to stay the registration of any dealing

⁶ Chapter 56:50

⁷ Section 17 provides: "17. Any person who claims to be the proprietor of any land, or to be interested in any mortgage or incumbrance, may enter a caveat in the office of the Registrar of Titles, either forbidding the issue of any certificate of title for any land to any specified person, or claiming that a note may be made upon any certificate of title in regard to any

with the registered land but it is a caveat forbidding the issue of the First Certificate of Title.

- b. That the application before the court brought by the caveatees is an application under section 121⁸ of the **Act** which does not apply to caveats presented to prevent the issue of a first certificate of title. Counsel submitted that section 121 deals with caveats against existing titles and to stay the registration of any dealing in the registered land for which there is already a certificate of title in existence.

[20] Counsel further submitted that section 121 falls under “*Part VII Caveats*” under **the Act**. Counsel referred the court to section 113 of the **Act** which speaks to the “*Form of Caveat*” which reads:

“113. A caveat shall, subject to the provisions of sections 17 and 77, be in Form 23 and shall be verified by the oath of the caveator, or his solicitor, or person acting under the power of attorney of the caveator, and shall contain an address within the State at which notices may be served on the caveator.”

[21] Counsel also made reference to Form 23 as provided by **the Act** and submitted that it is clear that a caveat in accordance with Form 23 is a caveat to stay the registration of any dealing in land.

[22] Counsel Moore Dyer submitted that the caveat referred to in section 121 refers to a caveat in the form as provided in Form 23 which is a caveat against an existing title and not a caveat as is provided in Form 2 against the issue of first certificate of title under section 17 of the **Act**. Counsel submitted that therefore the application as brought by the caveatees should be dismissed with costs.

CAVEATEES’ RESPONSE TO POINT IN LIMINE

[23] Mr Anthony Commodore was given the opportunity to respond to Counsel Moore Dyer’s submissions and he filed written submission on the 7th March 2022.

mortgage or incumbrance, or in any other manner stating an interest in any land, and the caveat shall be in Form 2 and the caveator shall heard before the certificate of title is issued, or the mortgage or incumbrance noted or rejected.”

⁸ Section 121. The caveatee may, in like manner, and without sending any order of removal to the Registrar of Titles, apply to the Court to have the caveat removed by order of the Court

[24] As far as the point in limine is concerned, counsel submitted on behalf of the caveatees that firstly the caveator has entered a caveat against the application of the caveatees without any legal right or authority to do so as she has stated that she has not even applied for letters of administration and averred of her intention to apply.

[25] Counsel further submitted that section 121 of the **Act** makes no mention of whether the removal of the caveat is one set against an existing Certificate of Title or an application for a new one. Counsel pointed out to the court that section 21 states unequivocally *inter alia* that “the caveatee may apply to the Registrar of titles to have the caveat removed by the order of the court”

[26] Counsel also pointed out to the court in his submissions, that, the property was surveyed for Cressey Belle on the 20th February 1997 and at that time no mention was made of either Norman or Graham Sorhaindo who the caveator claims to be the persons who owned the land to which she has an entitlement under intestacy.

[27] Counsel further submitted the caveatee’s application for title was served on all adjacent occupiers and no such notice was served on the caveator since no mention is made of her or her ancestors on the survey plan.

[28] Counsel for the caveatees noted that the caveat was never served personally on the caveatees, however, a letter was received by the caveatees from the Registrar of Lands informing them of the caveat against the issue of the Certificate of Title.

[29] Counsel submitted that based on the provisions of **the Act** regarding the notice to adjacent occupants, the caveat which was filed was out of time, as the notice requires that any objections to the application for title must be done within the six weeks period during with the caveat must be entered and in the circumstances the caveat should not be allowed to stand.

[30] Counsel also drew to the court’s attention that the caveator has failed to provide any documentation in support of her averments and case and noted that the map which has been exhibited by the witness in support of the caveator’s case is very different from the map upon which the caveatees are relying in support of their application for first certificate of title.

[31] Counsel Anthony Commodore also submitted that there was a letter served on the caveatees from Balthazar Watt Licenced surveyor which were sent to the heirs of Cressy Bell regarding

the property in dispute. And counsel noted that the letter was not sent to the heirs of either Norman or Graham Sorhaindo. Counsel submitted that this is further evidence that the caveat as lodged by the caveator should be dismissed and that the caveatees be allowed continue to apply for their First Certificate of Title.

[32] It was further submitted that the caveator has never lived on the land in question and that Eva Alexander was raised on the said land with her uncle and that she took care of him until his death.

Courts consideration:

[33] This court has reviewed the submissions made by both parties in this matter and this court is minded to dismiss the caveat lodged by the caveator solely on the ground that the caveator has no *locus standi* to take the action that she is seeking to take on this ground. In her own affidavit she avers that she is entitled to inherit under intestacy and that she intends to apply for letters of administration.

[34] It is well established law that where there is an intestacy the person who is entitled to take any action regarding the purported intestate estate is the person who has been granted letters of administration, that is the Administrator/Administratrix. It is established law that an administrator derives title solely under his grant of letters of administration and cannot therefore institute an action for and on behalf of the estate before he obtains a grant of Letters of Administration. **Re: Ingall -v- Moran**⁹ It was held in this case that an action brought “*on behalf*” of an estate by someone, without letters of administration and who is not named as an executor in the will, is a nullity.

[35] Therefore, in the case at bar it is clear that the caveator having stated that she is one of the intended beneficiaries of her father’s and or grandfather’s estate and that she intends to apply for letters of administration has no legal authority to commence any legal proceedings or make any claim on behalf of an intestate estate which she is clearly seeking to do in the matter at bar.

⁹ [1944] KB 160

[36] This court therefore finds that solely on the issue that the caveator is an intended beneficiary and or intended administrator the action taken by her to file a caveat which is a legal proceeding is a nullity and therefore this court will on that ground alone dismiss the caveat entered by the caveator.

[37] The court wishes to apologise to the parties and counsel for the inordinate length of time it took for this decision to be rendered.

M E Birnie Stephenson

High Court Judge

BY THE COURT

REGISTRAR