

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

GRENADA

CLAIM NO. GDAHCV2011/0515

BETWEEN:

JOHNATHAN LOPEZ

Claimant

and

JACQUI MCINTOSH

Defendant

Before:

The Hon. Mde. Justice Agnes Actie
High Court Judge

Appearances:

Mr. Nigel Stewart of counsel for the claimant
Ms. Claudette Joseph of counsel for the defendant

2022: August 10

RULING

1. **ACTIE J.:** The claimant seeks an order that the defendant vest the fee simple estate of a parcel of land situate at Florence in Petite Carenage in the island of Carriacou and for the Registrar of the Supreme Court to execute the said conveyance in favour of the claimant.
2. The matter came on for trial on 19th July 2021 and the court was of the view that the parties should endeavour an amicable resolution through mediation having regard to the narrow issues in dispute. The parties failed to settle. The court now gives its ruling.

Background facts

3. In a fixed date claim filed on 22nd March 2011, the claimant avers that sometime about 1991 he negotiated and entered into oral agreements with three siblings namely Veronica Samuel, Victoria Jordan and Orcy Mc Intosh for the purchase of three contiguous lots situate at Florence, Petite Carenage in the island of Carriacou at the price of \$5,000.00 each lot. The claimant states that he obtained Deeds of Conveyance from Victoria Jordan and Veronica Samuel but failed to obtain a conveyance from Orcy Mc Intosh.
4. The claimant states that he paid the full sum of \$5,000.00 in 1991, with an initial payment of USD \$1,000.00 to Orcy Mc Intosh's wife, Merle Lopez. He states he was instructed and did pay the balance of \$2,300 by cheque to Veronica Samuel on behalf of Orcy Mc Intosh. He states that Orcy Mc Intosh who ordinarily resided in the UK made many short visits to Carriacou. The claimant states that he failed in his many attempts to have Orcy Mc Intosh sign the conveyance during his short visits to Carriacou. Orcy Mc Intosh died in 2009.
5. The defendant admits that she is the daughter of Orcy Mc Intosh but states that she is not the administratrix or executrix of her father's estate. She states that her deceased father never told her that he sold or contracted to sell land to the claimant. The defendant denies that the claimant paid \$5,000.00 to her deceased father and challenges the purported memorandum in writing exhibited to Hilda Phillip's evidence. The defendant further contends that the matters relied on by the claimant are insufficient to satisfy the requirements of Section 4 of the Real & Personal Property (Special Provisions) Act Chapter 273 of the 1990 revised Laws of Grenada.

Legal Analysis

Whether there is an agreement enforceable against the defendant.

6. The starting point is whether the claimant can maintain the claim against the defendant who is the daughter of Orcy Mc Intosh . The claim is brought against the defendant in her personal capacity. It is the pleaded evidence that Orcy Mc Intosh died in 2009, a fact known to the claimant before the filing of the said claim in 2011.
7. **Part 21 (2) of CPR 2000** provides the procedure for the appointment of representative parties. Rule 21.4 provides for representation of persons who cannot be ascertained, etc. in proceedings about estates, trusts, and construction of written instruments. The Rule reads:

“21.4 (1) This rule applies only to proceedings about –

- (a) the construction of a written instrument;
- (b) the estate of someone who is deceased; or
- (c) property subject to a trust.

(2) The court may appoint one or more persons to represent any person or class of persons (including an unborn person or persons) who is or may be interested in or affected by the proceedings (whether presently or for any future, contingent or unascertained interest) where –

- (a) the person, or the class or some member of it, cannot be ascertained or cannot readily be ascertained;
- (b) the person, or the class or some member of it, though ascertained cannot be found; or
- (c) it is expedient to do so for any other reason.

(3) An application for an order to appoint a representative party under this rule may be made by any

- (a) party; or
- (b) person who wishes to be appointed as a representative party.

(4) A representative appointed under this rule may be either a claimant or a defendant.

8. **Rule 21.7** provides for Proceedings against estate of deceased person:

“(1) If in any proceedings it appears that a deceased person was interested in the proceedings but the deceased person has no personal representatives, the court may make an order appointing someone to represent the deceased person’s estate for the purpose of the proceedings.

(2) A person may be appointed as a representative if that person –

(a) can fairly and competently conduct proceedings on behalf of the estate; and

(b) has no interest adverse to that of the estate, of the deceased person.

(3) The court may make such an order on or without an application.

(4) **Until the court has appointed someone to represent the deceased person’s estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.** (My emphasis)

9. The claimant brought the claim against the defendant in her personal capacity with full knowledge that her father Orcy Mc Intosh was deceased. The proper procedure was to have brought the claim against the estate of the said deceased and an application made under Rule 21.4 for someone or the defendant to be appointed to represent the estate. The claimant was under a duty to take further steps to cure the irregularity in keeping with the requirements of **CPR 27.1(4)**. The matter is at trial stage and the claimant having failed to cure the defect in appointing the defendant in a representative capacity cannot proceed with the matter any further against the defendant in her personal capacity since the cause of action is against the estate of Orcy Mc Intosh, deceased.

10. Secondly, the issue is whether the claimant’s evidence in support of the claim satisfies the requirement of **Section 4 of the Real & Personal Property (Special Provisions) Act** Chapter 273 of the 1990 revised Laws of Grenada:

Section 4 Contract for sale of land to be in writing

“No action shall be brought whereby to charge any person upon any contract for sale of lands, or any interest in or concerning them, unless the agreement upon which the action is brought, or some memorandum or note thereof, is in writing, and signed by the person to be charged therewith, or some other person thereunto by him or her lawfully authorised”.

11. The document relied on by the claimant reads:

“This is to certify that in July 1991, I sold one acre of land to Jonathan Lopez of Petiit Carenage, Carriacou”

Ossie. McIntosh

8.01.03

Date

12. Ms. Claudette Joseph, counsel for the defendant, in her written submissions contends that on proper construction of section 4, it is required that any agreement or memorandum between the claimant and Ossie Mc Intosh had to satisfy the basic elements, namely the property to be sold, the parties to the agreement, the sale price and special provisions. Counsel contends that absent of any of the requirements will render the memorandum invalid and unenforceable.

13. The Court of Appeal in **Marlon Mills And Stacey Mckie (Executrix of the Will of Hughson McKie, deceased)** ¹ gave the following ruling:

Section 4 of the Real and Personal Property Act (Special Provisions) Cap 273, which is in pari materia with section 40 (1) of the Law of Property Act, 1925, of England reads as follows:

“No action shall be brought whereby to charge any person upon any contract for sale of lands, or any interest in or concerning them, unless the agreement upon which the action is brought, or some memorandum or note thereof, is in writing, and signed by the person to be charged therewith, or some other person thereunto by him lawfully authorized.”

¹ SVGHCVP2016/0001

The memorandum is required only as evidence of a contract. Put another way, the contract exists independently of the writing or memorandum but cannot be proved in court without the memorandum or writing. It has been consistently held in England that no special form of memorandum in writing is required provided only that it contains the essential terms of the contract and is signed by the party to be charged, or by someone on his behalf. It has further been held that where the memorandum in writing consists of more than one document, but only one document is signed by the defendant or on his behalf, then if that one signed document contains some implied or specific reference to another document, then oral evidence is admissible to identify the other document and the two may be read together.

14. Michel JA at paragraph 25 of the judgment states:

“The document establishing title may be a deed or other note in writing. A deed is a specific legal instrument signed, attested, delivered and, in some jurisdictions, sealed by the person transferring the property right to another person. A note in writing may be any written document, whether or not accompanied by any specific formalities. **To constitute a note in writing that satisfies the requirements of the Statute of Frauds and qualifies to be called a paper title, the note must identify the property transferred, the consideration for the transfer, the name of the transferor and of the transferee, and it must be signed by or on behalf of the transferor.**” (My emphasis)

15. Applying the law to the facts, this court is of the view that the memorandum in writing relied on the claimant does not satisfy the requirements of Section 4 of the Real and Personal Property (Special Provisions) Act. The memorandum in writing must clearly consist all the material terms which should properly identify the parties and must render ascertainable both the physical subject matter of the contract and the price paid. The memorandum must state the essential terms but also incorporate some acknowledgment or recognition by the signatory that a contract had actually been entered into².
16. The document relied on by the claimant fails to describe the property or to give any particulars of the location of the property. The claimant in her claim form seeks an order for title of a lot of land measuring 1 Ac 9 pls on a plan dated 30th June 1976

² Tiverton Estates Ltd v Wernell Ltd [1975] Ch 146 @160F-G

which precisely describes the parcel of land. However, the memorandum relied on by the claimant states an area of One (1) acre. The purported memorandum also fails to identify the location of the land and the exact terms of the agreement between the parties. The court is in agreement with counsel for the defendant that the purported memorandum relied on by the claimant fails to satisfy the requirements of Section 4 of the Real and Personal Property (Special Provisions) Act. The claimant has failed to establish his case against the defendant and accordingly the claim must be dismissed with costs to the defendant.

ORDER

17. For In summary, the claimant's claim stands dismissed with Prescribed Costs in the sum of \$7500.00 to be paid to the defendant pursuant to CPR 65.5.

Agnes Actie
High Court Judge

By the Court

Registrar