THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2010/0034

BETWEEN

SYL'S INVESTMENTS LTD.

CLAIMANT

AND

THE ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES

DEFENDANT

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

Appearances:
Ms. Samantha Robertsonfor the claimant.
Mrs. Cerepha Harper-Joseph, Ms. Moureeze Franklyn and Ms. Gabrielle Mayersfor the defendant.

2021: June22
July 14

JUDGMENT

INTRODUCTION

[1]**Henry, J.**:Syl's Investments Limited is a limited liability company.It alleged that it reclaimed 8,517 square feet of land from the sea at Point, Ratho Mill, Saint Vincent and the Grenadines at considerable cost. It claimed that the Government of Saint Vincent and the Grenadines ('the Government') authorized R & R Investments Limited to trespass on and convert the reclaimed land to its use and benefit.R & R Investments Limited purchased the adjoining land fromRBTT Bank Caribbean Limited and secured a lease to the reclaimed land from the Crown. Syl's Investments Limited sued

R & R Investments Ltd. and the Hon. Attorney General, the Government's legal representative. It has since discontinued its claim against R & R Investments Ltd.

[2] It seeks a declaration that it owns the reclaimed land or had acquired the fee simple interest in it; a declaration that the Government holds the land in trust for it; an order that it is entitled to grant of fee simple in the land; a declaration that the lease agreement between the Government and R & R Investments Limited is subject to its right to receive compensation; costs and relief from sanctions.

[3] The Honourable Attorney General resisted the claim.He submitted that the reclaimed land was at all material times Crown Land because it falls within the three chains measurement from the sea which by law is vested in the respective adjoining landowners in accordance with the **Three Chains Act**[1].I have found that the Government is not liable to Syl's Investments Limited.

ISSUES

[4] The issues are whether:

1. Syl's Investments Ltd. owns the legal estate or a beneficial interest inor was at material times in possession ofthe reclaimed land?
2. Whether the Government is liable to Syl's Investments Limited for trespass to or conversion of the reclaimed land?
3. To what remedies if any, is Syl's Investments Limited entitled?

LAW AND ANALYSIS

Issue 1 – Does Syl's Investments Limited own the legal estate or beneficial interest in or was at material times in possession ofthe reclaimed land?

[5] Mr. Carl De Freitas is the Managing Director of Syl's Investments Limited and held that position at all material times.He testified that Syl's Investments Limited owns the business name Blue Waters Charter Limited which was registered under the **Registration of Business Names Act, 1994**. He stated that at all material times Syl's Investments Limited owned and was entitled to possession of8.517 square feet of land at Ratho Mill which was reclaimed from the sea with the knowledge and

[1]Cap. 333 of the Revised Laws of Saint Vincent and the Grenadines, 2009

full approval of the Physical Planning and Development Unit. He explained that the reclaimed land was bounded with a parcel of land belonging to him which comprised2 roods and 12 poles.

[6] Mr. Defreitas indicatedthat Blue Water Charters obtained an Environmental Study to support the application to the Physical Planning and Development Unit. It is common ground between the parties that on May 7th, 1998, approval was granted to Syl's Investments Limited by the Physical Planning and Development Unit to reclaim the land. Syl's Investment Limited proceeded with the reclamation work. Sometimeafter, R & R Investments Limited bought Mr. Defreitas' adjoining land from the mortgagee RBTT Bank Caribbean Limited ('the bank'). It hasconstructed a building on the reclaimed land.

[7] Mr. De Freitas stated that by reclaiming the land, he interpreted that as constituting Syl's Investments Limited as the owner.He averred that the reclaimed land was surveyed and that survey constituted public notice of his interest in the land. He produced a copy of the survey[2], planning application and approval and a valuation of the cost of work carried out to reclaim the land. The Hon. Attorney General has not disputed that planning approval was granted as asserted.

[8] Mr. Glenford Stewart testified that he is a Consultant Civil/Structural Engineer, Environmental Scientist, Planner and Project Manager. He averred that around 1996 he was consulted by Mr. De Freitas about reclaiming the subject land. He explained that he made the application to the Physical Planning and Development Unit on behalf of Syl's Investments Limitedfor planning permission. He corroborated Mr. De Freitas' claim that a total of 8,517 square feet of land was reclaimed from the sea, adjoining land which was then owned by Mr. Carl De Freitas. Mr. Stewart testified that Stewart Engineering Limited was commissioned to give a valuation of the cost of reclaiming the land inclusive of the cost of the reclaimed land. He ascribed a valuation of $1,165,000.00, being approximately $135.61 per square foot.

[9] At the end of the trial on June 22nd, 2021, the parties were directed to file closing submissions on or before July 1st, 2021. Syl's Investments Limited filed none. The Hon. Attorney General submitted

[2]Survey plan G2547 approved by Chief Surveyor Adolphus Ollivierreand lodged at the Survey Department on 21st January 2007. Referred to as 'Exhibit E'at paragraph 8 of his witness statement filed 16th November 2010and admitted as exhibit 'CD5'.

that the **Three Chains Act**[3](‘the Act’) provides that the area of land consisting of the seashore up to the high-water mark is known as the three chains of which ownership is vested in the owners of lands adjoining it. The section states: -

> ‘The said Three Chains shall be and remain vested in the respective proprietors of lands adjoining thereto, for such estate as they respectively have in such lands and the like tenure therewith, whether in possession, reversion or remainder, but subject to the other provisions of this Act.’

[10] The recital at the top of the Act is instructive. Itcontains a short historical explanationof the genesis of the three-chain designation and reservation of land along the coast. It provides: -

> ‘Whereas when the lands of the Island of Saint Vincent were originally granted, the Commissioners appointed by His Majesty King George the Third for the sale and disposal of the same, reserved around the coast of the said Island a strip or belt of land of Three Chains in breadth running inwards from high water mark (hereinafter called “the Three Chains”) for the erection of forts or batteries’.

[11] The Hon. Attorney General submitted that the ownership of the three chains by adjoining landowners is subject to the express reservation of the public right of way. Section 4 of the Act reserves to the public the right to have and enjoy through the three chains all rights of way which have been used and enjoyed by it. The Court takes judicial notice that a chain is a measurement of length which converts to 66 feet or 22 yards. In the premises, the three-chain expanse would extend for 66 yards or 198 feet from the high watermark inland.

[12] For obvious reasons, the distances on the survey plan do not include measurements from the furthest point inland to the furthest point into the seashore or the sea. However, by mathematical calculation, it is possible to arrive at a reasonable estimate of that distance. In this regard, the distance on the survey plan between PI and G - 29 feet 6 inches when added to the distance between S10 and G – 16 feet 1-inchamounts to 45 feet 7 inches. This exceeds the measurement from S10 (the furthest point from the seashore) to the line demarcating the sea south/west of that

[3]Cap. 333 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 2.

point. It follows that the breadth of the reclaimed land falls well within the three-chain limit. It is therefore caught by the provisions of the Act.

[13] The Hon. Attorney General submitted that by prerogative right the Crown is prima facie the owner of all land covered by the narrow seas adjoining the coast or by the arms of the sea, also the foreshore or land between the high and low water mark. He cited **Bulstrode v Hall**[4] and **Earl of Ilshester v Raisleigh**[5]. He contended that the owner of lands adjoining any part of the three chains, also owns the corresponding three chains,for such estate whether in possession, reversion or remainder as the owner may have in the adjoining land. He argued that Syl's Investments Limited's entitlement to the three chains abutting the subject land at Ratho Mill wasnot based on any interest, title or right it had in the adjoining land. He submitted that Syl's Investment Limited lost any such entitlement whenthe bank exercised its power of salein respect of the adjoining land and conveyed it to R & R Investment Limited.

[14] The court takes judicial notice that as submitted by the Hon. Attorney General, the disputed property by virtue of its proximity to the seashore comprises the foreshore. The learned authors of **Halsbury's Laws of England**note that a person may establish title to the foreshore by producing an express grant of it from the Crown; by providing evidence from which such a grant may be inferred; by construction of a grant in ambiguous or general terms; by possession for a period of over 60 years, (in the case of Saint Vincent and the Grenadines the requisite period would be 30 years[6]); orby proof that the foreshore has come into existence by a sudden incursion of tidal water.[7]By implication, these methods would apply in a case where the foreshore adjoins Crown lands or at common law in the absence of contrary statutory provision.

[15] On the evidence before this court, all of the reclaimed land forms part of the three chains. Syl's Investments Limited did not own the adjoining lands when reclaimedthat area of land. The adjoining land was owned by Mr. Carl De Freitas. He would be deemed to be the beneficial owner

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[4] (1663) 1 Sid 148.

[5](1889)

[6]See Limitation Act, Cap. 129 of the Laws of Saint Vincent and the Grenadines, Revised Laws 2009, sections 17 (2) and paragraph 13 of Part II of the Schedule.

[7]Vol. 29 (2019), para. 171.

and in possession of the reclaimed land while the adjoining land was registered in his name. He did not retain such ownership after the bank's foreclosure and subsequent sale to R & R Investments Limited.Ownership would have reverted to the Crown or passed by operation of law to the new adjoining owner R & R Investment Limited. In any event, Mr. Defreitas is not a party to this claim and is unable to insert himself as a claimant as this stage.

[16] Moreover, Syl's Investments Limited did not proffer any evidence that it obtained an express grant of the reclaimed land from the Crown. It has produced no documentary or other evidence from which such grant may be inferred or construed. It has not established that it possessed the reclaimed land in excess of 30 years and has not pleaded any such prescription. It did not supply proof that the foreshore came into existence by incursion of tidal water. Ithas presented no evidence on the basis of which the Court can find that possession of, legal or beneficial interest to the reclaimed land was at any time vested in it, whether by operation of the Three Chains Act, by virtue of a trust or otherwise.

[17] I am satisfied that Syl's Investments Limited at no time became the owner of the beneficial or legal interests, rights, title to or possession of the reclaimed land. It was never recognized as or deemed by law to be the owner of the reclaimed land under the **Three Chains Act**, at common law or by any implied or express trust. Syl's Investments' claim to any legal and/or beneficial ownership or possession of the reclaimed land must therefore fail.

Issue 2 -Is the Government liable to Syl's Investments Limited for trespass to or conversion of the reclaimed land?

[18] Having found that Syl's Investments Limited neither owns nor is entitled to possession of the reclaimed land, it follows that the Government is not liable to it for trespass or conversion in. Syl's Investments Limited's claim is accordingly dismissed.

Issue 3 -To what remedies if any, is Syl's Investments Limited entitled?

[19] Remedies follow liability. In the absence of a finding of liability on the part of the Crown, no remedies accrue to Syl's Investments Limited.

Costs

[20] Syl's Investments Limited has lost its case against the Hon. Attorney General. Under the Civi Procedure Rules 2000, the general rule is that costs are awarded to the victorious party. Syl's Investments Limited is liable to pay costs to the Hon. Attorney General on the prescribed costs scale.

ORDER

[21] It is ordered:

1. Syl's Investment Limited's claim is dismissed.
2. Syl's Investment Limited shall pay to the Hon. Attorney General prescribed costs of $7,500.00 pursuant to CPR 65.5(2)(b).

[22] I wish to thank learned counsel for their written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar