

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2021/0040

BETWEEN

ARDEN BILLINGHURST

AND

MARLENE BILLINGHURST

AND

ZILLIA MARTINA DUBISSETTE

CLAIMANTS

AND

**THE REGISTRAR OF THE HIGH COURT OF
SAINT VINCENT AND THE GRENADINES**

DEFENDANT

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

Appearances:

Mrs. Zhing Horne-Edwards and Ms. Chelsea Alexander for the claimants.

Ms. Moureeze Franklyn for the defendant.

2021:Jul. 19

ORAL DECISION

BACKGROUND

[1] **Henry, J.:** This is an application by Mr. Arden Billinghurst, Mrs. Marlene Billinghurst and Ms. Zillia Dubissette for an order cancelling two Deeds of Conveyance which were made in error. Mr. and Mrs. Billinghurst purchased land from Mr. Kenroy Questelles in 2000. The land was registered in their joint names by Deed of Conveyance 91 of 2001. They secured a mortgage over the subject land from CIBC Caribbean Limited ('the bank'), which was registered by Deed 92 of 2001. In 2004, Mrs. Billinghurst purported to transfer her interest in the subject property to Mr. Billinghurst by Deed

of Gift 905 of 2004. That same day, he purportedly transferred the entire parcel of land to his sister Stella Bowen by Deed of Gift 914 of 2004. Even though the mortgage had not yet been discharged the Billinghursts failed to signify this in the 2004 Deeds.

[2] Subsequently, the bank reconveyed the subject property to Mr. and Mrs. Billinghamurst, seemingly unaware that the wife had purported to divested herself of any interest in the property. The Billinghamursts realized later that they had made an error by attempting to transfer the property to Ms. Bowen before the discharge from the bank. Without first cancelling the 2004 Deeds, they sought to correct this procedural step and jointly executed a further Deed to Ms. Bowen – Deed No. 1886 of 2005. Ms. Bowen has since passed away. Her executor Zillia Dubissette has encountered legal difficulties in selling the subject property because of the missteps taken by Mr. and Mrs. Billinghamurst. She joins Mr. and Mrs. Billinghamurst in this application for an order to cancel the 2004 Deeds. They filed this claim¹ against the Registrar of the High Court who is the Registrar of Deeds.

[3] The Registrar has not opposed the application. The Court is empowered² to grant the application if there are good grounds for doing so. The application is granted.

ISSUE

[4] The issue is whether Deeds of Conveyance No. 905 of 2004 and 914 of 2004 should be cancelled?

LAW AND ANALYSIS

Issue– Should Deeds of Conveyance No. 905 of 2004 and 914 of 2004 be cancelled?

[5] **The Registration of Documents Act ('the Act')** authorizes a Judge of the High Court³ to cancel any Deed. Applications for cancellation are directed to be made by originating summons and may be heard in chambers. The Billinghamursts used a Fixed Date Claim Form to commence their claim. This is in keeping with the Civil Procedure Rules 2000 ('CPR')⁴. The parties have consented to this

¹Filed on 30th April 2021; amended Fixed date Claim form filed on 13th July 2021.

² Registration of Documents Act, Cap. 132 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 17.

³Section 19.

⁴Rule 8.1(5)(d).

matter being dealt with in chambers and to an order being made to deem the Fixed Date Claim Form a regular one.

- [6] Mr. and Mrs. Billinghamurst and Ms. Dubissette provided affidavit testimony. Mr. Billinghamurst produced certified copies of the Deeds of Conveyance mentioned in the foregoing paragraphs. Their accounts were similar and consistent and supported by the documentary exhibits and were not refuted by the Registrar. They submitted that there is no third party legal or equitable interest, right or title to the subject property which would suffer prejudice if the referenced deeds are cancelled as prayed. The Registrar has effectively agreed.
- [7] The Court is satisfied on a preponderance of the evidence that this is so and that the claimants have disclosed and addressed all relevant issues. In the circumstances, it is evident that the just and equitable order would be cancellation of the 2004 Deeds.

Costs

- [8] The parties have submitted that having regard to the nature of this matter, that it is inappropriate to award costs to any party. I agree. In the premises, each party shall bear his or her own costs.

ORDER

[9] It is ordered that: -

1. Deeds of Conveyance No. 905 of 2004 and 914 of 2004 be and are hereby cancelled.
2. Mr. Arden Billinghamurst, Mrs. Marlene Billinghamurst and Ms. Zillia Dubissette are directed to surrender to the Registrar on or before July 29th, 2021, for destruction, the originals and all copies of the reference Deeds that they have in their possession, custody or control.

3. The Registrar of the High Court is directed those entries in relation to the referenced Deeds from the Register of Deeds with immediate effect.

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

[10] I wish to thank counsel for their written and oral submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar