

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2002/0457

BETWEEN

JIM SOLOMON
(OF BARROUALLIE)

CLAIMANT

AND

DEBBIE MATTHEWS
(OF BARROUALLIE)

DEFENDANT

Appearances:

Ms. Danielle France with Ms. La Kita John for the Claimant
Mr. Stanley John Q.C. with Mr. Akin John for the Defendant

2021: 30th March
13th May

JUDGMENT

Byer, J.:

- [1] This trial took place on 30th March 2021 as the last matter that was undertaken by the court before the Easter break of the court.
- [2] At the conclusion of the trial, the date of 20th April 2021 was given as the date for the filing of the closing addresses in the matter.
- [3] Between 30th March 2021 and the date due for filing of 20th April 2021, the La Soufriere volcano on mainland St. Vincent erupted on 9th April 2021 and the court office was closed from 12th April 2021. Thus on 20th April 2021 the court office was closed, however on 20th April 2021 the Covid 19 Emergency Measures Practice Direction 5 of 2020 (3rd Reissue) would have been operational and provision was clearly made for the filing of documents by email. This Practice Direction was not revoked until 21st April 2021 when the Practice Direction No 1 of 2021 was published. It was only upon the publication of that latter Practice Direction that provision was therein made for the

cessation of time to run for compliance with orders of court during the period that a court office remained closed due to a Notice of Closure or National Lockdown¹.

- [4] On 20th April 2021 the defendant in this matter filed their submissions by the email provided to counsel despite the closure of the office. On 6th May 2021 this court had sight of submissions prepared by counsel for the claimant supported by an application seeking to rely on the provisions of Practice Direction 1 of 2021. That application has been granted.

Background

- [5] The claimant alleges that the defendant unlawfully entered a parcel of land situated at Barrouallie of which he is owner, as described in the Schedule to his Deed of Conveyance dated 10th March 1977 and registered as Deed Number 446A of 1977 (hereinafter referred to as “Deed 446A”) and erected a chattel house thereon; that he caused notice to be given to the defendant to remove the chattel house therefrom within three months, which expired on 4th July 2002 and that the defendant is still in “**possession**” of the parcel of land as trespasser.
- [6] The claimant claims against the defendant a declaration that he is the fee simple owner of the said land.
- [7] He also claims recovery of possession of the said parcel of land.
- [8] He further claims an injunction to restrain the defendant whether by herself, her servants and or agents from trespassing on the said land and for damages for trespass.
- [9] In her Defence the defendant denies that she unlawfully entered the parcel of land described in the Statement of Claim and erected a chattel house thereon.
- [10] She denies that the claimant became the fee simple owner of the said land and alleges further that at all material times she was the occupant as a tenant at will of a parcel of land owned by Claudette McKenzie who has been in undisputed possession thereof since 1985, when same was conveyed to her by Harold Hepburn under and by virtue of a Deed of Conveyance dated 21st February 1985 and registered as Deed Number 449 of 1985 (Deed 449). She denies that the claimant is entitled to the reliefs prayed for.
- [11] The defendant further Counterclaims for a declaration that she is entitled to possession of the said property, for an order cancelling Deed 437 of 1974 (being the Title Deed of the claimant's predecessor in title) and Deed 446A respectively and for an injunction restraining the plaintiff whether by himself his servants and or agents from interfering with the defendant's occupation of the said property.

¹Rule 14.1 Practice Direction 1 of 2021

- [12] By his Reply, the claimant joins issue with the Defence and in his Defence to Counterclaim, he denies that "*the subject property*" was owned by Claudette McKenzie and asserts that he owned the said property by virtue of his Deed No 446A and in which case, the defendant could not be a tenant at will of any other owner.
- [13] At the trial of this matter it became pellucid to the court that the gravamen of the claim of the claimant and therefore the integral determination for this court, is whether in fact the parcel of land which the claimant seeks possession of, is the same parcel of land which is occupied by the defendant as tenant at will of the owner, Claudette McKenzie (hereinafter referred to as "Ms. McKenzie").

The Issues

- i. Is the parcel of land occupied by the defendant the same parcel of land as described in the Deed of Conveyance of the claimant and is the defendant therefore a trespasser?
(a) If not, is the defendant entitled to the reliefs as prayed on her counterclaim.
- [14] Before this court addresses its mind to these issues, this court having had sight of the submissions of both parties makes the following observations.
- [15] The claimant has submitted that the defendant's landlord Ms. McKenzie could not have been the owner of the parcel of land that is occupied by the defendant in that Ms. McKenzie's predecessor in title did not have legal title to the same at the time it was conveyed. The claimant then went on to submit the reason for saying so but failed to indicate to the court where in his pleadings these allegations that he sought to rely on were contained. He was however very quick to point the court to issues raised by the defendant which they say were not raised on the pleadings of the defendant, a point I will come to shortly.
- [16] In any event this court wishes to make it clear, as the claimant is aware, the parties are bound by their pleadings. It was clear to this court that at trial the claimant was seeking to take the position that the defendant's landlord could not have given the defendant permission to stay on the property as no property had been validly conveyed to the said landlord, her predecessor in title having no title to the same under the will of one Luther Hepburn. It is trite to say that if the claimant wished to rely on this point, a more substantial pleading than what was stated in their defence to counterclaim would have been required where a blanket statement was made in terms of "Harold Hepburn did not own the subject property and could not convey the same to Claudette McKenzie or any other person."²
- [17] The defendant certainly would not have been put on notice as to what basis the claimant was disputing title until the filing of the witness statement of the claimant and the supplemental list of documents filed on 27th March 2020, long after this matter had come on for trial.

² Paragraph 5 of the Defence to Counterclaim filed 16th December 2002

- [18] That being said, I therefore do not accept that this is a valid argument that can be relied upon by the claimant in this matter in support of his claim and I dismiss the same.
- [19] Therefore, in moving on to determine the issues as extrapolated by this court earlier in the judgment, this court is satisfied that it is required to make both factual and legal findings in relation to the allegations of both parties.
- [20] The submission of the claimant on the issue however is, that the defendant had never pleaded that the parcel of land claimed by the claimant was different from the parcel of land that is owned by Ms. McKenzie. Having so submitted, the claimant then went on to submit that the defendant's failure was a bar to now raising the same as she must be bound by her pleadings. Interestingly enough, this is the same point which this court has just found as against the claimant.
- [21] Therefore, to settle this matter the court has also inspected the pleadings of the defendant to see whether this allegation by the claimant is in fact justified.
- [22] In the defence of the defendant, she clearly stated at paragraph 3 the description of the parcel of land that she was in occupation of with the permission of Ms. McKenzie. The boundaries having been clearly stated should have put the claimant on immediate notice as to the parcel that the defendant was claiming that she occupied. At paragraph 4, the defendant then went on to state that the parcel that was identified in paragraph 3 was conveyed to Ms. McKenzie by way of Deed 449 from the estate of Luther Hepburn.
- [23] In reply to these pleadings in the defence, the claimant's response was that the "subject property" was owned by him. In this court's mind, the reply could only have been in direct reference to the allegations contained in the pleadings of the defendant. The defendant having clearly identified the parcel of which she was in occupation, the claimant's reference to being the owner of the "subject property" under and by virtue of Deed 446A immediately put the issue of "what parcel" are the parties referring to, squarely into dispute. What was also clear was that Deed 446A had no boundaries that were in common with Deed 449. Thus, by their own pleadings the claimant had opened the proverbial door for the defendant to substantiate by evidence their prior clear pleading of the parcel they occupied.
- [24] I therefore do not agree with the submissions of the claimant that the defendant was therefore now barred at trial to lead evidence to support their claim that the claimant is not entitled to the parcel of land occupied by the defendant.
- [25] That being said, this court is therefore satisfied, that in order to make a determination on this issue that the deeds of the respective parties must be considered and construed.
- [26] When the court is required to construe the contents of a deed, it is imperative that the portion of the deed that describes or sets out the parameters of the parcel that is conveyed to the holder of that deed be examined.

[27] By Deed 446A the claimant was conveyed the following parcel of land:

“All that Lot Piece or Parcel of Land situate at Barrouallie in the Parish of Saint Patrick in the State of Saint Vincent admeasuring FIFTY-SIX (56) FEET by FORTY-TWO (42) FEET and being butted and bounded on the North by a Road on the South by a Road on the East by lands in the possession of one Ash and on the West by lands in the possession of Luther Hebon or howsoever otherwise the same may be butted bounded known distinguished or described TOGETHER with all erections thereon and with all ways waters watercourses rights lights liberties privileges and all other easements thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto.”

[28] The boundaries of the claimant's land are therefore a road on the northern and southern boundaries, on the East by lands of one Ash and on the West by lands of Luther Hebon.

[29] In contrast Ms. McKenzie was conveyed the following parcel of land by Deed 449:

“All that Lot Piece or Parcel of Land situate at Barrouallie in the State of Saint Vincent and the Grenadines comprising one (1) Lot more or less being bounded on the North by lands of William O'Garro on the South by lands of George Ash on the East by a Public Road and on the West by lands of Harold Hepburn Together with all buildings and erections thereon or howsoever otherwise the same may be butted bounded known distinguished or described TOGETHER with all ways waters watercourses rights lights liberties privileges and all other easements thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto.”

[30] The boundaries of the parcel under Deed 449 were therefore on the North by land of William O'Garro, on the South by lands of George Ash, on the East by Public Road and on West by lands of Harold Hepburn.

[31] Both parties having therefore having had their property conveyed to them by virtue of clear descriptions, this court must be guided by the natural and ordinary meaning of the words contained in the descriptions in the deeds of conveyance of both parties.

[32] As the Learned Authors in the Halsbury Law's of England stated³ *“the title deeds of the parties concerned constitute the primary evidence and must be considered first and the boundaries as indicated in the title deeds prevail if they are clear and unambiguous”*.

[33] Therefore once the boundaries are clear, extrinsic evidence is not admissible to contradict or vary clear descriptions.⁴

[34] When this court thus considers the descriptions of both parcels, it is clear that the same are clear, unambiguous and definitively stated to be referable to fixed landmarks, in particular the existence of a road.

³ Boundaries Vol 4 (2020) paragraph 329

⁴ Ibid paragraph 331

- [35] In Deed 446A, the northern and southern boundaries are a road. In Deed 449 the only boundary that is fixed by reference to a road is the eastern boundary. That in this court's mind, even at a cursory glance, immediately seems to indicate that there are fundamental discrepancies between these two parcels of land and as such that should have put the claimant on notice that they were unlikely to be one and the same.
- [36] However, the claimant has persisted in this claim and in fact sought to introduce evidence of one McArthur Robertson Licensed Land Surveyor whose evidence this court found extremely instructive.

Evidence of McArthur Robertson

- [37] Mr. Robertson was contracted by the claimant to carry out a survey of his parcel of land conveyed to him under Deed 446A. At the time that he attended the site, he discovered that a survey plan had already been carried out in October 2003 by the surveyor Rudyard Coombs for the parcel of land that was contained in Deed 449. This plan was registered and numbered P3/153 (hereinafter referred to as "P3/153").
- [38] On this plan Mr. Robertson determined, based on information from the claimant, that the parcel of land conveyed to the claimant was included in the parcel of land delineated in P3/153 but then said clearly that this was so "...except for some discrepancies on [sic] the description mainly with regard to the road."
- [39] On cross examination this witness however went on to state that the boundaries as stated in Deed 446A were inconsistent with the boundaries shown on P3/153. In fact, he categorically stated that P3/153 was entirely consistent with the boundaries of Deed 449, the deed of Ms. McKenzie. Even when this court considers that the western boundary as stated in the Deed 449 states it as being by "lands of Harold Hepburn" while P3/153 shows that western boundary to be Ronnie Jeffrey and Samuel Quow, in the unchallenged evidence of Ms. McKenzie she had this to say:
- "Mr. Harold Hepburn told me that he was the owner of a large piece of land on which two (2) houses can be built. He divided the land into two (2). He offered to sell me the top portion near the main road. The bottom piece he had given to his nephew Ronnie Jeffrey. He also stated because of the way the land is situated Ronnie would have to walk through my land to get to the main road."*
- [40] In this court's mind when the totality of the evidence of Mr. Robertson and Ms. McKenzie is considered it was indeed telling and determinative of the issue.
- [41] It is clear, that both parcels of land had one determinative boundary, a road. That road is at different cardinal points on Deed 446A as opposed to Deed 449. Even the survey plan that the claimant relies on as containing his land⁵ does not conform to the boundaries in his Deed as clearly

⁵ Witness Statement of the claimant filed 6/4/2005 para 9

described therein. Further this is more than what counsel for the claimant has called a mere inaccuracy. This is a fundamental disparity.

- [42] I therefore do not accept the contention of the claimant that these statements contained in the description are inaccuracies. This court is satisfied that the deed upon which the claimant relied is evidence, his evidence of his parcel of land. This parcel of land is not the same parcel as occupied by the defendant.
- [43] The claimant therefore cannot be entitled to a recovery as against the defendant of the parcel of which she is in occupation. This is not the parcel of land to which the claimant is entitled under his Deed 446A.
- [44] That being said, this court must now consider whether the defendant is entitled to her reliefs as stated in the counterclaim filed herein.
- [45] The defendant by her counterclaim has sought a declaration of possession, cancellation of Deed 446A and 437/1974, the title deed of the claimant's predecessor in title, as well as an injunction to stop the claimant from interfering with her occupation.
- [46] When this court considers the evidence and the submissions of counsel for the defendant and the claimant (which do not speak to the defendant's counterclaim at all) the court is hard pressed to see any evidence or more importantly legal basis for the prayer seeking a declaration of possession in favour of the defendant.
- [47] It is clear to the court that the genesis of the defendant's presence on the land has always been as a tenant of the original owner Mr. Harold Hepburn and upon his death by the express permission of the new owner Ms. McKenzie. Indeed, the defendant has been in occupation of the same for over 20 years and this court does not accept that that occupation is to be disturbed by the claimant, he not in fact being legally entitled to the parcel which she occupies.
- [48] I therefore order that the declaration that the defendant is entitled to possession is denied but pursuant to the provisions of Section 20 of the Eastern Caribbean Supreme Court Act⁶, I find that the evidence and the case of the defendant supports a declaration that the defendant is entitled to occupy the parcel of land at Barrouallie as contained in the Deed 449 of Claudette McKenzie and that I therefore further order that the claimant his servants or agents are restrained from interfering with the occupation of the defendant of the said parcel of land as contained in Deed 449.
- [49] I also do not find that there was any evidence to substantiate a finding of cancellation of the claimant's title deed, as the case is clearly that the claimant's land is not the land of Ms. McKenzie. The relief seeking the cancellation of Deed 446A and 437/1974 is therefore denied.

⁶CAP 24 of the Revised Laws of Saint Vincent and the Grenadines

[50] This case has taken some 19 years to come to trial and this court certainly hopes that this will now bring an end to the matter and parties who are not getting any younger can move on with their lives accordingly.

The order of the court is therefore as follows:

On the Claim:

1. The claim is dismissed in its entirety.
2. Prescribed Costs to the defendant on an unvalued claim pursuant to Part 65.5 CPR 2000.

On the Counterclaim:

1. The declaration for possession is denied but it is declared that the defendant is entitled to occupy the property as contained in Deed 449 in the name of Claudette McKenzie.
2. The order for the cancellation of Deeds Nos 437/1974 and 446A/1977 is denied.
3. The injunction restraining the claimant whether by himself his servants or agents from interfering with the defendant's occupation of the said property as described at #1 above is granted.
4. Prescribed Costs to the defendant on the counterclaim on an unvalued claim pursuant to Part 65.5. CPR 2000 reduced by 25% for the defendant only obtaining partial success on her counterclaim.

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar