

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2020/0092

BETWEEN

KENROY QUESTELLES

AND

VASILCA CATO-MORGAN

(formerly VASILKA QUESTELLES)

CLAIMANTS

AND

BANK OF SAINT VINCENT AND THE GRENADINES

(formerly NATIONAL COMMERCIAL BANK (SVG) LTD.)

FIRST DEFENDANT

AND

THE REGISTRAR OF THE HIGH COURT OF

SAINT VINCENT AND THE GRENADINES

SECOND DEFENDANT

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

**Appearances:**

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

Mr. Jadric Cummings and Ms. Anique Cummings for the first defendant.

Mrs. Joezel Allen for the second defendant.

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2021: Feb. 17  
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**ORAL DECISION**

**BACKGROUND**

[1] **Henry, J.:** Kenroy Questelles and Vasilka Cato were married. They are now divorced. The wife now carries the surname Cato-Morgan as she has since remarried. As part of the divorce settlement

with Mr. Questelles, Mrs. Cato-Morgan transferred to him by Deed No. 3911 of 2000, her share in a property at Fountain that they owned jointly and registered by Deed of Conveyance No. 1328 of 1995. At the time of the divorce settlement, the property was mortgaged to the National Commercial Bank ('the former bank') by Deed of Mortgage No. 1329 of 1995. The former bank has been succeeded by a new entity – Bank of Saint Vincent and the Grenadines ('the bank'). When the mortgage was fully satisfied in 2001, the former bank executed Deed of Reconveyance No. 90 of 2001 and inadvertently named Mrs. Cato-Morgan as one of the transferees although by then she held no interest in the property.

- [2] Mr. Questelles subsequently sold the property to Mr. and Mrs. A. Billingham and they in turn transferred it to S. Bowen who has since passed away. Ms. Zillia Dubissette was appointed Administrator of Ms. Bowens' estate. Mr. Questelles and Mrs. Cato-Morgan have applied<sup>1</sup> to the court for an order to rectify the referenced Deed of Reconveyance by deleting references to Mrs. Cato-Morgan as mortgagor; by replacing the pronoun reference 'their' with his; and by inserting a recital to reflect that Mrs. Cato-Morgan had transferred her interest to Mr. Questelles by Deed No. 3911 of 2000. The Bank and the Registrar of the High Court have been named as defendants.
- [3] The defendants have not opposed the claim. The Registrar submitted that she appears as a neutral party. Ms. Dubissette provided affidavit evidence<sup>2</sup> supporting the claim. All parties indicated their support for the rectifications. They also filed written submissions to like effect. An order granting rectification of the Deed of Reconveyance is therefore made in terms of the prayer in the claim.

## ISSUE

- [4] The issue is whether Deed of Reconveyance No. 90 of 2001 should be rectified?

## LAW AND ANALYSIS

### Issue– Should Deed of Reconveyance No. 90 of 2001 be rectified?

- [5] The Registration of Documents Act<sup>3</sup> ('the Act') provides the statutory framework within an application

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<sup>1</sup> By Fixed Date Claim Form filed on 10<sup>th</sup> August 2020.

<sup>2</sup> Filed on 10<sup>th</sup> August 2020 and 12<sup>th</sup> January 2021.

<sup>3</sup> Cap. 132 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

for rectification of a Deed is determined. It stipulates<sup>4</sup> that applications be made by originating summons.

Originating summonses are no longer used in the Eastern Caribbean Supreme Court. The Civil Procedure Rules 2000 ('CPR')<sup>5</sup> mandates that a Fixed Date Claim Form be used whenever any enactment provides that proceedings be initiated by originating summons or motion. This matter was initiated by Fixed Date Claim Form presumably in light of the referenced provisions of the Act and the CPR.

[6] Fixed Date Claims are customarily heard in open court. However, the Act<sup>6</sup> empowers the court to exercise its powers of rectification in chambers. The trial of this matter was scheduled for February 17<sup>th</sup>, 2021 in open court. The court invited the parties to consider the referenced provisions and to indicate whether they had objections to the court making an order that the Fixed Date Claim Form be deemed a regular claim form so that the matter could proceed in chambers. There was no objection. The Fixed Date Claim form was deemed a regular claim form and the matter proceeded summarily in chambers on the basis of the affidavit testimony and without the need for the parties to give oral evidence. In this regard, the court observed that the provisions of the Act assume primacy over the CPR which is subordinate legislation.

[7] Mr. Kenroy Questelles' and Mrs. Cato-Morgan's accounts<sup>7</sup> rehearsed the facts as summarized above. Mr. Questelles exhibited certified copies of the referenced deeds. They are requesting that references to 'mortgagors' in the Deed of reconveyance be replaced with 'mortgagor' since Mr. Questelles was the only mortgagor at that time. Their prayer for a consequential adjustment to the pronoun 'their' flows from that requested change. Their other proposed amendment of the Deed is for the inclusion of a paragraph to recite that Mrs. Cato-Morgan was not a mortgagor when the deed of reconveyance was executed, because she had by then transferred her interest to Mr. Questelles.

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<sup>4</sup>Section 18.

<sup>5</sup>Rule 8.1(5)(d).

<sup>6</sup>Section 19.

<sup>7</sup>Affidavits filed respectively on 10<sup>th</sup> August 2020, 12<sup>th</sup> October 2020 and February 12<sup>th</sup>, 2021.

- [8] Kenroy Questelles and Vasilka Questelles are described respectively as the ‘purchasers’ and ‘mortgagors’ in the Deed of Conveyance No 1328 of 1995, Deed of Mortgage No. 1329 of 1995 and Deed of Reconveyance No. 90 of 2001. In the Deed of Transfer No. 3911 of 2000 they are referred to respectively as ‘transferor’ and ‘transferee’. In her affidavits filed in this claim, Mrs. Cato-Morgan has identified herself as ‘Vasilca Cato-Morgan formerly Vasilka Questelles’.
- [9] She explained that the name ‘Vasilka’ by which she was identified in the Deed of Reconveyance and the other Deeds is not the correct spelling of her name. She averred that the correct spelling is ‘Vasilca’. She exhibited her birth certificate, decree nisi of divorce, her marriage certificate and her national identification card as proof. She explained that she had erroneously spelled her name as ‘Vasilka’ for years but since discovering the error has started using the correct rendition of her name. I am satisfied that the person named as Vasilka Questelles in the Deed of Reconveyance is the same person as Vasilca Cato-Morgan the second claimant, who has provided affidavit evidence in this case.
- [10] Mrs. Nandi Williams-Morgan filed<sup>8</sup> an affidavit in her capacity as the bank’s representative. She asserted that the bank supports the claim. The Registrar also filed an affidavit<sup>9</sup> to similar effect.
- [11] The parties submitted that the **Registration of Documents Act**<sup>10</sup> empowers the court to rectify any omission or imperfection in the registration of a deed. They are all agreed that this is an appropriate case for a rectification order to be made in the terms prayed for by Mr. Questelles and Mrs. Cato-Morgan.
- [12] The Bank submitted that the proposed rectification does not affect any third party or any person other than Mr. Questelles, Mrs. Cato-Morgan and Ms. Dubissette. It argued that the Reconveyance ought to be rectified. Similarly, the learned Registrar submitted that:
- ‘the Court ought to be satisfied definitively that sufficient proof has been produced to justify the rectifications sought by the Claimants, and that the interest and possible interest of all relevant persons are not adversely affected by the changes sought.’

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<sup>8</sup>On February 9<sup>th</sup>, 2021.

<sup>9</sup> On February 5<sup>th</sup>, 2021.

<sup>10</sup> Cap. 132 of the Laws of Saint Vincent and the Grenadines, section 17.

[13] The learned Registrar cited that case of **Whiteside v Whiteside**<sup>11</sup>, in which Lord Evershed MR warned 'rectification is a discretionary remedy which must be cautiously watched and jealously guarded.' She observed that this statement was quoted approvingly in **Sardine v De Freitas**<sup>12</sup> submitted that Mr. Questelles and Mrs. Cato-Morgan must present cogent proof to satisfy the Court that this discretionary remedy of rectification should be utilized.

[14] Mr. Questelles and Mrs. Cato-Morgan relied on the text **Halsbury's Laws of England** where the learned authors stated:

'Since an instrument is to be construed according to the intention of the parties as appearing from the whole of its contents it follows that that intention must not be defeated by too strict an adherence to the actual words, and any corrections may be made which a perusal of the documents shows to be necessary.'<sup>13</sup>

They argued that no other person will be adversely affected by the granting of the proposed orders.

[15] The court is satisfied that Mr. Questelles, Mrs. Cato-Morgan, the bank and Ms. Dubissette have advanced satisfactory evidence which justifies the making of the corrections and amendments sought. I am also satisfied that the persons whose interests are likely to be affected by the court's order have all made representations to the court by affidavit evidence and that it is just and equitable to order rectification of the Deed. The Registrar will be directed to give effect to the order.

### **Costs**

[16] The parties have agreed that this is a case in which no order should be made as to costs. Accordingly, it is ordered that each party shall bear his, her or its own costs.

### **ORDER**

[17] It is ordered that:-

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<sup>11</sup> [1950] Ch 65 at page 71.

<sup>12</sup> (1984) 34 WIR 97 at page 103.

<sup>13</sup> 4<sup>th</sup> Ed. Vol. 12 at para. 1502.

1. Deed of Reconveyance No. 90 of 2001 be and is hereby rectified by: -

- a) deleting the 's' from the word 'mortgagors' throughout the deed;
- b) deleting the words 'and Vasilka Questelles' from the first paragraph and the backing of the Deed;
- c) replacing the word 'their' with the word 'his' in the penultimate line of the first paragraph of the Deed;
- d) inserting the words 'and Vasilka Questelles' in the first recital of the deed after the word 'mortgagor' wherever it appears; and
- e) inserting a new recital between the first and second recitals, in the following terms: -

'AND WHEREAS by a Deed of Transfer dated the 12<sup>th</sup> day of December 2000 and bearing registration number 3911 of 2000 Vasilka Questelles transferred her interest in the said hereditaments to the mortgagor subject to the said mortgage'.

2. The Registrar of the High Court is directed to make the foregoing corrections in the Register of Deeds in respect of Deed of Reconveyance No. 90 of 2001.

3. Each party shall bear his, her or its own costs.

[18] I am grateful to counsel for their written submissions.

Esco L. Henry  
HIGH COURT JUDGE

By the Court

Registrar