

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

COMMONWEALTH OF DOMINICA

(CIVIL) -

DOMHCV 2015/0127

BETWEEN:-

**SYLVESTER JOSEPH
JOAN VERONICA PAUL
(As Personal Representatives of Ophelia Cuffy)**

Claimants

And

ALBERT JOSEPH

Defendant

Before: The Hon. Justice M E Birnie Stephenson

Appearances:

Ronald Charles for the Claimants

Stephen Isidore of CC Law Practitioners for the Defendant

2019: March 31
2020: May 15

RULING ON WRITTEN SUBMISSIONS

[1] **Stephenson J.:** This is a long outstanding application brought by the defendants to strike out the claim brought by the claimants herein on the ground that the claim discloses no reasonable basis for bringing the claim¹.

[2] It is necessary to look at the background of this case.

Background

[3] The claimants have filed a fixed date Claim seeking the following relief:

¹ The delay is due to the fact that the file was inaccessible as it was among those files in the civil court which was locked down due to the mold infestation. This court apologises to counsel and the parties for the long delay in handing down this decision.

- a. A declaration that the property at Tareau where the dwelling house of Ophelia Cuffy deceased stands and occupied by the defendant form part of the estate of Ophelia Cuffy;
- b. An order that the defendant deliver possession to the claimants that the property at Tareau where the dwelling house of Ophelia Cuffy deceased stands and occupied by the Defendant;
- c. An injunction restraining the Defendant from trespassing.”²

[4] The claimants are the administrators of the estate of Ophelia Cuffy having obtained letters of administration on the 4th day of March 2015. The grant is recorded in Book of Probates NR2 Folio 224 and is attached to the fixed date claim form.

[5] The claimants contend that Ophelia Cuffy deceased is the owner of land located at Tareau which was gifted to her by her brother Sylvester John. That Ophelia Cuffy migrated to the United Kingdom in the early 1960s and returned to Dominica in 1989. That she built a two bedroom house on the portion of land gifted to her by her brother and that she resided there until her death in 2003.

[6] That Ophelia Cuffy was the mother of seven children and after her death Andrew Joseph one of her sons took up residence in his mother’s house and lived there until he died in February 2014.

[7] The claimants contend that in or about January 2014 the defendant who is the grandson of Ophelia Cuffy and son of Andrew Joseph entered into and took possession of the house owned by Ophelia Cuffy and occupied by his father Andrew Joseph. Further, that at all material times Andrew Joseph occupied the house at Tareau only with the permission of his mother Ophelia Joseph.

[8] The claimants have served the defendant with notices to quit and the defendant has failed and or refused to quit and deliver up the said premises. The claimants therefore seek the reliefs as set out above in paragraph 2.

[9] The defence to the claim was filed on the 30th November 2015 out of time with the leave of the court.

[10] The defendant in his defence contends as follows:

- a. That he is the fee simple absolute owner in possession of the property containing 3216 square feet with a building thereon;

² Extracted verbatim from the Fixed Date Claim filed herein on the 3rd November 2016

- b. That Ophelia Cuffy deceased and Andrew Joseph Deceased were his predecessors in title;
- c. That the disputed property was jointly occupied by Ophelia Cuffy and her son Andrew Joseph;
- d. That when Ophelia Cuffy commenced joint possession of the property she was an elderly woman about 70 years old and that she unable to manage the property on her own and that she convinced and relied upon Andrew Joseph to assist her in the management of the property;
- e. That the dwelling house was constructed by Ophelia Cuffy and Andrew Joseph jointly, that Ophelia was in England when the house was being constructed and she would remit money to Andrew Joseph for use in the construction of the building;
- f. That Andrew Joseph pooled his money with the money sent by his mother and constructed the house. That it was Andrew who retained and supervised the construction workers;
- g. That there was an agreement with Andrew Joseph and His mother Ophelia Cuffy that he would assist his mother with the construction of the house and that based on his agreement to take care of his mother and to construct and manage the property that both he and his mother would occupy the property jointly and that Ophelia Cuffy would enjoy the property for her life and that Andrew would be the fee simple owner of the property;
- h. That relying on this arrangement with his mother Andrew Joseph acted and proceeded to pool his resources with his mother and constructed the property and upon completion of the construction he and his mother lived in the property jointly until his mother death and thereafter until his death.

[11] The defendant contends and maintains in his statement of defence that Ophelia Cuffy was not the sole owner of the property as alleged by the claimants and that together with Andrew Joseph she exercised control of the property and was jointly in possession of the property with Andrew Joseph from 1998 until her death in 2003.

[12] The defendant also contends that after Ophelia Cuffy died his father Andrew Joseph remained in sole possession and control of the property and that he made an *inter vivos* gift to the defendant. The defendant says that he lived in the house with his father from September 2011.

[13] The defendant in his statement of defence says that his father went to the United Kingdom in August 2011 and suffered a stroke and that upon his return to Dominica he was bedridden and could not help himself. That his father promised him the property in return for his taking care of him. That he the defendant relied on his father's promise and moved into the premises with his live in partner and took care of his father until his death.

[14] The defendant further contends that after his father's death he continued possession of the property and effected repairs and improvements on the property.

[15] The defendant maintains that the property does not fall within the estate of Ophelia Cuffy as alleged by the claimants. That he is now the sole occupant and owner of the property and has been in undisturbed possession of the property jointly with his father since 2011. That his father Andrew Joseph has been in possession of the property as his own since 1998.

[16] The claimants filed a reply to defence on the 23 December 2015 and essentially denied the defendant's defence and maintain that the land was given to Ophelia Cuffy solely and that Albert Joseph occupied the property not as owner by as Licencee of Ophelia Cuffy.

[17] On the 23rd July 2015 this matter was sent to mediation which mediation was not successful.

[18] The matter came up for directions on the 14th January 2016 and directions were given and the matter fixed for trial for two days.

[19] The claimants contend that Albert Joseph never acquired any property right or interest in the property as a result of his occupation and is not and never was the fee simple absolute owner in possession of the property and that his continued occupation is a trespass.

[20] On the 2nd June 2016 the defendant by way of notice of application applied for the claim to be struck out on the grounds that the statement of claim fails to disclose any reasonable basis for bringing the claim.

[21] An affidavit was sworn to by Ernette Kangal the counsel representing the defendant. In a nut shell counsel averred that the interest asserted by the claimants for a declaration must be based on some right which the claimant has established or shown to be entitled to which the court is empowered to grant. That in order for the property which the claimants are seeking to claim to form part of the estate of Ophelia Cuffy it must be vested in her at the date of her death. It was submitted that Ophelia Cuffy must have either held legal title to the relevant property in the form of documentary title thereto or by way of Certificate of Title. Miss Kangal averred that "Actual possession of the relevant property does not serve to vest the Deceased with the legal Title thereto. It only entitles her to apply for legal title"³

³ Paragraph 7 of the Affidavit of Ernette Kangal dated and filed on the 2nd June 2016

[22] Miss Kangal further averred that the claimants have failed to assert any other interest in the land beyond the fact that Ophelia Cuffy was the owner in occupation of the disputed property at her death. That there is no Certificate of Title or documentary title which has been referred to or exhibited by the claimants in the witness statements or list of documents and in the circumstances the claimants cannot claim that they are vested with legal title to the property. It was averred that the claimants have not disclosed any basis upon which the property may be vested in them or the estate of Ophelia Marie.

[23] Miss Kangal in her affidavit in support averred that a claim of trespass or for recovery of possession is vested in the person with the right to possession or with actual possession. That given that legal title to the property is not vested in the claimants or in Ophelia Cuffy or her estate; they do not have the right to possession.

[24] The claimants themselves in response filed an application to set aside the defendant's application to strike out the claim and for an order that the defendant vacate the premises, for an injunction and for a declaration that they be permitted to continue administering the estate of Ophelia Cuffy. This is surely an unusual choice of action. One would have thought that if an application is made the respondent to the application would usually file a response opposing the application not file an application to have that application set aside.

[25] The parties were ordered to file submissions however claimants have failed to file any. This ruling is based on the law as the court understands it with the assistance of the submissions filed by the applicant (defendant).

[26] In the directions order it is noted that it was ordered that there be no further applications to be made or filed in this matter after the 15th May 2016 and the application which has drawn the viability of this action to the court's attention was filed after the expiration of time to file any further applications. It is however noticed that there is a serious question as to whether the claimants can maintain the claim. This court is cognisant of the fact that the court is clothed with a discretion to strike out matters before the court of its own motion where the claim does not disclose a cause of action. Further when the Overriding Objective is taken into consideration the court is required to consider saving expense.

The application

[27] The application brought by the defendant is pursuant to Part 26.3(1)(b) Civil Procedure Rules 2000 which states

” 26.3(1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –

...

(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim; ...”

[28] In civil litigation, the courts have the power to remove the whole or part of a statement of case. The power to do so may be exercised on the application of an opposing party in the litigation where

(a) the statement of case (usually particulars of claim or a defence) does not disclose a cause of action, such that there is no reasonable ground for bringing or defending the claim;

(b) the pleading does not contain a sufficient precise statement of the facts upon which the claimant relies; and

(c) inadequate reasons are given for a denial in a defence, or (d) the proceedings are an abuse of the process of the court.

[29] It is now well established law and practice in our jurisdiction that the striking out of a party’s statement of case, or most of it, is a drastic step which should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that the claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court.⁴ The court must therefore be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial.

[30] In the present case, the disputed property subject of the case at bar is unregistered land. The claimants are seeking an order of court for possession, an injunction and a declaration that the said property falls within the estate of Ophelia Cuffy deceased.

[31] Where property is unregistered can a person bring an action for possession of the said property? The right to commence proceedings in trespass or for possession of land is one which is vested in a registered proprietor of land. Learned Counsel on behalf of the defendant submitted that “the right to claim ownership

⁴ Baldwin Spencer –v- the Attorney General of Antigua and Barbuda et al Civil Appeal no 20A of 1997 at page 5

of the disputed property and to have this right protected by the court remains vested solely in the title held by the registered proprietor.”⁵ Counsel further submitted that “the court is not empowered to grant a declaration of ownership on a claim brought by the personal representative of a deceased who at the time of death was vested with no legal title to the property⁶.”

[32] It is contended by the applicant that the claimant’s assertion of their claim must be based on some right which a claimant can or has established or is shown to be entitled to and to which the court is empowered to grant. The applicant submits that in order for property to form part of an estate it must be vested in the decedent either in the form of documentary title thereto or by certificate of title. Actual possession of the property does not serve to vest the deceased with legal title thereto it only entitles her to apply for legal title and this applies to persons seeking to claim under that person. They are not vested with a title but instead what they have is an entitlement to benefit from the entitlement of the deceased in their application for title. I agree with counsel’s submission in this regard.

[33] As it regards the claim for trespass, it is the applicant’s contention that he went into possession of the property in January 2014, when he did so, he did so at the invitation of his father who was at that time in sole possession of the property. That Ophelia Cuffy on whose behalf the claimant’s are seeking to bring the claim died in 2003 and the letters of Administration obtained by the claimants was granted in March 2015 therefore, neither the claimants nor the estate of Ophelia Cuffy were in actual possession of the property at the date of his entry into possession. Further that the claimant did not have the right to possession as legal title to the property had not been vested in the estate when he entered the said property.

[34] The applicant contends that the claimants do not have a legal basis to bring the matter before the court for declaration of ownership or for trespass or otherwise as they do not have a right vested in them which is capable of being the subject of a declaration.

[35] In the case of **Albert Guye –v- David George**⁷ at first instance Justice Cottle stated “*I interpret the position to be that an owner of land who does not hold a certificate of title is prevented from bringing an action to evict a squatter after 12 years of adverse possession. However if he holds a certificate of title he can rely on the indefeasibility conferred by his certificate of title unless the squatter obtains the title under the Real*

⁵ Written submissions filed by the applicant (defendant) on the 5th October 2019 at paragraph 14

⁶ Ibid at paragraph 15

⁷ **DOMHCV2009/0400**

*Property Limitation Act y applying for such a title under the provision of S 34 of the Titles b y Registration Act*⁸

[36] In the case of **George –v- Rosalie Estates** ⁹ it was held that in the situation where the claimant did not have the Certificate of Title that the cause of action was not allowed. It was held that you cannot use what ever rights you may have acquired without first having obtained a certificate of title.

[37] In the case at bar, the claimants are seeking to enforce rights which they may have accrued as personal representative of Ophelia Cuffy, or rather they are seeking to enforce rights which may have been accrued by Ophelia Cuffy prior to her death. However based on the authorities as I understand it these rights cannot be enforced unless they first have a certificate of title. The rights which the claimants are seeking to enforce are rights which would be derived solely from a certificate of title which they do not have and in the circumstances of the case the rights which they seek to enforce are unenforceable.

[38] Accordingly in the circumstances of the case at bar the claimants have not basis for bringing the matter before the court and this court therefore has no other choice but to dismiss the matter as being hopeless and incapable of succeeding.

[39] Costs to be the defendant/applicant's costs to be assessed if not agreed.

M E Birnie Stephenson

High Court Judge

[SEAL]

BY THE COURT

Registrar

⁸ Ibid at paragraphs 16 and 17 of the judgment

⁹ [1965] 13 WIR 401