

EASTERN CARIBBEAN SUPREME COURT

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV 2010/0089

Between:

**ALVIN CUFFY
(Administrator of The Estate of Ermine Cuffy, Deceased
Acting Herein by His Duly Constituted Attorney on Record
GLORIA MILLER)**

Claimant

and

**JOY CUFFY
(Aka JOY GOODRIDGE)**

Defendant

Appearances:

Mr Parnell Campbell, QC with him Ms Mandella Campbell for the Claimant
Mr Emery Robertson for the Defendant

2017: January 17,
2018: May 30

JUDGMENT

- [1] **ROBERTS, J. [Ag.]:** In a fixed date claim form filed on 3rd August 2010, the claimant, Alvin Cuffy, administrator of the estate of Ermine Cuffy, deceased, claimed against the defendant, Joy Cuffy aka Joy Goodridge of South Rivers, an order that the claimant was entitled to possession of the property situate at South Rivers, the subject matter of Grant

Number 147 of 2009. The claimant also sought an order that the defendant give up possession of the property; pay to the claimant the rents collected from the Government of St Vincent and the Grenadines for the use and occupation of space in the building used as a post office; an injunction to restrain the defendant whether by herself, her servants or agents from remaining in the premises, and costs.

- [2] In his statement of claim the claimant related that Gloria Miller was appointed the attorney of Alvin Cuffy by a power of attorney dated 5th November 2009 and registered as Number 300 of 2009. Ermine Cuffy died intestate on 18th February 1996 and letters of administration of her estate were granted to the claimant on 20th August 2009 (No 147 of 2009).
- [3] The claim is that Ermine Cuffy became the owner of the parcel of land by virtue of a deed of assent registered as deed number 3255 of 1988. There was a two storey building on the land. The upper storey of the building was occupied by the defendant and the lower storey was rented to the Government of St Vincent and the Grenadines to house the South Rivers Post Office. On 24th November 2009 the defendant was given a notice to quit by 28th February 2010. She was also asked to account to the claimant for the rent collected from the Government for the use of the post office. At the time of the claim the defendant was still occupying the premises and she had not accounted for the rent.
- [4] In her defence, Joy Cuffy denied that the claimant was entitled to possession of the property situate at South Rivers, the subject matter of Grant number 147 of 2009, and consequently he was not entitled to an order for possession of the land. The defendant also denied that the claimant was entitled to collect any rents from the Government of St Vincent and the Grenadines for the use and occupation of space in her building since she was the lawful owner of the building. The defendant stated that she had been renting the building to the Government and as a consequence she was not liable to account to the claimant for moneys received for the rental of the premises.

[5] The defendant denied that the claimant was entitled to any relief by way of injunction or otherwise as she was lawfully in possession of same for the statutory period in excess of 12 years. She stated that by virtue of the Limitation Act and the Possessory Titles Act, she was granted a title thereto being registered as Deed No 527 of 2009. The title deed was obtained following the Possessory Titles Act No 38 of 2004 in Suit No 11 of 2008 and was granted by order of the High Court on the 3rd November 2008 before Honourable Justice Monica Joseph sitting in Chambers.

[6] The defendant stated,

“In answer to paragraph 2 of the statement of claim that the original owner of the land was Benjamin Goodridge who gave the land to Ermine Cuffy, his niece, Ermine Cuffy later gave the land to Alwyn Cuffy who later gave it to Selwyn Cuffy. Selwyn Cuffy and I built up the property and lived there until his death and I made a title for the property. No title deeds were ever made in respect of the said property to the best of my knowledge but my deceased husband Selwyn Cuffy who is a brother of both Alvin and Alwyn Cuffy occupied the property exclusively and collected the rent from the Government for the use of the post office”.

[7] The defendant denied the “legal efficacy” of the grant of letters of administration of the estate of Ermine Cuffy since under the Possessory Titles Act No 38 of 2004 she “obtained a title thereto since 3rd November 2008 prior in time to Grant No 147 of 2009...”. The defendant asserted that she had a “good, valid and lawful title to the said hereditaments for 3,125 square feet of land described as:

“All that lot piece or parcel of land situate at South Rivers 3,125 sq. ft of land and butted and bounded on the North by the Main Road (Public Road) on the South by lands of Glenda Williams, on the East by an existing concrete access road and on the West by lands of Mollie Spencer and more particularly set out in a plan drawn by Keith Francis Licensed Land Surveyor which was approved and lodged at the Land and Survey Office on the 12th February 2008 under C17/11”.

The defendant reiterated that she and her husband, Selwyn Cuffy built the dwelling house on the premises.

- [8] In his reply the claimant denied that the subject building was built by the defendant but rather he asserted that it was built by her husband, Selwyn Cuffy, with funds provided by the children of the deceased, Ermine Cuffy, all of whom resided out of St Vincent and the Grenadines.

Written Submissions

- [9] The claimant submitted that the case raised “two fundamental and profound issues of law”, namely:
1. “In what circumstances, if any, can one co-beneficiary establish adverse possessory rights over a parcel of land in St Vincent and the Grenadines against another co-beneficiary so as to extinguish the rights of the latter mentioned co-beneficiary in favour of the former mentioned co-beneficiary under the Limitation Act Cap 129 of 2009.
 2. In what circumstances, if any, can a challenge made in proceedings launched on 3rd March 2010 succeed against a declaration of Possessory Title issued by the High Court on 23rd January 2009, where the said Declaration of Possessory Title had been obtained without any opposition under the Possessory Titles Act Cap 328 of 2009.”
- [10] The claimant submitted that, “the defendant as the widow of the co-beneficiary Selwyn Cuffy, herself became in her own right a co-beneficiary of estate of Ermine Cuffy”. The submission, was that one co-beneficiary cannot claim adverse possession against another co-beneficiary in respect of the same property which forms part of the corpus of the estate of the intestate in question. In order to relate it to this case the claimant submitted that “... no co-beneficiary of the Estate of Ermine Cuffy Deceased could set up or rely on adverse possession as against any other co-beneficiary of that estate. Thus neither Selwyn Cuffy nor his personal representative ... could assert or could have asserted possessory rights to any part of the estate of Ermine Cuffy”.
- [11] The second submission of the claimant was that the defendant’s application under the Possessory Titles Act had “the taint of fraud”. It was pointed out to the Court that “the defendant’s application statements under the Possessory Titles Act are almost all false,

misleading and were obviously in breach of the defendant's duty of candour as stipulated by the Act". Section 26 of the Possessory Titles Act Cap 328 was drawn to the attention of the Courts:

"26 Declaration of title obtained by fraud.

- (1) If in the course of any proceedings under this Act any person fraudulently, knowingly or with intent to deceive makes, assists, joins in or is privy to the making of any material false statement or representation, or suppresses withholds or conceals or assists or joins in or is privy to the suppression, withholding or concealing from the court of any material document, fact or matter of information, any declaration of title obtained by means of such fraud or falsehood, shall be null and void except as against a bona fide purchaser for valuable consideration without notice and a second or subsequent mortgage in respect of that piece or parcel of land."

[12] It was pointed out that no time limit was specified in the Act for voiding of a title obtained in breach of the statutory obligations for truthfulness, honesty, and candour on the part of an applicant whose application has been approved. It was submitted that "this court quite clearly has, and in our respectful submission ought to exercise the jurisdiction to nullify the title granted to the defendant as the claimant has urged". "The reasoning of **Miller v Miller**¹ strongly suggests that the manifest misstatements made by the defendant in her application for title under the Possessory Titles Act ought to suffice to totally disqualify the Defendant from retaining the possessory title she received from the court by her false statements."

[13] The defendant submitted that the claimant was not entitled to any relief for the following reasons:

1. The defendant had acquired title in accordance with the Possessory Titles Act, Cap 328 and the title if any of the administrator was barred and he had no right to recover possession as the same was also extinguished under the Limitation Act Cap 90 of the laws of St Vincent and the Grenadines".

¹ SVGHPT2012/0041 (unreported case from St Vincent and the Grenadines)

2. The claimant as administrator of the Estate of Ermine Cuffy had no right to recover possession of the land in his capacity of such administrator.
3. The defendant and her predecessors in title have always been in possession and have at no time recognized Alvin Cuffy as being entitled to possession and the mere fact that the claimant is seeking to recover possession is an acknowledgment that Joy Cuffy -Goodridge is in possession.
3. The defendant pointed out to the court that her title was indefeasible by virtue of section 25 of the Possessory Titles Act. Section 25 provides –

25. Indefeasible title

The person named in an order containing a declaration of possessory title is entitled to an indefeasible title –

- (a) three months after the date of publishing particulars of the order pursuant to section 22 where there is no appeal;
- (b) upon the determination of the appeal where there is an appeal and the appeal is made within the time prescribed in section 24 [...appeal to the Court of Appeal no later than three months after the order or decision is made or given"].

Evidence and Analysis

[14] I had the opportunity of taking oral evidence of the witnesses. The claimant in cross examination asserted that the property belonged to his mother. He had the title deed but he did not have it with him. “My brother and sisters sent me to claim the land for them”. He had lived abroad from 1985 to 2015. He returned to St Vincent in 2016. He visited St Vincent 4 to 5 times during his time away and during his visits, “ [he] passed there at South

Rivers". He asserted that the title deed "is fraud" and that he had "the real title deed". He stated that he did "not want the property. It belongs to the family".

[15] The defendant in cross examination stated that she and her husband, Selwyn, lived in the property. She stated that she "was living there alone with her children after the death of Selwyn". She stated that her sole possession of the property was only after the death of Selwyn. She admitted that in an affidavit in support of her application for possessory title no village or parish was identified in paragraph 2. In the notice no village was shown nor did the notice say "South Rivers".

[16] Brenton Cuffy, one of the children of the defendant, also gave evidence in support of the defendant. In cross examination he refuted that his father ever received money from his siblings abroad to build the property.

[17] The evidence of the claimant was not reliable. He had been away from St Vincent for much of the history of the land. He had visited only four or five times during that period and on those visits had passed by the property. He did not seem to know much about the history of property. The court did not find this witness very helpful. On the other hand the defendant appeared to me to be a witness of truth and one on whom the court could rely.

Findings of facts

[18] The following are my findings of facts -

1. The building on the disputed parcel of land was constructed by the defendant and her husband, Selwyn Cuffy. I reject the assertion in paragraph 10 of the claimant's reply that the building was built with funds provided by Selwyn's Cuffy's siblings. There was no evidence to support this assertion and I do not find it credible.

2. The defendant is the owner of the land by virtue of an order declaring possessory title in accordance with the Possessory Titles Act, Cap 328 of the Laws of Saint Vincent and the Grenadines.
3. Application was made to the High Court of Justice for a declaration of possessory title to the parcel of land and the legislation was followed, including notice, to the satisfaction of Honourable Justice Monica Joseph who made the order declaring possessory title on 3rd November 2008.
4. There was due notice under the Act including the time within which challenges could be made to the application. I find that no challenge was made.
5. There was no appeal to the order of the Court within the 3 months allowed for appeal under the Act, or at all.
6. I do not find any material false statement or representation in the proceedings under the Possessory Titles Act that could form the basis for the claimant's claim that the declaration of title was obtained by fraud.
7. The claimant has fallen woefully short of proving that there was any fraud perpetrated in the application or order in favour of the defendant declaring title under the Act.

Fraud

[19] I feel it incumbent to address the allegation of fraud in the claim. The claimant's allegation of fraud surfaced in the reply of the defendant. At paragraph 7 he states... "the Statutory Declaration which the defendant obtained was obtained by fraud...". In paragraph 9 of the reply it is stated, "As to paragraph 7 of the defence, the claimant will contend that the defendant obtained title by fraud ..." No particulars of fraud were set out. In his witness statement at paragraph 9, the claimant stated,

"The Possessory title deed that the defendant obtained was obtained by fraud, as the Defendant failed to disclose the true history concerning the ownership of the land and her occupation thereof. The defendant did not even mention the joint occupation of the subject property by her deceased husband Selwyn Cuffy. As a

matter of fact, the Defendant used her maiden name and not her married name in her application for the declaration of possessory title.”

- [20] The Court is mindful that in a civil action where fraud is alleged, the standard of proof to be applied is that applicable in civil actions generally, namely, proof on the balance of probability, and not the higher standard of proof beyond all reasonable doubt required in criminal matters. However, on the evidence presented by the defendant, he has failed in proving on a balance of probability that there was fraud as claimed. He who alleges must prove. To merely assert such allegations, which are in essence conclusions unsupported by a factual basis, is not sufficient to ground a claim in fraud.

Conclusion

- [21] Given my findings of fact, the claimant’s submission of law as to co-beneficiaries is not applicable to the facts of this case. It should be noted that the claimant was granted letters of administration after the defendant was declared to be the owner of the land under the Possessory Titles Act. The declaration was not challenged and became indefeasible 3 months after. I have held that there was no material false statement or representation such that would bring section 26 [declaration of title obtained by fraud] into play in this case. In any event there was no evidence to support the claim of fraud.
- [22] Under the circumstances, I conclude that the claim by Alvin Cuffy for an order that he is entitled to possession of the property described in his claim fails. It follows that the consequential applications also fail. Therefore the claims against the defendant to give up possession, payment of rent and an injunction restraining the defendant from remaining in the premises, all fail.

Order

- [23] I order as follows:

1. The claimant's application for possession of the parcel of land in question is refused.
2. The consequential reliefs sought by the claimant under the claim are all refused.
3. The claimant's application is dismissed.
4. Prescribed costs based on a value of \$50,000.00 amounting to \$7,500.00 to be paid by the claimant to the defendant.

**Sir Clare K. Roberts, QC
HIGH COURT JUDGE (Ag)**

By the Court

Registrar