

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2006/0018

BETWEEN

DENNIS HADAWAY

CLAIMANT

and

AARON BUSHAY

FIRST DEFENDANT

ROBIN PUNNETT

SECOND DEFENDANT

Appearances:

Mr. Andreas Coombs holding papers for Mr. Carlyle Dougan Q.C. for the claimant. Ms. Samantha Robertson for the first defendant.

Mr. Sten Sargeant for the second defendant.

2017: Jun. 13

BACKGROUND

[1] **Henry, J.:** The parties in this case, Dennis Hadaway, Aaron Bushay and Robin Punnett, are locked in a long-standing dispute over ownership of land situated at Queensbury in Saint Vincent and the Grenadines. When Mr. Bushay was being cross-examined, he revealed that he was unable to read. By then, the witness statement which he had signed in 2007 had been admitted into evidence. Learned counsel for Mr. Hadaway applied for the witness statement to be struck out since it did not contain any indication that Mr. Bushay was unable to read.

[2] Mr. Bushay and Mr. Punnett resisted the application. They argued that the witness statement complied , with the requirements of rule 29.5 (1) of the Civil Procedure Rules 2000 which outlined the requisite specifications for witness statements.

ISSUES

[3] The issues are:

(1) Whether the law stipulates that witness statements of persons who are unable to read should contain an attestation clause to this effect?

(2) Whether Mr. Bushay's witness statement should be struck out?

Issue 1 - Does the law stipulate that witness statements of persons who are unable to read should contain an attestation clause to this effect?

[4] Mr. Hadaway submitted the Illiterates Protection Act¹ ('the Act') mandated that an attestation clause be included in official documents including witness statements signed by illiterates. He argued that the attesting witness must endorse the document to signify that he or she had read the statement to the maker of the document. He contended further that the witness statement should have been presented in another format.

[5] Mr. Bushay and Mr. Punnett argued that the witness statement is not invalidated by the absence of an attestation clause. They submitted that CPR 29.5 contains no requirement for such attestation clause. They contended that the witness statement was signed in conformity with CPR 29.5. Mr. Bushay submitted that the Act defined 'illiterate' as someone who is deaf and dumb and

he is neither. Mr. Punnett contended that the Act is restricted to dealings with land and is not applicable in the instant case. He argued that Mr. Bushay told the court under cross-examination that the witness statement was read over to him and that should suffice in the circumstances.

[6] Mr. Bushay's witness statement was filed on 14/12/07. It contained Mr. Bushay's signature which he said he recognized. During examination in chief he asked that it be admitted as his evidence in chief. He did not indicate that he could not read or that the witness statement was read to him. It was not

1 Cap. 288 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

read to him at that juncture. This court does not know if this is the same document that was read to him before he signed, or (by extension) whether he accepts the contents as being his and true and correct.

[7] The Act defines 'illiterate person' and 'document'² as follows:

'illiterate person' includes a person who, at the time of the execution or purported execution of the document concerned, was unable to write his name, whether temporarily or permanently and whether by reason of infirmity of mind or body or by reason of any physical or mental disability or for any reason whatsoever.'

'document' means -

- (a) any deed whereby an illiterate person conveys land or renders himself liable to any obligation;
- (b) any agreement for the sale or purchase of land by an illiterate person;
- (c) any agreement made with an illiterate person for a lease of land, whether the rent is reserved as a yearly rent or otherwise;
- (d) any promise in writing by an illiterate person to answer for the debt, default or miscarriage of another person; and
- (e) any promissory note for an amount exceeding four dollars and eighty cents made or indorsed by an illiterate person;'

[8] The definition of illiterate person does not exclude Mr. Bushay. It makes no reference to persons who are deaf and dumb. In any event, the meaning of 'document' removes witness statements from contemplation under the Act. In other words, the provisions of the Act do not apply to witness statements or the issue at bar.

[9] The parties relied on CPR 29.5(1J)(a)- (D. It provides: '1. A witness statement must-

- a. be dated;

b. be signed or otherwise authenticated by the intended witness;

c. give the name, address and occupation of the witness;

2 Section 2 of the Act.

d. include a statement by the intended witness that he or she believes the statements of fact in it to be true;

e. not include any matters of information or belief which are not admissible or, where admissible, must state the source of any matters of information or belief;

f. so far as reasonably practicable, be in the intended witness' own words; and

g. sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document.'

[10] Mr. Bushay's witness statement was signed, dated, contained his name and address, had a certificate of truth attached to it and indicated that it contained matters within his knowledge information and belief. In these respects, it conformed with CPR 29.5(1) (a) - (e). I do not know if it is in his own words. It is therefore not possible to say if it satisfies paragraph (D). The CPR does not address the issue of signing of witness statements by persons who cannot read. Neither do the practice directions made under the rules.

[11] However, the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act³ makes provision for aspects of the English rules of court to be exercised in this jurisdiction. Section 11 (1) states:

'The jurisdiction of the High Court in civil proceedings and in probate, divorce and matrimonial causes shall be exercised in accordance with the provisions of this Act and any

other law in operation in Saint Vincent and the Grenadines and rules of court, and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may

be **in conformity with the law and practice** administered in the High Court of Justice in England on the 27th December, 1989.' (bold added)

[12] Similar provision is made in the Evidence Act⁴ in relation to the admissibility of documents. Section 3 provides:

'Whenever any question shall arise in any criminal or civil proceedings whatsoever in or before any court, court martial or tribunal, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence, touching the admissibility or sufficiency of any evidence, the competency or obligation of any witness to

³ Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009, which came into effect on 28th April, 1970.

give evidence, the swearing of any witness, the form of oath or affirmation to be used by any witness, the admissibility of any question put to any witness, **the admissibility or sufficiency of any document, writing**, matter or thing tendered in evidence, such question shall, except as provided for in this Act, be decided according to the law and practice administered for the time being in England with such modifications as may be applicable and necessary in Saint Vincent and the Grenadines.' (bold mine)

[13] The combined effect of those sections is to import into the practice of the court in Saint Vincent and the Grenadines, any rule of court for which no special provision is made in the domestic rules, and specifically the law and practice as to the admissibility or sufficiency of any document.

[14] The English practice directions ('PD'5) stipulate that a witness statement made by a person who cannot read or write must contain a certificate by an 'authorised person⁶' stating that the witness statement has been read to the witness, who appeared to understand and approve its contents; that the statement of truth has been read to the witness; that he appeared to understand it and the consequences of making a false statement and that he then signed in the presence of the authorized person.

[15] In accordance with the referenced provisions of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act and the Evidence Act, this practice extends to Saint Vincent and the

Grenadines. It requires that an attestation clause be appended to such a witness statement, describing the conditions under which it was recorded and signed. This practice was not adopted in relation to the taking and recording of Mr. Bushay's witness statement.

Issue 2 - Should the witness statement be struck out?

[16] Mr. Hadaway submitted that the witness statement should be struck out as being unsafe and unreliable. Mr. Bushay and Mr. Punnett disagreed. The court may strike out or refuse to admit a witness statement into evidence which has not been prepared according to those standards.⁷ In

⁵ PD 32 para. 3A.1.

⁶ That is someone who is able to administer oaths and take affidavits.

⁷ English PD 32.

exercising any discretion, the court must give effect to the overriding objective of the Civil Procedure Rules to act justly.

[17] To strike out the impugned witness statement would be to deny Mr. Bushay the opportunity to put forward his case as outlined in the witness statement. To allow him to rely on it as his evidence would require additional evidence regarding how it was secured. Examination in chief

having been closed, it is doubtful that this can be satisfied without unduly causing prejudice to the other parties, particularly the claimant.

[18] All parties were represented by competent legal counsel who would have no doubt appreciated the significance of following the rules of court. In all the circumstances, I rule that Aaron Bushay's witness statement be struck out for non-compliance with the referenced rule of court.

Esco L. Henry

HIGH COURT JUDGE

By the Court

Registrar