

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV1999/0605

BETWEEN

GUARDSMAN QUAMMIE

By his Attorney on Record Lewis

Stephens of Barrouallie

CLAIMANT

and

HELON QUAMMIE

of Ratho Mill

DEFENDANT

By Substitution

LEARNA QUAMMIE

(Sole Executrix of the Estate of GUARDSMAN QUAMMIE,
deceased 10th December, 2006)

CLAIMANT/RESPONDENT

and

HELON QUAMMIE

DEFENDANT/APPELLANT

Appearances:

Mr. Emery Robertson Snr. for the claimant.

Mr. Carlyle Dougan Q.C. for the defendant.

2016: Oct. 5 & 25

Nov. 28

Dec. 7

DECISION

BACKGROUND

- [1] **Henry, J.:** Guardsman Quammie deceased and Helon Quammie were brothers. This case surrounds a long-standing dispute between them over ownership of land at Ratho Mill. The parcel of land was originally owned by their father Prince Quammie. In 1974, the father transferred a ½ acre of that land ('the disputed land') and the dwelling house on it to Guardsman Quammie by Deed of Gift 2355 of 1974 ('the 1974 deed'). Six years later the father purported to convey the same dwelling house and 5,367 square feet of his land at Ratho Mill to Helon Quammie by Deed of Gift 1264 of 1980 (the 1980 deed'). In 1999, Guardsman Quammie initiated action in the high court for a declaration that he is the owner of the subject property.
- [2] The learned trial judge ruled that Guardsman Quammie is the true owner. She also found that Deed No. 1264 of 1980 was void, to the extent that it purported to transfer the dwelling house or any part of the subject land to Guardsman Quammie. The case was appealed to the Court of Appeal. The Court of Appeal remitted the matter back to the high court to determine by survey and other means whether the land purportedly conveyed by the 1980 deed formed any part of the land described in the 1974 deed. It also directed the court to investigate any connection between the disputed land and land owned by Prince Quammie which is described in Deed No. 1200 of 1961 ('the 1961 Deed').
- [3] Guardsman Quammie has since died. Learna Quammie, the sole of executrix of his estate was substituted in his place as claimant. She was represented during the proceedings by Nesta Quammie. At the hearing on October 5, 2016, the parties agreed to jointly engage a single surveyor to effect any required survey(s) and to execute an agreement with him for that purpose. They selected Mr. Adolphus Ollivierre, licensed land surveyor and contracted him accordingly. The agreement and resulting survey report were filed¹ in the court office and are part of the record.
- [4] Mr. Ollivierre also testified and presented his report to the court on 28th November, 2016. In essence, he opined that the land purportedly gifted to Helon Quammie by Deed No. 1264 of 1980 form part of the lands previously transferred to Guardsman Quammie by the 1974 deed. Learna Quammie

¹ On 25th October, 2016 and 22nd November, 2016 respectively.

accepted Mr. Ollivierre's findings. Helon Quammie disagreed, contended that the survey report is inaccurate and that Mr. Ollivierre's testimony is unreliable.

ISSUE

[5] The issues are whether the land described in:

- (1) Deed No. 1264 of 1980 forms part of the land transferred to Guardsman Quammie by Deed No. 2355 of 1974; and
- (2) Deed No. 1200 of 1961 forms part of the land described in Deeds Nos. 2355 of 1974 and/or Deed No. 1264 of 1980.

ANALYSIS

Issue 1 – Does the land described in Deed No. 1264 of 1980 form part of the land transferred to Guardsman Quammie by Deed No. 2355 of 1974?

Description of land

[6] The 1961, 1974 and 1980 Deeds of Gifts were registered under the Registration of Documents Act ('the Act').² They each contain a description of the land in respect of which title was registered. The 1961 deed described the land as:

'... parcel of land situate at Ratho Mill ... being one and a quarter acres in area bounded on the North by land in the possession of one Elvin Tannis on the South by the public highway on the East by lands of Hilda Punnett and on the West by the public highway ...'.

[7] The 1974 and 1980 deeds respectively described the property transferred thereby as:

'... land situate at Ratho Mill ... being in extent (1/2 acre) and butted and bounded on or towards the North by lands in the possession of Helon Quammie on or towards the South by lands in the possession of Aldane Cipio on or towards the East by a road and on or towards the West by a gutter ...'; and

² Cap. 132 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

‘... parcel of land situate at Ratho Mill ... abutted and bounded on the North by a drain where it measures 75 feet on the South by lands of one Tannis where it measures 80 feet on the East by lands of Elnathan Quammie and on the West by a highway where it measures 90 feet ...’.

- [8] Mr. Adolphus Ollivierre was the only witness. He produced a report which he compiled following his survey of the subject land and in furtherance of his agreement with the parties³. It provided expressly that Mr. Ollivierre would undertake the survey ordered by the Court of Appeal in the instant matter.
- [9] Mr. Ollivierre’s report and survey plan of the subject land were admitted into evidence and he was questioned by the parties’ legal practitioners. He indicated that he received a number of documents from Mr. Emery Robertson Snr. including Deeds of Conveyances numbered 1200 of 1961, 2355 of 1974 and 1264 of 1980. He also acknowledged receipt from Mr. Andreas Coombs on behalf of Mr. Dougan Q.C. Deeds of Conveyances numbered 1263 of 1980 and 1282 of 1980 and an undated surveyors report signed by Collin Alexander licensed land surveyor.
- [10] Mr. Ollivierre said that his survey of the subject land was conducted on 5th November 2016 in the presence of Mr. Emery Robertson Snr., Nesta Quammie, Mr. Carlyle Dougan Q.C., Helon Quammie and Andres Coombs. He indicated that Helon Quammie pointed out the land. Mr. Ollivierre opined that the lands owned by Prince Quammie and described in Deed No. 1200 of 1961 totalled 31,301 sq. ft. This he said was reflected in survey plans previously lodged at the Lands and Survey Department as G35/153, G39/110 and G2014. He concluded that although the 1961 deed described Prince Quammie’s holdings as amounting to 1 ¼ acre, in reality those holdings comprised less than one acre. It is important to note that while Deed No. 1264 of 1980 expressly referenced the 1961 deed as the root of title, Deed No. 2355 of 1974 contained no such reference.
- [11] Be that as it may, Mr. Ollivierre testified that the 1961 deed contained inaccuracies in its description of the northern and southern boundaries. In this regard, he noted that the northern and southern

³ Which was signed by him, the parties’ respective legal practitioners on record, Helon Quammie and Nesta Quammie, duly appointed agent for Lerna Quammie.

boundaries captured in the deed were the opposites of what exists on the ground, where in fact the southern boundary borders land owned by one Adonis Hazell (granddaughter of the Scipios and Tannises – the previous owners). He explained that in practical terms the boundaries were interchanged in the deed. Similarly, Mr. Ollivierre noted that the eastern and western boundaries were incorrectly described in Deed No. 2355 of 1974. He remarked that the 1974 deed erroneously described the eastern boundary as consisting of a road when in actuality it was bounded by a gutter and lands of Hilda Punnett. He stated that no such discrepancies existed with respect to Deed No. 1264 of 1980.

[12] Mr. Ollivierre stated that none of the plans previously lodged at the Lands and Survey Department 'reflected lands described in Deed No. 2355/74 in the name of Guardsman Quammie.' Because of this, he carried out a survey to show the 'disputed area' comprising 11,293 sq. ft. He opined that the survey depicts the land described in Deed No. 2355/74 and the southern portion of the land described in Deed No. 1200 of 1961. It also visually illustrates and embodies corrections of the orientation inaccuracies reflected in the 1961 and 1974 deeds. Mr. Ollivierre concluded that in his opinion the lands described in the 1974 deed comprises part of the land in the 1961 deed and the lands described in the 1980 deed consists of part lands described in the 1974 deed.

[13] In response to questions from learned Queens Counsel Mr. Dougan, Mr. Ollivierre replied that he did not look for $\frac{1}{2}$ acre of land on the ground because while the root deed in the name of Prince Quammie quantifies the area as $1 \frac{1}{4}$ acre, that quantity of land does not exist on the ground. He testified that the existing 3 survey plans did not depict the lands of Guardsman Quammie and for that reason he had to do a survey to define it. He indicated that he did not identify Helon Quammie's land because it was part of the land described in the 1974 deed. He stated that none of the schedules in the 1961, 1974 and 1980 deeds were represented by a survey plan. He explained that in the absence of a survey plan, he took account of the description of the boundaries and his conclusion fits the description in the schedules.

[14] In response to the court, Mr. Ollivierre stated that he has had occasion to give evidence in relation to land matters in a court of law before. He explained that it was not the first time that he experienced a situation where boundary orientations or land areas were incorrectly referenced in deeds. He indicated

that for this reason it is now recommended that surveys be conducted before a deed is prepared. He averred that errors have arisen in the past because lands were sometimes transferred by word of mouth and at times instructions were given to lawyers to prepare deeds for land in respect of which no surveys had been conducted and in circumstances where the parties had no knowledge of orientation. He opined that when such errors are discovered the usual recommendation is that they be corrected.

- [15] This court is not concerned with re-litigating the central issue of ownership of the subject land. That was already decided by Thom J. and confirmed by the Court of Appeal. The Court of Appeal noted that paragraph 22 (b) of the judgment left uncertain the question of the interest of the respective holders of Deeds Nos. 2355/74 and 1264/1980 uncertain. It is instructive to set out the full text of paragraph 22 of the judgment. It states:

‘Judgment is entered for the claimant. It is ordered that:

- (a) A declaration is hereby granted that the claimant is the fee simple owner of all of the property described in Deed No. 2355 of 1974.
- (b) Deed No. 1264 of 1980 is void in so far as it purports to convey the dwelling house and any portion of the land described in Deed No. 2355 of 1974.’

- [16] The Court of Appeal y remitted the case to the high court and directed this court to:

‘... determine whether the lands described in the 1980 Deed form a part of or are comprised of the land described in the 1974 Deed of which purpose the High Court shall issue necessary directions including a direction for the survey of the said lands as well as the land contained in Deed No. 1200/61.’

- [17] In my view, Mr. Ollivierre’s testimony on oath and the opinions outlined in his report have conclusively resolved the question as to whether the lands described in the 1980 and 1974 deeds are the same. He concluded that essentially the land in the 1974 deed enveloped all of the land in the 1980 deed. He was not contradicted by a trained surveyor and he was not impeached. I therefore accept his testimony and declare that the land described in Deed No. 1264/1980 is part of the land conveyed to Guardsman

Quammie by Deed No. 2355 of 1974. The parties may wish to make the necessary applications for correction of the respective deeds.

Issue 2 – Does the land described Deeds Nos. 2355 of 1974 and/or 1264 of 1980 form part of the land described in Deed No. 1200 of 1961?

[18] Mr. Ollivierre was quite clear that the three deeds all relate to a single parcel of land with some overlap. He pointed out that the 1961 deed described the parent parcel consisting of 31,301 sq. ft. and not 54,450 sq. ft.⁴ as reflected in that deed. The 1974 and the 1980 deeds sought to effect transfer of a portion of that parcel, first to Guardsman Quammie and then to Helon Quammie. Guardsman Quammie's allotment was expressed to be half an acre or 21, 780 sq. ft. It was also circumscribed by boundaries expressed by reference to owners of adjoining lands.

[19] Mr. Ollivierre pointed out that the named owners have since been replaced by successors in title. He was able to identify the boundaries and effect a new survey representing the land passed in the 1974 deed. He exhibited survey plan G61/64 which was approved and lodged at the Lands and Survey Department on 18th November, 2016. It comprises 11, 293 sq. ft. and encompasses all of the land described in the Schedule to the 1980 deed. The rest of the land amounts to 10, 487 sq. ft. and it is not clear if it is the subject of one or more deeds. Such consideration is outside of the remit of this court as presently constituted.

[20] Based on the foregoing, I am satisfied and declare that the land described in:

(1) Deed No. 2355 of 1974:

(a) is delineated in survey plan G61/64; and

(b) forms part of the land described in Deed No. 1200 of 1961;

(2) Deed No. 2355 of 1974 encompasses all of the land described in Deed No. 1264 of 1980; and

(3) Deed No. 1200 of 1961 was reduced from 31,301 sq. ft. to 10, 487 sq. ft. on the date of registration of Deed No. 2355 of 1974.

⁴ The equivalent of 1 ¼ acres.

[21] This decision is concerned primarily with providing clarity to the parties regarding the extent of the subject property. It arises from a judgment which is of some vintage having been made in 2008 and confirmed by the Court of Appeal in 2011. It appears from the record that unsuccessful attempts were made to finalize a survey some time ago. Having regard to the nature of these proceedings and taking into account that the parties' main involvement had to do with drafting the agreement for survey and brief cross-examination, I consider it appropriate not to make any order for costs.

ORDER

[22] It is accordingly declared and ordered that:

1. The land described in Deed No. 1264/1980 is part of the land conveyed to Guardsman Quammie by Deed No. 2355 of 1974.
2. The land described in:
 - (1) Deed No. 2355 of 1974 forms part of the land described in Deed No. 1200 of 1961;
 - (2) Deed No. 2355 of 1974 encompasses all of the land described in Deed No. 1264 of 1980; and
 - (3) Deed No. 1200 of 1961 was reduced from 31,301 sq. ft. to 10, 487 sq. ft. on the date of registration of Deed No. 2355 of 1974.
3. Each Party shall bear his or her own costs.

.....
Esco L. Henry
HIGH COURT JUDGE