

THE EASTERN CARIBBEAN SUPREME COURT

IN THE COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

CIVIL

DOMHCV2014/0133

BETWEEN:

PETER ABBOTT

Caveator

AND

JEROME PASCAL, RICK PASCAL, JESSICA PASCAL

As Joint tenants

Caveatees

Appearances:

Mr Darius Jones and Mr. Ronald Charles for the Caveator
Mr David Bruney for the Caveatees

2016: January 1st

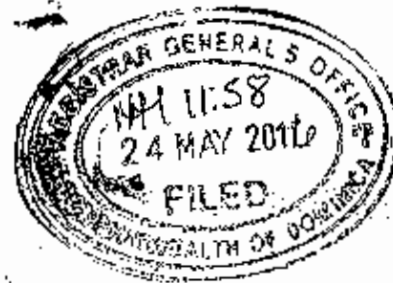
March 1st

May 24th

CASE SUMMARY AND CONCLUSION

The case involves an application for a Certificate of Title, under the **Title by Registration Act**¹ followed by the filing of a caveat with respect to the land sought to be registered by the applicant/caveatees.

¹ Chap. 56:50



Further, the land in issue was part of the estate of the deceased of which portions were devised to various persons, including the named executor, his daughter. But the estate was never probated and administered. And the executor of her father's will, in turn made a will seeking to devise her share of her father's estate plus devises to other beneficiaries. One such devise was to one of the caveatee, her son, respecting land that was vested in her as executor but which she did not own.

In this context the court determined that the caveat must be sustained since, *inter alia*, the caveatee's mother was not the legal owner of the land she purported to devise to her son, the caveatee; and as such the application, for title was devoid of a legal basis and such struck out with costs to the caveator.

JUDGMENT

- [1] **THOMAS. J.:[Ag]** On July 11th, 2014 Jerome Pascal, Rick Pascal and Jessica Pascal, as joint tenants, filed a request for the issue of a Certificate of Title with respect to 2.492 acres of land situate in Petite Soufriere, in the parish of St. David. They filed the request as holders of the title and owners in possession.
- [2] In accordance with the required procedure affidavits in support of the request were sworn to and filed by the persons making the request for the First Certificate of Title. Affidavits as to long possession were also filed by Margel Durand and Edward Durand on July 11th, 2014
- [3] Also in support was a Deed of Gift between Jerome Pascal, as donor and Jerome Pascal, Rick Pascal and Jessica Pascal as donees, with respect to the said parcel of land situate at Petite Soufriere and containing 2.492 acres.
- [4] On January 9th, 2014 Jerome Pascal, in his capacity as Executor in the Estate of the late Maude Lafond filed a fixed date claim² against Peter Abbott in which the following declarations are sought:
 - a. The claimant in his capacity as executor in the estate of Maude Lafond, deceased claims possession and damages for the defendants trespass over part of 2.492 acres which forms part of the Estate of the late Maude Lafond, deceased.

² Suit No. DOMHCV2014/0009

- b. Mesne profits at the rate of EC\$100.00 per month until possession is delivered up.
- c. An order that the defendant do forthwith pull down and remove the said wooden structure currently used as a workshop.
- d. Alternatively damages.
- e. Costs
- f. Further relief if required.

[5] The request for a first certificate of title was interrupted when on July 25th, 2014 a caveat against the issue of a Certificate of Title was filed by Peter Abbott. The bases of the caveat given by the caveator are: he has been residing on the said land over 40 years, his house and workshop are on the said land and that he has lived on and cultivated the said land.

[6] Having regard to the proceedings filed, the immediate issues must be the caveat filed by Peter Abbott on 25th July 2014.

Evidence on behalf of the caveator

[7] Peter Abbott in his affidavit³ identifies himself as the caveator and goes on to detail his knowledge of the land in issue which he says he knew all his life and which belonged to his grandfather, Ernelle Lafond.

[8] With respect to his grandfather's house, Abbott said he lived in it with his mother, his two siblings and his aunt Maude Lafond and his cousins. This habitation was from early childhood until adulthood until 1991 when he built his own house.

[9] At paragraph 9 of his affidavit the caveator deposes as to the content of his grandfather's will in which his father devised the property to his wife, Matilda Lafond and after his death to his three children, being Maude Lafond, Helena Roberts and Louise Abbott, his mother.

³ Filed on 1st December 2015

[10] In regard to the will Abbott also deposes that Maude Lafond was the executor named in his grandfather's will but the estate was never administered by the named executor but despite this failure to administer the estate the contention is that the three sisters each had a one-third share in his grandfather's estate. The further contention is that Maude Lafond was never the sole owner of either the house or the three portions of land.

[11] At paragraphs 16 and 21 the caveator addresses the question of the claim of the caveatee by averting to the will of his grandfather and the failure by the executor of his grandfather's estate and the resulting the land in issue is not part of the Estate of Maud Lafond and remains part of the estate of his grandfather.

[12] Under cross-examination Peter Abbott repeated that he lived in his grandfather's house with Maude Lafond and that he built his own house in 1991 near to Pantaleon Darroux⁴.

[13] With respect to the cultivation of bananas, the caveator testified that he did so for about one year. He added that the bananas were boxed and taken to the plant and that payment was received at the end of the fortnight.

[14] As far as Helen Lafond is concerned, the caveator said that she got married before the death of his grandfather and left the family home. He added that Helen Lafond cultivated a separate piece of land owned by Ernelle Lafond but Maude Lafond was not on this piece of land.

[15] As far as his mother house Abbott is concerned, the caveator said she had a piece of land similar to that cultivated by Helen which was also owned by his grandfather. He testified further that his mother continued to cultivate the said piece of land owned by her father after he died.

[16] In the case of Maude Lafond, Abbott said that her piece of land was just below the dwelling house but it was not the land we are arguing about today.

⁴ This person is shown on the plan of 2.492 acres surveyed for Jerome Rick Pascal which is an Exhibit JB3 to the Affidavit of Jerome Pascal

[17] The caveator ended his cross-examination by saying that when he was growing up all three daughters or Ernelle Lafond had their piece of land and that they worked the land at the time of his death.

[18] In re-examination Peter Abbott testified that everybody had a piece of bay leaf, including Alexander who is Emel grandson.

Louise Abbott

[19] The affiant in supporting the caveator's case says she knows the land all her life which belonged to her father. Further, the affiant deposes as to the failure of the executor, her sister, Maude Lafond to administer their father's estate resulting in no land being vested in Maude Lafond and the resulting failure of the devise in her will to Jerome Pascal.

[20] In elaborating on her affidavit Louise Abbott explained that she knew Ernele Lafond who was her father and Maude was her sister. And with respect to the land in Petite Soufriere Louise Abbott testified that she was born on it. She went on to say that the house was owned by her father and she was the last one in the house. The affiant added that the land is family land.

[21] Under cross-examination Louise Abbott said her father did not give her a piece of land but she worked the land. She added that her father gave her bailiff but he did not give them land apart.

[22] In re-examination Louise Abbott repeated her evidence given on cross-examination that her father gave them bailiff but he did not give them land part.

Evidence on behalf of caveatees

Jerome Pascal

[23] Jerome Pascal in his affidavit on behalf of the caveatees addresses the matter of his mother's (Maude Lafond) will and testament dated 1st June 1988 and in which he was named as executor.

[24] At paragraph 4 of his affidavit, Jerome Pascal dwells on the contents of the Last will and Testament of his mother, Maude Lafond. Specifically, he deposes that his mother devised to him: 'all the rest and residue of her Estate' and within the ambit of the said rest and residue is a portion of land at Petite Soufriere...containing 2.492 acres of land which was left to my mother lawfully as a consequence of the Last Will and Testament of her late father Emelle Lafond, deceased.

[25] The affiant next refers to the devise in his grandfather's Last Will and Testament with respect to his dwelling house and three portion of land at Petite Soufriere to his wife and after her death to his three daughters; Maude Lafond, Helena Roberts and Louise Abbott

[26] At paragraph 6 of his said affidavit Jerome Pascal deposes the three daughters aforesaid were given their distinct parcels of land referred to in the said Last Will and Testament of the said Emelle "during his lifetime." He continued by saying that: "As a consequence my said mother, Maude Lafond, took up occupation of the land I knew to be containing roughly two (2) acres and located on the boundary of the lands of James Durand and Arthur Durand whom I know and said land I am acquainted with."

[27] With respect the Last Will and Testament of Maude Lafond, his mother, the affiant deposes that the said Maude Lafond devised two separate and distinct portions of land to Peter Abbott, the caveator which is separate and distinct from the said 2.492 acres of land which forms part of the rest and residue of her Estate. It is deposed further that the rest and residue of Maude Lafond is left to Jerome Pascal, her son.

[28] At paragraph 9 of his said affidavit deposes that during the lifetime Emelle Lafond he knew his mother to be in occupation of the said 2.492 acres of land and cultivated the same with a variety of crops; and there was never any challenge to his mother's occupation of the said land during her lifetime.

[29] At paragraphs 11 to 14 of his said affidavit Jerome Pascal raises certain issues implicating the caveator with respect to the said 2.492 acres of land. These are that Abbott executed a document on 12th April 2010 in which he in effect acknowledged that he land on which his garage was built

was not his property. The second issue concerns a letter written by the affiant's solicitor to Abbott requesting him to vacate the land on which his workshop was built. The letter is said to be dated 14th August 2013 and further that Abbott failed to comply with the request. The issue relates to Abbott building his dwelling house on the said 2.492 acres to which there was no objection.

[30] Under cross-examination Jerome Pascal re-stated that Ernelle Lafond was his grandfather and Maude Lafond was his mother.

[31] Further evidence by Pascal is that Ernelle Lafond had a house in Petite Soufriere in which he lived with his wife and three daughters namely Maude, Helene and Louise. Further that he had three portions of land in Petite Soufriere and that on one portion of that land he build his dwelling house.

[32] With respect to his grandfather's will, Jerome Pascal testified that he is familiar with it, and that the three portions of land are the same land he mentioned. His further testimony is that Maude Lafond was the executor of his grandfather's will but that she did not probate the will of his grandfather. He went on to testify that his mother made a will and she appointed him as executor. Pascal also testified that his mother by her will gave out a portion of the house to Louise Abbott and one room for him and one for his sister. He added that this is the reason why we are here today.

[33] In explaining the portions of land involved he said that he knew the portion called shall and that his mother left him a big part of the residue.

[34] As far as his grandfather's will is concerned, Pascal repeated his earlier testimony that the will was never probated. In this connection it was put to Jerome Pacal that he knew very well that the land he was seeking to claim was part of the Estate of Ernelle Lafond. In response he said that he was just following the document. It was put to him further that the house in issue was part of the Estate of Ernelle Lafond. This was admitted by Jerome Pascal.

[35] In further testimony Jerome Pascal testified that he tried to register the 2.4 acres and that he surveyed the said land. Finally, it was put to Jerome Pascal that he tried to register the 2.492 acres of land in his name and his children when he knew that the said land was part of the Estate of

Ernelle Lafond. This was admitted by Jerome Pascal. And he went on to say that he was always familiar with both wills, being those of Ernelle Lafond and Maude Lafond.

Margel Durand

[36] Margel Durand in his affidavit deposed that he was born in Petite Soufriere, he knew the caveatee, Jerome Pascal, and lives about one mile from the land in dispute that forms the subject matter of this High Court action.

[37] The witness deposed further that he knew that Ernelle Lafond who was the grandfather of Jerome Pascal and the father of Maude Lafond, Helena Roberts and Louise Abbott.

[38] In terms of his knowledge of the just over 2 acres of land which forms the subject matter of the action in the High Court, Margel Durand deposed the following: he knew that Ernelle Lafond, directed both Helena Roberts and Louise Abbott to take up occupation of two distinct and separated portions of land. Helena moved away when she got married while Louise remained living in the family house with Maude Lafond. He viewed the survey plan of the land containing 2.492 acres and recognized the persons who owned adjoining lands.

[39] Finally, it is deposed by Margel Durand that at the time of Ernelle Lafond's death in 1983, and even after his death, Maude Lafond was in separate and distinct occupation and possession of the said 2.492 acres to the exclusion of both Helena Roberts and Louise Abbott. And further at the date of Ernelle Lafond's death Louise Abbott was still in occupation of the family house together with Maude Lafond.

[40] Under cross-examination Margel Durand gave testimony that he knew Jerome Pascal in the early 1970's. He testified further that he knew of the three portions of land owned by Ernelle but did not know the size. He also said that he read Ernelle Lafond's will and is familiar with the gifts to his daughters.

[41] Under further cross-examination the witness testified that he knew the entire family and the house owned by Ernelle where his children were born and resided.

[42] Finally, Marge Durand testified that he knew Jerome Pascal is trying to register the portion of land with the house on it.

ISSUES

[43] The issues for determination are:

1. **Whether the caveat filed by Peter Abbott, the caveator, should be sustained having regard to the devises contained in the Last Wills and Testaments of Ernelle Lafond and Maude Lafond?**
2. **What is the legal status of the request for issue of a Certificate of Title by Jerome Pascal and Jessica Pascal?**
3. **Who is liable in costs?**

Note on submissions

[44] It was the order of the court that submissions should be filed and exchanged by 1st March, 2016. But while submissions were filed on behalf the caveator, none were filed on behalf of the caveatees.

Issue No.1

Whether the caveat filed by Peter Abbott, the caveator, should be sustained having regard to the devises contained in the Last Wills and Testaments of Ernelle Lafond and Maude Lafond?

Submissions on behalf of the caveator

[45] In submissions on behalf of the Caveator learned counsel, Mr Ronald Charles proceeded by way of an analysis of the evidence followed by a conclusion. The following constitute the essence of the analysis of the evidence:

"Jerome Pascal said that Ernelle Lafond had three portions of land but he goes to say that Louise Abbott and her sisters each had a separate portion. However, he went on to say that Maude Lafond in her will left two portions to the caveator Peter Abbott and there still remains a portion measuring 2.492 acres which he seeks to register in his name and that of his children. He is therefore saying that Maude Lafond had three portions of land.

Jerome Pascal did not indicate where those portions of land belonging to the sister's Louise and Helena were or how Maude Lafond had three portions of land.

The evidence of Jerome Pascal does not fit with the evidence of Louise Abbott. She said her father did not divide the land and she was never given land.

There is difficulty in dealing with paragraph 15 of the witness statement of Jerome Pascal. He claims that Maude Lafond built her house on the subject land but that this is the same house of Ernelle Lafond where he lived with his wife and children. It is the same house where Louise Abbott was born and continues to live in to this very day. It is the same house where Peter Abbott lived. It is also the same house mentioned in the Will of Ernelle Lafond and in the Will of Maude Lafond.

The witness for the caveatee himself recognizes the house as that belonging to Ernelle Lafond.

The caveatee is the personal representative of Maude Lafond. He has presented the Will and obtained probate. He is now seeking to register a portion of land measuring [2.492] acres. He has executed a deed which seeks to convey the land to them and then presents an application for registration on behalf of himself and his children."

[46] The conclusion advanced by learned counsel is in these terms:

"Based on the evidence adduced it is clear that all the property in issue forms part of the estate of Ernelle Lafond. That Maude Lafond had no land in her own right and all that she had was that inherited from Ernelle Lafond. She never administered the Estate of Ernelle Lafond but was not capable in law of [being] the absolute owner by her dereliction of her duty as an Administrator.

It is clear that Jerome Pascal knew that the land he sought to register was not his to have. He knew quite well that Ernelle Lafond had three portions of land. It is therefore quite extra-ordinary that he would say that both Louise and Helena had a portion and Maude had three portions. He admitted that she gave two portions to Peter Abbott. It is therefore not possible that there is any land left and the 2.492 acres that he sought to register does not belong to him and he is therefore not entitled to succeed in his application."

Analysis

[47] It is common ground that the entire issue centers on land situate at Petite Soufriere owned by Ernelle Lafond. And after his death his Last Will and Testament becomes operative. This is what it states entirely:

"THIS IS THE LAST WILL AND TESTAMENT OF ME Ernelle Lafond of Petite Soufriere, Dominica

- i. I hereby revoke all former Wills and codicils made by me and declare this to be my last will and Testament.
- ii. I hereby appoint to be Executrix of this last will Maude Lafond

- iii. To my beloved wife Matilda Lafond my dwelling house and my 3 portions of land at Petite Soufriere and after her death to my 3 daughters; Maude Lafond, Helena Robert and Louise Abbott..."

[48] The other Last Will and Testament is that of Maude Lafond, and to the extent of its materiality, states thus:

"This is the last will and testament of me Maude Lafond of Petite Soufriere which I make this 16th day of June 1988.

I hereby revoke all former wills and testamentary dispositions heretofore made by me and declare this to be my last will and testament.

I hereby appoint my son Jerome Pascal to be the execution of this my Last will. After all my just debts and funeral expenses have been paid I leave and bequeath as follows:

1. The part of my dwelling house facing the sea which comprises two bedrooms and a corridor I leave to my sister Mrs. Louise Abbott.
2. The centre portions of the said dwelling house which comprises one bedroom and a drawing room I leave to my son, Jerome Pascal.
3. The part of the said house facing the mountain which comprises a bedroom and kitchen I leave to my sister Eleanor Roberts.
4. The portion of land at "shall" which is cultivated in bay leaf I leave to my nephew Peter Abbott.
5. The portion of land which bounds with Stella and which cultivated in bay leaf I also leave to my nephew Peter Abbott.
6. My big pot I leave to my son Jerome Pascal

All the rest and residue of my estate which I now possess or which I may hereafter possess I leave and bequeath to my son Jerome Pascal."

[49] Arising out of the two wills of Ernelle Lafond and Maude Lafond are the following:

1. While Ernelle Lafond appointed Maude Lafond as executor of his will, there is no evidence of his will being probated and administered.
2. The will of Maude Lafond probated and Jerome Pascal was named as executor.
3. In the will of Ernelle Lafond the devises of land relate to land in Petite Soufriere.
4. Margel Durand a witness for the caveatees gave evidence that he was born in Petite Soufriere and he knows the land which forms the subject matter of this High Court action.
5. The will of Maude Lafond was probated and Jerome Pascal the named executor.
6. The will of Maude Lafond does not identify where the land she devised to various beneficiaries is situate.

7. Jerome Pascal, a caveatee, admitted under cross examination that the land which he sought to register in his name and his children was part of the Estate of Emelle Lafond.
8. The only house in relation to the land in issue is the family home built by Emelle Lafond, on his land situate at Petite Soufriere, and in which he lived with his wife and daughters. Maude Lafond seeks to devise the said house into parts or portions.

Conclusion

[50] The court agrees with the following submissions on behalf of the caveator which point to the caveat being sustained:

"The property in question forms part of the un-administered estate of Emelle Lafond. The essential question that has to be decided is whether Maude Lafond can pass to the caveatee property of the un-administered estate of her father. Maude Lafond may have mistakenly construed her appointment as executor of the Will of her deceased father as conveying ownership on her or she may have deliberately decided to ignore the provisions of the will and treat the entire estate as belonging to her"

[51] The totality of the evidence, the law and the submissions come down to a narrow legal compass to say that an executor has a legal duty to apply for probate prove and administer the testator's estate strictly in accordance with his wishes as stated in his will⁵. As noted before, there was no grant of probate to Maude Lafond; and consequently there can be no legal instruments, such as deeds of assent, vesting the land to named beneficiaries. And consequently also, Maude Lafond, in her will alludes to land at Petite Soufriere then she is only entitled to one parcel of land under her father's will but which in strict law is still part of her father's estate.

[52] It follows, therefore, that Jerome Pascal is entirely out of the narrow legal compass and as such it is the determination of the court that the caveat must be sustained because:

- a. The devises in the caveatee's mothers Will could not give him a right to 2.492 acres of land situate at Petite Soufriere, in respect of which he seeks a title having regard to un-administered estate of Emelle Lafond, deceased.
- b. In essence, the application for a Certificate of Title with respect to 2.492 acres of land situate at Petite Soufriere contradicts the caveatee's grandfather's will;

⁵ Tristram and Cootes Probate Practice, W.J. Pickering, Edmund Heward and G.F Dawe (eds) 24th edition at pp. 107 et seq.

- c. The un-administered estate of Ernelle Lafond means that the subject land still forms part of Ernelle Lafond's Estate plus the plan of 2.492 acres surveyed by Gaeton Seaman, licensed surveyor, for Jerome Rick Pascal does not help the said Jerome Rick Pascal; since he does not own the land;
- d. The caveator, Peter Abbott in his affidavit in support points to the fact that Jerome Pascal's application for title is based on the contention that he and his predecessors in title were in undisturbed possession for over 50 years, but failed to state that throughout that period of possession that property was shared among family members;
- e. The foregoing contention by the caveator is supported by the will of Ernelle Lafond;
- f. The contention of possession for over 50 years by the caveatee represents abandonment by the caveatee of reliance on his mother's will.

Issue No. 2

What is the legal status of the request for Certificate of Title by Jerome Pascal and Jessica Pascal?

[53] On 11th July 2014 Jerome Pascal and Jessica Pascal filed a request for a Certificate of Title with respect to 2.492 acres of land situate at Petite Soufriere. In the request it is stated that "the Deed under which I hold the said Estate is long possession and Deed of Gift. Further, in his affidavit in support Jerome Pascal deposes as follows at paragraphs 5-9:

- "5. My late mother Maude Lafond passed on the said land to me after the execution of her will on the 16th day of June 1988. After the passing of my late mother I have caused the said will to be registered on the 13th day of June 2013 and is hereby recorded in the Book of Probates No. 2 folio 249-250 at the High Court Registry in Roseau.
- 6. I can further confirm that I executed a Deed of Gift dated 19th day of February, 2014 to include namely my son Rick Pascal and my daughter Jessica Pascal.
- 7. That as my deceased mother passed on the said land over to me. I in turn wish to do the same for my children jointly for their sole use and benefit
- 8. That no deed has ever been executed with regards to the said portion land but a will was done on the 16th day of June 1988.

9. That to the best of my knowledge, remembrance information and belief the land the subject of this application has been in sole and undisturbed possession for over 50 years."

Analysis

[54] It is fair to say that the request for a certificate of title constitutes legal confusion. To begin with, under cross-examination Jerome Pascal admitted that he tried to register 2.492 acres of land when he knew that it was part of the Estate of Ernelle Lafond. But he also deposes that the land which he seeks to register was in sole and undisturbed possession for over 50 years. Added to that, the matter of deed of gift is introduced with respect to land he does not own. More than that, he relies on the content of his mother's will as a substitute for an executed deed. This is entirely new.

Conclusion

[55] It is therefore the conclusion of the court that the request for a Certificate of Title is devoid of any legal basis, especially in view of the fact that Jerome Pascal admitted under cross-examination that he was aware that the land he sought to register was still part of the Estate of Ernelle Lafond. The request is therefore struck out. It is the further determination of the court that the request for a Certificate of Title also constitutes an abuse of process in all the circumstances.

Issue No. 3

What is liable in costs?

[56] The caveatee Jerome Pascal is entirely out of the picture. He has created legal confusion which is unwarranted given his knowledge of the legal situation of the 2.492 acres of land situate at Petite Soufriere. Not only did he file a request for Certificate of Title but he also filed a fixed date claim form, all of which the caveator had to answer by way of legal proceedings.

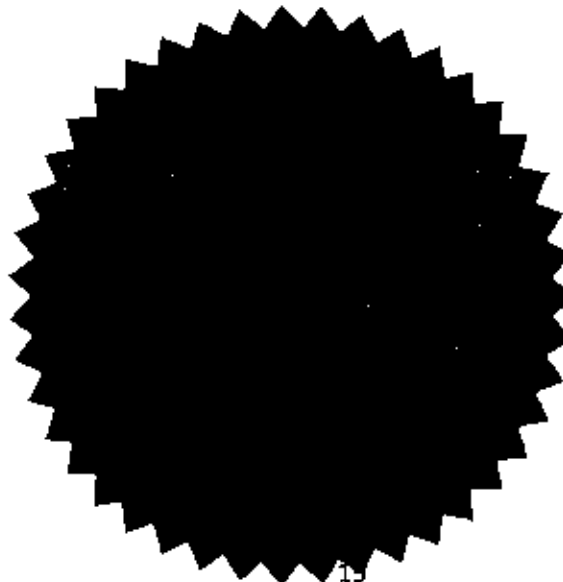
[57] It is the determination of the court that the caveatee, Jerome Pascal must pay the caveator, Peter Abbot, costs in the amount of \$10,000.00.

ORDER

IT IS HEREBY ORDERED as follows:

- 1: The caveat filed by Peter Abbott on 25th July 2014 must be sustained because:

- a. The devise in the caveatee's mother's Will could not give him a right to 2.492 acres of land situate at Petite Soufriere, in respect of which he seeks a title having regard to un-administered estate of Emelle Lafond, deceased.
 - b. In essence, the application for a Certificate of Title with respect to 2.492 acres of land situate at Petite Soufriere contradicts the caveatee's grandfather's will;
 - c. The un-administered estate of Emelle Lafond means that the subject land still forms part of Emelle Lafond's Estate plus the plan of 2.492 acres surveyed by Gaeon Seaman, licensed surveyor, for Jerome Rick Pascal does not help the said Jerome Rick Pascal; since he does not own the land;
 - d. The caveator, Peter Abbott in his affidavit in support points to the fact that Jerome Pascal's application for title is based on the contention that he and his predecessors in title were in undisturbed possession for over 50 years, but failed to state that throughout that period of possession that property was shared among family members;
 - e. The foregoing contention by the caveator is supported by the will of Emelle Lafond;
 - f. The contention of possession for over 50 years by the caveatee represents abandonment by the caveatee of reliance on his mother's will
2. The request for a Certificate of Title is devoid of any legal basis especially in light of the fact that Jerome Pascal admitted under cross-examination that he was aware that the land he sought to register was still part of the Estate of Emelle Lafond. The request is therefore struck out. It is the further determination of the court that the request constitutes an abuse of process in all the circumstances.
3. The caveatees, being Jerome Pascal, Rick Pascal and Jessica Pascal, are liable in costs and must pay the caveator, Peter Abbott, costs in the amount of \$10,000.00



Errol L. Thomas

High Court Judge (Ag)