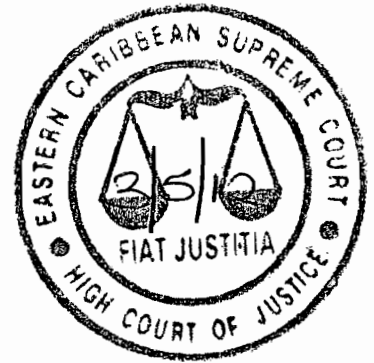


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 372 OF 2011



BETWEEN:

VERONICA NELSON

Claimant

V

NAOMI DUNCAN

Defendant

Appearances:

Mr. Jomo Thomas for the Claimant.
Mr. Olin Dennie for the Defendant.

2012: February 22
May 3

DECISION

- [1] **JOSEPH, MONICA J (Ag.):** Both parties claim ownership of a parcel of land measuring 15,000 square feet at Sandy Bay (Property) part of 25 acres of land originally owned by Joannie Hoyte (Hoyte) who died in 2007.
- [2] The Claimant filed a fixed date claim on 28th September 2011 against the Defendant, seeking a declaration that she is the fee simple owner of the property by virtue of a receipt and deed 1955/2010 (the Deed). She also claims damages for trespass to the property. In a defence and counterclaim filed on 21st November 2011, the Defendant claims ownership of the property, by virtue of an unregistered deed of gift.

WRITTEN SUBMISSIONS; 22nd March 2012.

CASE FOR CLAIMANT:

- [3] In 1997 she purchased the property for \$1,500.00 while she was living in the United Kingdom. She received a document referred to as a receipt (receipt) from Hoyte that Esford Lavia, who was responsible for the property, signed as witness. The statement of claim pleads that the Claimant paid cash, which she sent from the United Kingdom to Fred Toppin, (Toppin), Attorney on Record for Hoyte. She relocated to St. Vincent about 20th April 1999.
- [4] She claims that on 20th May 2000 the property was transferred by deed to her by Hoyte acting through Toppin. She contends that she visited the property about 25th June 2010 with surveyor Alric Williams and was chased off by the Defendant. She claims that the Defendant was aware that she had acquired a deed from Hoyte for the property. Further, she claims that she had given the Defendant reasonable notice to give up the property.

CASE FOR THE DEFENDANT

- [5] The Defendant claims that by deed of gift from Hoyte dated 14th January 2001, she became the lawful owner of the property. She denies that Hoyte, with whom she lived as caretaker, received any money for the purchase of the property from the Claimant.
- [6] She states that there is no binding contract for the sale of the property as Hoyte's signature is not on the receipt which purports to be an agreement for the sale. The Defendant pleads that Esford Lavia, who signed the receipt as a witness, was not the authorized agent for Hoyte to empower him to enter into any contract for the sale of lands.
- [7] The Defendant further pleads that the deed is a fraudulent document as it was registered after the revocation of the power of attorney to Toppin in 2001, who signed the deed.

FACTS - THE LAW APPLIED:

Revocation of Power of Attorney

- [8] I consider the evidence to find whether the Claimant has proved her case on a balance of probabilities. The Defendant has not challenged that Hoyte gave a Power of Attorney No. 74 of 1989 dated 22nd June 1989 to Toppin. The Deed transferring the property from Hoyte to the Claimant, was made on 20th May 2000, but was not registered until 22nd June 2010.
- [9] By Deed No. 156/2001 of 3rd August 2001, Hoyte revoked the Power of Attorney, which provided that nothing contained in the power 'shall affect the validity of any act deed or thing done by Toppin by virtue of the powers conferred on him by the deed before he has received notice of the revocation therein'. There is no evidence of the date of receipt by Toppin of the notice of revocation.
- [10] The revocation of the power of attorney signed by Hoyte on 3rd August 2001 bears a registration number, which evidences that it was registered but the copy presented does not bear the registration date. By registration, there is notice to all, that the power of attorney, which was registered by virtue of section 3 (1) (b) of the Registration of Documents Act (Cap. 132.) (the Act) (reproduced later) was revoked.

Is there a legally binding contract for the sale of the property?

- [11] The Claimant's claim is that she has a contract with Hoyte for sale of the property. She pleads that there was an agreement for the sale of the property made during her visits to St. Vincent from the United Kingdom. On 12th April 1997 she purchased the property from Hoyte and paid cash of \$1,500.00 sent to Toppin.
- [12] In a reply she claims that, being a family member she was offered the property for the amount in the note signed by vendor Hoyte. In oral evidence she stated that she never in fact sent money to Toppin as pleaded in her statement of claim: that she sent three hundred pounds through a Mrs. Cordice to Hoyte. Those inconsistencies cause me to look at other evidence as to whether or not there was a contract.

- [13] Mr. Dennie for the Defendant submits: There was no binding contract for the sale of the property: that the Defendant states that no money was received from the Claimant by Hoyte, with whom she lived as caretaker, for the purchase of the property. The Defendant admitted that Hoyte did not tell her that she had given a power of attorney to Toppin and she had found that out. That bit of evidence indicates that Hoyte did not inform the Defendant of all of her business. I believe the Claimant that she did send money to Hoyte to purchase the property and that there was an agreement between them.

Receipt and Unregistered Deed

- [14] Mr. Dennie submits further that Hoyte's signature does not appear on the receipt which purports to be an agreement for the sale of land. The Defendant claims that Esford Lavia whose signature appears on the receipt, was not an authorized agent for Hoyte that empowered him to enter into any contract for the sale of the property. The Defendant claims that she obtained the property by an unregistered deed of gift dated 14th January 2001.
- [15] Mr. Thomas for the Claimant submits, even if the deed of gift under which the Defendant claims is authentic, that deed is unregistered and the Defendant cannot claim a superior title.
- [16] I find: the Receipt, dated 12th April 1997 produced by the Claimant, refers to purchase of the property at a stated price. The deed under which the Defendant claims is not registered.
- [17] Documents dealing with title to, or transfer of, land must be registered in accordance with the Act. The receipt and the deed of gift are not registered. The effect of non-registration is that those documents cannot be received in evidence. I acknowledge the existence of those documents but disregard the contents as they are not registered. Sections 3 and 22 of the Act enact:

Section 3:

- (1) The following documents shall be registered under this Act –

- (a) documents relating to the title to, transfer of or incumbrance on any real estate:
-
- (b) powers of attorney and deeds of substitution thereunder empowering any person to represent and act for any other person in Saint Vincent and the Grenadines;"

Section 22 :

"No document required to be registered under this Act and not registered (except copies of the probate of a will or letters of administration granted by the Court) shall be admitted in evidence in any civil legal proceeding as proof of its contents, but such document may be admitted in such proceedings as evidence of its existence."

Registered Documents

[18] The description of the property appears in the schedule to the Deed which reads:

"All that lot piece or parcel of land by admeasurement being One hundred (100) Feet by One hundred and fifty (150) feet this is Fifteen thousand (15,000) Square Feet situate at Sandy Bay in the State of Saint Vincent and the Grenadines and being part or portion of Schedule Two of Deed of Conveyance 1972 of 1990 and being butted and bounded on One side by a Public Road on the Second side by remaining lands of the Vendor on the Third side by a Public Road and on the Fourth side by remaining lands of the Vendor or howsoever otherwise the same may be butted bounded known distinguished or described TOGETHER with all ways waters watercourses rights lights liberties privileges and all other easements and appurtenances thereto belonging or usually held used occupied and enjoyed therewith or reputed to belong or be appurtenant thereto."

[19] The Claimant's Deed signed by Toppin, Attorney for Hoyte, made on 20th May 2000, was registered on 22nd June 2010. Although it was made in 2000, the deed evidences the Claimant's title to the property from the date of registration, that is, 22nd June 2010.

[20] The purpose of registering dealings with real property under the Act is to provide an openness in dealing with real estate, thus enabling certainty as to dealings and ownership of land. The Deed, on registration, indicates property entitlement on the date of registration. It is from that date the Claimant's recognizable interest in real estate arises. Section 5 (1) of the Act provides:

"Every document relating to real estate required to be registered under this Act shall, on registration, operate both at law and equity according to the priority of time of registration and the right, title and interest of the person conveying, incumbering or otherwise dealing with such real estate against every other document subsequently, registered with respect to such real estate."

- [21] The Deed is also saying that on 20th May 2000 (date deed was made) Toppin had the authority to sign. That authority was revoked in 2001, and registered on 3rd August 2001, Toppin no longer held a valid power of attorney from Hoyte. The power of attorney, required by section 3 of the Act to be registered and the revocation of that power of attorney were registered. Section 5 (3).of the Act enacts:

"The registration of documents required to be registered under this Act shall be deemed due notice of their contents to all persons whomsoever claiming any estate or interest in, or incumbrance on, any real estate comprised in, connected with or affected by the document registered."

- [22] Hoyte signed a power of attorney in 1989 authorizing Toppin to deal with her business and property. The Claimant purchased the property and Toppin (for Hoyte) signed the Deed on 20th May 2000, conveying the property to the Claimant. From that date, an equitable interest arises in respect of the property in favour of the Claimant.

- [23] On 14th January 2001, Hoyte made a gift of the property to the Defendant. The deed of gift is not registered and an equitable interest arises from 2001 in respect of the property, in favour of the Defendant. There are, from 2001 to 2010, two equitable interests in respect of the property: one held by the Claimant and the other held by the Defendant. The earlier purchase by the Claimant takes priority over the later deed of gift to the Defendant.

- [24] In 2010 the Claimant's deed is registered and the Claimant's interest is then that of a legal estate. The equitable interest merges into a legal estate. The priority in registration is given under section 5(1) of the Act, which is earlier reproduced. That principle is explained in Cheshire and Burn's **Modern Law of real Property** Fifteenth edition page 59:

"(a) Purchaser for value

The purchaser must have given consideration in money or money's worth or marriage. Otherwise he is a donee and is bound by the equitable interest whether he has notice of it or not.

(b) Legal estate

The purchaser must normally show that he has acquired a legal estate in the land. The doctrine is based on the maxim (purchaser for value) that where the equities are equal the law prevails; and as between the beneficiary's equitable interest and the innocent purchaser's legal estate the equities are equal, and the purchaser's legal estate prevails.

On the other hand, the purchaser of an equitable interest in land takes the land subject to existing equitable interests in the same land whether he has notice of them or not. The competition here is between two equitable interests and the rule is that the first in time prevails.

The defence of the purchaser for value without notice thus avails the purchaser of an equitable interest against the owner of an earlier equity, but not against the owner of an earlier equitable interest."

ALLEGATION OF FRAUD

[25] The Defendant alleges that the Deed is a fraudulent document. Mr. Dennie submits the deed was registered after the revocation of the power of attorney to Toppin in 2001, who signed the Deed. Other particulars of fraud given are:

- (1) the receipt in support of the purported sale of the property was not signed by Hoyte, owner of the property;
- (2) the correct price paid for the property was not declared, in that \$1500 is given in the receipt and \$800.00, is stated in the deed;
- (3) the receipt is dated 12th April 1997 as the date of the agreement to buy the property whereas the deed states (in the recital) that the agreement was made on 22nd March 1996;
- (4) The land sold to the Claimant was valued at some EC\$30,000.00 not \$1,500.00 or \$800.00.

[26] Mr. Dennie points to the fact that the Claimant admits in her reply there is contradiction in her case, but blames the inartful drafting by her lawyer who was not called to give evidence. Mr. Thomas submits that the receipt was intended to show that both parties had an intention to enter into a transaction and Elford Lavia was asked to be a witness. Both counsel cited authorities.

[27] I consider those facts under common law fraud and statutory fraud. Firstly, under common law fraud, I do not think that those instances given by the Defendant satisfy the requirements of common law fraud. Rather those instances show that there is conflicting evidence which is to be considered when dealing with credibility. Civil Appeal 1 of 1993 (BVI) Byron, C.J. (Ag.) in **Ecedro Thomas lawful attorney for Alice Thomas and Alphonso Thomas v Augustine Stoutt and Grehel Stoutt-Richardson** had this to say:

“....the fraud must relate to some matter which would be a reason for setting aside the judgment. Perjury on a matter which is collateral to the issue would not suffice. The requirement that there must be a reason other than mere falsehood for setting aside the judgment was referred to in **Flower v Lloyd** (1879) Ch.D.327 at p 333-334:

“.....There are hundreds of actions tried every year in which the evidence is irreconcilably conflicting, and must be on one side or other willfully and corruptly perjured.....”

[28] Relative to statutory fraud, section 5 (2) .of the Act enacts:

“Every such document that shall not be registered shall be deemed fraudulent and void as to the real estate affected by such document against any subsequent purchaser or mortgagee for valuable consideration without notice whose document shall be first registered or against any person who may have, subsequently to the date of such unregistered document, obtained a judgment operating as a charge against such real estate.”

[29] For a document to be deemed fraudulent under the Act, the document must fall under one of two categories: Under category one, property that has been registered, must be obtained by a subsequent purchaser or mortgagor for valuable consideration without notice. The Defendant’s deed of gift is not registered and that element required in category one is not satisfied.

- [30] Category two does not apply. Under category two, a person must have obtained a judgment which operates as a charge against the property, subsequent to the date of the unregistered document. The elements of statutory fraud are not present in this case and statutory fraud does not arise.

OCCUPATION: TRESPASS

- [31] In 1999, the Claimant relocated to Saint Vincent and the Grenadines from the United Kingdom, where she had been living. I find that the Claimant purchased the property but did not occupy the property. Her oral evidence: "We pass to see the land. I didn't occupy the land. I never plant nothing. I waiting on a deed. I didn't know Ms. Duncan. First time I know her when I went to survey the land."
- [32] I find that the Defendant is married with five children; that she lived with her husband in his house and visited Hoyte frequently. After Hoyte's death she lived on the property. I accept that the Defendant was living on the property in June 2010, and she chased the Claimant from the property when the latter and her husband visited the property with a surveyor.
- [33] The Defendant is in actual possession of the property which is owned by the Claimant, and the Claimant has the right to possession of the property. Trespass arises when one person enters the land of another, unjustifiably. The Defendant was trespassing on the Claimant's property.
- [34] It was not the intention of the Defendant to trespass on the Claimant's land. She mistakenly thought that the property belonged to her, having received it as a gift from Hoyte. Her mistake is not a defence to trespass. In the circumstances of this case, I will award nominal damages against the Defendant. The text of Clerk and Lindsell on Tort, Eighteenth Edition states:

Page 923 paragraph 18-01:

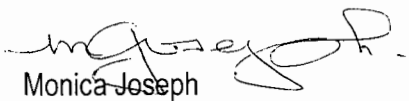
"Trespass to land consists in any unjustifiable intrusion by one person upon land in the possession of another."

Page 928 paragraph 18-11:

"Proof of ownership is prima facie proof of possession unless there is evidence that another person is in possession but if there is a dispute as to which of two persons is in possession, the presumption is that the person having title to the land is in possession --- and even a long continued assertion of title, without of proof of title, can be of significance."

ORDER:

- [35] (1) The Claimant is the owner of 15, 000 square feet of land at Sandy Bay described in Schedule to Deed No. 1955/2010.
- (2) Damages for trespass to be paid by the Defendant to the Claimant in the sum of \$100.00.
- (3) The Defendant's counterclaim is dismissed.
- (4) Ten minutes submissions by each counsel on award of costs in Chambers on 6th June 2012.


Monica Joseph
High Court Judge (Ag.)

27th April 2012.