

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2007/0015

BETWEEN:

RAOUL (also spelt RAWLE) ODLUM

Claimant

and

**[1] CATHERINA (also spelt CATRAVINA) JEAN JACQUES nee
ANTOINE**

[2] ERICA ANTOINE-COLE

[3] JOHN COLE

Defendants

Appearances:

Ms. Veronica Barnard for Claimant

Mr. Huggins Nicholas for Defendants

2011: August 12.

JUDGMENT

[1] **GEORGES, J. [A.G.]:** On 11th January 2007 the claimant, Raoul Odlum, filed a claim seeking improbation of a Deed of Donation dated 15th July 1999 and registered in the Land Registry as Instrument Number 3129/99.

[2] He also seeks a declaration that he is the owner with absolute title of the land transferred under the Deed of Donation by the first defendant to the second and third defendants, registered as Block 0023B Parcel 6 situate at the "Garconet" lands in the Quarter of Choiseul (hereinafter referred to as "the disputed land").

- [3] A further order is sought that the Registrar of Lands be directed to correct the Land Register by deleting the names of the second and third defendants as proprietors of the disputed land and inserting his name in the proprietorship section in lieu.
- [4] All further consequential relief is similarly requested by the claimant including a claim for damages and costs.

Pleadings

- [5] In his accompanying statement of claim the claimant alleged that he purchased the disputed land from the first defendant by a Deed of Sale dated 21st December 1987, which was signed by himself, the first defendant and the executing notary, Fleur Byron Cox. A copy of the Deed of Sale R.0.1 was exhibited.
- [6] The claimant further alleged that the purchase price for the land was \$6000.00 which he paid in full to the first defendant who acknowledged receipt by signing the said Deed of Sale.
- [7] It is noteworthy to mention that the Deed of Sale was not registered in the Land Registry.
- [8] The claimant also alleged that he occupied the disputed land since 1987 and made improvements to it by building a weekend/holiday cottage on it causing electricity to be connected to it and water lines to run on to it from the main road and causing a road to be cut through it to the main road. From 1987 he said he cultivated fruit trees and vegetables thereon. According to him his occupation of the land has been free of "opposition or interruption from anyone." He said that the third defendant had visited him on the disputed land in 1989 and did not say anything about his occupation of or presence on the property.
- [9] At paragraph 5 of his statement of claim he avers that the first defendant, the alleged vendor, transferred the land which he had previously purchased from her without his knowledge or consent to the second and third defendants by a Deed of

Donation dated 18th July 1999 which was registered in the Land Registry on the 4th August 1999 as Instrument Number 3129/99.

- [10] The gravamen of the claimant's case is that the Deed of Donation purporting to vest the disputed land in the second and third defendants should be improbated as he is the rightful owner of it on account of his earlier Deed of Sale which effectively meant that the first defendant had no interest in it at the relevant date viz 18th July 1999 which she could lawfully pass to the second and third defendants. It is on that premise that the claimant also seeks correction of the Land Register to reflect his ownership/proprietorship.
- [11] In protest against the Deed of Donation the claimant placed a caution, Instrument Number 5048/2005 on 30th September 2005, against the disputed property and launched these proceedings.

Defendants' Response

- [12] On 29th May 2007, the first defendant filed a defence in which she denied selling the disputed land to the claimant or signing any Deed of Sale "along with the claimant before any Notary" (paragraph 2 of defence).
- [13] She categorically denied receiving \$6,000.00 from the claimant as payment for it or acknowledging receipt of payment by affixing her signature to any Deed of Sale.
- [14] The claimant's occupation of the disputed land according to her was because he was her surveyor. She avers that he promised to purchase a portion of the land from her "if she would be interested to sell in the future" (paragraph 7 of defence). She categorically maintained that he only occupied the land with her express consent.
- [15] She applied for dismissal of the claim and costs. She did not however file a witness statement and failed as a result to give evidence reportedly according to her attorney on account of her advanced age and failing health. This is regrettable

as her evidence would have been of vital importance.

[16] In accordance with Part 26.3 of the **Civil Procedure Rules 2000** (CPR), claimant counsel requested that judgment should be entered against her with costs relying on the ruling of Barrow J [Ag.] as he then was in **Kenton St. Bernard v Attorney General of Grenada** (Grenada Civil Case No. 0084 of 1999).

[17] Rule 26.3(1)(a) **CPR** states that:

“In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –

(a) There has been a failure to comply with a rule, practice direction, order or direction given by the court in proceedings.

Rule 29.11 decrees that:

- (1) “If a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court, the witness may not be called unless the court permits.
- (2) The court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief under rule 26.8.”

[18] At paragraph 4 of his decision in **Kenton St. Bernard v A.G. of Grenada** the learned judge referring to rule 29.11 CPR held that if a witness statement is not served in the time specified the witness may not be called unless the court permits and the court will not give permission at the time of trial unless the party seeking permission has a good reason for not previously seeking relief under rule 26.8.

[19] In the result, the first defendant finds herself literally out of court as it is ordered that her defence filed on 1st June 2007 be struck out for non-compliance. The question of costs is deferred for the time being.

[20] On 30th May 2007, the second and third defendants filed a defence stating that they were unaware that the first defendant had entered into any transaction to sell the disputed land to the claimant, if any such transaction was at all made. They also denied the claimant's allegation that the third defendant had visited him in the past on the disputed land. According to them, they had “only engaged in dialogue”

with the claimant in 2005 concerning vacant possession of the land. Yet the said defendants state at paragraph 7 of their defence that the second-named defendant had never lived in St. Lucia!

They too sought dismissal of the claim and a declaration that they are in fact the registered owners of the land with absolute title and costs.

Issue to be determined

- [21] The principal issue that falls to be determined is whether the claimant's unregistered Deed of Sale constitutes an overriding interest sufficient to uphold his claim to the disputed land and effectively negate the registered title of the first and second defendants.

Co-relative to the main issue is whether the Deed of Sale constitutes a valid contract of sale of the disputed land by the first defendant to the claimant.

- [22] Before embarking on any analysis the Court is obliged to say that it only had the benefit of written closing arguments from counsel for the claimant for which it is indebted. There were also some difficulties as a result of the alleged advanced age of the first named defendant who did not file a witness statement and was therefore not available for cross examination. As a key witness her evidence would have been vital for the case. Without it she really has no case.

- [23] Certain provisions of the **Land Registration Act (LRA)** and the **Civil Code (Ch. 242)** have a direct bearing on the issues in this case and learned counsel for the claimant in her written submissions helpfully drew the attention of the Court to some of them.

Section 23 of the **LRA** stipulates (in part) that:

“Subject to the provisions of sections 27 and 28 the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject ----

(a) to the leases, hypothecs and other encumbrances and to the

- conditions and restrictions, if any, shown in the register; and
- (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register."

[24] Claimant counsel submitted that this provision shields the claimant's interest in the disputed land since when read together with section 28(g) **LRA** it confers an overriding interest.

Section 28(g) of the **LRA** declares that:

Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may subsist and affect the same, without their being noted on the register -

- "(g) **The rights of a person in actual occupation of land** or in receipt of the income thereof save where inquiry is made of such person and the rights are not disclosed.

However, the Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such a manner as he or she thinks fit."

[25] Learned counsel further submitted that section 37(2) **LRA** preserves the viability of the Deed of Sale which is duly executed and operates as a binding contract.

Section 37(2) **LRA** reads as follows:

"This section shall not be construed as preventing any unregistered instrument from operating as a contract, but no action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged or by some other person thereunto by him or lawfully authorized."

Learned counsel also sought to impugn the relative strength in law, of the second and third defendants' Deed of Donation as against the claimant's Deed of Sale by referring to section 27 **LRA** which stipulates in part that:

"Every proprietor who has acquired land, a lease or a hypothec by transfer without consideration shall hold it subject to any unregistered rights or interests subject to which the transferor held it."

Was there a valid contract for the sale of the disputed land?

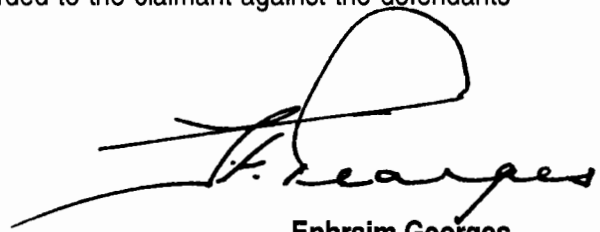
- [26] The claimant exhibited a copy of the Deed of Sale purportedly signed by the parties concerned before a Notary. The first defendant denied that the sale had occurred. The court did not have the benefit of her evidence on that aspect of the case as noted earlier. At paragraph 3 of his witness statement the claimant alleged that he in the company of the first defendant, visited her attorney Mrs. Fleur Byron-Cox (who was at the relevant time married to his late brother) where the Deed of Sale was duly executed by them before her.
- [27] In her witness statement Mrs. Byron-Cox confirmed that she recalled preparing a Deed of Sale by Catherina Jean Jacques to Raoul Odlum pursuant to instructions from Mr. Odlum and that the said Deed of Sale was signed by Catherina Jean Jacques on 21st December 1987 in which she duly acknowledged receipt of the purchase price of \$6,000.00. She (the attorney) duly paid the stamp duty on the Deed to the Inland Revenue Department. The said Deed was stamped on 22nd December 1987 and a photocopy thereof was exhibited to the Court. This impresses as being straightforward and credible.
- [28] Counsel for the claimant referred to the judgment of **Kent Winston Adonai v Michael Jacques et al** No. 130 B of 1990 (St. Lucia) where Madam Justice Suzie D'Auvergne delivering her judgment in 2002 opined at page 14 that:
- "In my judgment the construction of the swimming pool on Parcel 12 was a cogent act of the Claimant's ownership of Parcel 12 for under normal circumstances a person does not construct such a permanent and personal amenity on land unless he believes that he owns the land."
- [29] Like the Claimant in the Michael Jacques case Mr. Odlum's construction of a cottage on the disputed land and cutting a road to it from the main road and providing utilities to it afford cogent evidence of acts which are generally consistent with ownership. And the court is equally satisfied that the claimant's occupation/possession throughout was open peaceable uninterrupted and unequivocal. It is moreover evident that the defendants all acquiesced in respect of the claimant's use, occupation and possession of the disputed parcel of land

and are now estopped from denying his claim thereto as owner.

[30] Finally the first defendant having sold and delivered the land to the claimant in 1987 effectively divested herself of her interest therein and was thereafter incapable of lawfully executing a valid Deed of Donation in respect of it to the second and third defendants as she purported to do in July 1999. This would be a nullity consonant with the maxim *nemo dat quod non habet*.

[31] For all of the foregoing reasons it is ordered that the Deed of Donation dated 15th July 1999 and registered in the Land Registry as Instrument No. 3129/99 on 4th August 1999 be improbated. It is further ordered and declared that the claimant Raoul Oldum is the owner with absolute title of Block 0023 B Parcel 6 situate at the "Garconet" lands in the quarter of Choiseul and it is hereby directed that the Registrar of Lands do rectify the Land Register in respect of the said parcel by deleting the names Erica Antoine-Cole and John Cole from the Proprietorship Section and substituting the name Raoul (also spelt Rawle) Odlum in lieu.

[32] The claimant has placed a value of \$150,000.00 as the present day value of the land without any empirical data and prescribed costs calculated at \$41,500.00 are claimed. No order in respect of costs was made at case management. The figure of \$150,000.00 seems both exorbitant and arbitrary. On a reduced value of \$50,000.00 prescribed costs calculated at \$14,000.00 would seem fair in the circumstances and is accordingly awarded to the claimant against the defendants jointly and severally.

A handwritten signature in black ink, appearing to read 'E. Georges', with a large, stylized loop at the end.

Ephraim Georges
High Court Judge [Ag.]