

COMMONWEALTH OF DOMINICA

DOMHCV2004/0347

BETWEEN:

Anthony Commodore as Executor of the Will

of Grace Celestine Charles

Claimant

And

Michael David

Defendant

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Singoalla Blomqvist Williams for Claimant

Mrs. Zena Dyer for Defendant

[2011: February 7th]

[2011: February 16th]

[2011: May 4th]

JUDGMENT

- [1] **COTTLE J:** The claimant is the Executor of the will of Grace Celestine Charles. He brings the present claim to recover possession of a parcel of land which he says rightfully belongs to the estate. The defendant has a certificate of title for the parcel. He obtained that certificate in 2005. The certificate was issued to the defendant on the basis of an application to the Registrar of lands wherein he claimed he own the land by virtue of his possession of that land for more than 30 years.
- [2] In 2007 the claimants obtained a certificate of title to a larger portion of land. That larger portion includes the parcel for which the defendant has a certificate. At present there exist two certificate of title which concerns the same (smaller) parcel.
- [3] The claimant seeks to have the certificate of title of the defendant set aside. The claimant avers that this certificate's of title was obtained by fraud. Under the Title by Registration Act, certificate of titles are indefeasible save for certain limited circumstances. One such circumstance is where the certificate of title has been obtained by fraud.
- [4] The defendant denies that there was any fraud involved in his obtaining the certificate. He also challenges the claimant's right to bring the present claim. I shall examine both issues in turn.

Locus Standi

- [5] The defendant says the claimant has no standing to bring this action. As I understand it the argument runs like this. The claimant is seeking 28.790 acres of land belonging to the estate of Stella Dupigny. Grace Celestine Charles was the personal representative of Stella Dupigny. The claimant is the executor of the will of Grace Celestine Charles. Stella Dupigny died intestate. Consequently there is no chain of executorship. Only the estate of Stella Dupigny can maintain the claim. The claimant under cross-examination admitted that the estate of Stella Dupigny has not yet been fully administered.
- [6] In his statement claim, the claimant avers that "the estate of Grace Celestine Charles owns a portion of land situated at Providence in Laudat containing 28.790 acres." As part of the evidence led by the claimant he exhibits the certificate of title of Grace Charles. It recites that Grace Charles held the certificate of title as Personal

Representative of Stella Dupigny, having been granted Letters of Administration of the estate of Stella Dupigny on 28th January 2008.

- [7] As noted earlier, Grace Charles did not fully administer the estate. The claimant now seeks to do so as her executor. When the matter is stated like this it is at once apparent what difficulty the claimant faces. The claimant by law has a right to get in all property which forms part of the estate of Grace Charles. He can also get in and administer all property which forms part of any estate for which Grace Charles was Executrix at her death. He has no power to administer any estate for which Grace Charles held only letters of administration as opposed to a grant of probate.
- [8] This determination is sufficient to dispose of this claim in favour of the defendant on the claim. However it leaves the unsatisfactory situation of the parties holding competing Certificates of Titles for the same parcel of land. This court had the benefit of hearing all the relevant evidence and the opportunity to evaluate the witness as far as these contending certificates are concerned. I decline to offer any finding as any such pronouncement would be obiter dicta as these findings do not form the basis of my present judgement.
- [9] The claim is dismissed as I find that the claimant has no standing to initiate or maintain it in its current form. The defendant will have his costs on the basis of prescribed costs in the sum of \$14,000.00

Justice Brian Cottle

High Court Judge