

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

**COMMONWEALTH OF DOMINICA
DOMHCV2008/0493**

BETWEEN:

JULIUS CARRIERRE	Claimants
LEONA CHARLES	
CHARLES FABIEN	
and	
JESSIE BRUNEY, NEE Paul	Defendant
P.R of St. Ford Peter Paul deceased	

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Levi Peter for the Claimants
Mr. Michael Bruney for the Defendant

JUDGMENT

[2010: September 23rd]
[2011: January 25th]

- [1] COTTLE J:** This claim is for a declaration that a Certificate of Title in respect of 4.972 acres of land at Anse de Mai was obtained by fraud and ought to be cancelled. The claimants also seek a declaration that they are tenants in common of the said land.

- [2] In 1996 the father of the defendant, a man called St. Ford Paul, applied for the issue to him of a first certificate of title in respect of the land. The application was supported by an affidavit of St. Ford Paul and two further affidavits by Anicet Jno. Baptiste and Claude Bruney. These affidavits say that the applicant had been in possession of the subject land for over 30 years without disturbance. The possession was said to have been by the applicant and his parents as predecessors in title. The certificate of title was issued on 5th February 1998.
- [3] The defendant resists the claim. She says that her father's certificate of title was not obtained by fraud. She also says that the claimant's action is statute barred. She relies on the indefeasibility of title conferred by the Title by Registration Act chap 58:50

Limitation period

- [4] It is convenient to deal with this point first. Under the Eastern Caribbean Supreme Court Act at section 11, where no special provision is contained in the Laws of Dominica or rules of court in relation to civil proceedings the law and practice of the High Court of England as at 1st June 1984 are to be applied. Section 15 (1) of the UK Limitation Act 1980 which applies to Dominica prescribes a limit of 12 years within which an action can be brought to recover land.
- [5] Mr. Bruney for the defendant says that time began to run from July 1996 when the application for the Certificate of Title was made. Consequently by the time the present action was filed in 2008 on 23rd December, more that 12 years had elapsed. Mr. Bruney accepts that the limitation period in an action based on fraud is extended to 12 years after the fraud is discovered or could have been discovered with reasonable diligence.
- [6] The argument of the defendant is that time began to run in July 1996 where the alleged fraudulent misrepresentation was made to the Registrar of Lands. The claimants say they only found out about the issuance of the certificate of title in November 1998. As it turns out this is of no moment. The cause of action in this case only arose when the certificate was issued. The fact that the representations were made before then does not matter. It is only when the Registrar acted on those representations and issued a Certificate of Title that the right to bring suit arose. That happened in 1998. The claim was issued in 2008 well within the 12 year period.

- [7] Much of the factual background of this matter is not in dispute. St. Ford Paul applied for and obtained a certificate of title. He did so, on the basis that he and his parents had been in undisturbed possession of the land for more than the requisite statutory period of 30 years. He says that he was well recognized in the community as the owner of the land.
- [8] The court visited the locus in quo. The parcel sits atop a small promontory with a stunning view of the surrounding seascape. It is a plateau from which the neighboring hamlet of Anse de Mai/ Anse Soldat can be seen. There is evidence of some cultivation in the past but much of the parcel is now covered in shrubs and abandoned coconut palms. Many of the witnesses for the claimant have small landholdings which surround the parcel apart from the cliff which drops steeply into the sea. Access to the plateau is through the yard of Mionette Simon through an alternative difficult alternate route exists.
- [9] The Affidavit of St. Ford Paul consists of 6 very short paragraphs. It is this affidavit that the claimant say is fraudulent. To show that the affidavit is fraudulent the claimants must show that it contains false representations and that St. Ford Paul made these knowing them to be false or without belief in their truth or recklessly, uncaring whether they were false or not.
- [10] In the circumstance of this case there is no room for supposing that the representations – if found to have been false- were made by St. Ford Peter Paul other than deliberately for the purpose of misleading the Registrar of Lands into granting him a certificate of title. I turn and examine the affidavit. St. Ford Paul says:

“From my childhood I knew the land to be part of a larger portion in the possession of my parents. I was born and grew up on a larger portion of land. I lived with my parents there.”

- [11] All of the witnesses for the claimant deny this. The village of Anse Soldat/ Anse de Mai is a small community. It is surprising that no one in the community has testified in support of this statement. Additionally, the birth certificate of St. Ford Paul shows him to have been born at Bense- several miles away. Similarly there is no other evidence that the land in question was ever in possession of his parents. The evidence of the defendant, the personal representative of St. Ford Paul, is that the land was gifted to St. Ford Paul by his uncle. This inconsistency casts serious doubt on the veracity of the affidavit.

- [12] Additionally, the affidavit of St Ford Paul says that he was “well recognized in the community as owner” of the land. No one in the community has been produced by the defendant to support this. On the contrary, the claimant and all the witnesses who testified for the claimant deny recognizing him as owning any land in the area. The two persons who swore affidavits in support of St Ford Paul are not members of the surrounding community.
- [13] At the trial, one of these persons, Anicet Jno. Baptiste, testified. He recanted. He now says he was tricked by his friend St. Ford Paul into signing the affidavit. On oath and under vigorous cross-examination he now says that he did not know St. Ford Paul to own the land or to have occupied it as his affidavit stated. I accept the evidence of this witness. He has no interest to serve.
- [14] Having seen and heard all of the witnesses I find that the affidavit of St. Ford Paul was false. I find that he deliberately misled the Registrar into issuing him a certificate. I direct that the certificate of title St. Ford Paul be surrendered to the Registrar of lands and cancelled.
- [15] The claimants also seek a declaration that they are the owners. I decline to make any such order. While the evidence of the fraud of St. Ford Paul is compelling there is no such compelling proof that the three claimants are the owners of the land. Indeed it appears that the extended family of Mionette Simon (including the claimants) has cultivated this land on an hoc basis over many years. In any event they must follow the procedure laid down in the Title by Registration Act if they wish to secure a certificate of title themselves.
- [16] Judgment is entered for the claimants. The defendant is ordered to surrender the certificate of title to the Registrar of Lands for cancellation as having been obtained by fraud. As there has been no clear winner in these proceedings each party will bear their own costs.

High Court Judge
Justice Brian Cottle