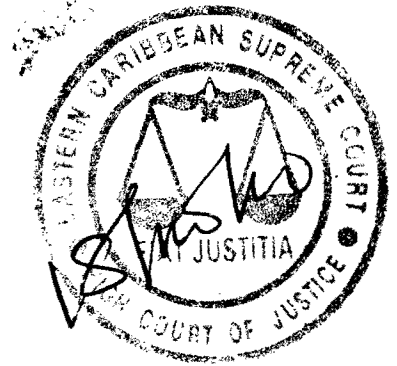


ST VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

(CIVIL)

CLAIM NO SVGHCV2009/044



BETWEEN:

ERLENE RICHARDSON

Claimant

AND

1. HELENOR WILIAMS

2. DON WILLIAMS

Defendants

Appearances:

Ms Kelisia Isaacs and Mrs Ada Johnson for Claimant

Mr Stephen Williams for Defendant

.....
2010: February 11

October 18
.....

Decision

[1] **LANNS, M:** On 24th November 2003, Arthur Richardson (Mr Richardson) executed a statutory declaration by which he asserted claim to:

“ALL THAT LOT PIECE OR PARCEL OF LAND by estimation being 7,062 square ft more or less situate at Collins in the Parish of St George in St Vincent and the Grenadines being abutted and bounded on or towards THE NORTH by lands of GERTRUDE WILLIAMS, on or towards THE SOUTH BY LANDS OF Jacob Martin; on or

towards THE EAST by A PUBLIC ROAD; on or towards THE WEST by A BYE-WAY; ... together with all buildings and erections thereon situate and all ways watercourses rights liberties privileges paths passages and all other easements and appurtenances thereto belonging or usually held used occupied and enjoyed therewith or reputed to belong or appurtenant thereto...."

- [2] Mr Richardson specifically asserted claim to the subject land in the following terms:

"... [B]y virtue of Section 17 Chapter 90 of the Limitation Act 1988, Volume 3 of the Revised Edition of the Laws of Saint Vincent and the Grenadines I DECLARE that the right of anyone to dispossess me of the said lands is extinguished and the right of any person to bring any action to recover the said lands must first accrue to that said person or to this predecessor in title with TWELVE YEARS from the year 1988. I therefore claim a POSSESSORY TITLE to the said lands."

- [3] The declaration was registered as Deed No 4067 of 2003.

- [4] On 19th August 2005, Mr Richardson, executed a Deed of Gift of 5,575 sq ft of the said land to his daughter, Earline Richardson, the Claimant herein. This Deed of Gift is registered as Deed No 2606 of 2005. It appears from the filings, that upon resurvey of the property, for the purposes of the Deed of Gift, it was stated as measuring 5,575 sq ft and not 7,062 square ft as stated in Deed No 4067 of 2003 in favour of Mr Arthur Richardson. I do not think anything turns on this.

- [5] On 10th September 2008, the Claimant and one Ferique R. Shortte (Mr Shortte) sought and obtained loan financing for the construction of a dwelling house in the amount of \$202,900.00 from the Saint Vincent and the Grenadines General Employees Cooperative Credit Union (GECCU). The loan was secured by a mortgage over the subject land, which mortgage was executed by the Claimant and Mr Shortte, and registered as Deed of Mortgage No 3646 of 2008. It is necessary to look at the statement of claim.

The Statement of Claim

- [6] The Statement of Claim allege that the Claimant is the owner and entitled to the possession of the land situate at Mesopotamia by virtue of Deed No. 2606 of 2005. Construction of her house began on 1st October 2008. On or about 11th January 2009, when construction was well on the way to completion, the Defendants caused a truck load of concrete slabs and debris to be delivered and dumped on to the land causing obstruction and blocking entrance to the land, with the result that the workmen could not continue the work.
- [7] The Claimant also alleges that on or about 22nd January 2009, the Defendants wrongfully entered on the land and lit fire to the structure and to certain items including bamboo posts, electrical equipment and sacks of cement purchased in aid of construction.
- [8] Then, on 29th January 2009, the Defendants wrongfully entered the land and proceeded to cut up and destroy bamboo stilts, used in the construction process.
- [9] The relief claimed was for general damages, special damages which were particularized, and costs.

The Defence and counterclaim

- [10] In the joint Defence and Counterclaim, the Defendants denied that the Claimant is the owner of the subject land. They then proceeded to give a history of the possession of the land. They asserted that the property in question is owned by one Bertram Yearwood, by virtue of Deed of Conveyance dated 25th May 1961, and registered as 748 of 1961. They say that Bertram Yearwood is the brother of the first Defendant and uncle of the second Defendant and that he, Bertram Yearwood migrated to Canada (on an undisclosed date) leaving his brother Hillary Yearwood in charge of the subject property. James Yearwood, another brother of Bertram Yearwood took control of the property and gave Arthur Richardson permission to work the property on a share crop basis. James Yearwood departed this life in December 2001, leaving Arthur Richardson still working the land.

- [11] The Defendants further answered the claim by asserting that the first Defendant is the duly constituted attorney on record for Bertram Yearwood by virtue of a Power of Attorney dated 6th April 2009, registered as number 104 of 2009.
- [12] An examination of the Power of Attorney shows that this document was executed after the alleged wrongful entry and damage, and after the claim was filed
- [13] By paragraph 17 of their Defence, the Defendants simply deny paragraphs 3, 4 and 6 of the Claimant's Statement of Claim wherein the Claimant alleges wrongful entry and damage and loss. The Defendants failed to give the reason for their bare denial of paragraphs 3, 4, 5, and 6 of the Statement of Claim in breach of Rule 10.5 (4). Instead, they counterclaimed for a declaration of Bertram Yearwood's entitlement to possession of the subject property. They also counterclaimed for orders that the Claimant remove forthwith her building from the property; cancellation of the Possessory Deed No. 4067 of 2003 in favour of Arthur Richardson; cancellation of the Deed of Gift No. 2606 of 2005 in favour of the Claimant; cancellation of the Mortgage Deed 3646 of 2008 in favour of GECCU; damages for trespass; and costs.
- [14] Paragraph 18 of the Defence disclosed that when the Defendants became aware that the building was being constructed on the subject property, they spoke to the Claimant and instructed a Solicitor to send a letter to the Claimant. A copy of the letter was annexed. Interestingly, paragraph 2 of the letter informs the Claimant that she had unlawfully trespassed on a parcel of land owned by the First Defendant. The letter continued to state that despite several requests for the First Defendant to desist from her actions she has failed to comply. The letter then suggested to the Claimant that there appears to be a misunderstanding on her part as to the ownership of the subject land which she occupied. The letter then invited the Claimant to attend the Chambers of the Defendant's solicitors bringing with her evidence of her ownership of the subject land. The letter warned that failure to do so will result in legal action being taken against the Claimant.

- [15] I pause here to state that on 29th April 2009, the Defendants filed an Ancillary Claim against the GECCU, but this was subsequently struck out. So GECCU is no longer part of these proceedings.

The Reply to Defence

- [16] In paragraph 1 of the Reply to the Defence and Counterclaim, the Claimant alleges that the Power of Attorney referred to in the Defence is of no legal effect and is null and void since it is in breach of the requirements of section 2 the **Powers of Attorney Act**, Chapter 91, and section 8(b) of the **Registration of Documents Act** Chapter 93. In paragraph 2 of the Reply, the Claimant alleges that the Defence does not amount to a Defence to her claim of trespass. She pointed out that the claim is for trespass on 11th, 22nd and 29th January 2009, whereas the purported power of attorney is dated and registered April 6th 2009, months after the alleged trespass, and even after the claim was filed. In these circumstances, the purported power of attorney offers no protection or defence to the claim for trespass, argues Ms Isaacs.

Preliminary Issue

- [17] At a case management conference held on 16th December 2009, Master Mathurin ordered the Claimant's counsel to file and serve submissions and authorities in respect of paragraphs 1 and 2 of the Reply to the Defence. The Defendant's counsel was ordered to file and serve response by 29th January 2010. The parties complied. The central issues which seem to arise for determination from paragraphs 1 and 2 of the Reply are (1) What is the effect of the general Power of Attorney on the claim for trespass to and destruction of property brought by the Claimant; and (2) Whether the Defendants Defence has properly answered the claim?
- [18] To determine the issues identified above, one must first look to see if the Power of Attorney was properly executed, its date and its scope of authority.

[19] **The Powers of Attorney Act** Chapter 91 section 2, side noted "Execution of power of attorney" provides

2. (1) An instrument creating a power of attorney shall be signed by, or by direction and in the presence of, the donor of the power.

(2) Where such an instrument is signed and sealed by a person by direction and in the presence of the donor of the power, two other persons shall be present as witnesses and shall attest the instrument.

(3) This section is without prejudice to any requirement in, or having effect under, any written law as to the witnessing of instruments creating powers of attorneys..."

8. (1) Subject to subsection (2) a general power of attorney in the form set out in the schedule , or in a form to the like effect but expressed to be made under this Act, shall operate to confer ---

(a) on the donee of the power authority to do on behalf of the donor anything which he can lawfully do by an attorney.

(2) This section does not apply to functions which the donor has as a trustee, personal representative, tenant for life or statutory owner.

[20] The **Registration of Documents Act** Chapter 93 is also applicable here by virtue of section 2(3) of the **Powers of Attorney Act**. The relevant sections of the **Registration of Documents Act** provides as follows;

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

(a) ...

(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.

(c) ...

6. All documents required to be registered under this Act shall---

(a)-(b) ...

(c) ...

(ii) be executed, attested, and proved in manner provided for in this Act.

8. (1) The execution of all deeds shall be proved---

(b) if executed outside Saint Vincent and the Grenadines either

(i) by the persons executing the same acknowledging their signatures to the deed personally before a judge of a court of record, a magistrate, a notary public...; or

(ii) by a declaration in writing of, subscribed by an attesting witness, thereto proving due execution made before any of the persons holding the offices set out in paragraph 1 above...

[21] Ms Richardson's learned counsel Ms Kelisia Isaacs (Ms Isaacs) contended that the Power of Attorney failed to abide the formalities as set out in Section 2 of the **Power of Attorney Act** in that it was not attested by two witnesses. Counsel further contended that the Power of Attorney does not meet the requirements for proof of execution as required by the **Registration of Documents Act**, as there is nothing to show the acknowledgement of any

signature by the signatories to the Power of Attorney or a solemn Declaration by an attesting witness.

- [22] I pause to state that the power of attorney appears to be properly executed under section 2 (1) of the Powers of Attorney Act, it having been executed before a Notary in Canada. I consider that in the present case, there is no requirement under Section 2 (2) of the Powers of Attorney Act for the attestation by two witnesses since the power of attorney was signed by Mr Bertram Yearwood and not by any one by the his direction. However, I am inclined to agree with Ms Isaacs that the Power of Attorney does not meet the requirements of proof of execution under the Registration of Record Act, Section 8(1) (b).
- [23] The Defendants' learned counsel Mr Stephen Williams (Mr Williams) countered that the Power of Attorney is properly executed in accordance with section 1 of the Powers of Attorney Act. He next submitted that the limitation contained in section 8 (2) (b) of that Act do not apply to the present case where the issue is one of trespass and ownership of property. I entirely agree with him. But this was not contested.
- [24] Counsel then posited that the general power of attorney executed by Bertram Yearwood is capable of conferring power to the Defendants to enable them to represent his interest. Counsel went on to submit that the Claimant claimed ownership of the subject land by virtue of deed 2606 of 2005 and the Defendants by virtue of the power of attorney 104 of 2009 are acting on behalf of Bertram Yearwood, the donor of that power who has a vested interest in the land claimed by the Claimant. My short answer to that is that whereas it can be said that a general power was given to the first Defendant, none was given to the second Defendant.
- [25] Counsel concluded his submissions by submitting that there is nothing in the **Powers of Attorney Act** that restricts or prevents the donor from conferring a general power to a donee to deal with land transactions or of trespass. Again I say, the power was given to the first Defendant only.

Paragraph 2 of the Reply

- [26] In relation to the paragraph 2 of the Reply, wherein it is alleged that the Defence does not amount to a Defence to the claim for trespass, Ms Isaacs submission reechoed paragraph 2 of the Reply, adding that the defendants defence attempts to assert title to property.
- [27] Ms Isaacs relied on paragraph 7 of the judgment of the Court of Appeal in **Lorenze Williams et al v Hestina Edwards** [Saint Vincent and the Grenadines] Civil Appeal No 20 of 2000, wherein Byron CJ quoted Halsbury's 4th Edition, Vol 38 as stating that "trespass is the interference of one's possession and it does not turn on whether the party bringing the action had a deed in law or was in fact the owner of the land." Counsel further relied on Halsbury's 4th Edition, Vol 38 paragraph 1213 for the submission that an action of trespass is founded on possession of the subject premises and not on title thereto and that any form of possession is sufficient to ground an action for trespass so long as it is clear and exclusive and exercised with intention to possess. On counsel's submission, possession by the Claimant is evidenced by her Deed of Gift No 2606 of 2005. As such, the Defendants plea of title as a Defence to trespass does not negate the Claimant's actual possession nor does it justify the unlawful act of the Defendants in destroying the Claimant's property. Counsel concluded her submissions by submitting that the defence does little to answer the claim brought by Ms Richardson and should be struck out for failing to disclose a viable defence to the claim.
- [28] Mr Williams did not specifically address the issue as to whether the Defence amounts to a Defence to her claim in trespass. I take it that his submissions outlined in paragraphs [19], [20] and [21] above are intended to address both issues raised in paragraphs 1 and 2 of the Reply.

Discussion and decision

- [29] In Saint Vincent and the Grenadines, the **Powers of Attorney Act** Chapter 91 and the **Registration of Documents Act** Chapter 93 govern the execution of Powers of Attorney.

The power of attorney created by Bertram Eugene is a general power of attorney in the form set out in Schedule to the **Powers of Attorney Act**, except that the full address of the donor is not given as contemplated by the Act. This defect may not be fatal and no issue was specifically taken with it.

- [30] It is clear to me from a reading of the relevant sections of both Acts that the requirement for execution of a power of attorney set forth in Section 2 of the Powers of Attorney Act has been satisfied, but it appears that the requirement for proof of execution has not been satisfied under Section 8 (1)(b) of the **Registration of Documents Act, there being no declaration by an attesting witness**. Accordingly, I find and hold that the Power of Attorney which purports to be executed by Bertram Yearwood is null, void and of no effect since it runs afoul of Section 8 (1) (b) of the Registration and records Act Chapter 93. If I am right, then it logically follows that portions of the Defence and Counterclaim proffered by the Defendants which purport to assert title to the subject property by virtue of the power of attorney are liable to be struck out as disclosing no reasonable ground for defending the claim.
- [31] Even if the power of attorney was properly executed, or can be treated as valid, there can be no doubt that it gave power to the first Defendant only. So the second Defendant cannot cloak himself with that document to defend a claim for damages for trespass, and destruction of property, or to counterclaim for Bertram Yearwood's entitlement to property.
- [32] Additionally, I make the observation that the power of attorney was executed only after the claim was issued. So the first Defendant would have had no standing to do anything pertaining to the land in question prior to the 6th of April 2009 when the Power of attorney was created or executed. The suit was brought on 7th January 2009, claiming damages for trespass and/or destruction of property on January 11, 22, and 29, 2009.
- [33] Moreover, I take the view that the alleged unlawful act of the Defendants in destruction of the Claimant's property gives rise to an in personam action against the Defendants. No power of attorney can authorize a donee to do something unlawful or illegal. As outlined in

Section 8(2) of the **Power of Attorney Act**, "a general power of attorney in the form set out in the Schedule or in a form to the like effect but expressed to be made under this Act, shall confer on the donee of the power authority to do on his behalf anything which he can lawfully do by an attorney." This power cannot be said to extend to the trespass to and destruction of property in a situation where the Claimant holds a possessory title to the subject property. I hasten to add, that I make no finding as to whether the rights, title and interest of Bertram Yearwood in the subject property continues to exist.

- [34] In my judgment, the defence discloses no reasonable ground for defending the claim. The claim for destruction of property consists of a bare denial. CPR 10.5(4) stipulates that if the Defendant denies any of the allegations in the claim form or statement of claim, the defendant must state the reasons for doing so; and if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence. The Defendants have failed to comply with this rule. It would appear, however, that the Defendants seek or attempt to set out their version of events in paragraph 18 of the Defence wherein they referred to a letter written to the Claimant stating that the first Defendant owns the land upon which the Claimant had commenced construction of her dwelling house. It is evident from this letter which is not only pleaded but annexed to the Defence, that there is much conflict in the Defendants' answer to the claim. Given these conflicting and contradicting assertions by the first Defendant, I do not think that there is a viable defence to paragraphs 3, 4 and 5 of the Statement of Claim. Nor is there a viable defence to the claim for trespass and or destruction to property.

Conclusion

- [35] I am entirely in agreement with counsel for the Claimant when she submits that the power of attorney is null void and of no effect; that the assertion of title in the defence does not negate the wrongful act of trespass or the destruction of property by the Defendants, and that the Defence does little to answer the claim brought by the Claimant.

[36] For all the foregoing reasons, I am of the opinion that the Defence and Counterclaim must be struck out under Rule 26.3 (b)(c) and (d), and judgment should be entered for the Claimant for damages to be assessed and costs.

[37] **IT IS THEREFORE ORDERED THAT**

[1] The Defence and Counterclaim be and the same is hereby struck out under CPR 26.3 (b) (c) and (d).

[2] Judgment is entered for the Claimant for damages to be assessed upon application by the Claimant.

[38] I have been provided with very helpful submissions and authorities. For these, I am grateful to both counsel.


PEARLETTA E LANNS
Master