



THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 244 OF 2006

BETWEEN:

RICHARD WILLIAMS

First Claimant

LEXART INC.

Second Claimant

v

OLIN DENNIE

First Defendant

McCONNIE YAMMIE & CO LTD

Second Defendant

Appearances: Mr. P.R. Campbell Q.C. and Ms. R. Frederick for the Claimants
Mrs. Kay Bacchus-Browne for the First Defendant
Mr. Emery Robertson Sr. for the Second Defendant

2009: July 14, 15 and 22

2010: March 12

JUDGMENT

[1] **THOM, J:** Mr. Richard Williams is the owner of Lexart Inc. Mr. Olin Dennie served as Attorney-at-Law for McConnie Yammie and Co. Ltd. (the Company). The Company is the owner of a parcel of land at Villa in the State of Saint Vincent and the Grenadines (the Property).

BACKGROUND:

[2] Some time in February 2006 by an undated letter Mr. Richard Williams made an offer to Mr. Olin Dennie to purchase the property for the sum of \$715,864.00, subject to contract

with a deposit of \$200,000.00 to be paid forthwith and the balance of \$515,864 to be paid within 90 days. Attached to the letter was a valuation from Mr. Franklyn Browne.

- [3] By letter dated March 1, 2006 Mr. Olin Dennie made an offer to Mr. Richard Williams to sell the property to him for the sum of \$800,000.00 on terms that a deposit be made of \$200,000 by Friday March 3, 2006 and the balance of \$600,000.00 within 90 days of the deposit of \$200,000.
- [4] At the request of Mr. Richard Williams a similar letter was sent to Lexart Inc. on March 2, 2006.
- [5] On 3rd March 2006 Mr. Richard Williams issued a cheque to Mr. Olin Dennie for \$200,000 and on the same day Mr. Olin Dennie issued a receipt to Mr. Richard Williams. The receipt stated the \$200,000 was received by Mr. Dennie for the Company.
- [6] By a letter dated April 27, 2006 Mr. Albert John a director of the Company wrote to Mr. Olin Dennie informing him that he had no authority to sell the property and that he should refund the \$200,000.00 to Mr. Richard Williams. A similar letter was sent to Richard Williams. The letter to Richard Williams was attached to the letter to Mr. Olin Dennie. Consequently, Mr. Richard Williams and Lexart Inc. instituted these proceedings in which they claim inter alia specific performance of the agreement for sale of the property and damages for breach of contract.
- [7] In the Statement of Claim Mr. Richard Williams alleged that he knew Mr. Olin Dennie to be the Attorney for the Company since 1995. Mr. Olin Dennie represented to him that he had the authority to sell the property on behalf of the Company. He accepted the counter offer made by Mr. Olin Dennie and paid the deposit of \$200,000.
- [8] Mr. Olin Dennie in his defence pleaded that he was the Attorney for the Company for many years. He had sold several properties on behalf of the Company. He was authorized by the Company to sell the property. The property was valued by Mr. Franklyn Browne and

Mr. Franklyn Evans and the Company considered the valuations and agreed to sell the property before he made the offer for sale.

- [9] The Company in its defence admitted that Mr. Olin Dennie was its solicitor and that he sold several properties on behalf of the Company, but denied that he was authorized to sell the property.

ISSUE

- [10] The issue to be determined is whether Mr. Olin Dennie had the authority of the Company to enter into an agreement of sale in relation to the property.

EVIDENCE

- [11] Mr. Richard Williams testified on behalf of the Claimants, no witnesses were called. Mr. Olin Dennie testified and called two witnesses being Mr. Franklyn Browne and Mr. Franklyn Evans. No witness statements were filed on behalf of the Company and no witnesses were permitted to testify on behalf of the Company.
- [12] Mr. Richard Williams testified that he was aware that Mr. Olin Dennie had represented the Company for the past 14 years and at all material times he held himself out as acting for and on behalf of the Company in the transaction for the sale of the property. He treated with Mr. Olin Dennie in the genuine and honest conviction based on representation made by Mr. Dennie that he was acting as solicitor for the Company and with full authority of the Company.
- [13] During December 2005 Mr. Olin Dennie informed him that the Company was interested in selling the property and that he had commissioned a valuation report. About mid January 2006 Mr. Olin Dennie arranged for him to inspect the property, a valuer Mr. Franklyn Browne was present at the inspection. A few days later Mr. Olin Dennie gave him a copy of the valuation prepared by Mr. Franklyn Browne. Mr. Olin Dennie told him that the

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Company wanted to have a second valuation. Mr. Dennie by letter dated February 10, 2006 sent him a copy of the valuation report by Mr. Franklyn Evans. After receiving the report he made an offer to purchase the property for \$715,864.00. By letter dated March 1, 2006 Mr. Olin Dennie sent in a counter offer of a purchase price of \$800,000.00. A deposit of \$200,000.00 was payable on March 3, 2006 and the balance of \$600,000.00 payable within 90 days. He requested Mr. Olin Dennie to address the letter to Lexart Inc. since the property would be purchased in the name of Lexart Inc. On March 2, 2006 Mr. Dennie sent him a similar letter addressed to Lexart Inc. He immediately communicated acceptance of the offer to Mr. Olin Dennie and paid Mr. Dennie the deposit of \$200,000.00 by cheque. Mr. Olin Dennie gave him a receipt on behalf of the Company. On May 26, 2006 he wrote to Mr. Olin Dennie informing him that he was ready to conclude the sale. By letter dated May 30, 2006 Mr. Dennie informed him that the Company did not wish to proceed with the sale of the property and that the Company had applied part of the deposit to its loan account. Consequently, this claim was instituted seeking inter alia specific performance.

[14] Under cross-examination Mr. Richard Williams agreed that he dealt solely with Mr. Olin Dennie. He had no communication with the Company. More specifically he had no communication with Mr. Albert John or Mr. Carl Prescott, the Directors of the Company. He was aware that the property was owned by the Company but he did not make any enquiries of the Company. He took Mr. Olin Dennie's word. The cheque was in Mr. Olin Dennie's personal name. He did not see any authority for Mr. Olin Dennie to act. He agreed that an Attorney must have authority to act. He was aware that Mr. Olin Dennie had sold several properties for the Company and there was no problem. When he went to inspect the property Mr. Olin Dennie had the keys to the property. Shortly before the balance of the purchase price was due he received a letter from Mr. John stating that Mr. Olin Dennie had no authority to sell the property.

[15] Mr. Olin Dennie testified that he acted as solicitor for the Company since 1991. Acting on behalf of the Company he sold several of its properties including property at Villa to Basil

Charles, property at Stubbs to Mr. Sutherland, property at Diamond to Rhonda Lewis and property at Hamilton, Bequia to Mr. Nolly Simmons.

- [16] The company was founded by Mr. McConnie Yammie who died testate on March 29, 1999. He appointed his wife Victoria Yammie to be the Governing Director of the Company. At the death of Victoria Yammie, she was indebted to First Caribbean International Bank in the sum of \$866,197.90.
- [17] The purchase price obtained from the sale of the property to Basil Charles was insufficient to meet all of the debts of the estate of Victoria Yammie including legal fees.
- [18] At a meeting of the Company held at his office on February 27, 2006 the question of the sale of the property was discussed. Prior to the meeting, he was given instructions to sell the property as there was a balance of \$300,000.00 owing to First Caribbean International Bank. It was agreed the purchase price would be used to settle the debt and effect repairs to the Granby Street Property. At the time the Company had a cash flow problem.
- [19] Having received authorization he commissioned Franklyn Browne to prepare a valuation. The Company required a second valuation and he commissioned Mr. Franklyn Evans to prepare a valuation. He received an offer from Mr. Richard Williams to purchase the property for \$715,864.00. He discussed the valuations at the meeting of February 27, 2006. It was agreed that the property should be sold to Mr. Richard Williams for \$800,000.00. By letter dated March 1, 2006 he wrote to Mr. Richard Williams offering to sell him the property for \$800,000.00. Mr. Richard Williams responded requesting the offer be made in the name of Lexart Inc. He did so by letter dated March 2, 2006. He communicated verbally to Mr. John that he had received \$200,000.00 from Mr. Richard Williams and Mr. John told him to deposit \$50,000.00 towards the loan account at First Caribbean International Bank. On March 8, 2006 he wrote to Mr. John reminding him of the meeting of February 27, 2006 and informed him of the deposit of \$200,000.00 made by Mr. Richard Williams.

- [20] By letter dated April 27, 2006 Mr. Albert John informed him that he had no authority to sell the property and informed him to refund the \$200,000.00 to Mr. Richard Williams. An undated letter addressed to Mr. Richard Williams was also attached. Upon receipt of the letter he summoned Mr. Albert John to a meeting at his office. At that meeting Mr. Albert John informed him that Mr. Prescott had agreed to lend the money to the Company to pay off the debt to the Bank so it was decided not to proceed with the sale. Mr. Albert John promised to make available to him the sum of \$50,000.00 to be repaid to Mr. Richard Williams but he failed to do so.
- [21] He never entered into any transaction for the sale of any of the Company's properties without its authorization.
- [22] Under cross-examination by Mr. P.R. Campbell Q.C., Mr. Olin Dennie testified that he had represented to Mr. Richard Williams that he was acting on behalf of the Company. He agreed that if the Company was not liable then he would be liable. It was not the practice for lawyers to get written authority from clients.
- [23] Under cross-examination by Mr. Robertson, Mr. Dennie testified that he did not have a retainer from the Company. He was paid for each transaction. At the time of the death of Victoria Yammie, Mr. Albert John was the sole Director of the Company. Mr. Carl Prescott became a director around 2005 and Ms. Simmons as Secretary. He testified that he sold several properties of the Company acting on the instructions of Mr. Albert John. In relation to those properties, he did not have any written instructions. Mr. John signed all of the Deeds. When the property was sold to Basil Charles in 2004 the purchase price was paid to him and he was instructed to pay certain debts including legal fees. At the time when he held negotiations with Mr. Richard Williams the Company had financial problems. The decision to sell the property was made on February 27, 2006 at a meeting at his office. On the instructions of the Company, on March 28, 2006 he paid \$50,000.00 of the \$200,000.00 deposited by Mr. Richard Williams to the Company's loan account at the Bank. Mr. Olin Dennie agreed with Mr. Robertson's suggestion that at the meeting of February 27, 2006 at which Mr. Albert John, Mr. Carl Prescott and Ms. Simmons were

present that they discussed the problems with Paul and Pearl Yammie, children of Victoria Yammie, the outstanding debts of the Company, and sale of one or both of the Villa properties. Mr. Olin Dennie denied that no decision was made to sell the property. He agreed that no agreement for sale was prepared. The instructions to sell the property that were given to him prior to the meeting were given by Mr. Albert John. Mr. Olin Dennie admitted that he was still in possession of the \$150,000.00 and would pay it to the Company if so ordered by the Court. Mr. Olin Dennie also admitted that he was no longer the Attorney for the Company at the time of the filing of this claim.

SUBMISSIONS

[24] Learned Queen's Counsel for Mr. Richard Williams submitted that the Court, having refused the Company's application for relief from sanction to file its witness statements which application was made at the trial, the consequence is that the defence of the Company must be regarded as having been struck out and judgment should be entered for the Claimants. Learned Queen's Counsel referred the Court to the case of **Edwardo Lynch v Ralph Gonsalves** (St. Vincent and the Grenadines) Civil Appeal No. 18 of 2005 paragraphs 11 and 12 which read as follows:

- "11. ...the Defendant argues that before the Court can find that there was publication, the Claimant must first call at the trial the witnesses who allegedly heard the words spoken to testify as to the fact and content of publication. The appellant advances a number of arguments in this connection including arguments as to hearsay and credibility. With respect, I do not see the need to address these arguments because, as I understand it, the consequence of failure to defend against an allegation is the same as it was under the old rules of Court. In the old rules, it was explicitly stated in RSC Order 18 Rule 3 that if there is no defence to a material allegation in the statement of claim that allegation must be treated as admitted. Where an allegation was admitted RSC Order 7 Rule 3 entitled a plaintiff to apply for judgment on admission.
12. In CPR 2000 the same purport is in Rule 12.5 which states that the consequence of failure to file a defence to the claim or any part of it is that the Court Office, at the request of the Claimant must enter judgment for failure to defend. Rule 12.5 (c) (i) makes it clear that a defendant is in the same position as if his defence had been struck out as if he has simply not filed a defence as a defence to part of a claim. When there is a failure to defend the rule does not require the Claimant to prove his case. The

Claimant is at once entitled, at the stage of the failure to defend, to apply for judgment. The submission on behalf of the appellant that the respondent still needed to prove the fact and the contents of the publication, even after the defence to publication had been struck out, with respect is misconceived. I would accordingly dismiss the appeal against the judge's decision as to publication."

Learned Queen's Counsel also referred the Court to the text The Caribbean Civil Court Practice (2008) at page 129, and the case of Young v Thomas [1892] 2 Ch. 134.

[25] Learned Queen's Counsel also submitted that there is no need for Mr. Olin Dennie to go beyond his pleaded defence in order to establish that he had the necessary authority to bind the Company. Alternatively, Mr. Olin Dennie by his oral testimony and documentary evidence has established on a balance of probabilities that he had the authority of the Company to sell the property.

[26] Learned Counsel for Mr. Olin Dennie submitted that based on the witness statements of Mr. Richard Williams and Mr. Olin Dennie the Court should find that Mr. Olin Dennie had the authority of the Company to sell the property. Learned Counsel further submitted that judgment must be granted to the Claimants based on the authority of the case of Edwardo Lynch v Ralph Gonsalves.

[27] Learned Counsel for the Company submitted that the Court should find that Mr. Olin Dennie had no authority to sell the property. Mr. Olin Dennie failed to produce written authority. Learned Counsel referred the Court to the case of Wright v Castle (1817) 3 MER 12 p. 5 where Lord Chancellor Eldon said:

"It is also settled that, if the Plaintiff denies, and the solicitor asserts authority to have been given and there is nothing but assertion against assertion the Court will say that the solicitor ought to have secured himself by having an authority in writing and that, not having done so he must abide the consequences of his neglect. There must be a special authority to institute, although a general authority is sufficient to enable the solicitor to defend a suit. In this case the plaintiff has positively shown that he gave no authority whatsoever to file the Bill and this is met by only a general assertion of his being authorized on the part of the Solicitor. The motion must therefore be granted."

- [28] Learned Counsel also referred the Court to Mr. Olin Dennie's letter of March 8, 2006 and asked the Court to consider that Mr. Olin Dennie admitted that he commenced negotiations in January 2006; and also two valuations were commissioned before February 27, 2006.
- [29] Learned Counsel further submitted that a contract for sale of land must be in writing and registered in accordance with the Registration of Documents Act Chapter 93 Section 3(1). Learned Counsel also referred the Court to Halsbury Laws Volume 9 paragraphs 623 and 624. There was no formal contract for sale. Mr. Richard Williams in his letter to Mr. Olin Dennie stated that the offer was subject to formal contract. Also it is not clear who was the purchaser, Richard Williams or Lexart Inc. Learned Counsel referred the Court to the case of Alpenston Ltd and another v Regalian Properties plc (1985) 1 WLR 721 and Cohen v Nessdale [1982] 2 AER p. 97.
- [30] Learned Counsel further submitted that the cheque was written to Mr. Olin Dennie in his personal capacity and not on behalf of the Company. The receipt was not issued to Lexart Inc. but to Mr. Richard Williams. Neither Mr. Richard Williams nor Lexart Inc. made any demand for the return of the deposit. Specific performance is an equitable remedy and the maxims: He who seeks equity must do equity, and He who comes to equity must come with clean hands are applicable in this case. Mr. Olin Dennie stated that the money was in escrow and to date he has not refunded the money.

LAW AND COURT'S ANALYSIS

- [31] It is settled law that a solicitor must have the authority of the client to enter into a contract on behalf of the client. Whether a solicitor has the authority to act on behalf of the client is a question of fact.
- [32] I do not agree with the submissions of Learned Queen's Counsel that based on the decision in Edwardo Lynch v Ralph Gonsalves judgment should be entered for the Claimants. The paragraphs referred to are based on Part 12.5 of CPR 2000. Part 12.2 of

CPR 2000 specifically states that Part 12 does not apply to fixed date claims. Part 12.2 reads:

"A Claimant may not obtain default judgment if the Claim is:

- (a) a claim in probate proceedings;
- (b) a fixed date claim; or
- (c) an admiralty claim."

These proceedings were instituted by a fixed date claim.

- [33] It is conceded that Mr. Olin Dennie had no written authority from the Company to sell the property.
- [34] In this case the only evidence is the evidence of Richard Williams and the evidence led on behalf of Mr. Olin Dennie.
- [35] I find that Mr. Richard Williams was a credible witness. He was very forthright in his testimony. He readily agreed that he had no discussions with the officials of the Company even though he knew the property belonged to the Company and he had not seen any authority from the Company for Mr. Olin Dennie to sell the property. Lexart Inc. had no money. He was providing the money for the purchase of the property and the property was to be conveyed to Lexart Inc.
- [36] I find that there was no evidence to contradict Mr. Olin Dennie's testimony that he had authority from the Company to sell the property. Mr. Olin Dennie's evidence that a meeting was held at his office on February 27, 2006 at which both directors of the Company, Mr. Albert John and Mr. Carl Prescott and the Company Secretary Ms. Simmons were present was not challenged. His testimony that at that meeting the indebtedness of the Company was discussed was also not challenged. His evidence that they discussed the sale of the property along with another property was also not challenged. In fact, Mr. Robertson in cross-examination suggested to Mr. Olin Dennie that those matters were on the agenda for the meeting and Mr. Olin Dennie agreed. Mr. Dennie referred to the decision of the Company to sell the property for \$800,000.00 and that he had received a deposit of \$200,000.00 from Mr. Richard Williams in the March 8, 2006 letter. There was no response to that letter until April 27, 2006 when Mr. Albert John

wrote to Mr. Olin Dennie stating that he had no authority to sell the property and that he should refund the deposit to Mr. Richard Williams. I do not believe the contents of Mr. Albert John's letter. This is a very valuable property. If the Company had not agreed to sell the property when Mr. Albert John received the letter of March 8, 2006 he would have indicated to Mr. Olin Dennie that the Company did not agree to sell the property.

[37] Learned Counsel also referred the Court to the evidence that shows that Mr. Olin Dennie had commenced negotiations before the meeting of February 27, 2006. I agree that based on the evidence Mr. Olin Dennie did conduct negotiations with Mr. Richard Williams prior to the meeting of February 27, 2006. In fact, the evidence shows that the offer by Mr. Richard Williams was made before the meeting of February 27, 2006. This offer was rejected by the Company. However, the offer by Mr. Olin Dennie was made after the meeting of February 27, 2006. The offer was made to Mr. Richard Williams on March 1, 2006 and to Lexart Inc. on March 2, 2006. This offer to Lexart Inc. was on the instruction of Mr. Richard Williams. Mr. Richard Williams in his evidence stated that he was the owner of Lexart Inc. The property was being purchased in the name of Lexart Inc and he was providing the money thus he gave specific instructions for the offer to be addressed to Lexart Inc. I find that the agreement of sale was between Lexart Inc and the Company.

[38] In relation to the submission that the offer was made subject to contract, the evidence indeed shows that the offer from Mr. Richard Williams was made subject to contract. This offer was not accepted by the Company. This offer was made prior to February 27, 2006. After the meeting of February 27, 2006, indeed on March 1, 2006, Mr. Olin Dennie wrote to Mr. Richard Williams and made a counter offer of a purchase price of \$800,000.00. At Mr. Richard Williams' request the offer was made to Lexart Inc. on March 2, 2006. This submission of Learned Counsel has no merit.

[39] The case of White v Castle is of no assistance to the Company since there is no evidence by the Company to contradict Mr. Olin Dennie's evidence that he had the Company's authority to sell the property.

[40] In conclusion, I find that Mr. Olin Dennie did have the authority to sell the property. The Company breached the contract and is liable in damages to Lexart Inc. Mr. Olin Dennie must pay the \$150,000.00 to the Company. I wish to state very clearly that I make no finding in relation to Mr. Dennie's conduct in his dealings with the finances of the Company, in particular the purchase price he received for the sale of the Company's property to Basil Charles. I was not required to do so in these proceedings.

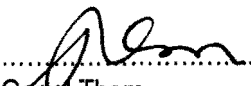
[41] Judgment is entered for Lexart Inc.

[42] It is ordered that:

- (1) It is hereby declared that Lexart Inc is entitled to the completion of the contract for the sale of the property described hereunder as follows:

"ALL THAT LOT PIECE OR PARCEL OF LAND situate at Villa in the Parish of Saint George in the State of Saint Vincent and the Grenadines admeasuring Twelve Thousand Nine Hundred and Sixteen (12,916) square feet and abutted and bounded on or towards the North by a road thirty (30) feet in width on or towards the South by the sea on or towards the East by lands in the possession of the heirs of Walter Hubert Du Morier Barnard and on or towards the West by lands of the Government of Saint Vincent now leased to Young Island Resorts Limited or as the same is more particularly shown and set out on a Plan drawn by Earlmont Stinson Campbell Licensed Land Surveyor in the month of June 1969 and lodged in the Survey Office of the Territory of Saint Vincent on the 8th day of July 1969 and bearing drawing number G. 7/22 or howsoever otherwise the same may be butted bounded known distinguished or described Together with all buildings and erections thereon and with all ways waters watercourses rights lights liberties privileges and easements thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto."

- (2) An injunction is hereby granted restraining the Company its servants, agents or howsoever otherwise from encumbering or alienating or attempting to encumber or alienate the said contract for sale of the property to Lexart Inc, or from doing any act, deed or thing whereby the Claimant's legal and equitable rights in and over the property may be adversely affected.
- (3) An order is hereby granted for specific performance of the said contract for sale of the property to Lexart Inc. Lexart Inc shall pay the balance of the purchase price to the Company within 90 days (less Vendor's Stamp Duty); the Company shall within 7 days of receipt of the balance of the purchase price (less Vendor's Stamp Duty) cause a Deed of Conveyance to be executed in favour of Lexart Inc in respect of the said property. Should the Company fail to convey the property to Lexart Inc in compliance with this Order, the Registrar of the High Court is authorized to execute a Deed of Conveyance of the said property to Lexart Inc.
- (4) The Company shall pay Lexart Inc damages for breach of the contract, such damages to be assessed on application by Lexart Inc., such application to be made within three months.
- (5) Mr. Olin Dennie shall within 7 days pay to the Company the sum of \$150,000.00 being part of the purchase price paid to him on March 2, 2006 together with interest on the said sum at the rate of 5% per annum from the 3rd day of June 2006.
- (6) The Company shall pay costs to Lexart Inc and Mr. Olin Dennie, such costs to be prescribed costs in accordance with Part 65.5.


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Gentel Thom
HIGH COURT JUDGE