

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2007/617

BETWEEN:

**MAX FRELING
NICOLE FRELING**

Claimants

And

**DELCINE THOMAS
REGISTRAR OF LANDS**

Defendants

Appearances: Ms. K. Roberts for the Claimants
Mrs. L. Freeland-Roberts for the Defendants

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2008: October 13

2010: March 04
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JUDGMENT

[1] **Thomas J:** On 29th October, 2007, the claimants Max Freling and Nicole Freling filed a fixed date claim form in which Delcine Thomas and the Registrar of Lands were named as defendants. The claim is for:

1. Possession of the parcel of land properly identified as Registration Section: Falmouth and Bethesda, Block: 34 2682A, Parcel: 399.

2. A declaration that the Claimants are Purchasers for valuable consideration dealing with the Registration Proprietor of Registration Section: Falmouth and Bethesda, Block: 34 2682A, Parcel: 399 and are thus entitled to protection under section 38(1) of the Registered Land Act; Cap. 374 of the Laws of Antigua and Barbuda.
3. An Order that the restriction registered on the Land Register as Entry No. 4 on the Proprietorship Section of the Land Register of the above captioned parcel of land be removed.
4. An order that the transfer of the above-captioned parcel of land from the estate of Mary Felicia Beatrice Thomas to Max and Nicole Freling be perfected by entry of Max and Nicole Freling as the registered Proprietors of the above captioned parcel of land.
5. Damages.
6. Costs.
7. Further and or other relief.

[2] In their affidavit in support, the Claimants detail the circumstances in which they became involved in the purchase of Parcel 399. Included are:

1. The payment of a 10% deposit of the purchase price, that price (being EC\$236,095.00) to Mary Felicia Thomas.¹
2. The payment of EC\$1,800 towards the completion of the subdivision of the property.²
3. The subsequent payment of remainder of the said purchase price.³
4. The payment of stamp duties on the transfer and the non-citizen's licence.⁴

[3] At paragraphs 11 to 15 and 18 to 21 the following is deposed:

¹ At paragraph 5.

² At paragraph 6.

³ At paragraph 16.

⁴ At paragraph 17.

"11. We are informed and verily believe that Mary Felicia Beatrice Thomas, the personal representative of Malcom Thomas, deceased and the Vendor in the transaction died on the 1st day of October, 2006 at the Holberton Hospital, St. John's, Antigua.

12. On or about the 24th day of October, 2006 our attorneys filed an application for a caution to be lodged against the land pursuant to Section 127 of the Registered Land Act, Cap. 374, Laws of Antigua and Barbuda, Revised Edition 1992, forbidding the registration of any dealings and the making of entries in the register relating thereto without our consent or until the Caution was withdrawn by us or removed by order of the court or of the Registrar. We are informed by our attorneys, Roberts & Co. and verily believe that at the time of lodging this caution, there were no other incumbrances on the Land Register.

13. The caution was duly registered on the 24th day of October, 2006, and is recorded as Entry No. 3 in the Land Register. There is now shown to us marked "MFNF6" a copy of the Notice dated 26th day of October, 2006 from the Registrar of Lands verifying the registration of the caution.

14. On the 16th day of November, 2006, our attorneys received written notification from the Attorney General's Chambers that our non-citizens licence application had been approved.

15. On the 1st day of February, 2007, Letters of Administration in the estate of Mary Felicia Beatrice Thomas were granted to Victor Leopold Josiah Wilkins as the Lawful Attorney of Teresa Marcella Lewis.

18. On the 21st day of March, 2007, the signed transfer documents were filed at the Land Registry. However, this transfer was never perfected by the Registrar of Lands by the entering of our names as the registered proprietors of the land. We were informed that the transfer was not perfected due to the fact that a restriction was lodged on the land register on the 18th day of January, 2007 in favour of Eustace Thomas and Delcine Thomas. This restriction was registered without our knowledge or consent. There is now shown to us marked "MFNF11" a copy of the Land Register in relation to the land.

19. We are informed and verily believe that on the 2nd day of May, 2007, the Estate of Mary Felicia Beatrice Thomas applied to the Registrar for the Withdrawal and Removal of the above restriction. We are further informed by our attorneys that on the 1st August, 2007, the Registrar held a hearing on the matter and made an order that the restriction should remain registered until the 1st day of September, 2007, to allow the Cautioners, Eustace Thomas and Delcine Thomas to file proceedings in court.

20. We are informed by our attorneys and verily believe that on the 13th day of September, 2007, Claim No. ANUHCV 2007/0530 was filed on behalf of Delcine Thomas of Bethesda Village, St. Phillip's, Antigua, against Victor Wilkins, the lawful Attorney of Teresa Lewis, Administrator of the Estate of Mary Felicia Beatrice Thomas.

21. It is our position that we are the beneficial owner of Parcel 399, having purchased the parcel of land from the registered proprietor and paid the full purchase price, all stamp duties, and signed the transfer instrument."

- [4] In her affidavit in answer, the First Defendant challenges the right of her uncle, Malcolm Thomas, to the original Parcel 42 of Block 34 2682A which gave rise to Parcels 399 and 400. And at paragraphs 8 to 10 the following is deposed:

"8. It is my belief that my Uncle fraudulently acquired parcel 42 and other parcels of family land, and I hereby urge the Court to allow the restriction to remain pending the outcome of the substantive matter, CLAIM NO. ANUHCV 2007/0530. Bearing in mind, that the Caution was placed on the land in January 2007, final payment was effected in February, 2007 and further fencing of the property was completed in May 2007 or any time thereafter. The question of the whereabouts of the monies that paid as purchase price for parcel 400 is yet to be answered.

9. It is my family's view that Uncle Malcolm Thomas took his fair share of our Grandparents Estate, and the remaining lands are to be given to the other lawful heirs of George and Catherine Thomas.

10. I hereby pray that this Honourable Court will allow the restriction to remain in force on parcel 400 in order to protect the interest of the Thomas family as aforesaid or grant any other relief it deems just under the circumstances that would preserve the said interest."

- [5] In cross-examination, Max Freling confirmed the content of affidavit which was deposed with his wife, Nicole Freling. In relation to the caution placed on the Land Register relating to Parcel 399, the witness said that it was his understanding that with the caution in place their interest was protected as a search had been done. And in re-examination, the witness said that at the time of the caution the search done did not reveal any incumbrances.
- [6] The First Defendant, Delcine Thomas is seeking to assert title to parcel said in cross-examination, *inter alia* that she was not aware of the cadastral surveys in 1979 which was part of a new system of registered title. She also testified that she was in the public service for 38 years and that her post at retirement was Permanent Secretary, Ministry of Labour.
- [7] In seeking to explain why no legal proceedings were brought between 1952 and 2007, the witness said that there was an understanding that the land was family land to be worked; and further that no one worked the land after the death of her uncle, Malcolm Thomas, in 1996. She also disagreed that she failed to exercise reasonable diligence with respect to the subject land.
- [8] In re-examination, Delcine Thomas said that in 2007, at the time of the filing of the proceedings, Malcolm Thomas was the registered proprietor of Parcel 399 and the restriction was placed on it because the name of Malcolm Thomas should not be there as proprietor.

Result of Claim No. ANUHCV 2007/0530.

- [9] As indicated by the Claimants and confirmed by the First Defendant, the above-mentioned proceedings were instituted by the First Defendant against Victor Wilkins, Lawful Attorney of Teresa Lewis and Administrator of the Estate of Mary Felicia Thomas, the Administrator and sole beneficiary of the Estate of Malcolm Thomas. The matter was heard on May 12, and 19, June 09, 2009 and on 29th October, 2009, Madam Justice Louise Bleman rendered her judgment in which she ruled against the said Delcine Thomas, as Claimant. The critical portions of judgment read thus:

"66. Accordingly, and as stated earlier, the Court is satisfied that there are no sufficient facts from which the Court could properly draw the inference that Mr. Thomas committed a fraud.

Parcels 399 to 400

67. For the sake of completeness, it is important that the Court makes clear that it accepts the arguments advanced by Learned Counsel, Ms. White, insofar as she advocated that Ms. Delcine Thomas has failed to establish any fraud committed by Mr. Malcolm Thomas.

68. In fact, Ms. Delcine Thomas has failed to lead any credible evidence to substantiate her contention that Mr. Malcolm Thomas fraudulently obtained titles to Parcels 399, 400 and 16. An allegation of fraud, quite apart from being specifically pleaded, must be proven and the standard of proof required is very stringent, as alluded to earlier.

Laches

69. Also, the Court finds it very noteworthy that Ms. Delcine Thomas is familiar with the process of the Cadastral Survey which operated in 1977 and the subsequent registration process, yet she expects this Court to believe that a woman of her vast intelligence never sought to ascertain in whose name Parcels 399 and 400 were registered.

70. In passing, I state that it is also of significance that Ms. Thomas has seen it fit to institute this claim long after Mr. Malcolm Thomas has died, and importantly after the death of his wife, Mary Felicia Thomas, to whom the property was transmitted. Learned Counsel, Ms. Mary White, quite correctly questions the timing of Ms. Delcine Thomas' claim, in view of the fact that several years have elapsed since the death of Mr. Malcolm and Mrs. Mary Felicia Thomas and the date on which the claim at bar was filed. I do not for one moment believe that it was in 2007 that Ms. Delcine Thomas became aware that the Parcels were registered in Mr. Malcolm Thomas' name.

71. For the sake of completeness, it is opposite for the Court to emphasize that even if the Court is wrong in its conclusion, it is of the respectful view that the doctrine of laches has tremendous relevance to the case at bar and would operate so as to prevent the Court from granting any relief to the Claimant.

72. In view of the above conclusions, it is therefore unnecessary for the Court to address the other issues that have been raised.

Conclusion

73. In view of the foregoing, Ms. Delcine Thomas had failed to prove her claim against Mr. Victor Wilkins.

74. Accordingly, it is ordered that Ms. Delcine Thomas' claim against Mr. Victor Wilkins, the lawful Attorney of Teresa Lewis and Administrator of the Estate of Mary Felicia Thomas, is dismissed together with prescribed costs, unless otherwise agreed."

[10] The decision in this case was reserved pending the outcome of **CLAIM NO. ANUHCH 2007/0530** which, as noted above, is that Delcine Thomas has failed to prove her case against Victor Wilkins. As such it means that in 1977 Malcolm Thomas was registered as the proprietor of Parcels 399 and 400. It follows also that on the death of Malcolm Thomas, intestate, Parcels 399 and 400 were transmitted to his wife who in 2006 had lawful title thereto thus enabling her to enter into an agreement with the claimants for the sale of Parcel 399. And upon her death the Administrator of her Estate had conduct of such matters.

[11] The foregoing renders the arguments on these proceedings academic and as such the Claimants are entitled to the reliefs sought as the Court is satisfied as to the evidence of the vendor's title, the agreement, the payment of the purchase money, the obtaining of the non-citizen's licence and the payment of the relevant stamp duties.⁵ In any event, the Claimants have the protection of section 38(1)(a) of the Registered Land Act which states that: "No person dealing or proposing to deal for valuable consideration with a proprietor shall be required or in any way concerned (a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered....".

IT IS HEREBY ORDERED AND DECLARED as follows:

1. The Claimants are entitled to possession of the parcel of land properly identified as Registration Section: Falmouth & Bethesda, Block: 34 2682A, Parcel 399.
2. The Claimants are purchasers for valuable consideration dealing with the Registered Proprietor of Registration Section: Falmouth & Bethesda, Block: 34 2682A, Parcel 399, and as such are entitled to protection under section 38(1) of the Registered land Act Cap. 374 (Revised Laws of Antigua and Barbuda).

⁵ See Exhibits to the affidavit in support of Max Freling and Nicole Freling.

3. The restriction registered on that Land Register as Entry No. 4 on the Proprietorship Section of the said Land Register with respect to the said Parcel 399 be removed.
4. Forthwith, the transfer of the said Parcel 399 from the Estate of Mary Felicia Beatrice Thomas to Max Freling and Nicole Freling be perfected by the Second Defendant by the entry of Max Freling and Nicole Freling as the registered proprietors of the said Parcel 399.
5. The Claimants are entitled to damages for the inconvenience and distress arising from the action of the First Defendant which prevented the Claimants from completing the transfer in accordance with the agreement with the vendor.
6. The Claimants are entitled to costs to be paid by the First Defendant which must be determined at the time of the assessment of damages.

[12] The Court wishes to record its sincere apologies for any inconveniences caused by the tardiness of this judgment which is due in part to the fact that the judgment in CLAIM NO. ANUHCV2007/0530 had to be awaited. Additionally, in the meanwhile other matters intervened.

[13] The Court also wishes to acknowledge the assistance of counsel on both sides in these proceedings.



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Errol L. Thomas
Judge (Ag.)