

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

SAINT LUCIA

CLAIM NO. SLUHCV2006/0117

BETWEEN:

GODDARD DARCHEVILLE

Claimant

And

1. LINCOLN ST. ROSE
2. NATHANIEL HAYNES
3. JOAN IZA ST. ROSE HAYNES

Defendants

Appearances:

Mr. Alvin St. Clair for Claimant

Mr. Peter Foster and Ms. Diana Thomas for Defendants

2008: December 10, 11;
2009: October 09.

JUDGMENT

- [1] **GEORGES, J (Ag.):** This is a claim for specific performance of a purported contract for sale of a parcel of land at Cap Estate Gros Islet registered in the Land Registry as Block and Parcel No. 1257B 66 (Parcel 66) of which the proprietors are Nathaniel Haynes and Joan Iza St. Rose Haynes a St. Lucian couple resident in Toronto Ontario Canada who hold the same in equal undivided half shares. They are the second and third defendants. The first defendant (Mr. St. Rose) is a Castries businessman and cousin of the second defendant (Joan) and a friend of her husband (Nat) the second defendant. The claimant a businessman himself and the intended purchaser told the Court that he owned a number of businesses and had purchased many parcels of land before. He further disclosed that

although he was not on friendly terms as such with Mr. St. Rose they did have a business relationship and had both been in business for a long time.

- [2] It all started in or about the month of May 2005 when Cecil and Anthea St. Jules a husband and wife of Morne Du Don Castries but residing in the United States of America were closing on the purchase of Parcel 66 for the sum of \$317,988.00 from Nat and Joan represented in St. Lucia by their agent Mr. St. Rose.
- [3] A draft sales agreement (GD 2) which had been drawn up for that purpose states that a deposit of \$15,899.40 was to have been paid by the purchasers to the vendors at the execution of the sales agreement completion date being 30th August 2005. That transaction however fell through and the claimant was alerted of the availability of the said parcel of land by Geoff Fedee a real estate agent who took him to view it and put him on to Mr. St. Rose the owners' representative to whom the claimant said he made an offer of \$300,000.00 which Mr. St. Rose told him he could not accept because the property belonged to someone in Canada and his role was solely that of an agent. Geoff Fedee had in actual fact told him that he was Mr. St. Rose's sub-agent the claimant revealed. Mr. St. Rose promised to contact the owners (the Haynes') and to inform him of their decision. That was about the end of June 2005.
- [4] Within 2 days the claimant said Mr. St. Rose reverted to him and told him that a decision had not yet been arrived at whereupon he (the claimant) asked for the Haynes' telephone number and subsequently made contact with Nat to whom he said he made representations and who promised to discuss his offer with his wife and later communicate their joint decision with Mr. St. Rose their agent in St. Lucia who was quite capable of handling the matter.
- [5] Paragraphs 9 – 16 of the claimant's witness statement is most instructive and merit replication. The claimant went on to say:

9. *Mr. Lincoln St. Rose subsequently communicated with me his client's acquiescence via my cellular phone at the George F. L Charles airport while on a trip to St. Vincent. He indicated that I should move speedily to furnish him with a deposit in order to prepare the documents as there was an opportunity to send it to Canada with a friend who was traveling the following week.*
10. *I then informed Mr. St. Rose that Mr. Alvin St. Clair was my attorney and I will instruct Mr. St. Clair to issue a \$15,000.00 cheque to him as a deposit and gave him the numbers for Mr. St. Clair's office as well as Mr. St. Clair's cell number.*
11. *I was informed and verily believe that Mr. St. Rose communicated with Mr. St. Clair and discussions were held.*
12. *Upon my return to Saint Lucia from St. Vincent Mr. St. Clair presented me with a receipt from Mr. St. Rose reflecting that the deposit was in fact paid to Mr. St. Rose on behalf of the Haynes (a copy of the receipt is attached shown to me and marked GD 3) A caution was immediately placed on the property on the strength of the receipt (a copy of the Land Register showing the caution is attached shown to me and marked GD 4).*
13. *It was agreed that the balance of the purchase price being \$285,000.00 would be paid on or before the 31st day of October 2005. I was informed by my solicitor Alvin St. Clair and verily believe that he had communicated with Mr. St. Rose who had also told him of the Jules transaction. Mr. St. Rose suggested he should speak to Mr. St. Catherine the Jules solicitor to get a precedent of an agreement for sale with respect to the same land (a copy of the sales agreement has already been referred to as GD 2).*

14. *In July 2005 a package containing a letter dated July 26th 2005 addressed to Nathaniel and Joan Haynes together with a Deed of Sale with a Power of Attorney was prepared by my solicitors after all necessary searches and checks were done for delivery to Mr. St. Rose for dispatch to the Haynes in Canada in order that they would sign the same transferring the land to the Claimant or his agent (a copy of the letter is attached shown to me and marked GD 5).*
15. *In September 2005 Mr. Lincoln St. Rose wrote to my lawyer informing him that the Haynes did not accept the deposit paid by me and enclosed a check in the sum of \$15,000.00 as a refund to me of my deposit. I did not accept the same and the said check was returned to Mr. St. Rose who again sent the check to Mr. St. Clair. The Check is in our possession the same **not having been cashed** as I intend to pursue this agreement evidenced in writing for the sale of the said property (a copy of the letter is attached shown to me and marked GD 6).*
16. *Mr. St. Rose sent another letter to my lawyer proffering an explanation for the sale not coming off and stating that he had acted beyond his authority (a copy of the letter is attached shown to me and marked GD 7).*

[6] The events narrated in paragraphs 9 - 14 appear for all intents and purposes to have occurred in July 2005. It was whilst on a trip to St. Vincent at the George F. L. Charles airport the claimant declared that **Mr. St. Rose had communicated with him his client's acquiescence via his (the claimant's) cellular phone.** (My emphasis)

It was on that said occasion he further declared that Mr. St. Rose had prompted him to move speedily to furnish him with a deposit which was duly paid in the sum of \$15,000.00 receipt whereof (which had been prepared by the claimant's attorney) was duly acknowledged and signed by Mr. St. Rose for Nathaniel Haynes and Joan Iza St. Rose Haynes on 11th July 2005 on the strength of which a caution was immediately placed against Parcel 66 by the claimant.

[7] By application and affidavit in support sworn 13th February 2006 Nat Haynes moved for the removal of that caution and this is what he deposed to at paragraphs 5 and 6 of his supporting affidavit:

5. In or around June 2005, Lincoln St. Rose told us that he had been approached by Goddard Darcheville who was interested in purchasing our property. I then received an unsolicited call from Mr. Darcheville at my residence in Canada and Mr. Darcheville told me that was interested in purchasing the property but offered me substantially less money than I was asking. I declined. He then tried to persuade me to accept this offer and I repeatedly declined. I ended the conversation by saying I would think about it because Mr. Darcheville would not let up. At this time, I did not tell Mr. Darcheville that Mr. St. Rose was my agent or that I would convey any price to him. I could not have agreed to less money in any event without discussing this with my wife. My wife makes her own determinations on her property. I discussed Mr. Darcheville's offer with my wife and we thought it was substantially less than we were asking and did not discuss it further.

6. I was very surprised to hear from Lincoln St. Rose in July 2005 that he had received \$15,000.00 from Mr. Darcheville on our behalf for the purchase of the property. We immediately told Mr. St. Rose that he had no authority to receive this sum on our behalf and that we were not interested in selling the property to Mr. Darcheville and that we had not agreed to the purchase price of the property.

[8] Nathaniel Haynes further deposed at paragraphs 7 and 8 of the said affidavit that:

7. Lincoln St. Rose had acted on our behalf as our agent once in 1991 and has not acted on our behalf since. I admit that it was the intention of my wife and me to use Lincoln St. Rose as the agent in the intended sale of the property to Mr. and Mrs. St. Jules but this never happened because they never signed any agreement. I never conveyed to Mr. Darcheville in our only telephone conversation in June

2005 or at any time at all that Mr. St. Rose was my agent and I never conveyed to his Solicitor or anyone else that he was my agent in any agreement for sale with Mr. Darcheville. In fact, I never agreed to enter into any agreement for sale with Mr. Darcheville at any time or at all or authorize Mr. St. Rose to enter into any agreement for the sale of the property on my behalf. I know of no reason why Goddard Darcheville would reasonably believe that Mr. St. Rose was my agent or that Mr. St. Rose could bind me in any agreement for sale or receive any money on my behalf.

8. Should I have agreed to sell this property to Mr. Darcheville it would have been on the same terms and conditions as the first intended sale. There would have had to be written agreement for sale and I would have expressly agreed to Mr. St. Rose acting on my behalf. I have no problems with Mr. St. Rose and I have the greatest respect for him but I did not authorize him to receive any money on my behalf or to enter into an agreement for sale on my behalf oral or otherwise.

[9] As I see it the matters which fall for determination are:

- (i) Whether or not there exists a valid contract of sale of Parcel 66 by Nat and Joan to the claimant.
- (ii) Whether the receipt dated 11th July 2005 is a sufficient note or memorandum in writing evidencing an agreement between the claimant as purchaser and Nat and Joan as vendor for the sale and purchase of Parcel 66 in accordance with sections 37 and 72 of the Land Registration Act Cap 5.01 of the Revised Laws of St. Lucia 2001 (the Act).
- (iii) Whether there existed an agency between Mr. St. Rose as agent and Nat and Joan as principals for the purpose of selling the said parcel.
- (iv) Whether in the event that there is a contract of sale it is capable of being enforced by way of specific performance.

[10] No evidence has been adduced in this case which shows the existence of any contract for the sale and purchase of Parcel 66 between the claimant and the Haynes'. The claimant

alleges that Mr. St. Rose was their agent and had been authorized by them to enter into an agreement for the sale of the said parcel on their behalf. This was however firmly denied by Nat Haynes as stated at paragraph 7 above as well as under cross-examination. The claimant admitted in cross-examination that he had not known either of the Haynes' hitherto. He also admitted that there was no evidence in writing of any arrangement between Mr. St. Rose and the Haynes' appointing Mr. St. Rose as their agent. Nor was there any evidence in writing between himself and the Haynes' for the sale of Parcel 66.

- [11] The only written document tendered in evidence in support of the allegation that there existed an agreement for sale of Parcel 66 is the receipt dated 11th July 2005 learned Counsel for the defendants submitted. And it is on that receipt which was signed by Mr. St. Rose for Nathaniel Haynes and Joan Iza St. Rose Haynes that Counsel for the claimant places great reliance as evidence of his assertion that Mr. St. Rose was the agent for the Haynes'.
- [12] Counsel for the defendant therefore contended that no contract in writing had been produced in accordance with sections 37 and 72 of the Act that the court could act on to enforce a sale (of Parcel 66) by Nat and Joan Haynes to the claimant and even if the receipt had been signed by Nat and Joan Haynes that per se would not have constituted a sufficient contract in writing for the purpose of enforcing the sale by an order for specific performance learned Counsel posited.
- [13] Counsel reasoned that since the receipt for a deposit of \$15,000.00 towards the purchase price of the land states that if the balance of \$285,000.00 was not paid by the completion date of 31st October 2005 the deposit would be returned without interest the claimant would have suffered no loss or detriment in the event of default.
- [14] Conversely learned Counsel argued by necessary implication (although not expressly stated) if the Haynes' no longer wished to proceed with the transaction they ought not *mutatis mutandis* be liable to any sanction/penalty nor should the claimant be entitled to an order of specific performance of the contract either. Equity should not intervene in this

transaction Counsel argued as there was nothing to move the conscience of the Court that Nat and Joan should be forced to sell their property.

- [15] If as the evidence shows there is no contract for sale in writing or otherwise between the Haynes' and the claimant who were evidently strangers to him there is no way to my mind that specific performance of the purported sale of Parcel 66 could possibly be enforced against them by the claimant.. And I so hold.

- [16] Section 37(2) of the Act stipulates that:

"... no action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which such action is brought or some memorandum or note thereof is in writing and is signed by the party to be charged or by some other person there unto by him or her lawfully authorized."

The question which therefore next arises is whether or not Nat and Joan lawfully authorized Mr. St. Rose to sign the receipt. This is where the issue of agency arises. As the evidence clearly shows there is no note memorandum or agreement in writing signed by Nat and Joan to that effect.

- [17] Article 1603 of the Civil Code provides that:

" Agency may be either special for a particular business or general for all the affairs of the principal. When general it includes only acts of administration. For the purpose of alienation and hypothecation and for all acts of ownership other than acts of administration the agency must be express."

- [18] It follows Counsel submitted in that regard that for an agency to have existed between Nat and Joan and Mr. St. Rose for the sale of Parcel 66 the agency must be express that is put in words stated explicitly and clearly. I am satisfied that no such evidence has been tendered to that effect which establishes a contract of agency between Nat and Joan as

principals and Mr. St. Rose as agent. Contrast the St. Jules draft Sales Agreement (GD 2) which expressly declares Nathaniel Haynes and Joan Iza Haynes were acting therein and represented by their agent Lincoln St. Rose in May 2005.

[19] Contrary to his testimony the claimant appears to have had only one conversation with Nat and certainly none with Joan the arrangement being that Nat would have communicated **their joint decision** through Mr. St. Rose.

[20] They both steadfastly denied agreeing to any offer made over the telephone by the claimant to Nat which was substantially less than the price fixed in the earlier St. Jules' transaction. I believe them. That certainly seems eminently prudent and reasonable. In fact Nat disclosed in his witness statement that the claimant was very persistent in trying to persuade him to accept his offer of \$300,000.00 but he repeatedly declined and ended the conversation by saying that he would think about it because he would not let up.

[21] I pause at this point to review the evidence of Mr. Geoff Fedee (the claimant's sole witness) in that context. Mr. Fedee stated at paragraph 9 of his witness statement and also under cross-examination that the claimant had informed him that he had spoken to Mr. Haynes and that he and his wife through their agent Mr. St. Rose had agreed to round up the price of the land to \$300,000.00. Oddly the claimant himself made no mention of such important evidence either in his witness statement or in cross-examination. And at paragraph 10 of his witness statement he went on to declare that Mr. St. Rose had subsequently informed him that Mr. Haynes had contacted him and had told him that he (Mr. Haynes) had in a conversation agreed verbally with the claimant to sell the land to him at the agreed price of \$300,000.00. Again the claimant made no mention of that crucial piece of evidence anywhere in his own testimony! I find that aspect of Mr. Fedee's testimony wholly unconvincing and inconsistent with the evidence on that issue generally. In short it stands alone by itself.

[22] The claimant's evidence and indeed his case is that Mr. St. Rose communicated with him via his cell at George F. L. Charles airport whilst en route to St. Vincent **his client's**

acquiescence (which presumably was the joint decision of Nat and Joan) and pressed him to move swiftly by furnishing him with a deposit (quantum not specified) in order to prepare the necessary documentation for dispatch to Canada whereupon he advised Mr. St. Rose to contact his (the claimant's) attorney Mr. Alvin St. Clair to issue a cheque to him for \$15,000.00 as a deposit which Mr. St. Clair promptly sent to Mr. St. Rose receipt for which was duly acknowledged by Mr. St. Rose for Nat and Joan Haynes and a caution was then placed against Parcel 66 at the Land Registry by the claimant.

[23] In both his witness statement and under cross-examination Mr. St. Rose explained that he had signed the receipt for \$15,000.00 as this was what was sent to him by the claimant and he did so in the expectation that he would thereby have been able to persuade Nat Haynes to accept the claimant's offer of \$300,000.00 cognizant of the fact that it was substantially less than the price which had been agreed in the aborted sale with the St. Jules' two months earlier.

[24] His efforts alas proved to be unsuccessful. Nat remained as uncompromising with him as he had been with the claimant himself. He flatly refused to settle for \$300,000.00 which is not surprising since according to Geoff Fedee land prices in St. Lucia at the time were on the rise. Small wonder (as stated earlier) that Nat was very surprised to hear from Mr. St. Rose in July 2005 that he had received \$15,000.00 from the claimant on behalf of himself and his wife for the purchase of Parcel 66 and immediately told him that he had no authority to do so and that they were not interested in selling to the claimant and had not agreed the purchase price.

[25] The receipt signed by Mr. St. Rose sets out the deposit paid by the claimant the square footage of the land being purchased and a full description of Parcel 66 and its boundaries as well as the balance of the purchase price and completion date and the fact that in default of payment of the balance by the completion date the deposit would be returned without interest.

- [26] The refusal of the Haynes' to sell at the claimant's price must surely have placed Mr. St. Rose in a bind who by letter dated 1st September 2005 informed Mr. St. Clair that the Haynes' had not accepted the deposit paid by the claimant as a deposit for the purchase price of Parcel 66 and that a cheque representing the said amount (\$15,000.00) which had been paid to him for them was being refunded.
- [27] On the selfsame day Mr. St. Clair returned the cheque to Mr. St. Rose who on 8th September 2005 replied that he had now realized that he may have exceeded the scope of his authority beyond finding potential buyers for the property after which the owners would negotiate the terms of sale for themselves.
- [28] At paragraph 2 he went on to plead that he had been advised "that as a potential purchaser you ought to have enquired of my ostensible authority to sell and the extent of my authority prior to assuming that my involvement would result in a binding sale. I am advised that if that were the case my agreement with Nathaniel and Joan Haynes would have clearly stated this or that they would have granted me a power of attorney to act on their behalf".
- [29] Here Mr. St. Rose is in effect conceding that (even in the absence of a power of attorney expressly appointing him to act as agent for the Haynes') he ostensibly did by his conduct and involvement hold out himself to be their agent. Having regard to all the surrounding circumstances therefore there would have been no need or onus on the part of the claimant to inquire of his authority to sell or its extent.
- [30] As I see it for all intents and purposes I hold that there was a contractual agreement between the claimant and Mr. St. Rose for the sale of Parcel 66 to the claimant and by that contract a legal contract was established but when the claimant got his deposit back the contract came to an end. The claimant could certainly not seek to enforce it by way of specific performance and whilst in normal course the claimant could possibly maintain his right of action against Mr. St. Rose for damages for breach of contract even after he had accepted the return of his deposit from him the fact of the matter is that the terms of the

contract as spelt out within the four corners of the receipt dated 11th July 2005 made no such provision.

- [31] For it was an unusual arrangement which permitted the claimant to default without forfeiture of his deposit or other penalty and so by the same token when Mr. St. Rose reneged having refunded the claimant's deposit to him the claimant should not implicitly be entitled to or expect any gravy. That in my view accords with the tenor and true intent of the agreement as set out in the receipt upon which the claimant's case rests. For equality is equity and that conclusion is reinforced by the fact that it is the claimant's attorney who drew up the receipt which incorporated the agreement for sale of the land and having regard to all the circumstances Mr. St. Rose ought not in my judgment to be put to the sword as it were by the claimant.
- [32] Referring to sections 37(2) and 72 of the Act Counsel for the claimant submitted that whilst a power of attorney to execute a Deed of Sale as per section 72 of the Act it was not necessary to have one for the execution of an agreement for sale or a receipt or a memorandum as per section 37(2) of the Act. He however conceded that "there should be an agency relationship of sorts between the person giving the receipt and the owner of the land" and this clearly is a question of fact for the Court to decide. From my evaluation and consideration of the evidence I am satisfied that no such relationship existed between the Haynes' and Mr. St. Rose in this particular transaction.
- [33] In the result I would dismiss the claimant's claim against the defendants and order that each party bear its own costs. I also direct and order that the Registrar of Lands do remove the caution registered against Parcel No. 1257B 66 in the Registration Section of Gros Islet in accordance with section 88(1) of the Act.



EPHRAIM GEORGES
HIGH COURT JUDGE (Ag.)