

TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

BVIHCV 2008/0362

BETWEEN:

BERNICE GREENE

Claimant

and

MARGUERITE HODGE

(as next friend for Wellington Todman, deceased)

Defendant

Before:

The Hon. Mr. E. Anthony Ross, QC

High Court Judge [Ag.]

Appearances:

Ms. Sheryl Rosan for the Claimant

H. McKenzie for the Defendant

2009: September 23.

JUDGMENT

- [1] **ROSS, J. [AG.]:** This matter came on for hearing on 29th June 2009. Essentially, it is an attempt to re-litigate a dispute that was resolved through mediation.
- [2] In her submissions at the conclusion of the hearing, counsel for the claimant sought a ruling of this court on a mediation agreement entered into between Bernice Greene and Marguerite Hodge (the same parties in these proceedings) on 14th July 2006, which agreement became part of an order which was entered on 21st July 2006 bringing matter number 1999/0027 to an end. The mediation agreement, having become part of an order of the court, was (and is) binding on the parties and on the court. There appears to have been effort by the parties to vary the order of the court on consent and without the involvement of the court.

- [3] For reasons that I do not understand, the resolved matter (1999/0027) appears to have been referred back to the Master on 15th May 2007, 4th October 2007 and 16th June 2007, and was subject to an opinion of the court of appeal of 23rd September 2008. What is important is that the cause of action in matter 1999/0027 was driven by a contest between the parties, Bernice Greene and Marguerite Hodge with respect to two (2) parcels of land on Tortola, BVI, referred to as Parcel 62 and Parcel 63.
- [4] My reading of the law and my understanding of the doctrine of merger is that all causes of action were subsumed into any decision and order of the court, which order is binding on the parties and the court.
- [5] The matter now before me at trial (Claim No. 2008/0362) sought declarations and an order to the effect that Parcel 63 be registered in the name of the claimant, Bernice Greene, the claimant in this second round of litigation. It is to be noted that Bernice Greene was the claimant in the matter 1999/0027 which related to Parcel 62 and Parcel 63, the latter being the identical lands driving litigation in this matter (Claim No. 2008/0362).
- [6] In the defence of Marguerite Hodge of 14th January 2009, the defendant sought to esstop and preclude the claimant from maintaining her action on the grounds that the relief sought was the same relief that was sought in matter 1999/0027 and against which a court order had been given.
- [7] This matter (2008/0362) came before this court, in chambers, on 15th January 2009, on which date, an order were given with respect to disclosure, witness statements, skeleton arguments with authorities, pre-trial review, fixing of trial date, costs and estimated time of trial. There is nothing on the record to show that the Chambers Judge was aware of the mediation agreement and order in matter 1999/0027.
- [8] In preparation for the hearing before me, the claimant's chronology of events states, *inter alia*, that:

7th November 1997 – The Applicant filed an application to the Registrar of Lands for Prescriptive title of Parcels 62 and 63 of Block 2840B East Central Registration Section which was declined by the then Registrar of Lands, Juliette Penn.

14th July 2006 – The parties entered into a Mediation Agreement.

21st July 2006 – The Mediation Agreement attached to a Court Order.

[9] References are made to these entries in the chronology specifically to show that the causes of action with respect to Parcel 62 and Parcel 63 were a subject of mediation agreement, which mediation agreement became part of the court order. Accordingly, it is my view that any proceedings other than an appeal or proper effort to clarify or rectify the mediation agreement cannot form the basis of fresh proceedings. To think otherwise would risk my making an order that would be inconsistent with the mediation agreement which became part of a binding court order.

[10] The question is then: What course of action should this court take in face of the history of proceedings in matter 1999/0027 and the matter now before me, 2008/0362? Guidance is to be found in the decision of Rawlins, J.A. (as he then was) in **Saint Christopher Club Ltd. v Saint Christopher Club Condominiums et al (SKN)**, Civil Appeal No. 2007/004, delivered 15th January 2008, in which he ruled that the court had jurisdiction to correct errors made by its own offices. The error is that this matter, having been resolved by earlier litigation, should not have advanced to the extent that it was set down for trial. I am guided by that decision, and I dismiss the claim of the claimant and award prescribed costs to the defendant, based on the value of the property of \$50,000.00, as agreed to between the parties.



E. Anthony Ross, QC
High Court Judge [Ag.]