

SAINT LUCIA

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

Claim No. SLUHCV 69/2004

BETWEEN:

**ANTHONY BERNARD
VALERIE BERNARD**

Claimants

AND

**SIMON FRANCIS
MARTINUS FRANCIS**

Defendants

Appearances:

**Mr. Alvin St. Clair for Claimants
Mr. Colin Foster for Defendants**

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2005: November 02
2006: June 26
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DECISION

Mason J

[1] The facts of this case are quite simple and involve principally the court deciding which of the parties is telling the truth.

[2] Prior to November 1999 the parties entered into negotiations for the sale and purchase of a parcel of land measuring approximately five (5) acres.

[3] Before the Deed of Sale was executed by the parties, they visited the property and walked the boundary, with the first Defendant showing the Claimant the boundary pegs.

[4] It is here that the stories diverge. It is the contention of the Claimants denied by the Defendants that the property they were shown included an estate road but when the Deed of Sale was executed, the document did not show this.

[5] **The Claimants are now bringing an action for:**

- 1) an order that the Defendants do transfer the parcel of land registered in the Land Registry as 02428B 80 to the Claimants;
- 2) an order for specific performance of the agreement for sale evidenced in the Deed of Sale
- 3) damages for breach of agreement;
- 4) an inhibition preventing the Defendants, their servants, agents or otherwise from in any way disposing of the property namely Parcel 0428B 80
- 5) further or other relief deemed necessary by the Court
- 6) interest as deemed fit by the court; and
- 7) costs

- [6] According to the evidence of the Claimants, they walked the demarcated boundary with the first Defendant and were shown the boundary pegs by him, that all the relevant existing and new survey pegs were in place, that the pegs pointed out by the first Defendant included the road as part of the property which the first Defendant agreed to sell, that the sales pitch from the first Defendant was that they (the Claimants) would have their own private road.
- [7] The valuer for the Bank visited the land to confirm and ascertain the extent of the pegs and the initial deposit was paid.
- [8] When some months later, the survey plan was completed, it showed that the access road was included as part of the property for sale.
- [9] The Defendant on the other hand categorically denies that the private access road was ever intended or contemplated to be sold to the Claimants.
- [10] The Defendant submits that the conveyance and Deed of Sale support the true position that it was lot 3 which the parties agreed to sell and purchase and then the existing private road is not part of lot 3, that the road stands alone as a separate parcel.
- [11] It is the Court's task to decide whether or not the Defendants in selling to the Claimants that portion of land did in fact indicate that the access road was included as part of the sale

or whether the Claimants were labouring under the mistaken belief that the road was included as part of the sale.

[12] The Court having had the benefit of examining the evidence led and observing the demeanor of the witness can state that it is my unequivocal belief that there was no mistake made: that when the parties walked the land, the Claimants were shown the relevant pegs and given to understand that the property being sold to them did include the access road.

[13] The Claimant gave his evidence unhesitatingly and with conviction and was not shaken in cross examination. I found him to be a witness of truth.

[14] The first Defendant prevaricated all too often and I found it difficult to accept the truth of his statements, On one occasion he admitted to the court that he had a problem responding to the very crucial question of whether the pegs he showed the Claimants were beyond the road.

[15] He was not at all a credible witness.

[16] There was also the question of the altercation between the Claimant and another neighbour when the Police were called. He denied being asked to resolve the question of to whom the land belonged and that he informed those gathered that the land belonged to the Claimants. He preferred to say that the matter was never resolved when the Claimants

and the two (2) police officers gave evidence that it was the Defendant who resolved the matter by stating that the land belonged to the Claimants.

[17] Counsel for the Defendant sought to suggest to the Court that the evidence of the police officers with respect to this incident should be discounted and excluded. Counsel thought that their evidence lacked originality to the point of being identical.

[18] However police officers can be considered professional witnesses in the sense that as part of their training they are taught to give evidence and how a statement must be structured.

[19] I see no reason why their statements should not be accepted or believed.

[20] This incident highlighted the evasiveness of the first Defendant.

[21] Mr. Allain, witness for the Defendant, stated that he gave the Deed of Sale to the Claimants and that at no time did they query any aspect or detail of the conveyancing process on the actual sale. He was of the opinion that it was clear that the Claimants were satisfied and aware of what they were purchasing.

[22] The Claimant on the other hand stated that Mr. Allain, who acted as their lawyer at the suggestion of the first Defendant whose lawyer he was “because it would make the process simpler” simply presented them with the Deed of Sale and asked them to read and sign it, that he did not explain anything to them.

[23] I am of the opinion that as their lawyer he has failed them and it leads me to ask the question whether if he had in fact explained the Deed of Sale and the survey plan to them, the Claimants would have concluded the sale since as he is seeking to say now, he would have told them that the access road was not included.

[24] I do not believe that they would have because as they stated the sales pitch of the Defendant was that they would have their own private road, a major selling point in the purchase of the property.

[25] Counsel for the Defendant sought to expand on the question of the amount of the land which was being bought - approximately five (5) acres or five (5) acres more or less.

[26] The Claimant in his forthright manner responded: "We agreed to buy Lot 3 as per the survey posts on the ground which was pointed out to us when we visited the land. Whether or not it was "more or less" did not matter to me because these were the points which I agreed to. I agreed to buy the points as per the survey planwhen the land was offered to me, the area was clearly demarcated and surveyed. It is not true that I had seen the survey plan when I went into Mr. Baden Allain's office. There was never any survey plan at that point. The land was surveyed and the pegs were in place. That is what I bought the land on".

[27] From this testimony it is clear that the Claimant purchased the land believing that the access road was included especially since it was the only means of access to the property and he would have his own private road as suggested by the Defendant.

- [28] It is very telling that although the survey was done in 1999, that the survey plan was not produced until six (6) years later and when it is produced appears to support the story of the Claimant.
- [29] I am unsure as to what really transpired regarding the access road being registered as a separate parcel of land but what is very evident is that the road was included in the negotiations for the sale of the property.
- [30] As has been stated the Deed of Sale described the land as being "bounded on the south by the Estate access road, parcel 0428B 80 but goes on to make reference to the Plan of Survey dated August 1999.
- [31] When this survey plan is examined, it shows pellucidly clearly that the access road is included in the Lot number 3.
- [32] Counsel for the Defendant sees it differently – that the private access road is not excluded – Lot 3 because some survey pegs went beyond the boundary of Lot 3 and were placed onto the access road but that this does not signify that the private access road belongs to the Claimant.
- [33] But as the Claimant said, "the land was surveyed before we agreed to buy. That is why when we walked there was a cleared survey path we got a survey plan showing appropriate survey pegs which included the road in the land we purchased".

[34] Having heard the evidence of the parties, I find as a fact that it was the intention of the parties to conclude a sale and purchase of property which included the access road,

[35] In the circumstances therefore the Claimant's application is granted with respect to the transfer of the land by the Defendants to the Claimant and the Deed of Sale rectified to repeat that the access road forms part and parcel of the Claimants Lot 3.

[36] Costs to the Claimants.

Sandra Mason Q. C.

HIGH COURT JUDGE