

SAINT LUCIA

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

Claim No. 810/2000

BETWEEN:

EDWARD JOHN ANDAS

Claimant

and

TREVOR EDWARD

Defendant

Appearances:

Mr. Lorne Theophilus for the Claimant
Defendant in person

2004: June 07
June 11, September 09

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** On 11th June 2004, I delivered an oral judgment in this matter dismissing the defendant's counterclaim and awarding him damages of \$1,765.00 for improvements. I gave detailed reasons for my decision but promised to reduce those reasons into writing. I do so now.

Brief Facts

2. The facts briefly stated are as follows. On 14th August 2000, the claimant, Edward John Andas as administrator of the estates of the late Cecile Jules and Edwin Andas, issued a Writ indorsed with Statement of Claim against the defendant, Trevor Edward claiming among other things, an order that Mr. Edward removes his wooden house which is on a parcel of lands which belonged to the late Cecile Jules and Edwin Andas. The parcel of land is situate at Monier in the Quarter of Gros Islet and was previously registered in the

Land Registry as Block 1450B Parcel 46. By Mutation No. 448/2001, it is now registered as Block 1450 Parcel 510.

3. Mr. Edward filed a defence and counterclaim. The gist of his defence is that Edwin Andas ("the deceased") permitted him to work on his land and make necessary improvements with the view that he would eventually get his (the deceased) share. He counterclaimed for the following:
 - (a) An order for specific performance of an onerous gift.
 - (b) An Order that the parcel of land registered in the Land Registry as Block 1450B 510 (not 52) and situate at Monier be transferred to the claimant.
 - (c) Alternatively, that the claimant do pay the defendant the sum of \$22,890.00 and
 - (d) Damages for breach of agreement and/or promise.
4. On 5th December 2003, I dismissed the claim for want of prosecution and the order on the counterclaim was reserved. On 7th June 2004, I proceeded with the matter on the basis of the counterclaim.

The Counterclaim

5. Mr. Edward claimed damages which he allegedly suffered as a result of breach of agreement and/or promise made and confirmed by the deceased on or about May 1990 and in 1994 verbally and in writing to the effect that the deceased would transfer to him by Deed of Donation an interest in the parcel of land on condition that he assists the deceased financially and otherwise in (i) taking out Letters of Administration with respect to the estate of Cecile Jules co-owner of the said parcel of land with the deceased and (ii) in developing the same.
6. He also alleged that at the time that the agreement/promise was made, the said parcel of land was not in a condition to commence development and as a result, he had to do a number of things to facilitate ease in dealing with the property. Firstly, he had to obtain Letters of Administration at a cost of \$1,500.00 so that the property could be vested solely in the name of the deceased. Secondly, he paid \$11,250.00 in survey fees to Mr.

Tennyson Gajadhar, Licensed Land Surveyor to conduct a survey of the said land and to cause a plan to be drawn subdividing the same so as to facilitate development and thirdly, he paid the total sums of \$2,950.00 to Mr. Oliver Sampson and Mr. Gilbert Fontenard for engineering services which they performed.

7. He alleged that in reliance on the assurances and promises of the deceased, he received an aggregate of \$7,500.00 from interested persons wishing to purchase lots.

The Evidence

8. Mr. Edward was the sole witness to testify at this trial. Mr. Andas who resides in Germany did not defend the counterclaim. However, his Counsel, Mr. Lorne Theophilus appeared for him and participated fully in these proceedings.
9. It is elementary law that Mr. Edward has to prove his case on a balance of probabilities. Mr. Edward alleged that before the deceased died, he told him that he would give him his share of the land and as a result, he took the deceased to Mr. Peter Foster, an Attorney-at-Law to prepare the Deed transferring the land to him but it was not done because of a legal hurdle. He also alleged that because of that obstacle, the deceased prepared another document which was executed before Mr. Dolcy, Justice of the Peace. Suffice it to say, this document was not tendered in evidence.
10. Mr. Edward next alleged that as a result of the assurances/promises made by the deceased, he expended large sums of money to develop the land. It is safe to say that the majority of the invoices exhibited do not relate to this claim. As Mr. Theophilus correctly pointed out, the counterclaim hinges on aspects of fraud. For example, the receipt from the Development Control Authority is in the name of two dead people.
11. Mr. Edward is the step-son of the deceased. His mother, Romana Actie was in a common law relationship with the deceased after his wife, Cecile Jules died sometime in 1986. Mr. Theophilus submitted that in accordance with the Civil Code of Saint Lucia, Mr. Edward is not an "heir" of the deceased. Therefore, he had no authority to deal in any manner with

- the deceased' land. He next submitted that in any event, all transfer of land must be evidenced in writing and Mr. Edward does not possess any written document. So, he ought to fail in law. I agree with the submission.
12. If equity were to assist Mr. Edward, he must come with clean hands. Most of the invoices which were tendered in evidence bore no relationship with the claim. Some were undated; others relate to events which transpired after the deceased's death.
13. On the evidence presented, I came to the conclusion that the deceased never promised Mr. Edward his half share of the land and even if he did, it should have been reduced to writing. I also concluded that Mr. Edward was not honest, truthful and straightforward. I therefore reject his evidence.
14. There is no denial that Mr. Edward had been living and cultivating the land. This is evidenced by a valuation report prepared by Mr. Andre P. Mathurin, a Valuation Surveyor. He estimated the value of crops on the land at \$1,765.00. Therefore, Mr. Edward is entitled to that amount.

Conclusion

15. Accordingly, I will make the following Orders:
- (a) That the Claim and Counterclaim is dismissed in so far as it relates to the parcel of land situate at Monier in the Quarter of Gros Islet and registered in the Land Registry as Block 1450B 510 in the name of Edmund John Andas.
 - (b) That the Defendant is entitled to damages of \$1,765.00 representing compensation for improvements to the parcel of land of land registered in the Land Registry as Block 1450B 510 to be paid to him by Friday, 18th day of June 2004.
 - (c) That the Defendant removes his wooden house from the said parcel of land not later than 11th day of November 2004 failing which the Claimant is entitled

to do so, at the expense of the defendant, with or without the assistance of the bailiff.

- (d) Costs to the Claimant in the sum of \$3,000.00.

Indra Hariprashad-Charles

High Court Judge