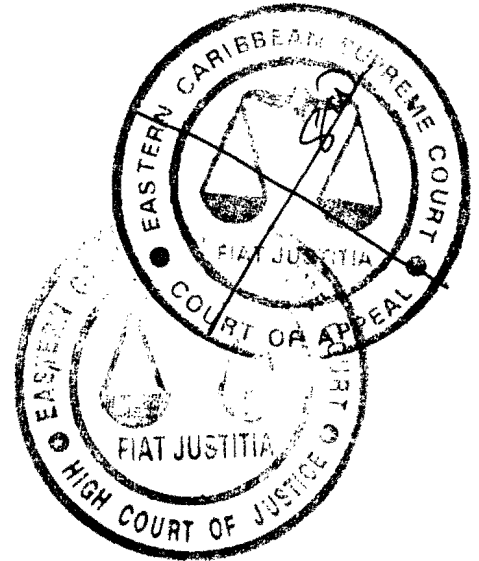


IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL SUIT NO.: 259 OF 1999



BETWEEN:

MAUREEN SMITH

Claimant

V

LAWRENCE WEEKES

Defendant

APPEARANCES:

Mr. Joseph Delves for Claimant

Mr. Arthur Williams for Defendant

2002: July 29, 30, 31

JUDGMENT

- (1) **ALLEYNE, J.:** An examination of the deeds in this matter reveals that both the land of the Claimant and the land of the Defendant are parts of Lot 32, all of which was apparently at one time or another under the ownership of Eldon Smith. The lot appears to have been broken up into four separate parts, two front lots bounding with Bay Street to the south and two back lots bounding with land shown in this plan as land of G.W. Frank & Co. Ltd. It appears that, in order to give access to the back lots, and originally also to give access from Bay Street to Middle Street, a right of way was established separating the two eastern portions of that land and the two western portions. This pathway, within living memory, also gave access to the Frank property, which was apparently occupied by a

bakery at any rate in part, many years ago. That connection to the Frank property, and thus to Middle Street, has long been blocked off by the common wall between Lot 32 and the Frank property.

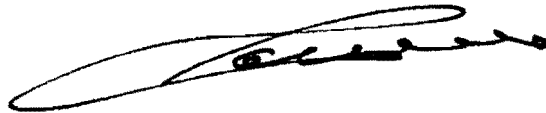
- (2) Counsel for the defendant correctly, if belatedly, has conceded that the Defendant's claim to ownership, and the right to full and exclusive use of the right of way cannot, on the evidence of the defendant himself, be sustained. Counsel submits that each party has succeeded in part on their respective claim, each has failed in part, that appropriate orders should be made on both the claim and the counterclaim, and that each party should have her or his own costs. Counsel argues that the Claimant has no interest in the issue of the right of way to the back since her title is to the front lot only, and that she has suffered no real loss or inconvenience, since she had full access to the land from Bay Street.
- (3) On the other hand Counsel for the Claimant has submitted that the Claimant has succeeded in her claim, and has had to go to considerable lengths in marshalling evidence to resist the defendant's counterclaim. I have found the witnesses Alexander Lewis, and to a lesser extent Gregory Doyle, extremely helpful in this matter.
- (4) I find as a fact that the disputed strip of land is a pathway, a right of way of which both the Claimant and the Defendant have the right of access and use. The right of way was established for the use and benefit of the owners and occupiers of the separate portions of Lot 32. I find that no person has the right to occupy the said right of way, or to obstruct access thereto by other persons entitled to access, including legitimate invitees of the owners and occupiers of the various parts of Lot 32. I find as a fact that, while some occupiers of Lot 32 might have made greater use of the pathway, and others lesser use thereof from time to time, it was not until after the death of Winnifred Smith in 1994 that any person attempted to assert exclusive rights of ownership of the land forming the right of way.

Consequently, I find that no rights to the use of the right of way have been extinguished by operation of the Limitation Act.

- (5) I find as a fact that the Claimant has prove every allegation of fact made in her statement of claim and vigorously resisted by the Defendant in his defence and his evidence, until he, by his counsel, belatedly conceded, in part.
- (6) The Claimant is entitled to the declaration sought. She is not, however, entitled to an injunction restraining the Defendant from entering or using the passageway, and that claim is dismissed.
- (7) Although the Claimant has not specifically claimed an order that the Defendant demolish the shed, walls and fences erected on the right of way, in keeping with the overriding objectives of CPR 2000 of dealing with cases justly and saving expense, and in pursuance of the Court's powers as provided for in CPR 2000, R. 26.1 (2) (w) and 26.2, and having heard the parties on this issue, I will make an order for the Defendant to demolish the shed and walls erected by him on and adjoining the right of way. My understanding is that he has demolished the wall erected by the Claimant, and there is no need to make an order in that regard.
- (8) The Claimant has suffered inconvenience by the Defendant's wrongful actions, and has been deprived of her legitimate access to and use of the right of way, and is entitled to an award of damages, which I fix nominally at \$1,000.00.
- (9) The Defendant has counterclaimed for special damages, a declaration of title to the 4-foot right of way, and an injunction, further or other relief, general damages and costs.
- (10) Only the claim for an injunction restraining the Claimant from interfering with his use and enjoyment of the 4-foot right of way has the slightest merit. Nevertheless, it is my view that such an injunction is unnecessary, in view of my

finding that the 4-foot pathway is a right of way to which both parties are entitled to access.

- (11) The counterclaim is dismissed. The Claimant is entitled to seventy-five percent (75%) of her costs of the action, to be agreed or assessed. The shed and walls to be demolished on or before 31st August 2002.

A handwritten signature in black ink, appearing to read 'Brian Alleyne', with a large, sweeping loop at the end.

Brian Alleyne

HIGH COURT JUDGE