

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV98 / 2000

BETWEEN:

**AUGUSTUS GEORGE
KATHY ANN KING**

Claimant

and

**JAMES GEORGE
JENITA GEORGE**

Defendant

Appearances:

Mr. Stephen Huggins for the claimants
Mr. Ronald Marks for the defendants

2002: July 22, 31

JUDGMENT

ALLEYNE J.

- [1] By the writ issued in this matter on February 28, 2000, the claimants claimed an injunction restraining the defendants from constructing or continuing to construct a concrete or any building on the land the subject of the action, an order that the defendants pull down and remove so much of the building that has already been erected, a declaration that the defendants are not entitled to possession to (*sic*) the whole or any part of the said land, and an injunction restraining the defendants from entering, crossing, occupying or constructing any building or structure of any description on the whole or any part of the said land.

- [2] In their statement of claim they allege that in or around 1972 the Housing and Land Development Corporation (the Corporation) put Olive George, the mother of the first named claimant and of the first named defendant, grandmother of the second named claimant, and mother in law of the second named defendant, into possession of the subject land, and agreed that she would pay for the land by instalments. It was allegedly further agreed that on payment of the full purchase price, the Corporation would transfer legal title to the land to the said Olive George. These allegations are admitted by the defence filed on December 8, 2000, and were proved by evidence at trial.
- [3] The claimants claim that Olive George's payments fell into arrears and the Corporation threatened to take action to recover possession of the land. In 1992 an arrangement was entered into between the Corporation on the one hand, Olive George of the second part, and the first named claimant of the third part, for the first named claimant, Olive George's son, to assume responsibility for payment of the purchase price. Once again payments fell into arrears, and by letter dated 13th July 1998, the first named claimant requested of the Corporation that they make the second named claimant, his daughter, a party to the agreement for the purchase of the land.
- [4] The claimants claim further that by letter dated 30th September 1998 Olive George instructed the Corporation to transfer her account into the names of the claimants and for the title to the land to be transferred to their names upon completion of payment.
- [5] By letter dated 21st October 1998, the Corporation advised the claimants that the outstanding balance on the account was \$5349.98, and that an additional sum of \$100.00 for the preparation of the deed was also payable. On October 30th, 1998 the second named claimant completed payment of the amount due.
- [6] The defendants, in their defence, pleaded, in substance, to these allegations, that they did not admit these allegations. They did not, however, and perhaps were not

in a position to, specifically deny the allegations. Be that as it may, I find these allegations proved on the evidence before the court.

[7] The first named claimant lived all his life with his mother Olive George, in her house on the said land, until her death on June 9th, 2001 at the age of 89. He is now 47 years old. His elder brother, the first named defendant, who is 63 years old, lived on a separate portion of land nearby, and in 1973, with the permission of his mother, built a board house on a part of the land which he acknowledged to be his mother's, where he has lived since. At no time did he make a claim to the land adverse to that of his mother or, for that matter, of the Corporation, nor has he so pleaded.

[8] The title to the land remained in the Corporation until after the death of Olive George. However, by Indenture dated 7th September 2001, registered as deed number 3501/2001, the Corporation, as it was fully legally entitled to, conveyed the legal title in said land to the claimants. It appears that this was done in pursuance of the alleged arrangement between the deceased Olive George, the claimants and the Corporation, but only after the claimants had obtained a default judgment against the Corporation ordering it to do so. In consequence, whereas at the time of the filing of this action the claimants had, at best, no more than a right to specific performance of a contract for the sale of the land, having paid the purchase price thereof, and the first named claimant was in occupation of a part of the land, with his mother, the defendants being in occupation of another part with the permission of the said Olive George, at the time of trial the claimants were owners of the legal fee simple and entitled to possession, subject, however, to whatever rights the defendants have on the land.

[9] The first named defendant claims to be entitled, by virtue of the terms of the will of his late mother duly executed on the 8th of January, 2001, but apparently not yet admitted to probate, to ownership of the land. The will gives, devises and bequeaths to the testator's son James George, the first named claimant, "absolutely in all my personal property". In a residuary clause the will gives,

devises and bequeaths "the residue of my estate, real and personal, to the aforementioned James George." The will was prepared by an Attorney at Law, and it is presumed that the specific bequest of all "personal" property was deliberate and intentional, probably in the knowledge that the testator owned no real property at the time.

[10] The claimants are entitled to judgment on the claim within the limits hereinafter set out.

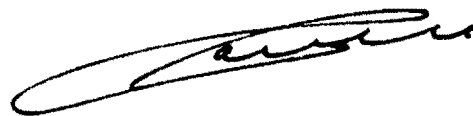
[11] An analysis of the defendant's counterclaim as pleaded demonstrates that it is based on the following allegations of fact only:

1. The Corporation has refused and continues to refuse to execute and register a deed of conveyance in favour of the claimants.
2. That Olive George had handed over to the first named claimant the sums received as death benefits on the death of her son Leroy in 1997, with the intention that he use that money to pay the balance of the purchase price on the land.
3. That the defendants have been informed by Olive George that the claimants attempted to deceive her into transferring her rights over the land to them, that she unequivocally informed the Corporation that she does not intend to transfer the land to the claimants, and that the money used to settle the balance of the purchase price came from the death benefits of Leroy George, to which she, Olive George, was legally entitled.

[12] The defendants have failed to prove any of these allegations, which, in any event, would not be sufficient in law to vitiate the title of the claimants vested in them by the deed of conveyance earlier referred to, and the counterclaim is accordingly dismissed.

[13] There will therefore be judgment for the claimants on the claim, for

1. An injunction to restrain the defendants by themselves, their servants or agents or howsoever otherwise from constructing or continuing to construct a concrete or other building on that portion of land at Upper Cane Hall being lot number 25 in a plan lodged in the surveys office on the 6th January 1960 under number G468 and which said parcel of land contains 2,946 square feet and is abutted and bounded on the North by lot number twenty-four (24), South by lot number twenty-six (26), East by remaining lands of Cane Hall Estate, West by Amos Vale Estate.
2. An order that the defendants do pull down and remove from the said land so much of the concrete building or structure as they have erected on the said land, on or before the 31st day of August 2002.
3. A declaration that the defendants are not entitled to possession of the whole or any part of the said land, except as licensees of the claimants in respect of the part thereof on which their dwelling house stands.
4. The claimants will have their costs of the claim and counterclaim, fixed at \$6000.00.



Brian G.K. Alleyne
High Court Judge