

ST. LUCIA

IN THE HIGH COURT OF JUSTICE

1990 NO. 130B

BETWEEN:

KENT WINSTON ADONAI

Claimant

and

1. MICHAEL JACQUES
2. PITTON EXPERIENCES LIMITED

Defendants

Appearances:

Mrs. Brenda Floissac-Flemming for Claimant
Miss Brender Portland for the Defendants

1994: March 29th & 30th
September 27th

2000: 21st September
18th December

2002: January 23rd, 24th, 25th, 30th
March 28th

JUDGMENT

d'Auvergne, J.

Background

[1] On the 22nd May 1989, Leonard Joseph Riviere, Notary Royal executed a Deed of Sale for the purchase of a portion of land measuring 11 acres and 31.5 perches in extent, situate at Morne La Croix in the quarter of Soufriere in the island of St. Lucia between the First named Defendant and one Charles Jean.

[2] The above portion of land was later registered in the Land Registry on the 9th June 1989 as Instrument No. 3161/89 Block 0027B Parcel 4 (hereinafter referred to as Parcel 4).

[3] On the 30th of June 1989 an unregistered notarial Deed of Sale (hereinafter referred to as the unregistered Deed of Sale) was executed between the First-named Defendant and the Claimant for a 7 acre dismemberment of Parcel 4 before the same Notary, Leonard Joseph Riviere.

[4] The schedule to the unregistered Deed of Sale reads as follows:

“All that piece of parcel of land measuring about 7 acres being a dismemberment of a larger portion of the Morne La Croix lands in the Quarter of Soufriere, registered in the Land Registry at Block Parcel and is bounded as follows:- or howsoever otherwise the same may be bounded. Together with all the appurtenances and dependencies thereof.

The land hereby sold is more particularly delineated in Plan of Survey by Mr. Surveyor Drawing No. lodged at the Survey Office No. of 1989.”

[5] On the 24th of June 1989 the First named Defendant signed a notarial written instrument (hereinafter referred to as the avoidance of doubt document) which was executed before the said above mentioned notary, Leonard Joseph Riviere in those terms:

“For The Avoidance of Doubt, I Michael Jacques of Soufriere, in pursuance of a Deed of Sale, made between Kent Adonai and myself, executed before Leonard J. Riviere, Notary Royal, DO Hereby declare and acknowledge, that the Southern boundary of the land thereby sold, situate at Morne La Croix, Quarter of Soufriere, extends beyond the ravine on the said lands and is located and marked at: “commencing from a timber house then towards a rock painted with a white cross, thence towards a coconut tree painted with two white crosses, thence towards lands said to belong to one Evadne Nelson.”

[6] On the 19th of July 1989 a plan of subdivision viz 7 acres of land from Parcel 4, expressed to have been made at the instance of the Claimant and the First-named Defendant was

lodged with the Development Control Authority and was approved by the Authority on the 11th August 1989 (hereinafter referred to as Parcel 12).

- [7] On the 5th of January 1990 the First-named Defendant executed a Deed of Transfer before Oswald Wilkinson Larcher, Notary Royal to the second-named Defendant for the whole of Parcel 4, which includes parcel 12. That Deed of Transfer was registered in the Land Registry on the 10th January 1990 as Instrument No. 144/90.
- [8] On the 10th January 1990 Parcel 12 was registered in the Land Registry in the name of the Second-named Defendant.
- [9] It is noteworthy that at the date of execution of the Deed of Transfer, the First-named Defendant was the sole shareholder and Managing Director of the Second-named Defendant.
- [10] I pause here to note a letter written by Mr. Peter I. Foster, who was then appearing as Counsel for the Defendants' since much reference was made to it during the hearing of the matter and in Counsel for the Defendants' final address to the Court.

"MR. LEONARD RIVIERE,
Chambers
Bridge Street
CASTRIES

27th September, 1989

Dear Mr. Riviere,

I act herein on behalf of my client MICHAEL JACQUES of Morne La-Croix in the Quarter of Soufriere.

- My client has shown me a copy of a Lease which is:-
- (a) undated:
 - (b) unsigned by your clients BEAU ESTATES INCORPORATION (in fact the names, address and occupation of the persons representing BEAU ESTATES, if any, has not been included in the said Agreement and:
 - (c) the measurement of land is not included in the Schedule.

My client has expressed concern with regard to the nature of the whole agreement and its contents. My client has the following reservations which he is desirous of verifying and/or clarifying and if necessary negotiating.

- (i) the option to purchase;
- (ii) clause 5(a);
- (iii) whether planning permission has been obtained for your proposed alterations;
- (iv) what would the position as to insurance of the building in the event of an accident;
- (v) whether your client would have any claim to improvements made to the building at the determination of the lease, and finally
- (vi) my client has not been notified to be present at any surveys of the property which is being carried out. He is desirous of being present at all such surveys.
- (vii) Increase in rent after the first three years to keep pace with the rate of inflation as calculated by the National Commercial Bank of St. Lucia.

I would be grateful for you to contact me as soon as possible for us to iron out these details.

Thanking you for your kind co-operation.

Yours faithfully
PETER I. FOSTER
Solicitor

Arguments

[11] The fundamental issue to be determined is the ownership of Parcel 12.

[12] Learned Counsel for the Claimant submitted that the unregistered Deed of Sale purporting to be a sale and conveyance by the First-named Defendant to the Claimant of the immovable property described in the schedule to the unregistered Deed of Sale is incomplete since the boundaries were not established but argued that they were

deliberately left out since the First-named Defendant and the Claimant contemplated that those boundaries would be established by a Plan of Survey of the 7 acres.

[13] Learned Counsel submitted that, the fact that the unregistered Deed of Sale was called a Deed of Sale did not deprive it of its lower status of an Agreement for sale or an authentic writing or a private writing. In support of this submission she quoted **Articles 1139, 1141 and 1153 of the Civil Code of St. Lucia** and the case of **Goddard v. John (1971) 19 WIR 511 (PC)** per Lord Cross at page 517 (E) to (F).

[14] Learned Counsel submitted that the decision in **Goddard v. John** is authority for three propositions namely:

- (i) a notarial written instrument or other authentic writing (such as the unregistered Deed of Sale in this case) becomes enforceable as a notarial Deed of Sale or conveyance or as an authentic writing only if and when it is completed as such.
- (ii) The fact that a written instrument is, purports to be or is called an authentic writing (e.g. a notarial Deed of Sale) does not deprive the written instrument of its lower status of an Agreement for Sale or other private writing if it has been signed by the parties thereto.
- (iii) A private writing (if and when completed) may be legally capable of creating legal or equitable proprietary rights and interests which the Courts will recognize and enforce either by way of judicial declaration of those rights and interests and/or by way of an order for specific performance and/or by way of some other appropriate order or remedy (e.g. rectification of the Register).

[15] Learned Counsel contended that since **section 58 of the Land Registration Act No. 12 of 1984** expressly forbids the transfer of dismemberments of registered land which has not been officially subdivided therefore the unregistered Deed of Sale was unregistrable before

11th of August 1989 (when the Plan of Subdivision was approved by the Development Control Authority).

- [16] Learned Counsel argued that the **Avoidance of Doubt** document is a solemn statement by the First-named Defendant that the Southern boundary of the 7 acres of Parcel 4 which he sold or agreed or intended to sell and convey to the Claimant under the unregistered Deed of Sale extended beyond the ravine and therefore he is estopped by that document from denying that the Southern boundary of the 7 acres of Parcel 4 which he intended to sell to the Claimant extended beyond the ravine. **Halsbury's Laws of England (Fourth Edition) Vol. 16 paragraph 1605.**
- [17] She submitted that the clarification of the Southern boundary was the first major step towards the completion of the unregistered Deed of Sale and that the second step was the Plan of subdivision. Accordingly, the Plan of Subdivision is an essential component by which the objective common intention of the First-named Defendant and the Claimant may be inferred and the unregistered Deed of Sale may be interpreted. In support of this argument she quoted **Article 945 of the Civil Code of St. Lucia** and the case of **Halstead v. The Attorney General (1995) 50 WIR 98** at page 102 (d) to (f) page 103 (f) to page 104(e) **Privy Council Appeal No. 53 of 1996** (per Lord Clyde at pages 3 to 5.)
- [18] Learned Counsel submitted that the unregistered Deed of sale expressly referred to the First-named Defendant and the Claimant as having clearly contemplated a future Plan of Survey which was necessary for the purpose of accurately defining the boundaries of the 7 acres of Parcel 4 intended to be sold and for the purpose of completing the unregistered Deed of Sale and satisfying the requirements of **section 58 of the Land Registration Act**; that the particulars and results of the Plan of Survey would be inserted in the unregistered Deed of Sale if considered necessary. Therefore, the unregistered Deed of Sale and the Plan of subdivision together constitute a sale and conveyance of Parcel 12 by the First-named Defendant to the Claimant. **Halsbury's Laws of England (Fourth Edition) Vol. 12 paragraph 1470. Sudbrook Trading Estate Ltd. v. Eggleton (1982) 3 AER 1 (H.L).**

[19] Learned Counsel submitted that the principles propounded in **Sudbrook's** case equally apply to the present case (which is substantially identical with **Sudbrook's case**) in that

- (a) Both cases relate to agreements or contracts for the sale of land
- (b) In each case, the agreement or contract was originally executory, incomplete and unenforceable because at the time of the execution of the agreement or contract, an essential term of the agreement or contract had not yet been agreed upon or determined:
 - (i) In **Sudbrook's Case**, the essential term was the purchase price payable under the option to purchase the land.
 - (ii) In the present case, the essential term was the identity or boundaries of the land intended to be sold.
- (c) In each case, the agreement or contract provided machinery for determining the essential term:
 - (i) In **Sudbrook's Case**, the contractual machinery was the appointment of 2 valuers and an umpire to determine the value of the land or the purchase price therefore.
 - (ii) In the present case, the contractual machinery was a survey of the land intended to be sold.

[20] In fact, Counsel submitted that the Claimant is in a much stronger position than the purchaser in **Sudbrook's case** and that therefore based on the authority of **Sudbrook's Case** on the 11th August 1989 (when the Plan of Subdivision was approved by the Development Control Authority), there was a valid, complete and enforceable agreement or contract between the First-named Defendant and the Claimant for the sale and conveyance of Parcel 12.

- [21] She further submitted that pending the transfer of Parcel 12, the Claimant justifiably assumed and the First-named Defendant encouraged the Claimant to assume that the Claimant had become the owner of Parcel 12 and as a result the Claimant paid and First-named Defendant received and retained the full purchase price of Parcel 12 and the Claimant constructed a swimming pool on and made other improvements to Parcel 12.
- [22] Counsel submitted that both in the unregistered Deed of Sale and in paragraph 6 of his Defence the First-named Defendant admitted that he received from the Claimant or his agent the sum of \$61,000.00 representing the full purchase price of the 7 acres from Parcel 4 now identified as Parcel 12; that he has retained and never refunded the said purchase price; this being so, he has created an equitable proprietary estoppel and is thereafter estopped from denying that he had sold Parcel 12 to the Claimant and that the Claimant had become the owner of Parcel 12.
- [23] In support of this argument Learned Counsel quoted **Siew Soon Wah v. Yong Tong Hong (1973) A.C. 836 (P.C.) per Viscount Dilhorne at page 837 (C) to (D) and page 846 (B) & (C).**
- [24] Learned Counsel submitted that after the purported sale and payment of the money by the Claimant to the First-named Defendant the former evidently believed or assumed that he had become the owner of Parcel 12 and in reliance on his belief he constructed a swimming pool on the said Parcel 12; that the First-named Defendant knew or ought to have known that the Claimant was constructing a swimming pool on Parcel 12 on the Claimant's belief or mistaken belief that he had become the owner of Parcel 12; that he did nothing to stop the construction, therefore he is estopped by his acquiescence from denying that Parcel 12 belonged to the Claimant. In support of this argument Learned Counsel quoted **Halsbury's Laws of England (Fourth Edition) Vol. 16 paragraphs 1475 and 1511** and **Taylor Fashions v. Liverpool Victorian Trustees Co. (1981) 1 AER 897 Ch. D; Lim v. Aug (1992) 1 WLR 113 (P.C.)**

- [25] Learned Counsel submitted that the First-named Defendant had an implied contractual obligation to do nothing to prevent the implementation of the Agreement for sale and conveyance of Parcel 12 by the registration of the Plaintiff as the proprietor.
- [26] In support of the above argument Learned Counsel quoted the case of **Alghussein Establishment v. Eton College (191) 1 AER 267 (H.L.)** and urged the Court to note the principle enunciated in that case which she said applied to the facts and circumstances of the case under review.
- [27] She said that at the time of the execution and registration of the Deed of Transfer the Claimant had an unregistered legal or equitable right of ownership and a legal or equitable right to be registered as proprietor of Parcel 12. Therefore by executing and registering the Deed of Transfer the First-named Defendant fraudulently purported to transfer to his own company the same parcel 12 which he had already sold to the Plaintiff for \$61,000.00 and which he knew no longer belonged to him in law or in equity.
- [28] Learned Counsel argued that the Deed of Transfer was a wrongful act and is therefore null and void for at the execution and registration of the transfer the First-named Defendant was not the rightful owner of Parcel 12: Therefore the maxim ***nemo dat quod non habet*** applied and that it was also a violation of the doctrine that the law will not permit a man to take advantage of his own wrong.
- [29] Learned Counsel conceded that as a general rule the ownership or other proprietary title of a person registered as proprietor of land with absolute ownership is indefeasible and quoted **section 23 of Land Registration Act No. 12 of 1984** and **Frazer v. Walker (1967) 1 AER 649 (PC)**.
- [30] Counsel however submitted that in the present case the Claimant was relying on two exceptions to the general rule prescribed by **section 23 of the Land Registration Act No. 12 of 1984**. Firstly that the transfer of Parcel 12 by the First named Defendant to the Second-named Defendant was a voluntary transfer, one without consideration (See

section 27 of the Land Registration Act No. 12 of 1984 and Article 917 A of the Civil Code.

[31] Learned Counsel urged the Court to note that the preamble of the Deed of Transfer reads:

“The Transferor is the owner of the property described in the schedule hereto” and that “The Transfer is desirous of transferring the said property to the Company”; that neither ownership nor mere desire could ever constitute “consideration” at common law or “cause” in civil law; that a transferor’s desire is a mere motive which does not amount to “cause” in civil law if it is not preceded or accompanied by a natural or moral duty on the part of the transferor. See **Royal Institution for the Advancement of Learning v. P. Lyall & Sons (1937) 62 KB 125 (Quebec)** (Reproduced at pp 315 to 320 of “the Civil Law System of the Province of Quebec” (1962) by Jean-Gabriel Castel) Per Bond, J. at page 316 (last paragraph to p. 317 (1st two lines); that no evidence was adduced to show that the First-named Defendant was under a legal or moral duty to transfer his property to his own Company, the Second-named Defendant.

[32] The second ground on which the Claimant relies in asserting the predominance of his unregistered proprietary rights in Parcel 12 over the second-named Defendant’s registered title to parcel 12 is the fact that on the date of the execution of the Deed of Transfer the Claimant had already acquired those unregistered proprietary rights which had already been elevated to the status of an overriding interest by virtue of Claimant’s actual occupation of Parcel 12 on that date. **Section 28(g) of the Land Registration Act No. 12 of 1984** and **Spiricor St. Lucia Limited vs Attorney General & Hess Oil St. Lucia Ltd. (St. Lucia Civil Appeal No. 3 of 1996)**

[33] Learned Counsel argued that in the circumstances, the Claimant’s unregistered legal or equitable proprietary rights and interests in Parcel 12 are statutory overriding interests which are superior to or override the Second-named Defendant’s registered title to Parcel 12.

- [34] Learned Counsel for the Defendants argued that the issues to be considered were whether or not there was an oral contract reduced into writing that sufficiently described the property to be sold; was the Deed of Transfer null and void, if not, what was its effect prior to the attempted registration of the purported Deed of Sale; the effect of the Solicitor's letter dated 27th September 2000; whether the proposed subdivision plan for Development Control Authority purposes could be called a survey; that the First-named Defendant was in actual occupation of the property and finally the allegation of fraud raised in the pleadings by the Claimant.
- [35] Learned Counsel for the Defendants admitted that there was a contract but said that it was between the First-named Defendant and one Colin Tennant, not the Claimant. She quoted extracts of examination in chief of Colin Tennant who said, "I assisted in negotiations for purchase of Mr. Jacques' property at Morne La Croix. I was responsible for meeting the payment of the disputed piece of land to Mr. Jacques."
- [36] Learned Counsel argued that the oral contract on its own did not translate into a memorandum to reflect what was discussed between the First-named Defendant and Colin Tennant who was then an alien for to do so would have been a contravention of the **Aliens Landholding Regulation Act 1973**. Hence the reason why the Claimant's name was inserted.
- [37] Learned Counsel argued that the photocopy of the unregistered Deed of Sale exhibited by the First-named Defendant is the document that should be considered since it is identical to the one tendered by the Claimant with the exception of the date, the amount of land and that the signature of the executing notary which were entered after the parties had signed and therefore could not be said to sufficiently represent a memorandum in writing. In support of this argument she quoted **New Hart Builders Ltd. v. Brindley (1972) D No. 226** where it was held that, although alterations made to a document after it had been signed could be authenticated by that signature, such signature could not authenticate subsequent alterations which affected, or evidenced, an alteration of a contract concluded and binding on the parties at some time earlier than the alterations."

[38] The Defence's case is that the First-named Defendant only contracted to sell one acre of land. Learned Counsel quoted **Article 945 of the Civil Code** which states:

“When the meaning of any part of a contract is doubtful, its interpretation is to be sought rather through the common intent of the parties than from the literal construction of the words.”

[39] She said that the issue of construction gives rise to the dicta in **Crevelle v. Affoon (1987) 42 WIR 339** where it was held that “usually mere payment of money part or whole, is not sufficient; taking possession generally is; making improvements is acceptable, continuance in possession may not be. It is fraud that it is being sought to avoid and in the same way that the statute could be made an instrument of fraud, so too, part performance could itself be made an engine of fraud.”

[40] Counsel urged the Court to place little significance to the fact that the valuer, Christopher Alcindor, said the land was valued at \$3,000.00 per acre and that merely five weeks previously the First-named Defendant had paid \$60,000 for parcel 4 (11 acres of the said land).

[41] Learned Counsel submitted that the Deed of Transfer was valid since it was registered before any other deed.

[42] Counsel argued that the lease property mentioned in the letter of 27th September 1989 is inextricably bound to the property under consideration and notes paragraph (vi) “..... my client has not been notified to be present at any surveys of the property which is being carried out. He is desirous of being present at all surveys.”

[43] She said that the above clearly showed that the First-named Defendant was not informed of the survey which was later lodged and approved of by the Development Control Authority on the 11th August, 1989, as Parcel 12.

- [44] Learned Counsel contended that in order to ascertain whether the First-named Defendant was in actual occupation of the property one should look to the decisions in **Bridges v. Mees (1957) 3 WLR page 215** and **City of London Building Society v. Flegg and others (1987) 3 AER page 434.**
- [45] Learned Counsel concluded her arguments by reminding the Court that fraud must be specifically pleaded and the mere stating by the Claimant that the First-named Defendant transferred to the Second-named Defendant with the knowledge that the property had been sold is not sufficient to substantiate any allegation of fraud.

Conclusion

- [46] Paragraph 2 of the Defence and Counterclaim reads, “The First-named Defendant states that the said document referred to as a Deed of Sale by the Plaintiff was in fact a document purporting to effect the sale of lands measuring one acre, the boundaries of which were to be agreed upon at a later date to the Plaintiff in trust for Colin Tennant; a non national of the state of Saint Lucia and as such an alien” In fact the Defendants are claiming that the Claimant by virtue of a Deed of Sale, bought the property in trust for Tennant Colin an unlicensed alien.
- [47] **Section 15(2) of the St. Lucia Aliens (Licensing) Act No. 9 of 1999** prohibits the holding of land without a licence but the Judicial Authorities show that the contravention of the Aliens Act renders the Deed of Sale to the Plaintiff voidable and is deemed to be valid until judgment declaring a forfeiture of the property is entered in favour of the Crown.
- [48] In **Young v. Bees (1995) 46 WIR 165 (P.C.)** Lord Jauncey of Tullichetile delivering the advice of the board on an appeal from the Court of Appeal of the Eastern Caribbean Supreme Court, St. Vincent and the Grenadines said the words, “shall be forfeited” in sections 3 and 4 (2) should be construed as meaning “shall be liable to be forfeited” and the time when the forfeiture took place” in section 5(1) is the time when liability to forfeiture arose. In **Village Cay Marina Ltd. v. Ackland and others 1996 52 WIR page 238** Sir Vincent Floissac C.J. at page 248 said that “the Non-belongers land Holding Regulation

Act is not an invalidating Act. It does not invalidate a non-belonger's title to land Such an Act merely renders such titles or offices voidable at the discretion of the Crown."

- [49] As I see it the First-named Defendant cannot be heard to say that the unregistered Deed of Sale is invalid because of its incompleteness since the proper inference to be drawn from the First-named Defendant's signature on the Deed is that the First-named Defendant trusted the executing notary to complete the Deed by inserting the description of the land after the survey and by dating the Deed: See **United Dominions Trust Ltd. v. Western and another** (1975) 3 All ER page 1017.
- [50] This conclusion is further supported in the **Avoidance of Doubt** document which clarifies the Southern boundary of the 7 acres.
- [51] I agree with Learned Counsel for the Claimant that the common intention of the First-named Defendant and the Claimant was that if and when the future Plan of Survey was executed, the relevant particulars and results of the Plan of Survey would operate to complement and complete the unregistered Deed of Sale.
- [52] It is undisputed that the First-named Defendant received \$61,000.00 for the purchase price of a piece of land at Morne La Croix. I do not accept the evidence of the First-named Defendant that it was for 1 acre. I accept the evidence of the valuer, Christopher Alcindor, and moreover I bear in mind that a mere five weeks previously, the First-named Defendant bought over 11 acres for \$60,000. I therefore find as a fact that the \$61,000 represented the full purchase price for Parcel 12.
- [53] In my judgment the construction of the swimming pool on Parcel 12 was a cogent act of the Claimant's ownership of Parcel 12, for under normal circumstances a person does not construct such a permanent and personal amenity on land unless he believes that he owns the land.
- [54] The evidence discloses that the First-named Defendant never objected or in any way interfered with the construction of the said swimming pool. Equity will protect the Claimant

as by confirming his supposed title and would prevent the First-named Defendant from taking advantage of his passive conduct to the disadvantage of the Claimant. I agree with Counsel for the Claimant that the First-named Defendant transferred Parcel 12 to the Second-named Defendant at a time when he no longer owned it and the law will not allow a man to take advantage of his own wrong.

[55] Statutory and judicial authorities clearly show that registration of a piece of land with absolute title is indefeasible but if the land was acquired without consideration it shall be held subject to any unregistered rights such as the unregistered Deed of Sale.

[56] Based on the above I enter judgment on behalf of the Claimant and declare and order the following:

- (1) That the Deed of Transfer by the first-named Defendant (Michael Jacques) to the Second-named Defendant (Pitton Experiences Limited) registered in the Land Registry on 10th January 1990 as Instrument No. 144/90 is null and void in so far as it relates to Parcel 0027B 12.
- (2) That the Claimant is the proprietor of Parcel 0027B 12 and is entitled to be registered in the Land Register as such proprietor.
- (3) The Registrar of Lands is hereby ordered to rectify the Land Register by canceling the registration of the Second-named Defendant (Pitton Experiences Ltd.) as proprietor of Parcel 0027B 12 and by inserting the name of the Claimant as the proprietor of Parcel 0027B 12.

[57] The Defendants are to pay costs to the Claimant in the sum of \$20,000.00.

Suzie d'Auvergne
High Court Judge