

SAINT LUCIA



IN THE HIGH COURT OF JUSTICE
(CIVIL)

Suit No. 826 of 1995

Between:

JOSEPH CORNIBERT

- Plaintiff/Respondent

vs

BEATRICE GEORGE

- Defendant/Applicant

Mr. K. Monplaisir Q.C. for Plaintiff/Respondent
with Miss. C. Hinkson

Mr. H. Deterville with Mr. S. Anthony for Defendant/Applicant

1996: January 21
March 18

J U D G M E N T

d'Auvergne, J

On the 21st November, 1995 the Plaintiff filed a writ of Summons indorsed with a Statement of Claim.

The Statement of Claim is reproduced in its entirety.

STATEMENT OF CLAIM

1. The Plaintiff is the son and heir at law of the late EDMUND CORNIBERT.
2. The Defendant is the beneficiary under the Last Will and Testament of the late CHARLES JOHN whose Executor under the said Will was SYLVESTER JOHN.
3. The said Executor executed a Vesting Deed before Ira d'Auvergne, Notary Royal and this document was handed to

the Defendant for her signature but was never completed and in consequence never registered.

4. On or before 8th March, 1988 the said Sylvester John received from the Plaintiff the sum of **SIX HUNDRED (\$600) DOLLARS** as the final balance due on the purchase price of the sale of **ONE CARRE** of land sold by the late Charles John to Edmund Cornibert the father of the Plaintiff. The said Sylvester John gave a receipt to the Plaintiff which will be referred to at the trial.
5. The said Sylvester John has since died.
6. The Plaintiff has called upon the Defendant to perfect the Deed of Sale but the Defendant has neglected or refused to do so whereby the Plaintiff has suffered loss.
7. The Plaintiff has at all material times been and remains ready and willing to perform his obligation under the said contract.

The defendant entered an appearance on the 8th of January, 1996 in this form.

Please enter an appearance for the defendant Beatrice George Sued herein as Theresa George.

On that same day the defendant filed a Summons on application to strike out pleadings under Rules of the Supreme Court Order 18 Rule 19 and under the inherent jurisdiction of the Court and on the ground that it discloses no reasonable cause of action against the defendant and that the plaintiff's action against the defendant be stayed or dismissed, and that the defendant be at liberty to enter judgment for her Costs including the Costs of this application to be taxed.

This Summons was argued on the 26th of January, 1996 in Chambers.

The Plaintiff applied for an amendment for the word Theresa to be deleted as the Christian name of the defendant and the word Beatrice to be submitted.

There was no objection and the amendment was granted so the defendant became known as Beatrice George.

Learned Counsel for the defendant submitted that under **Order 18 Rule 19 (3) of the Supreme Court Practice 1985 Edition Vol. 1** if a Claim is on the face of it obviously unsustainable, since it is unarguable then it should be dismissed by this Summary process.

He argued and submitted on every paragraph of the Statement of Claim in chronological order. His arguments were as follows:

Paragraph one (1) of the Statement of Claim discloses that Edmund Cornibert is dead.

Paragraph two (2) states that the defendant is the beneficiary under the last Will and Testament of Charles John whose Executor was Sylvester John who paragraph five (5) states is also dead.

Paragraph three (3) states that there was no Vesting Deed to the property of Charles John.

Paragraph four (4) states that the executor Sylvester John received \$600.00 as final balance due on purchase price of the Sale of one Carre of land sold by Charles John to Edmund Cornibert.

Counsel contended that based on the pleadings the defendant does not own any land, is not part of any contract with the Plaintiff and therefore is in no position to effect a Deed of Sale in favour of the Plaintiff.

He argued that in order for the defendant to abide by the prayer of the Statement of Claim of the plaintiff she would have to be the personal representative of Charles John.

He strenuously argued that the Statement of Claim should be struck off since it could not be cured by an amendment, that it discloses no reasonable cause of action.

Learned Counsel for the Plaintiff argued that the Claim did have a chance of success since money was paid for a piece of land and a receipt was given by someone who had the capacity to give such receipt; that under paragraph three (3) the defendant appeared to be a beneficiary under the Will and had an interest in the succession of Charles John.

He contended that an amendment could cure the defect and the estate of Charles John could be made a party to the case.

He quoted the oft cited case of **Drummond-Jackson V British Medical Association** 1970 1 WLR 688, 1970 1 AER Page 1094.

He said that Learned Counsel for the Plaintiff was confusing no cause of action against the defendant and that the case discloses no cause of action.

Learned Counsel for the defendant replied that there must be a cause of action against the defendant and that all causes of action vest in the personal representatives of the deceased and that one cannot sue the beneficiary of a deceased.

He further submitted that Charles John was the brother of the defendant Beatrice George and that if any money was paid to one person, another person could not and cannot be made liable.

CONCLUSION

Having listened to the arguments and applying the law to the pleadings in this Statement of Claim it is my view that this case could not be improved by an amendment since the cause of action is obviously bad and almost incontestably bad. **Dyson v Attorney General 1911 1 K.B. Page 419.**

Therefore under the discretionary jurisdiction conferred on me and having regard to the quality and all the circumstance relating to the pleadings this action cannot be sustained if justice is to be done. **Metropolitan Bank v Pooley 1885 16 App Cases at page 221** approved in **Riches v Director of Public Prosecutions 1973 1 W L R 10119, 1027 (973) 2 ALLER 935, 942.**

My Order is as follows:

This action is dismissed.

The Plaintiff is to pay costs in the sum of \$500.00 to the Defendant.

**SUZIE d'AUVERGNE
PUISNE JUDGE**