

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 2 of 1988

BETWEEN:

YACHT HAVEN HOTEL LIMITED _ Appellant
and

ROBERT STANLEY MALAYKHAN _ Respondent

Before : The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: H. Giraudy and B. Floissac for the Appellant
M. Gordon for the Respondent

1988; May 11,
Oct.24.

JUDGMENT

MOE, J.A.

This appeal concerns the ownership of a portion of land (referred to as the Pasture Lands) in the Marigot Adjudication Section in the Quarter of Castries. The area some ten acres in extent was awarded to the appellant by the Adjudicator whose decision was reversed by the Land Adjudication Tribunal which awarded the land to the respondent with Absolute Title.

The appellant contends that the pasture lands form part of a larger parcel known as the Tertuillién Lambert Lands which it purchased in 1960 from Marigot Des Roseau Ltd which had eleven days earlier purchased the said Lambert Lands from Alfred Littman. The respondent's contention is that the pasture lands form part of a different parcel lying immediately North of the Lambert Lands and are lands which in 1962 the said Alfred Littman sold to one Wilhelmina Barton and from whom the respondent bought in 1977.

Alfred Littman in 1923 purchased 63½ carres of land more or less from Oscar Long (Deed of Sale vol. 76 No. 43975 registered 9th October, 1923). In 1930 Littman purchased at a Judicial sale another 6 carres, more or less, the land being the Tertuillien Lambert land (Sheriff's sale and Adjudication Deed Vol. 80. No. 46500, registered 9th October, 1923). It is agreed that these two portions of land but and bound - the Southern boundary of the Long Lands being the Northern boundary of the Lambert Lands.

In 1958 Littman, having previously disposed of certain portions of the Long Lands, sold another portion to Eggleston. The description of the Southern boundary of the land sold and set out in the Schedule to

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to the relevant Deed of Sale contains the following reference :-
 ".....the said remainder being bounded as follows..... South by
 lands of Tertuillien Lambert....."

In 1960 Littman sold to a company called Marigot Des Roseau Ltd. 5 carres of the Lambert Lands, which the company in turn sold to the appellants. The description of the Northern boundary of the land sold as set out in the Schedule to the relevant Deed of Sale is "North by the said Marigot Lands". It must be observed that the lands bought from Long were at one time what were the Marigot Estate. In 1962 Alfred Littman sold 2½ carres to Wilhelmina Barton who in turn sold this land to the Respondent. The land, subject of these sales, is the area in dispute.

The Land Adjudication Tribunal saw the issue to be determined as whether the pasture lands form part of the Lambert Lands or whether they form part of the Oscar Long Lands. In making that determination the Tribunal made reference to the first Cadastral Survey of St. Lucia called the Fort de Latour map. The Tribunal compared what appears on that map as the Northern boundary of the lands which formed the Tertuillien Lambert Lands with a line appearing on survey plans by surveyors Guard and Monplaisir which line Littman claims to be the boundary line between the Long Lands and the Lambert Lands.

The Monplaisir plan was done in August 1963 at the instance of the appellants, the Guard plan done in August 1979 at the instance of the respondent. Shown on each of these plans North of the common boundary line claimed by Littman is a line which Eggleston and Littman say is the Southern boundary of the land sold to Eggleston in 1958. In evidence was a third plan done by surveyor Guard in 1957 and recorded in 1958. This shows the Southern boundary of Eggleston as the line seen North of the common boundary line on the other two plans. Between the 2 lines fall the disputed area. It may be observed also that the Tribunal in its written decision made reference to a Deed of Correction which Littman and Eggleston executed in 1964 and corrected the description of the Southern boundary of the Long Lands sold to Eggleston by Littman in 1958 from that shown in the Deed of Sale of 1958.

Counsel for the appellant submitted that to resolve the dispute the Tribunal was required to interpret certain deeds the purpose of which was to ascertain the intention of the parties to those deeds. He referred to a passage in Lord Atkinson's judgment in Houlder Bros. & Co. Ltd. v Public Works Comr. (1908) A.C. 276 at page 285. However, he said, the Tribunal departed from normal canons of construction in this exercise. While accepting that extrinsic evidence may be used for certain purposes of interpretation he submitted that the Tribunal considered inadmissible extrinsic evidence, namely:-

(1) The Deed of Correction executed in 1964 which formed no part of the matters to be considered by the Tribunal; and

(2) The Fort de Latour Map, a public document which could only have been considered if the map was in the contemplation of the parties to the 1960 Deed of Sale Littman and Marigot Des Roseau Ltd. at the time of the dealing which culminated in the relevant Deed of Sale. He contended the map was not in evidence and there was nothing to show that the map was in contemplation of the parties.

Counsel's submission was that the Tribunal should have interpreted the 1960 Deed of Sale from Littman to Marigot Des Roseau Ltd. by reference to:-

(i) a lease entered into between Littman and Marigot Des Roseau Ltd. in 1959; and

(ii) the Deed of Sale of 1958 between Littman and Eggleston.

The lease concerned was a lease by Littman to Marigot Des Roseau Ltd. of the Turtuillien Lambert Lands. Counsel drew particular attention to a covenant of the lease Des Roseau Ltd. as follows:-

"(2) To permit the said Alfred W. Barton Littman to graze his animals on the said portion of land leased."

He contended this way: That the lands in dispute are "the pasture lands" and the lease shows that those are the lands to which the lease made reference. That is, the pasture lands formed part of the lands leased. The lands leased were sold to Marigot Des Roseau Ltd. in 1960.

Counsel also contended that that 1959 lease signed by Littman estops Littman from denying that the land sold is bounded on the North by Eggleston's land. Reference was also made to the two Guard Plans which show the Southern boundary of Eggleston's boundary as North of the common boundary line between Long Lands and Tertuillen Lambert Lands.

Counsel for the respondent stated that the 1964 Deed of Correction moved Eggleston's Southern boundary to the position in which it should have been as shown in the Guard's survey of 1958. It in effect corrected a misdescription of a boundary. He submitted that the Tribunal did not err if it used that Deed in interpreting what happened with the Long Lands. He quoted section 21 of the Land Adjudication Act No. 11 of 1984 as providing the authority under which the La Tour Map may have been used.

One aspect of the elementary principle of interpretation of deeds mentioned by appellant's Counsel, that of ascertaining the intention of the parties to the Deed of Sale 1960, is that the intention is to be ascertained from within the four corners of the Deed itself. There

/can be....

can be and is no dispute that the lands intended to be sold and bought under that Deed of Sale of 1960 were the Tertuillien Lambert Lands. There is no justifiable complaint therefore about the Land Adjudication Tribunal having sought to determine what were the Tertuillien Lambert Lands. For having so determined it would also have determined whether the pasture lands fell within those lands.

The Tribunal was evidently unable to decide from the Deed itself the position of the Northern limit or boundary of those lands or looked at another way the common boundary line between those lands and the lands butting to its North. The description of the boundary it will be recalled was simply "other Marigot Lands" which we have seen would be other Oscar Long Lands. The Tribunal was therefore entitled to turn to other evidence from outside the Deed itself. Article 1137 of the Civil Code. Scarfe v Adams (1981) 1 All E.R. 843.

THE DEED OF CORRECTION

I am unable to accept the submission that the Tribunal used the Deed of Correction in order to determine the Northern boundary of the Tertuillien Lands set out in the 1960 Deed of Sale. An analysis of the Tribunal's decision reveals that the Tribunal in its elaboration of the background to the dispute mentioned the execution of the Deed of Correction in 1964 and indicated what transpired between the parties Littman and Eggleston including the agreement between them as to the description of a boundary, the Southern boundary of the land sold to Eggleston. For the sake of clarification I think it useful to state some details of this Deed.

In the first perambular paragraph it is stated, "Whereas by Deed of Sale by the vendor to the Purchaser executed on the 4th August 1958... ..it was written: then is set out the whole description of the property sold as appears in the Schedule to the 1958 Deed".

Then follow these 3 paragraphs:

"AND WHEREAS contrary to the intention of the parties the Southern boundary of the said lands was erroneously described to be bounded as follows:- South by lands of Tertuillien Lambert.

AND WHEREAS the definition of the said Southern boundary should have read: "South by the Marigot River and Marigot Ravine and partly by the North of the Pasture Lands extending Eastwards to lands of Phulgence Desir on the Guard Survey No. 30/

NOW THESE PRESENTS WITNESSETH"

1. That the Vendor and the Purchaser hereby confirm that the said Southern boundary in the relevant Deed registered in Vol. 89B No.66960

/was....

was erroneously described to be South by land of Tertuillien Lambert. And hereby expressly agree that the said definitions were written in error, itself not their true intentions, and hereby establish as true and correct by way of substitution thereof now this description "South by the Marigot River and Ravine, and partly by the North of the pasture lands extending Eastwards to lands of Phulgence Desir and on the Guard Survey No. 30/1958".

Rectification can be had of an instrument if there is a mistake mutual or common to the parties to the instrument. In *Beale v Kyte* (1907) 1 Ch. 564 where by a common mistake between the parties to a contract for the sale and purchase of land, the parcel in the conveyance included more land than was comprised in the contract pursuant to which the conveyance was drawn up, rectification of the conveyance was allowed. It can be seen that the Deed of Correction in the instant case has all the attributes of a Deed of Rectification. I accept the submission of respondent Counsel that as between Littman and Eggleston the Deed effectively corrected a misdescription in the 1958 Deed of Sale of a boundary of the land sold thereunder.

USE OF 1958 DEED OF SALE

The decided cases referred to in the appellant's submission on record do not provide any authority for reference to the 1958 Deed of Sale, interpretation of which would show what land the parties thereto intended to sell and buy and did in fact sell and buy. The cases quoted were not concerned with the use of a contract between third parties to assist in determining what the parties to a particular contract meant or intended. This 1958 Deed would be of assistance if it relates to the sale by Littman of the Southern portion

of the Long Lands with the Southern Boundary being the common boundary line with the Tertuillien Lambert Lands. The description of the Southern boundary of the land sold under the 1958 Deed of Sale as set out above is "South by lands of Tertuillien Lambert Lands". But that description, as I understand the statement of facts, included the pasture lands within the area sold. This fact has not been challenged nor refuted. The pasture lands having been included in the land sold to Eggleston under the 1958 Deed of Sale, use of that Deed by itself can hardly be of assistance to the appellant. For if Littman sold the pasture lands in 1958, the appellant cannot successfully contend that Littman still had the area to sell in 1960.

However the effect of taking into account the Deed of Correction subject to which the 1958 Deed of Sale must be read is that the Southern boundary of the land sold to Eggleston is "South by the Marigot River and Ravine and partly by the North of the pasture lands

/extending.....

extending Eastwards to lands of Phulgence Desir on the Guard Survey No. 30/1958".

The appellant certainly does not contend that the Northern boundary of the Tertuillien Lands is the Marigot River and Ravine, etc. It is also worthy of note, although not addressed by Counsel, that the Deed of 1960 to Marigot Des Roseau did not name Eggleston as bounding the Tertuillien Lands on the North.

USE OF THE 1959 LEASE

The argument put forward concerning the inference to be drawn from reference to a certain clause in the 1959 lease is clearly unsound. The clause leads to the inference that there would be material on the lands leased on which Littman's animals would be able to graze. But neither that clause nor any other clause in the lease said that the grazing would be only in a particular area, for the purpose of this case in the North of the lands. Surely the terms of the clause are that the lessor may graze on the lands leased - the whole lot of the Tertuillien Lands. Littman could very well have grazed his animals to the East or to the South of the lands leased.

The submission with regard to estoppel was based on the soundness of the argument relating to the interpretation of clause 2 of the 1959 lease. This submission also must of necessity fail.

THE FORT DE LA TOUR MAP

The Tribunal for this purpose used the De La Tour Map which is a public document. Section 21 of the Land Adjudication Act No. 11 of 1984 provides:-

"(1) In hearing a dispute under section 15 or petition under Section 20, the Adjudicating Officer shall, so far as may be practicable, follow the procedure directed to be observed in the hearing of civil suits, save that in his absolute discretion he may admit evidence which would not be admissible in a court of law and may use evidence adduced in any other claim or contained in any official record and may call evidence on his own motion."

Section 21 provides one authority for the use of the Map by the Tribunal and although the Adjudicator did not use it, the Tribunal, the forum of review was in order using evidence which the Adjudicator was entitled to use. But it seems to me that this survey, made pursuant to authority, to be a public record of the lands in St. Lucia is admissible as a public document on boundary questions.

Using the Map which it was entitled to use, ^{the} Tribunal determined the extent of the Tertuillien Lands with its Northern boundary being along the line set out above. That really is an end of the matter. But consideration of the following evidence reinforces the finding.

/The plan.....

The plan No. C2084 of surveyor Guard done in 19 57 shows a line F to H which represents the Southern boundary of Eggleston's land. Guard said in evidence that that line was walked with him by both Littman and Eggleston in 1957 as the Southern boundary of the land which Eggleston wished surveyed. The plan No. C5632 of Surveyor Guard done in 1978 shows the same line F to H or Southern boundary of Eggleston's land and another line further South O to P which represented the Northern boundary of the Bucklands, which the evidence shows is another name for the Tertuillien Lambert Lands. He said this 1978 survey was done to separate the "Bucklands" from the Marigot Estate. The Title to the Bucklands was the Deed of Adjudication and Sale by the Sheriff of lands once owned by Tertuillien Lambert which lands had nothing to do with the pasture lands". All of this is in confirmation of the finding of the Land Adjudication Tribunal as to the Northern boundary of the Tertuillien Lambert Lands.

In the circumstances the evidence was clearly in favour of the finding reached by the Land Adjudication Tribunal as to the Northern boundary of the Tertuillien Lambert Lands or the common boundary line between these lands and the Oscar Long Lands. The decision must be supported. I would dismiss the appeal and affirm the decision. The respondent to have his costs.

G.C.R. MOE,
Justice of Appeal

L.L. ROBOTHAM,
Chief Justice

E.H.A. BISHOP,
Justice of Appeal.