

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 149 OF 1995

BETWEEN:

LEON DA BREO

Plaintiff

and

ROBIN PUNNETT

HELEN ST HILL

Trustees of the Will of Alexander Fraser, deceased

Defendants

Appearances:

Samuel Commissiong for the Plaintiff

Nicole Sylvester for the Defendant

2000: November 13, 28

JUDGMENT

[1] MITCHELL, J: This was a disputed contract for sale of land in St Vincent.

[2] By a generally endorsed writ issued on 21 April 1995 the Plaintiff sought the following relief:

- (1) Specific performance of a contract of sale dated 3rd May 1993 for the sale and purchase of 3 acres and 20 poles of land at Rutland Vale as set out and described on a registered survey plan number P 232 being "Lot No 1" on the plan;

- (2) An order for an account and inquiry as to the balance of the purchase price due to the vendors and payment of the said balance and execution of a deed of conveyance by the Vendors to the Purchaser;
- (3) Further or alternatively, damages for breach of contract.

[3] By the Statement of Claim filed five months later on 19 September 1995, the Plaintiff claimed that on 3 May 1993 Agnes St Hill acting as one of the trustees of the Will of Alexander Murdoch Fraser had entered into an agreement with him to sell him 3½ acres of land at Rutland Vale Estate; that the agreed purchase price had been \$60,000.00; that an agreed deposit of \$5,000.00 had been paid on 3 May 1993 for which the Plaintiff had been issued a receipt; that the Plaintiff had been thereafter entitled to a conveyance; that it had been an express term of the contract that the Vendor would provide the Plaintiff with an access road; that completion of the contract had been delayed by the death of Harry St Hill the husband of Agnes St Hill and the subsequent illness and death of Agnes St Hill and also by the attitude of the 2nd Defendant in frustrating the Plaintiff in his attempts to communicate with Agnes St Hill during her illness; that the Plaintiff had subsequently learned that the land in question had been transferred to a family member and an attempt had been made to find an alternative piece of land for the Plaintiff, but the 2nd Defendant had declared that the parcel of land was not available and the parties had not been able to agree on a suitable alternative; and the Plaintiff claimed specific performance and/or damages for breach of contract, etc.

[4] By a Defence filed on 14 December 1995, the Defendants admitted that a cheque in the sum of \$5,000.00 had been paid to Agnes St Hill on 3 May 1995 but denied that the cheque had ever been never negotiated; that Agnes St Hill had written to the Plaintiff on 12 May 1995 to obtain from him the financial arrangements for the payment of the proposed purchase; that the Plaintiff had never replied to the letter and had never accepted the offer contained in it; that the Defendants relied on the

letter for its terms and effect; that the 2nd Defendant denied that she had frustrated the Plaintiff's attempts to communicate with Agnes St Hill during her illness and that the Plaintiff had been uncouth to the 2nd Defendant and had behaved so that he was unbearable; that the Defendants had offered the Plaintiff an area of land which had then been available for purchase at the price of \$60,000.00 per acre but that the Plaintiff's solicitor had informed the Defendants that the Plaintiff had refused the offer; that the Plaintiff had wanted the land at pre-1993 prices; and that the Plaintiff had instead indicated his interest in a parcel of land which formed a portion of the land appropriated to Mrs Blencowe of the devisees. The Order on the Summons for Directions in this matter was filed on 9 April 1996 and the Request for Hearing on 17 May 1996. The case has been ready for hearing ever since.

- [5] At the trial the Plaintiff gave evidence for himself and called as his witness Mr MacArthur Robertson, a licensed land surveyor who for many years had done survey work on the estate and who had made the survey plan put in evidence. Giving evidence for the defence was the 2nd Defendant alone. A number of documents were also put in evidence. The facts as I find them are as follows.
- [6] The Rutland Vale Estate (hereinafter "the Estate") lies on the Leeward Coast of St Vincent adjacent to the town of Layou. On 3rd May 1993, the Estate belonged to the estate of Alexander Murdoch Fraser and was vested in Agnes St Hill and other trustee or trustees of his Will. Neither the number nor the names of the trustees have been put in evidence. Agnes St Hill at the time in question was married to a Mr Harry St Hill, and she and her husband lived on the Estate.
- [7] The trustees were selling out parts of the Estate to persons who wished to purchase. The surveyors who most frequently worked on the Estate doing surveys for purchasers were MacArthur Robertson and Keith Francis. MacArthur Robertson had done a survey in the year 1991 of a parcel of land on the estate some 3½ acres in area for a Mr Owen Walker who had then been interested in

purchasing the land. The contract with Mr Walker was not put in evidence, so it is not known exactly what the terms with Mr Walker were. Mr Walker had not been interested in purchasing more than 3 acres in area. The land that Mr Robertson had originally measured off was 3½ acres. Mr Robertson had subsequently amended his survey to divide the 3½ acre parcel of land into 2 parcels, Lot 1 consisting of 3 acres 0 roods and 20 poles, and Lot 2 consisting of 16,773 sq ft. The 3 acre and 20 pole lot had been intended for Mr Walker, and the remainder of 16,773 sq ft had been for sale to anyone else. The deal with Mr Walker had not gone through, and the two surveyed spots of land remained unsold after the year 1991. The survey plan had been approved and lodged in the Surveys Department on 27 September 1991 and given the survey plan number P232.

[8] The Plaintiff Leon DaBreo at the time had been interested in investing in a piece of land. He had been searching about for a suitable area to purchase. He had learned of the selling out of parcels of the Estate, and got MacArthur Robertson whom he knew quite well to show him a suitable spot on the Estate for him to purchase. When the Plaintiff in about April 1993 was shown the part of the Estate included in plan P232 he fell in love with it, as he testified. Mr Robertson personally showed him some of the boundary marks of Lot 1, but none of Lot 2. The Plaintiff met with Agnes St Hill to discuss purchasing the land that he had been shown. He testified that the land he had discussed with Agnes St Hill was Lot 1 and Lot 2, all of the land in the plan P 232, and that they had both agreed for the purchase and sale of both these lots. His recollection was that they had agreed on a purchase price of \$60,000.00 for all the land. His recollection was that that price had been worked out by him and Agnes St Hill on the basis that it was \$20,000.00 per acre for 3 acres, and he could have the remaining ½ acre for nothing because it was rocky land.

[9] He came back later to visit Agnes St Hill on 2 May 1993 and brought with him a cheque for a previously agreed deposit of \$5,000.00. This was a personal cheque drawn on his bank in Kingstown. He gave the cheque to Agnes St Hill, and she

gave him a receipt dated 3 May 1993 because the 2nd May was a Sunday. The receipt states, "Received from Leon and Elizabeth DaBreo the sum of five thousand dollars for a/c Lot P-232 (\$60,000.00)." The Defendant's recollection is that the only thing that stopped him from paying cash immediately was that he needed the Vendors to put in a road to the land. He had agreed to put in the electricity and water himself, but the agreement was for the Vendors to put in the road. The evidence is that there was an allocation on the plan for a road, but the road had not been bulldozed.

[10] The receipt says that the \$5,000.00 was a deposit on account of "Lot P 232". There was no "Lot P 232", only a plan P 232. There were two lots, Lot 1 and Lot 2, shown on the plan P 232. One possible interpretation of the receipt is that it demonstrated an intention to sell all of the land in plan P 232. Another interpretation is that it is ambiguous, confusing and unclear what it is that the maker of the receipt thought she was selling.

[11] No harm would have been caused by all of this confusion if the contract had been duly completed. The "deal" between the Plaintiff and Agnes St Hill, however, did not go through. The Plaintiff's evidence is that not only was the road holding up matters; the 2nd Defendant had obstructed his dealings with Agnes St Hill and had done every thing she could to frustrate the contract. The 2nd Defendant denied that there had been any hold up over the road or that she had attempted to frustrate the contract. The Plaintiff also testified that Agnes St Hill had delayed his completion of the contract because she had wanted to give Owen Walker time to complete his deal if he was still interested. The 2nd Defendant testified that this was not true as the deal with Owen Walker had fallen through long before discussion with the Plaintiff had commenced. Agnes St Hill was not here to give her version of the allegation of the Plaintiff concerning the road or Mr Walker.

[12] There was put in evidence by the Plaintiff the letter to him from Agnes St Hill dated only 10 days after he had given her the cheque for the deposit of \$5,000.00. In

that letter she made no mention of needing more time for Mr Walker. Instead, she appears to have been saying that the purchase price had not been finalized between the two of them. She appears to have understood that the Plaintiff had been interested in purchasing 3 acres at \$20,000.00 per acre and that she had agreed to that. Her letter indicates that, because Lot 1 consisted of 20 poles more than the 3 acres that had been discussed between the two of them, there would be an additional \$2,500.00, making a total purchase price of \$62,500.00, if the Plaintiff was interested in also acquiring the additional 20 poles of land in Lot 1 on the survey plan. The letter from Agnes St Hill asked the Plaintiff to confirm whether he accepted this price. She also asked him to inform her of the financial arrangements for final payment as she required full payment within one year of the deposit. She advised him that the cheque for \$5,000.00 was being held awaiting his acceptance of this figure of \$62,500.00. The Defendant never replied to this letter. He testified that he was surprised at this letter; he understood that he was purchasing the entire 3½ acres for the amount of \$60,000.00. He testified that in a telephone conversation with Agnes St Hill before she died in April 1994 she told him to ignore the letter of 12 May 1993 as it was the doing of the 2nd Defendant. Agnes St Hill is not here to reply to this allegation, and the 2nd Defendant denies she had anything to do with the letter. I make no finding about this allegation. I find that what really delayed the completion of these negotiations was the new offer made by Agnes St Hill in her letter of 12 May 1993 and the inability of the Plaintiff to negotiate with her because of Harry St Hill's illness and death and the subsequent illness and death of Agnes St Hill.

[13] It appears that subsequent to the death of Agnes St Hill, the two present trustees were appointed. Mr Graham Bollers was retained by the Plaintiff as his solicitor to represent him in his dealings with the new trustees of the estate. The Plaintiff's view was that Mr Bollers had represented him in the claim that he had against the Estate. The Defendants denied that there was any claim, merely that the Plaintiff had renewed his interest in purchasing some of the Estate and had had Mr Bollers make an enquiry for him. Mr Bollers did not give evidence, but he appears from

the evidence to have been told by the new trustees, the Defendants, that they were willing to sell the Plaintiff 3 acres of land on the estate if he was still interested. Mr Robertson the surveyor was engaged to find 3 suitable acres for the Plaintiff. The Plaintiff was not offered the original parcel of land because it had now been allocated to a beneficiary of the Estate and was no longer available. When the Plaintiff learned that the Defendants wanted \$60,000.00 per acre for this other land, he lost interest.

- [14] In March 1995 the Plaintiff saw his present solicitors. On 6 March 1995 they wrote a letter on his behalf to the new Trustees, the Defendants in this case. That letter, which was put in evidence, reveals that even at that stage the Plaintiff was of the view that his arrangement with Agnes St Hill had been to purchase the "3 acres of land shown and described as lot number one on a registered survey" plan P 232. The letter also contains the conflicting statement that the land that had been to be sold for \$60,000.00 measured 3½ acres. From the above it would appear that even in March 1995 the Plaintiff was uncertain of exactly what it was that he had been trying to purchase from Agnes St Hill. This letter of 6 March 1995 was a letter before action and gave the Defendants 7 days to complete the agreement made with Agnes St Hill or to provide suitable alternative land, failing which the Plaintiff would resort to what was described as a "more effective means" of getting the Defendants to comply. The Defendants not complying with the demand in the letter, the result was the Plaintiff's writ of 21 April 1995. Even the description of the land in the writ contradicts the evidence of the Plaintiff as to the land he claims to have contracted to purchase. The writ claims specific performance of a contract to purchase no more than the area of land contained in Lot 1 on the plan in evidence. The subsequent Statement of Claim is no more certain as to what the Plaintiff claims as to the land to which he is entitled. The Statement of Claim has it that the Plaintiff claims 3½ acres of land, but the description of the land in paragraph 2 of the Statement of Claim has Lot 2 as "butting and bounding" the north-east of the land being claimed by the Plaintiff. That is, the Statement of Claim has Lot 2 lying outside the land being claimed by the Plaintiff. It is only in

his testimony that the Plaintiff gives for the first time the detail that he had agreed with Agnes St Hill to purchase the full 3½ acres encompassing Lot 1 and Lot 2, but that Agnes St Hill had only charged him for 3 acres, throwing in the other ½ acre for nothing because it was stony.

- [15] The Plaintiff may well, as he testifies, have thought that he was purchasing all the land on the plan P 232 prepared by Mr Robertson in 1991 for Mr Walker. He may well have believed that the purchase price for all the land on the plan had been agreed at \$60,000.00. He may well be completely truthful about his recollection of his discussion with Agnes St Hill. Given the absence of a contract in writing, the court needs to be satisfied on a balance of probabilities that the Vendors had committed themselves to those terms described by the Plaintiff in his evidence, i.e., that the parties had been *ad idem*. But, is the evidence that the parties were *ad idem*? For there to be a binding contract for the sale of land there must at the very minimum be an agreement as to the parties to the contract, the price to be paid, and the property to be sold. Is there any evidence that the parties had agreed on the parties to the contract, the price to be paid, and on the extent of the land to be sold when the deposit cheque had been left with Agnes St Hill on 2 May 1993 and Agnes St Hill had issued the receipt? There is nothing in the receipt to make it clear whether or not both lots were intended to be sold. Agnes St Hill did not wait till the illness and death of her husband intervened to take action to suggest that she did not consider that the terms of the contract had been agreed, as claimed by the Plaintiff. I find it significant that she did not deposit the cheque when she received it. She wrote almost immediately after the Plaintiff left the cheque, on 12 May 1993, raising the question as to the extra 20 poles of land. And, she was only talking about Lot 1, not Lot 2. It is significant that the plan had not been prepared for this transaction but for an earlier transaction. There is no evidence that this plan had been, prior to the payment of the deposit, the subject of discussion between the Plaintiff and the Vendors and that the parties were familiar with the detail of the two separate lots of land depicted on the plan. There is nothing, other than the say-so of the Plaintiff, and the ambiguous statement in

the receipt, to show that Agnes St Hill really intended by this receipt to evidence a binding contract to sell both the lots amounting to all the 3½ acres of land as surveyed in the plan. The subsequent conduct described above of the two persons most directly involved in the negotiations does not help to make the resolution of the ambiguity any easier. The letter of Agnes St Hill to the Plaintiff dated only 10 days later when she appears to assert that she had agreed to sell exactly 3 acres at \$20,000.00 per acre, the description of the land claimed by the Plaintiff in the general endorsement on the Writ as being the 3 acres and 20 poles in Lot 1, and the conflicting and ambiguous descriptions of the land in the Statement of Claim which has the land as 3½ acres but specifying that it was only Lot 1, all combine to suggest that it was not clear even to the Plaintiff that he was claiming both Lot 1 and Lot 2 on the plan P 232 until much later, shortly before he came to give his evidence from the witness box. I find that the parties were not *at idem* at the time of the issuing of the receipt as to the property that was to be sold.

[16] Given the discrepancy between the parties named in the receipt as the purchasers and the testimony of the Plaintiff that he alone was to be the purchaser, I find that the parties were not *ad idem* either as to whom the purchaser was to be. The court has not seen any document appointing the trustees of the estate of the deceased. Nor do I know to what extent Agnes St Hill was able, acting on her own, to enter into a contract with the Plaintiff to bind the estate. It is not clear who was to be the vendor of the land to the Plaintiff and whether all the vendors had agreed to the sale, if they were all required to agree. The clear inference to be drawn from this confusion is that the two parties to the agreement of 3 May 1993 were not *ad idem* as to either the area of land being contemplated for sale or as to the purchase price to be paid by the Plaintiff or as to who the parties to the agreement were to be.

[17] Do the subsequent negotiations between Mr Bollers and the Defendants amount to an admission by the Defendants binding on the estate that the estate was under an obligation to the Plaintiff? Do the negotiations even amount to evidence that

corroborates and supports the Plaintiff's recollections of the terms of the oral contract that he testified had been negotiated between himself and Agnes St Hill? I find that there is no evidence that the Defendants ever admitted that the Plaintiff had any claim against the estate, and that they have steadfastly maintained that the Plaintiff was made an offer which he failed to accept, and that they were always of the view that he had paid no money to the estate in part performance of any contract of any kind with Agnes St Hill. The answer to the above questions is in the negative.

[18] The Plaintiff submits that the contract, though it was for land and had not been reduced to writing, is enforceable under the doctrine of part performance. His claim is that the trustees had received the cheque for \$5,000.00, and had issued a receipt saying they had received the \$5,000.00, and that it was not his fault that the cheque had never been cashed. The Court was invited to hold that a cheque is in the commercial world accepted as money to be paid in due course. The receipt says that \$5,000.00 had been received from the Plaintiff. The evidence however is that the estate had not received any cash. What the estate had received was a personal cheque from the Plaintiff. A cheque is not payment. A cheque is not the same as cash. A cheque is nothing more than a letter of instruction to one's own banker to pay cash to someone. The drawer of a cheque can at any time before presentment of the cheque by the holder to the drawer's bank stop payment on the cheque. At best, a cheque is no more than a promise to pay. No cash payment or payment of any kind had been received by the Vendors. The receipt says something that is not true when it says that \$5,000.00 had been received. Agnes St Hill had been clear in her letter of 12 May 1993 that the deposit of the cheque would await the response of the Plaintiff to her letter. There was no reason for the Plaintiff to believe after he received that letter that the then Trustees considered themselves under any obligation to him in relation to the land in which he had previously expressed an interest, unless he responded to the letter and came to some agreement with them.

[19] The Plaintiff, as with so many would-be purchasers, did not think to visit his solicitor, before he paid the deposit, to have an agreement in writing drawn up for the Trustees of the estate to sign. Where there is an agreement in writing, preferably drawn up by a solicitor, there can usually be little dispute as to what the terms of the agreement were. Given St Vincent's antiquated system of land law and title to land, it is very advisable for any purchaser of land to have a contract to purchase land reduced into writing, and for the title to the land to be required to be proved by the Vendor. A purchaser acting as the Plaintiff did in this case takes the risk that if a problem or some misunderstanding occurs, he will lose the opportunity to purchase the land in which he was interested.

[20] Given the above findings, the claim of the Plaintiff is dismissed. The Defendants are entitled to their costs, to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge