

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Civil)

Comment [a1]: Final copy. Distributed to parties on July 03.2001.

Suit No. 229 of 1995

BETWEEN:

WILLIAM THELIS

Plaintiff

and

WILLIAM DELICE

Defendant

Suit No.366 of 1997

BETWEEN:

WILLIAM THELIS

Plaintiff

and

- (1) **WILLIAM DELICE** of Riviere Mitan
- (2) **PETER POLIUS** of Monchy, Gros Islet
- (3) **PAUL POLIUS** of Monchy, Gros Islet
- (4) **HILARY NORVILLE** of Desruisseaux,Micoud
- (5) **CARLISLE WAYNE PLANTE** of Marisule, Gros Islet

Defendants

Appearances:

Ms Claire Greene-Malaykhan, Solicitor for the Plaintiff

Mr. Mark Maragh, Solicitor for the First Defendant

Second and Third Defendants absent and unrepresented

Mrs. Dawn Lay-Moyston for the Fourth Defendant

Mr. Michael Gordon, Solicitor for Fifth Defendant

2001: April 24 and 26.

JUDGMENT

- [1] **BARROW, J. (Ag.)** These are Consolidated actions. Suit No. 229 of 1995 is a claim by William Thelis for trespass to half carre of land situate at Riviere Mitan in Gros Islet. Suit No.366 is a claim that Defendant No.1, whom I shall call Delice, fraudulently represented himself to be the Plaintiff and surveyed and subdivided the Plaintiffs' land. The land is identified as what was formerly designated as Block 1453 B Parcel 77. The Plaintiff, whom I shall call Thelis, also claims that Delice fraudulently sold subdivided portions to the other Defendants. The Plaintiff claims possession and ownership of the sold portions. He impeaches the title of the Defendants/ purchasers.

- [2] Delice pleads that he was the true owner of the land; that he bought the land with his own funds. The other Defendants deny fraud and they relied on their registered title.
- [3] The trial of the principal issue between the Plaintiff and Delice proceeded. The issue of the title of the other Defendants was left open to await the outcome of the issue between Plaintiff and Delice. If the Plaintiff succeeds then the issue of the other Defendants' titles needs to be tried. If Delice succeeds then the titles of the other Defendants stand unaffected.
- [4] It is appropriate for me to pay tribute to the considerable industry of both Counsel in the preparation of this case for trial and their competence in the conduct of the proceedings. The benefit of The Civil Procedure Rules 2000 was fully manifested in consequence. A trial involving seven witnesses and 32 documents was completed in just about two hours because of the happy combination of professional competence, an improved procedural matrix and the newly implemented system of electronic court reporting.
- [5] At the heart of the issue is which of Thelis and Delice took the benefit of the conveyance by Deed of Sale dated April 26, 1962 [39 years to the day!] of the subject land. The deed is to "William Thelis a minor acting herein and represented by his grandmother Paulicienne James (born Thelis) of Gros Islet aforesaid, (hereinafter called the Purchaser) of the other Part".
- [6] Much evidence was directed to prove who was known or legally identified or identifiable as William Thelis. I do not propose to review the evidence because, at the end of it all, it is clear that both Thelis and Delice were legally entitled to that name. Thelis and Delice were the sons of two sisters. The two sisters were the illegitimate children of Paulicienne Thelis, as she was known at the date of the birth of each of the two sisters. Each of the two sisters carried the surname Thelis. At the time that each gave birth to her son, each son named William, neither sister was married. So each son William ought properly to have carried the surname Thelis. The complications arising from the fact that the birth certificate of neither William reflected this position are ultimately irrelevant. I believe I can

hardly avoid taking notice of the overarching factor that the use of names is a matter of high fluidity in St. Lucia. It is common to see one litigant identified before the Court by as many as five different names.

- [7] The precise issue to determine is, therefore, to which William did the Deed of Sale refer. The answer to that question must be sought first in the document. The Deed gives significant information in this regard. The Deed identifies the transaction as a sale as opposed to a gift or donation. It identifies the grantee as the purchaser. It specifies that the person purchasing was a minor. That minor was acting and being represented by his grandmother.
- [8] The issue, therefore, narrows down to the question, who bought the land?. At the date of the Deed of Sale (20th April 1962) Thelis, having been born on 1st April, 1956 was six years old. At that date Delice, who was born on 16th March, 1944, was eighteen years old. If effect is given to the plain meaning of the words of the deed then it means that either the six year old or the eighteen year old decided to enter into a business transaction and buy a parcel of land for sixty dollars, the consideration recited in the Deed. As a matter of basic reasoning it would seem more probable that it was the 18 year old who would be making a decision to invest his money in a parcel of land. Purely on the basis of that probability I would be prepared to decide the issue in favour of Delice.
- [9] But there is specific evidence on the point from Delice and two witnesses. Delice testified that at the material time he was working as a mason on the construction of the St. Lucian Hotel. He testified that his salary was \$15.00 per week and that he gave it to his grandmother who paid the purchase price from this source. Both Delice and Thelis were living in the grandmother's household at the time. He told of acts of ownership after the purchase.
- [10] Gabriel Tisson testified for Delice. This witness was living at the time with Bertina, another member of the Thelis family, a second cousin of Thelis and Delice. Around the same time that grandmother Thelis arranged for Delice to purchase his portion, grandmother Thelis also arranged for Bertina to purchase an adjoining portion. Tisson testified that he agreed

to help Bertina pay for her purchase. It was common knowledge to Tisson, Bertina, Delice and grandmother Thelis that Delice was buying the portion of land as arranged by grandmother Thelis.

- [11] Bertina gave a witness statement fully confirming this information. She did not attend for cross-examination. Counsel for the Plaintiff quite helpfully waived cross-examination, which the court had agreed to have taken at Bertina's residence. I take Bertina's evidence as mainly confirmatory of the evidence of Delice and Tisson.
- [12] In the result I am fully satisfied that the Deed of Sale was made between the vendor and Delice, as the purchaser. As Thelis testified, he had not a clue as to the existence of this document until in about the year 1994. Obviously he could not have been the party to the deed who was represented by his grandmother. It was the other William.
- [13] Accordingly, I give judgment in the consolidated action for Delice. In the result, I give judgment as well for the other Defendants to action 366 of 1997. The Plaintiff is to pay the costs of Delice in the sum of \$10,000.00, the costs of Defendant No.4 in the sum of \$6,000.00 and the costs of Defendant No.5 in the sum of \$ 5,000.00.

Denys A. Barrow S.C
High Court Judge (Ag.)