ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 242 OF 1998

BETWEEN:

ESTAVAN CHEWITT

Plaintiff

and

ST VINCENT CO-OPERATIVE BANK LTD
and
CAULDRIC YOUNG
and
ELROY YOUNG

Defendants

Appearances:
Samuel Commissiong for the Plaintiff
Margaret Hughes-Ferrari for the 1st Defendant
Nicole Sylvester for the 2nd and 3rd Defendants

2000: November 20
2001: May 2, 28, July 31

JUDGMENT

[1] MITCHELL, J: This case brings into sharp profile the weaknesses in the present system of recording land titles in the State of St Vincent and the Grenadines.

[2] The case began on 4 June 1998 by the issue of a generally endorsed writ by the Plaintiff against the Defendants. The Plaintiff claimed against the 1st Defendant bank damages for breach of covenant in deed No 537 of 1996, or, alternatively, as against the 2nd and 3rd Defendants damages for trespass. By the Statement of Claim filed on 10 July 1998, the Plaintiff claimed that on 16 March 1990 one Roxanne Williams had been the purported owner of the disputed property at

Questelles in St Vincent. On that date she had mortgaged the property with the 1st Defendant bank to secure a loan of $15,000.00. The mortgage was recorded by deed No 934 of 1990 of the same date. When Roxanne Williams defaulted on the loan, the 1st Defendant had sold the disputed property to the Plaintiff for the consideration of $25,000.00. That sale was evidenced by deed No 537 of 1996 dated 8 September 1995. The Plaintiff subsequently purchased building materials and began to construct a house on the disputed property. Thereupon, the 2nd and 3rd Defendants had without warning stopped the construction and had removed his construction materials, resulting in a loss of $6,000.00. The 2nd and 3rd Defendants had subsequently claimed the land was theirs and had refused to allow the Plaintiff to enter the property. The Plaintiff had since found that he did not have a clear title to the property. The 1st Defendant bank had failed to resolve the dispute.

[3] By a defence filed on 13 August 1998, and subsequently amended, the 1st Defendant bank claimed that it had conveyed good title to the Plaintiff and denied that it was in breach of title. By a defence filed on 18 November 1998, the 2nd and 3rd Defendants denied that Roxanne Williams had been the owner of the disputed property. They claimed that they had first become aware that Roxanne Williams and the Plaintiff were making claims on the property when the Plaintiff's workmen went onto the disputed property in 1997; that Roxanne Williams was the niece of the 2nd and 3rd Defendants and at all times knew that the disputed property belonged to her grandmother Sheila Young, now deceased; that on 22 May 1989, by letter, Roxanne Williams had requested Sheila Young to refund her monies she had expended on the disputed property; that the disputed property had originally been owned by John Young, the father of the 2nd and 3rd Defendants; that John Young had sold the property to Augustus Findlay; that Augustus Findlay had mortgaged the property to the 1st Defendant bank; that Sheila Young, the mother of the 2nd and 3rd Defendants, through her solicitors, had paid the 1st Defendant bank the balance of the debt owed by Augustus Findlay; that Sheila Young's solicitor had by letter of 6 March 1976 requested of

the 1st Defendant bank the relevant documents; that the 1st Defendant bank had never forwarded the relevant documents; that Sheila Young and her children including the 2nd and 3rd Defendants had gone into possession of the disputed property from about the year 1976, and had remained in uninterrupted possession of it; and that any title or interest of Augustus Findlay had been extinguished by virtue of the Limitation Act, Cap 90 of the Laws of St Vincent and the Grenadines; that the deed No 932 of 1990 from Augustus Findlay to Roxanne Williams was a fraud and a forgery; that by virtue of the payment of the mortgage debt in 1976 the 1st Defendant bank was a trustee of the legal estate in the disputed property for Sheila Young; and that the 2nd and 3rd Defendants were entitled to remove the building material from the disputed property.

[4] On 5 January 1999, the order made on the summons for directions was filed. The order gave leave to the 1st Defendant bank to amend and re-serve its defence within 21 days, with leave to the Plaintiff to file a reply within 14 days. On 13 January 1999, the request for hearing was filed.

[5] By its amended defence filed on 18 January 1999, the 1st Defendant bank claimed that if Roxanne Williams had obtained title by fraud, which was denied, then by virtue of the mortgage deed No 934 of 1990, the 1st Defendant bank had become a bona fide purchaser of the legal estate in the disputed property for value without notice of any alleged impediment on the title of Roxanne Williams; further, the bank denied that it had ever been a trustee of the legal estate in the property for Sheila Young or anyone else.

[6] The matter came up on call-over on 2 December 1999, and was fixed for trial on 17 July 2000.

[7] By a Notice filed on 23 October 2000, the 2nd and 3rd Defendants gave notice that at the trial they would seek to amend their Defence to make an alternative claim that from about the year 1976 they had gone into uninterrupted possession

of the disputed property and that the right title and interest of Augustus Findlay had been extinguished by virtue of the Limitation Act, Cap 90 long before the deed No 932 of 1990 dated 16 February 1990 had been made; that deed 932 of 1990 was a fraud or a forgery in that Roxanne Williams knew that the disputed property was owned by her grandmother Sheila Young and her uncles and aunts including the 2nd and 3rd Defendants, and that Augustus Findlay had migrated to the USA and could not have signed the deed and appeared at the Registry on 16 February 1990. This Notice of the 2nd and 3rd Defendants was repeated by another Notice in more or less the same terms filed on 26 October 2000. The application was granted by consent in Chambers on 3 November 2000.

[8] By a Notice filed on the same 23 October 2000, the 2nd and 3rd Defendants required the 1st Defendant bank to produce the mortgage account between Augustus Findlay itself and the original letters written to it on behalf of Sheila Young during January-March 1976.

[9] After various adjournments, the trial started on 20 December 2000. After various further adjournments, the trial continued on 2nd May and was concluded on 28 May 2001. The court heard evidence from the Plaintiff, and his nephew (and building contractor) Gregory Chewitt. The court also heard testimony from the 2nd and 3rd Defendants, from Othneil Sylvester QC who had acted as solicitor since 1961 for John Young relating to the disputed property, and from Kenneth Forde for the 1st Defendant bank. The parties put in evidence a number of documents, including various deeds and letters.

[10] The facts as I find them are as follows. The 3,500 sq ft lot of land in dispute lies in the village of Questelles. Let us look first at the history of the title deeds.

(a) From the recitals in the 1961 deed of John Young, it appears that the property first came into private hands when a one-acre parcel of land, of

which the 3,500 sq ft lot was a part, passed from the Crown by way of a Crown Grant on 30 January 1908 to George Alexander.

(b) After the death of George Alexander in 1952, his heirs on 19 April 1961 by deed No 627 of 1961 for the sum of $200.00 sold the 3,500 sq ft lot to John Young, the father of the 2nd and 3rd Defendants.

(c) Some 3 years later, on 5 June 1964, John Young by deed No 958 of 1964 for the sum of $280.00 sold the 3,500 sq ft lot or disputed property to Augustus Findlay.

(d) Some 5 years later, on 18 April 1969, Augustus Findlay used the disputed property to secure a $4,000.00 loan from the 1st Defendant bank. This security was in the form of a mortgage deed No 537 of 1969. By this deed, under the land law of St Vincent and the Grenadines, the legal interest in the property passed to the 1st Defendant bank. The mortgagor, Augustus Findlay, retained only the equity of redemption.

(e) The next title document in evidence is deed No 932 of 1990 dated 16 February 1990. By this deed, Augustus Findlay purported to transfer the legal interest in the property to Roxanne Williams. This 1990 deed recites only the 1964 purchase by Augustus Findlay. It does not recite the 1969 mortgage to the 1st Defendant bank, nor does it recite a re-conveyance back to Augustus Findlay by the 1st Defendant bank. There is no hint of evidence that the 1st Defendant bank had ever conveyed back to Augustus Findlay the legal interest in the property. I am satisfied that there has never been any re-conveyance to Augustus Findlay of the legal interest in the property held by the 1st Defendant bank, nor any other conveyance of any kind to any other person by the 1st Defendant bank on behalf of Augustus Findlay. At the time of the 1990 conveyance, Augustus Findlay held no legal interest in the property that he could have conveyed to Roxanne Williams. He held at most the equity of redemption. There was no evidence as to how Augustus Findlay came to execute this conveyance in favour of Roxanne Williams. Neither of them was either a party to or a witness in these proceedings.

(f) Roxanne Williams next used the property to secure a $15,000.00 loan from the 1st Defendant bank. This was the same bank that already held the legal interest in the property as a result of the mortgage deed given to it by Augustus Findlay in 1969. The security given by Roxanne Williams was in the form of a legal mortgage registered as deed No 934 of 1990 in the Registry of Deeds at the Courthouse.

(g) The last title document is the Plaintiff's deed of 8 September 1995. By this deed, the 1st Defendant bank conveyed the disputed property to the Plaintiff for the sum of $25,000.00. The Plaintiff's deed recites the 1990 mortgage of Roxanne Williams, the power of sale contained in the mortgage, and the 1st Defendant bank's agreement with the Plaintiff to sell the property to him for the price quoted. The deed contains the usual warranties as to the title of the 1st Defendant bank, including: ". . . the Vendor now hath good right to grant the said hereditaments UNTO and TO the use of the Purchaser in manner aforesaid . . . "

[11] The evidence given by the witnesses reveals how this state of affairs came about. After John Young purchased the property in 1961, he and his wife emigrated to England. But, first he sold the property to Augustus Findlay, who built a house on it. Augustus Findlay subsequently emigrated to the United States. Sheila Young, the widow of John Young, negotiated with Augustus Findlay and the 1st Defendant bank to buy back the property. The letter from Sheila Young's solicitor in evidence dated 6 March 1976, shows that the 1st Defendant bank was made aware that Sheila Young was purchasing the property then held by the 1st Defendant bank as security for the loan made to Augustus Findlay. Sheila Young, as part of the negotiations, paid off the balance of the loan owed by Augustus Findlay to the 1st Defendant bank. The 1st Defendant bank was unable to transfer the property to Sheila Young as it had not received the necessary instructions from Augustus Findlay. Only Augustus Findlay could have instructed the 1st Defendant bank to transfer the fee simple in the property to Sheila Young. Absent the cooperation of Augustus Findlay, there the matter rested. From about the year 1976, Sheila

Young and her children went into possession of the disputed property that she had purchased, all be it that she had not received the legal title to the property. In time, Sheila Young passed away and her children took over the ownership and occupation of the property. Then, in due course, her children emigrated. In about the year 1985, they left their cousin Roxanne Williams in possession. In due course, Roxanne Williams herself emigrated from St Vincent. But, not before she had arranged the 1990 deed that allowed her to bank-roll her change of residence by borrowing from the 1st Defendant bank.

[12] It appears that the 1st Defendant bank was taken in by Roxanne Williams' 1990 title document. When she applied for the loan, the manager went with her to do a physical inspection of the property offered as security. He was satisfied that the property was in a relatively good condition and adequate to cover the amount of the loan. He saw no one else other than Roxanne Williams occupying the property. She had a deed for the property. He had no recollection of his bank having previously in 1969 accepted the same property as security for the loan to Augustus Findlay. The bank made the loan to Roxanne Williams, and its solicitors prepared the necessary mortgage deed to secure the loan. When the loan failed to be properly serviced and Roxanne Williams could not be contacted, the bank, pursuant to the powers given to it by the mortgage from Roxanne Williams, sold the property in 1996 to the Plaintiff. The 1st Defendant bank, as is not unusual, also financed the purchase of the property by the Plaintiff. The Plaintiff borrowed from the 1st Defendant bank some or all of the money necessary to purchase the property from the 1st Defendant.

[13] The first that the owners of the property knew of these goings on was when, in about 1997, they saw the Plaintiff commencing construction work on the property. The 2nd and 3rd Defendants took the action previously described to stop the construction work. The Plaintiff had his solicitor write a letter to the 1st Defendant bank. The letter suggested that the bank repay the Plaintiff the money that he had

spent on the attempted purchase. The bank did not accept the suggestion. It would have been better if it had done so.

[14] At the time of the transactions with Roxanne Williams, the 1st Defendant bank had notice of the invalidity of her title document. It had actual notice in that it had been made aware since 1976 that Sheila Young had purchased the property from Augustus Findlay. I have no doubt that the manager did not remember the transaction after such a long period of time. But, the fact is that there was 1976 correspondence between the 1st Defendant bank and the solicitor for Sheila Young that vested that knowledge in the bank. The 1st Defendant bank also had constructive notice. Under our Registration of Documents Act, Cap 93, the registration of a deed relating to land is notice to all the world. The 1st Defendant bank, even if no member of its staff remembered that the bank still held the legal interest in the property transferred to it since 1969 by Augustus Findlay, is deemed to have knowledge of the state of the legal and equitable interests in the property by virtue of the registration of the 1969 mortgage deed. The 1st Defendant bank cannot now be heard to say that it did not remember the 1969 deed, and that it was entitled to rely on the subsequent 1990 title documents produced by Roxanne Williams. The 1990 sale by Augustus Findlay to Roxanne Williams was fraudulent and invalid. The mortgage deed of 1990 held by the bank, based as it is on this fraudulent deed, is invalid. The 1996 deed of conveyance in favour of the Plaintiff, based as it is on the invalid mortgage given to the 1st Defendant bank by Roxanne Williams, is worthless. The 1st Defendant bank could not and did not convey to the Plaintiff any legal or other interest in the land in dispute. The 1st Defendant bank is, as a consequence, in breach of its warranty as to title.

[15] In the circumstances, given what has been set out above, there will be judgment for the Plaintiff. The 2nd and 3rd Defendants did what they had to do to protect their family property. They committed no wrong. They are entitled to have the case brought against them dismissed. In exercise of the discretion vested in the court as to costs, I shall order the 1st Defendant bank to pay their costs. The

Plaintiff is entitled to judgment against the 1st Defendant bank. He has claimed the sum of $6,000.00 as special damages, but was unable to produce any receipts for the building materials and other expenses he had incurred as the receipts had been lost. That he had incurred building expenses is not seriously in doubt. But he has not been able to prove any special damages. Additionally, there would have been the expenses of the loan from the bank, the conveyance from the bank, and the mortgage in favour of the bank, not least the legal and stamp duty costs of the void instruments. What these costs are, have not all been revealed to the court. The copies of the receipts, attached to the deeds in evidence, evidence some of the stamp duty and other filing fees. The court does not propose, however, to attempt the bookkeeping task of adding them up. There is the likelihood of my making an error in the calculation. Additionally, some of the receipts may be missing from the bundle of exhibits. The 1st Defendant as a bank no doubt keeps meticulous records of the amounts of stamp duties, legal fees, registration fees, and other expenses that it passes on to the borrower/purchaser, as well as of any other payments that it has made from an account and any loan instalments paid by the borrower to that account. It should not be difficult for the 1st Defendant bank to prepare an account showing the exact figures paid by the bank to or for the account of the Plaintiff, and the exact amounts paid by the Plaintiff to the bank, whether by way of deposit or loan instalments or otherwise in this failed transaction. The order of the court will be that:

(a) the sale of the disputed property by the 1st Defendant to the Plaintiff is set aside;
(b) the deed of conveyance No 537 of 1996 is declared to be null and void and is cancelled;
(c) the Plaintiff is entitled to general damages for breach of warranty of title against the 1st Defendant which I set at the net amount of $15,000.00 after accounts have been settled between the Plaintiff and the 1st Defendant;

(d) in the absence of any agreement between the Plaintiff and the 1st Defendant as to the accounts between them, I order that accounts be produced by the 1st Defendant bank and brought up on a summons by either party for the accounts to be settled by the court;

(e) the 2nd and 3rd Defendants will have their costs of this suit paid by the 1st Defendant to be taxed if not agreed;

(f) the Plaintiff will have his costs of this suit to be paid by the 1st Defendant to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge