

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CASE NO. 209 OF 1999

ADOLPHUS GRANT - Claimant
VS
CYNTHIA WILLIAMS - Defendant

Appearances -:

Mr. Emery Robertson for the Claimant

Mr Graham Bollers for the Defendant

.....
April 22nd 2002
6th March 2003
.....

JUDGEMENT

[1] **BRUCE-LYLE, J-:** By a Writ of Summons filed on the 23rd day of April 1999 and attached with a Statement of Claim setting out the detailed particulars of the claim, the Claimant Adolphus Grant commenced action against the Defendant Cynthia Williams.

[2] The Claimants claim was for-:

- (1) Specific performance of an agreement for Sale made on the 20th day of January 1990 or

- (2) Alternatively that the Defendant do pay the Claimant the sum of \$7,200 being the balance of monies due and owing by her on the sale of a piece or parcel of land 50ft. by 75ft. situate at Broad Road Bequia, being butted on the North by lands of Maria Ollivierre, on the South side by Julian Bynoe, on the East by lands of Joseph Forde, and on the West by lands of Moses Bynoe or howsoever otherwise the same may be abutted bounded known and described.
- (3) Alternatively a declaration that the Plaintiff is not bound by the agreement for sale made on the said 20th January 1990 because of the breach on behalf of the Defendant.
- (4) A declaration that the Claimant is entitled to possession of his said property described in (2) above.
- (5) An order declaring that the sum of \$4800 be forfeited.
- (6) Such further order or direction as to this Honourable Court deems just.
- (7) Interest on the balance of \$7200 at the rate of 12½% from October 1990 to date of payment.
- (8) Damages.
- (9) Costs.

[3] The matter proceeded in accordance with the Rules of Court (Supreme Court Rules 1970 and C.P.R. 2000) and came up for trial after Case Management, on the 22nd Day of April 2002.

[4] At the Case Management Conference, it was ordered, amongst other orders that the issues of fact to be dealt with at trial would be limited to -

- (a) who did the claimant contract with; the defendant or her husband Arthur Williams?
- (b) What was the consideration agreed between the parties? The order specifically stated that the trial would be limited to those issues only.

[5] This case revolves entirely on the facts. In answer to the first issue to be resolved which would determine the contracting parties, the testimonies by way of witness statements and cross-examination of the defendant Cynthia Williams and her witness Arthur Williams are pertinent. I look at the evidence of Cynthia Williams as juxtaposed to that of Arthur Williams. In her witness Statement which was tendered as her evidence-in-chief, and signed by the witness Cynthia Williams as being true and correct, she stated that she became aware of the Claimant offering his property for sale sometime in 1989 for \$6,000. She was asked by her husband to verify this information from the claimant. She did so. She then reported back to her husband Arthur Williams of her findings. She stated that she saw her husband Arthur go to the claimant on the beach in Mustique where a discussion ensued, but she could not hear what they were saying.

[6] She further testified that the Claimant worked with her husband on a seine in Mustique, together with one Lincoln Kydd. This witness further testified that her husband Arthur reported back to her as to his discussions with the claimant. She then says in Paragraph 5 of her witness statement "On the 18th March 1989, I know that my husband paid the claimant the sum of \$3,000 and my husband entered into possession.' Yet under cross-examination by Learned Counsel for the Claimant Mr. Emery Robertson, this defendant stated "I first learnt on 15th December 1989 that Mr. Grant was selling his house. I learnt of this in Mustique". If this defendant first got to know of this property being for sale on 15th December 1989 how on earth was it possible for her husband to have paid the claimant the sum of \$3,000 on 18th March 1989 and then entered into possession.

[7] Further, in her witness statement at Paragraph 8, the defendant states "To my knowledge, my husband paid a further \$1000 on 3rd July 1990 and \$800 on 8th December 1990, leaving a balance on the purchase price of \$6000. My husband tried to pay him the

remaining \$1200 in early 1991 but he refused to take the money....". I cannot fathom how in one vein the balance of the purchase price is stated as \$6000 and then soon after stated as \$1200 in the same vein.

[8] Looking at the evidence of Arthur Williams as per his witness statement which was tendered as his evidence-in-chief he states that on 18th March 1989 he paid the claimant \$3000 in cash as the first instalment, and then made two subsequent payments of \$1000 on 3rd July 1990 and \$800 on the 8th December 1990. Yet under Cross-examination, this witness states "Mr. Grant discussed with myself alone the purchase price of \$6000. He told me to pay him how I wanted as I was an honest fellow and he knew me. I paid him \$3000. I cannot remember the exact date as it was a long time ago. It was in 1992. Then I paid him \$1000 and a further \$800 leaving a balance of \$1200". Yet in the evidence of Cynthia Williams under cross-examination she states "I do not remember the dates I paid. I know I paid him \$900 twice and \$3000 once. This left a balance of \$1200". She then insisted that the full purchase price was \$6000 and not \$12,000.

[9] All throughout the trial the defendant and her witness insisted that the agreed purchase price for the land was \$6000 and not \$12,000 as testified to by the claimant, and that the agreement or contract, was between the Claimant and Arthur Williams the witness for the defendant, and not the defendant herself. The defendant sought to portray herself as only an intermediary for the purposes of firstly ascertaining whether the claimant was actually selling the property in issue and secondly as a conduit for the payment of the said sums of money. In this she has failed woefully. From the evidence adduced by the defendant and her witness with the glaring inconsistencies highlighted therefrom, I cannot help but to conclude, on a balance of probabilities, that the defendant cannot be believed when she says her husband Arthur Williams was the contracting party as regards the sale. I find and do hold that the proper contracting parties to this sale were the claimant Mr. Adolphus Grant and the defendant Ms. Cynthia Williams.

[10] I now turn to the second issue pertinent to the resolution of this Suit. The claimant in his evidence has categorically maintained that the agreed purchase price for the property was

pegged at \$12,000. He gave specific dates when he received sums of money from the defendant - \$3000 on 18th March 1990; \$900 on 15th August 1990 and a further \$900 on 12th October 1990. Apart from the date of payment of the \$3000, which corresponded with the evidence given by the defendant and her witness, the other dates mentioned by the claimant differed from the dates mentioned by the defendant and her witness. Whose testimony do I believe? Based on the previous telling inconsistencies in the testimonies of both the defendant and her witness, which impinge heavily on their credibility, and having observed their shifty demeanour in the narration of their evidence, I find and do hold the claimants version to be credible. Flowing from that I am more than convinced that the sale price as agreed between the claimant and the Defendant was \$12,000 and not \$6000. The evidence of the claimants witness Jefferson Bynoe goes further to the logical conclusion that at all times the defendant Cynthia Williams was the person who had all dealings with the land. He states in his witness statement "Cynthia Williams told me she bought a board house in Paget Farm from Adolphus Grant. She told me that in the year 1990. She told me she wanted to break down the board house. I broke down the house for her and after I did that, Adolphus Grant asked me who broke it down. I said it was me and he said that he made arrangements with Cynthia Williams and that she had not paid for the house as yet. Cynthia Williams gave me permission to break down the house. I broke down the house by myself. I never saw Arthur Williams at the time I broke down the house neither did Cynthia Williams tell me anything other than to break down the house".

- [11] I find this piece of evidence to be very telling against the defendants case. Mr. Jefferson Bynoe lived at the defendants home for sometime as his sister was married to the defendants son. He knew the property in issue. He described it as being located at Paget Farm and was a board house. This witness stated categorically that the defendant told him that she bought the house from Adolphus Grant. Here is what he said under cross-examination- "... she told me she bought the house from Adolphus. She did not say "We" meaning her and her husband, she said "I" meaning herself". Then when re-examined by claimants Learned Counsel he had this to say; "Cynthia told me she bought the land from Adolphus Grant. She said she bought it for \$12000". I find this evidence again to be

riveting as against the evidence from the defendant. There is no evidence on rebuttal as to why this witness would have concocted this testimony. I believe him. I find him to be a credible witness if one compares his evidence with the convoluted evidence adduced by the defendants. I am more than satisfied that the claimant Adolphus Grant had contracted with the defendant Cynthia Williams in respect to the sale of the said land and with no one else.

THE LAW

[12] The object of the Law of Rescission is to put the claimant in the position he would have been were it not for the parting with of his property in view of the contract of sale. In other words if I order the contract to be rescinded the claimant takes possession of his property and stands to benefit from the forfeiture of the monies already paid to him, that is \$4800. In this case the claimant would even benefit further in view of the developments to the tune of \$30,000 by way of a concrete house built on the land in issue.

[13] The evidence adduced in this case by both the claimant and his witness Bynoe, and also from the defendant herself was to the effect that at the time of entering into possession of the said land, there was a board house on the land which was torn down by Jefferson Bynoe on the orders of the defendant. Bynoe contends that the said board house was in good condition. The defendant contends otherwise.

[14] There is no evidence from the claimant as to the actual value of the said board house which was torn down, except for the obvious fact that it was included in the total purchase price of \$12,000. Flowing from this premise if I were to order the contract for sale to be rescinded the claimant stands to benefit far more than the value of his property at the time of contracting with the defendant. This would be grossly unfair and not in the interests of justice.

[15] In this regard I am more inclined to agree with Learned Counsel for the defendant, Mr. Grahame Bollers when he argued that the behaviour of the claimant over the years he claimed there was a breach of contract leaves much to be desired. The claimant did not

seek injunctive relief pertaining to the developments on his land. This shows the glaring injustice which would be visited on the defendant were I to allow the claim for Rescission of the Contract and put the claimant back into possession of the land.

[16] I would therefore order specific performance on the part of the defendant. The contract is to be completed by way of the defendant paying to the claimant the balance of the purchase price of \$7200, with interest at the statutory rate of 6% (percent) from the date of the filing of this Suit or Writ. The defendant will also pay the Claimants costs in the sum of \$3600. The remainder of the claims made by the Claimant are dismissed.

Frederick V. Bruce-Lyle
High Court Judge