

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CIVIL CASE NO. GDAHCV1999/0190

BETWEEN:

CLAYTON THOMAS

Claimant

and

YVANNACE THOMAS
(also known as YVANNACE BOHLA)

Defendant

Appearances:

Mr. Reynold C. Benjamin for the Claimant
Mrs. P. Nicola Byer for the Defendant

2004: May 25
2005: February 24

JUDGMENT

- [1] **BELLE J.:** This is yet another matter in which the Court is asked to adjudicate a family dispute over actual or perceived inherited land. The parties are brother and sister and the disputed land is 5.3 acres of farmland in St Andrew, Grenada. At the outset counsel for the claimant seemed to think that the matter should be settled by argument over accepted facts and disputed law. But the decision to allow the evidence to be heard must have been the correct one in light of the product of the viva voce evidence, which was heard.
- [2] The Claimant in paragraph 1 of his Statement of Claim filed before the transition to the CPR 2000 on April 26th 1999 claimed that he was the fee simple owner in possession of "All that parcel of land situate at Mt. Rich in the parish of Saint Patrick in Grenada containing 5 Acres 2 roods 5 Poles known as "Punch Bowl" and being originally part of Mount Rich Estate and abutted and bounded as the same is delineated and described in the plan or

diagram marked "M" annexed to the Indenture of Conveyance made the 7th day of June 1974, between Kent Estates Limited of the one part and Mignon Thomas of the other part recorded in the Deeds and Land Registry of Grenada in Liber P8X at page 274 and which said parcel of land is contained and described in Indenture of Conveyance made 3rd January , 1990, between Veronica Thomas of the one part and the Plaintiff of the other part recorded in the Deeds and Land Registry of Grenada in Liber 8-99 at page 611"

[3] The Claimant further contended in paragraph 2 of his Statement of Claim that in the year 1974 the Plaintiff orally appointed his father Mignon Thomas his agent for the purchase of 11½ acres of land more or less situate at Mt. Rich, St. Patrick, Grenada from Kent Estate Limited for the price or the sum of \$18,000.00.

[4] In his witness statement the Claimant provided a background to the purchase mentioned in the Statement of Claim. He said that in 1973 he decided to return to Grenada. In a letter to him his father said that if he was serious about purchasing the land he should buy three Land Rovers for resale in Grenada. He further stated that after selling his home, he bought the (Land) Rovers and brought them to Grenada.

[5] The Claimant explained what happened when he returned to Grenada in the following words:

"I returned to Grenada in the month of December 1973. My father informed me that he had changed his mind about selling me the land at Carriere. He took me to see Mr Paul Kent who was Agent/Owner of Kent Estates who at that time was selling lands at Mt. Rich. Mr Kent showed us a piece of land at Mt. Rich containing 11½ acres and I decided to purchase it for \$18,000.00"

[6] In the following paragraph of his witness statement the Claimant said:

"I signed an Agreement to purchase the 11½ acres from Mr. Kent .My father had money holding for me and he made a deposit on my behalf. I can't remember now how much he paid. Mr. Kent agreed to grant me a mortgage on the land. I left my father to make the arrangement. My father advised that two deeds should be made, one in my name and one in his to avoid the tax that was imposed on the purchase of land in excess of 10 acres."

- [7] Mr Thomas explained to the Court that he went to America to live in 1974, and sent money to his father to pay for the land. All of the money was paid through this father and the receipts were made in the names of both Mignon Thomas and Clayton Thomas.
- [8] The Claimant claims that the Defendant has since the year 1997 on divers occasions trespassed upon his land and sought to survey the said land and exercise acts of ownership thereupon. The body of his claim concludes that despite the Plaintiff's/Claimant's objections and protest, the Defendant continues to trespass upon the said land. The Claimant claimed damages for trespass to his land, in the alternative a declaration that he is the fee simple owner of the land described at paragraph 2 above and an injunction to restrain the defendant whether by herself, her servants and/or agents howsoever from trespassing upon his land.
- [9] The Defendant denies that the land is owned by the Claimant and asserts that the land was at all material times owned and in the possession of Mignon Thomas deceased and was never owned by the Claimant. She denied that the land was ever conveyed to the Claimant, but does not allege fraud in the part of the Claimant. She relied heavily upon a hand written document, which she said the Claimant had himself prepared to establish that the Claimant could not be the owner of the land in question. That document was tendered as an exhibit and states as follows:

" After the surveying of the land which is in boundary with me Clayton Thomas: 5.53 acres I wish to give Veronica Thomas, Yvannance Bhola and Patricia Cato equal shares in my Portion. This being in lieu of money for compensation which is owed to the abovementioned names for 13 years of my occupying the abovementioned acres."

This note was signed by Clayton Thomas and was dated 24/11/98.

- [10] The Defendant Counterclaimed for i. a declaration that the said land is the property of Mignon Thomas, deceased, ii. A declaration that the Defendant is entitled to enter the said land in her capacity as Administratrix of the deceased estate, and thirdly an order that the

said land be surveyed and partitioned by the Administratrix as part of the said deceased's estate.

The Law

- [11] The Claimant's counsel argued that although the Claimant's right is grounded in resulting trust in that he purchased the land in the name of his father and there could be no presumption of advancement between son and father the Claimant now holds the legal title having had the same conveyed to him, by the legal personal representative of the father. The conveyance for value until it is set aside is conclusive of the Claimant's title to the land and all the incidents of title attached to it.
- [12] The other major bone of contention is the deed transferring the same 5.3 acres from the estate of Mignon Thomas to the claimant in 1990, but which was registered in 1999. Yvannace Thomas the defendant decided that her father's estate should be put in order because her mother who was the administratrix of her father's estate had failed to do so before she died. In the course of conducting searches to conduct the administration of her father's estate she discovered that there was a deed of 5.3 acres of land at Mount Rich in St Andrew of conveyance to Mignon Thomas for the disputed 5.3 acres of land. She spoke to her brother about it . Her brother the Claimant was reaping the land at the time. The claimant did not deny this fact and appeared at one time willing to give up the land to be divided between the his two sisters and presumably his mother's estate, since when he allegedly signed the note to this effect his mother was already dead.
- [13] The authenticity of this conveyance is challenged more by innuendo than actual legal impeachment since there is no claim of fraud, or undue influence or any other legal claim that would negative the conveyance other than the assertion that it only materialised after a move was afoot to distribute the 5.3 acres which was owned by Mr Mignon Thomas who died intestate in 1985. Yet the signature on the conveyance is not challenged and no other specific challenges to the conveyance have been raised. No doubt it is open to the Court to find on the evidence that the conveyance is invalid but of course there would have to be evidence to lead to that conclusion.

[14] In the circumstance the Court finds for the Claimant whose evidence was both believable on it's own and more so because his sister supported it. The Claimant's sister Patricia Cato said in paragraph 3 of her witness statement:

"After the death of our father in 1985, my brother , my sister, our mother and I all went to Mr. Irvin .I. Duncan's office to discuss the administration of our father's estate by our mother. I knew the land belonged to my brother. Ms. Duncan said to my mother "you can claim that land Mrs.Thomas", my mother said "It is not mine it belongs to my son". Mr. Duncan said "if you want me to make up the papers I will do so." My sister and I returned to England. My mother died in 1995."

[15] The Defendant says that this meeting never took place. But I believe Patricia Cato. The fact is that the Claimant's mother must have been persuaded in some way to convey the land to the Defendant. That is strong evidence of the existence of some compelling reason to do so.

[16] The fact that claimant's mother executed the conveyance to claimant on the behalf of his father's estate is also very cogent evidence of his entitlement to the land since it is expected that she would have known something about her husband's affairs. The evidence also revealed that the deceased Mignon Thomas ensured that all of his children benefited in some substantial way from his estate. This makes the picture painted by the Claimant even more convincing.

[17] The Court therefore orders as follows:

1. The Defendant is restrained, either by herself her servants or agents or howsoever from entering upon or doing any other act of trespass upon the land of the Claimant at Mount Rich and recorded in the Deeds and Land Registry of Grenada in Liber P8X at page 274 and which said parcel of land is contained and described in Indenture of Conveyance made 3rd January, 1990, between Veronica Thomas of the one part and the Plaintiff/Claimant of the other part recorded in the Deeds and Land Registry of Grenada in Liber 8-99 at page 611.

2. Damages for trespass are awarded to the Claimant to be assessed.
3. The Defendant must pay the costs of the Claimant in accordance with Part 65 of the CPR 2000 and the Case Management Order of 25th September 2003.

Francis H V Belle
High Court Judge