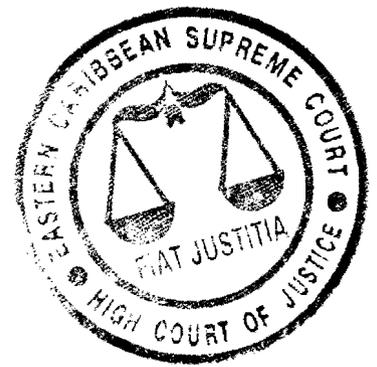


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CLAIM NO. 24 OF 2003



BETWEEN:

JUDITH BURGESS-HAYDE

Claimant

v

VENOLD COOMBS

1st Defendant

and

IVAN HENRY COOMBS

2nd Defendant

and

IRVIN CARR

3rd Defendant

and

LORNA CARR

4th Defendant

and

BARCLAYS BANK PLC and/or
FIRST CARIBBEAN INTERNATIONAL BANK

5th Defendant



Appearances:

Mr. Samuel Commissiong for the Claimant
Mr. Olin Dennie for the 1st and 2nd Defendants
Ms. Nicole Sylvester for the 3rd and 4th Defendants
Ms. Zhingia Horne for the 5th Defendant

2004: October 28th

2005: September 28th

JUDGMENT

- [1] **BRUCE-LYLE, J** - The Claimant is a female adult temporarily residing in New York the United States of America. She is the owner of two contiguous parcels of land in fee simple numbered 3 and 4 respectively and measuring 7,455 square feet in total and set out and described on the registered Survey Plan G628 dated 15th April 1969 and hereinafter in this judgment called the "Claimant's land". This Survey Plan G628 was admitted into evidence by consent of all the parties for this suit, together with all other documents each party sought to rely on at trial.

- [2] The First Defendant Venold Coombs was the son and agent at all material times of the second defendant. The second defendant was the owner in fee simple of the two parcels of land numbered 1 and 2 respectively on the registered Survey Plan G628. Of these two parcels of land, Lot Number 2 is adjacent and immediately south-east to lot Number 3 of the Claimant's land. For the purposes of this judgment Lot Number 2 is hereinafter referred to as the "Second Defendant's land".

- [3] The Claimant retained a contractor to erect a wall house on her land. In error the contractor built the wall house on Lot Number 2 owned by the Second Defendant as evidenced by the registered Survey Plan G35/16 annexed to the Claimant's claim. This encroachment on the Second Defendant's land is not disputed by either the First or the Second Defendants.

- [4] The dispute as exists between the Claimant and the First and Second Defendants is over the house built by the Claimant on the Second Defendant's land in error. The dispute is as a result of the failure of the Claimant and the First and Second Defendants to negotiate a settlement of the problem arising out of the Claimant's error, and the First and Second Defendants selling the Second Defendant's land with the Claimant's house thereon and to date not having compensated her for the value of her house which she felt she was entitled to.

[5] The Claimant's house was left in an unfinished state when the error was discovered and all during the negotiations between herself and the First Defendant on behalf of the Second Defendant.

[6] According to the Claimant the basic tenet of the negotiations was that the Claimant would purchase the Second Defendant's Lot Number 2 on which the house stood at a price to be agreed or else the Second Defendant would purchase the Claimant's house at a price to be agreed.

[7] Obviously the protracted negotiations broke down as the parties failed to agree on a fair price for either the Second Defendant's land or the Claimant's house. Enter the Third and Fourth Defendants who are husband and wife and business executives. Upon negotiations with the First Defendant on behalf of the Second Defendant, they purchased the Claimant's house on the Second Defendant's land – Lot No. 2, and also the other parcel of land also owned by the Second Defendant. This was done through a Mortgage Loan financed by the Fifth Defendant.

[8] From the facts as outlined above, the Claimant contends that all of the defendants were fully aware that the Claimant's incomplete house did not belong to the First and Second Defendants. She contends that they were warned orally and in writing of same. She therefore claims that:

1. The First, Second and Third and Fourth and Fifth Defendants are attempting to enrich themselves unjustly at the expense of the Claimant;
2. That they dealt with the property knowing well in advance that the First and Second Defendants had no claim of right to sell it;
3. That the Defendants by their conduct always knew that the property belonged to the Claimant and had led her to believe that they would either purchase the incomplete building from her or else sell her the Lot Number 2 of land on which the incomplete house was built; and

4. That the Defendants are estopped by their conduct from claiming the said building because of their negotiations with the Claimant from 1995 until March 2001 when the property was sold to the Third and Fourth Defendants.

[9] The Claimant further contended that all of the defendants at all material times had notice that the incomplete house was the property of the Claimant in that

1. The First and Second Defendants by their dealings knew that the incomplete house was owned by the Claimant and
2. The Third, Fourth and Fifth Defendants were put on enquiry by the age of the incomplete house and the length of time it had remained there incomplete and that by failing to enquire into its history they deliberately deprived themselves of knowing that the same belonged to the Claimant and thereafter had constructive notice of its ownership.

[10] The Claimant therefore claims:

1. A declaration that the Defendants at all material times were aware that the Claimant was the owner of the incomplete building erected by error on Lot Number 2 on the registered Survey Plan G628.
2. A further declaration that the Third, Fourth and Fifth Defendants were at all material times aware that the incomplete building was not the property of the First and Second Defendants; and that they had actual notice, alternatively, constructive notice that that was the case.
3. A declaration that the First and Second Defendants are not entitled unjustly to enrich themselves from the proceeds of sale of the Claimant's property and retaining the proceeds there from for themselves.
4. A further declaration that the said sale was wrongful.
5. An order that the First and Second Defendants do pay the Claimant forthwith such value of her incomplete property as the court may find to be due and owing to her at the hearing of these proceedings.
6. An order for payment of the Claimant's costs.
7. Any other relief as the court may consider to be due to the Claimant.

- [11] For completeness it should be stated that the Claimant has since died and her husband Lloyd Burgess-Hayde also acting in the capacity of personal representative of the estate of Judith Burgess-Hayde, was substituted as Claimant herein.
- [12] I wish to deal with the Claim as regards the Third and Fourth Defendants as in my view a resolution of the issues pertaining to that part of the Claim would have a direct bearing on the resolution of the Claim as regards the First and Second Defendants and also the Fifth Defendant.
- [13] The Third and Fourth Defendants Irvin Carr and Lorna Carr are married to each other and are business executives. On the 30th April 2001 they purchased a property, the subject matter of this trial from the Second Defendant Ivan Henry Coombs as joint tenants. This is evidenced in Deed of Conveyance bearing Registration Number 1402 of 2001. The Third and Fourth Defendants contend that at the time of the purchase, they were not aware of any dispute in relation to the property as between the Claimant and the First and Second named Defendants or anyone else. They also contend that through their solicitors Mr. Errol Layne, the relevant searches were carried out at the Land Registry which revealed that the said property was free from all encumbrances.
- [14] The Third and Fourth Defendants also contend that prior to the conclusion of the purchase they inspected the property as it was vacant but that there was an old dilapidated building thereon. Their main contention was that at no time during or prior to the purchase did they engage in any negotiations with the Claimant or their Solicitor or Servants and/or Agents in relation to the purchase of the said property.
- [15] Months after the purchase was concluded between the Third and Fourth Defendants and the First and Second Defendants, specifically sometime in September 2001 the Third and Fourth Defendants received a letter from the Claimant's solicitor, which they ignored as they had long since purchased the said property.

[16] The Fourth Defendant being now in possession of the said property and having obtained a Deed of Conveyance in relation to same and a Mortgage on the said property was confronted by Solicitor for the Claimant indicating that the Claimant had an interest in the said property. This was again ignored by the Fourth Defendant.

ISSUES:

[17] I agree with learned Counsel for the Third and Fourth Defendants, Ms. Nicole Sylvester in the narrowing down of the issues involving her clients, and these are –

- a. Whether the Third and Fourth Defendants were bona fide purchasers for value without notice
- b. Whether the doctrine of notice is applicable
- c. Whether the doctrine of estoppel is applicable to the Third and Fourth Defendants
- d. Whether the legal maxim "Quicquid planatur solo, solo cedit" is applicable
- e. Whether unjust enrichment is applicable.

[18] The doctrine of the bona fide purchaser for value of the legal estate without notice is a cardinal principle of Land Law and is used as a residuary principle to some problems of the enforceability of third party rights. On examination of Deed of Conveyance No. 1402 of 2001 it is evidenced that the Third and Fourth Defendants gave consideration in money for a legal estate in the land described in the schedule to the deed in the amount of \$180,000. They then through Mr. Errol Layne, their Solicitor, investigated the title of the vendor the First and Second Defendants. This investigation provided satisfaction that a good root of title existed and that the land was free from all encumbrances. Mr. Errol Layne deposed to this in his witness statement.

[19] Again the Third and Fourth Defendants maintain that at all relevant times prior to the purchase the Third and Fourth Defendants inspected the land and would have made such inquiries as any reasonable purchaser would. This revealed an unoccupied, incomplete building on the land. On being satisfied that no one was in occupation they decided to conclude the purchase of the property.

[20] I agree with learned Counsel for the Third and Fourth Defendants that it is a well-established principle of law that if a purchaser obtains a conveyance of the legal estate at the time of his purchase and can support the plea of purchase for valuable consideration without notice, then the legal estate affords him an absolute protection – See *Pilcher v Rawlins [1872] 7 CH APP259 at 269*; and also Halsburys Laws of England Fourth Edition Vol. 16 paragraph 1319. I am more than satisfied that in this case based on the evidence adduced and on a balance of probabilities that the Third and Fourth Defendants were bona fide purchasers of the land in issue for value without notice.

[21] On the issue of constructive notice I am of the view that that does not arise at all as I am satisfied entirely that all investigations as to title carried out by the Third and Fourth Defendants' Solicitor revealed that the land was free from all encumbrances. The Claimant failed to register her equitable interest in the property by way of an encumbrance. This would have constituted notice to all the world. Had it been done the Third and Fourth Defendants would have had no leg to stand on. I am satisfied that in the absence of any evidence attaching the Third and Fourth Defendants as being involved in the course of negotiations with the Claimant, that there was no notice or prior dealing with the said property by the Claimant a circumstance affecting the property which will defeat the plea of bona fide purchaser for value without notice. I agree that in the circumstances of this case, an unfinished building, whether dilapidated or not, was not an uncommon existence and cannot by itself raise suspicion or constitute notice.

[22] I am satisfied and on a balance of probabilities having regard to the evidence before me that the Third and Fourth Defendants acted in good faith and for value without notice and in the process have acquired an absolute and indefeasible title.

[23] I am also of the view having examined the evidence and submissions and case law presented as regards the Third and Fourth Defendants that the well established principles of Estoppel are wholly irrelevant as against them. There is no mutuality or nexus between the Claimant and the Third and Fourth Defendants.

"A maxim which is stated by the old writers as applicable to estoppels generally is that they "ought to be mutual" or "reciprocal" which means that they must bind both parties, and that a stranger can neither take advantage of nor be bound by them." – Halsbury Laws of England Fourth Edition Volume 15 paragraph 1513.

[24] Flowing from the above stated view of the law, the Claimant is bound by its pleaded case. Estoppel does not lie as against the Third and Fourth Defendants.

[25] "Quicquid Planatur solo, solo ced it" – simply put means "whatever is affixed to the soil belongs to the soil." The Third and Fourth Defendants purchased this land in issue with an unfinished building on it. This, which is not in dispute, was built on the said land by the Claimant. To my mind, bearing in mind the evidence adduced, this created a fixture. The structure being a building was so affixed to the land it became a part of it. A conveyance of land in the absence of express reservation, passes fixtures but not chattels to the purchaser without special mention, and cannot be removed by a vendor. Deed of Conveyance 1402 of 2001 would therefore have passed the building to the Third and Fourth Defendants who were the purchasers and the fixture would be deemed to have been paid for by the price fixed for the land. See Chester and Burn's Modern Law of Real Property Fourteenth Edition page 141:

"A conveyance of land, in the absence of express reservation, passes fixtures but not chattels The fixtures are deemed to have been paid for by the price fixed for the land, and if the vendor desires to remove them or to receive an additional sum in respect of them a clause to that effect must be inserted in the contract"

See also H.E. Dibble Ltd v Moore [1969] 3 ALL E.R. 1465.

[26] I agree therefore that if a building is erected on land and objects are permanently attached to the building, then the soil, the buildings and the objects affixed to it are all in the law "land" i.e. they are real property, not chattels. Therefore the old dilapidated building or new building as produced in evidence conflictingly, is a fixture in law and has become so attached to the land as to form in law part of the land. It is therefore of no moment that the fixtures are not mentioned in the conveyance.

"..... without exception, all fixtures attached to the land at the time of a Contract of Sale must be left for the purchaser unless otherwise agreed.

The conveyance will be effective to pass the fixtures to the purchaser without express mention. The Statutory "general words" also operate to convey all buildings, erections, and fixtures along with the land, in default of contrary intention".

[27] Flowing from the above expositions of the law I find that the doctrine of unjust enrichment is inapplicable as between the Third and Fourth Defendants for very obvious reasons which I need not rehash. Therefore any equitable remedies for the recovery of the property that the Claimant may have will be defeated as I have already held that the Third and Fourth Defendants are bona fide purchasers for value without notice. I therefore hold that the claim from the Claimant as against the Third and Fourth Defendants cannot hold and are hereby dismissed.

[28] The Fifth Defendant's counsel adopted in its entirety the arguments and case law so ably put forward by learned counsel for the Third and Fourth Defendants. Flowing from that position I also hold that the claim against the Fifth Defendant is also dismissed.

[29] This leaves me with the claim against the First and Second Defendants. These Defendants in their dealings with the Claimant for the sale of the incomplete house to themselves or the purchase of the land by the Claimant lead the Claimant to believe that they would not insist on their strict rights of regarding her as a squatter and so seize the incomplete house. Are they now estopped from doing same?

[30] I agree with learned Counsel for the Claimant Mr. Samuel Commissioning that the First and Second Defendants by the course of their dealings with the Claimant from 1995 to 2001 became constructive trustees for her property and could not lawfully dispose of it without her consent or telling her by adequate notice that their position had changed and would henceforth insist on their strict legal rights – see **Allcard v Skinner [1887] 36 Ch. D 145 at 182.**

[31] The duty of the First and Second Defendants who fill fiduciary positions such as the positions they held viz a viz the Claimant's incomplete house, is to protect the interests which are confided to their care. They may not avail themselves of the benefit for their

own use to the prejudice of those whose interests they are bound to protect – see Exp. Larking (1877) 4 Ch. D. 566. It is clear that a trustee cannot under any circumstances be allowed to deal with himself on behalf of the cestui que trust surreptitiously and without his knowledge and consent as in this case. The obligation of the trustee is to do his utmost for the cestui que trust – See Lewis v Hillman [1852] 3 H.L. 607

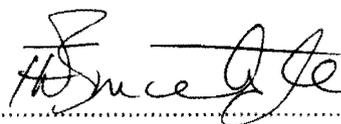
[32] Frankly speaking the First and Second Defendants have no leg to stand on considering the nature and facts of the evidence as adduced by the Claimant. Their behaviour or modus operandi as regards the property in issue leaves a lot to be desired to say the least. On a balance of probabilities and having regard to the totality of the evidence I believe the Claimant's case and hold that she is entitled to judgment against the First and Second Defendants; the claim having been already dismissed as against the Third, Fourth and Fifth Defendants.

ORDER:

[33] This Court:-

1. Declares that the First and Second Defendants were at all material times aware that the Claimant was the owner of the incomplete building erected by error on Lot Number 2 on the Registered Survey Plan G628.
2. Declares that the First and Second Defendants are not entitled unjustly to enrich themselves from the proceeds of sale of the Claimant's property and retaining the proceeds there from for themselves.
3. Orders that the First and Second Defendants do pay the Claimant forthwith such value of her incomplete property which the Court values at \$100,000.00 having considered the different valuation reports and actual price of the sale of the property to the Third and Fourth Defendants in the amount of \$180,000.00.
4. That the First and Second Defendants will pay the Claimants prescribed costs in the sum of \$10,000.00.

5. That in view of the nature of the claim against the Third, Fourth and Fifth Defendants as supported by the evidence and the claims against them having been dismissed this Court is of the view that to impugn the Claimant with costs would be terribly unjust in the circumstances. Therefore the Third, Fourth and Fifth Defendants will be entitled to no costs.



Frederick Bruce-Lyle
HIGH COURT JUDGE