

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 243 of 2004

BETWEEN:

O'NEIL CREESE

Claimant

v

KELVIN JOSLYN

Defendant

Appearances: Mr. Arthur Williams for the Claimant
Mr. Carlyle Dougan Q.C. for the Defendant

2008: January 18
February 1

RULING

- [1] **THOM, J:** This is an application to call an expert witness.
- [2] On the 20th day of July 2007 the Court granted leave to the Claimant and the Defendant to make application to call expert witnesses.
- [3] On January 11, 2008 the Defendant made an application to call Mr. Clifford Williams as an expert witness in the field of land valuation pursuant to Part 32 of CPR 2000.
- [4] The application was supported by an affidavit of Mr. Clifford Williams sworn on the 11th January 2008.
- [5] In his affidavit at paragraphs 3 – 6 Mr. Williams stated his qualification and experience in land valuation as follows:

- “3. I obtained my qualifications as a Surveyor from the Royal Institution of Chartered Surveyor in the United Kingdom. I studied in Trinidad for two (2) years between 1954 and 1956 whereupon I passed my Intermediate Examinations. I then studied in England for a further two (2) years between 1968 to 1970 where I completed my final examinations becoming fully qualified as a Land Surveyor.
4. In 1971 I was appointed Chief Surveyor assuming responsibilities pertaining to land issues, valuation of lands and boundary disputes throughout the State.
5. My career as a Land Surveyor has spanned 45 years and I accordingly consider myself an expert in my field.
6. During my time as a Government Valuator and Inland Revenue Commission, I have valued varying lands a multitude of times and my valuations have been accepted as competent in arbitration and other proceedings.”

[6] No affidavit of response was filed by the Claimant.

[7] At the hearing of the application on January 18, 2008 the Claimant submitted that the application should not be granted on the following grounds:

- (a) Mr. Clifford Williams was not a qualified valuer.
- (b) Non-impartiality of Mr. Clifford Williams.

NON-IMPARTIALITY:

[8] Learned Counsel for the Claimant submitted that while Mr. Clifford Williams served as Chief Surveyor the Defendant worked with him as a Surveyor. The Defendant's work had to be approved by Mr. Williams. There is no affidavit evidence in support of this. In any event this submission has no merit. The issue of impartiality of a witness goes to the weight of the evidence and not to the admissibility of the evidence of the witness – see **Baring PLC et al v Coopers and Lybrand** [2001] Lloyds Rep. p. 85; **Fields v Leeds City Council**; and **Factor tame and Others v The Secretary of State for Transport** [2002] EWCA Civ. 932.

QUALIFICATION:

- [9] Learned Counsel for the Claimant/Respondent submitted that the affidavit of Mr. Clifford Williams does not show that he is a qualified valuer. Learned Counsel also referred the Court to the decision of the Privy Council in **Windward Properties Ltd v Government of Saint Vincent and the Grenadines** 1995 47 WIR p. 189 at pp 192 and 193 letter j – c where the court stated as follows:

“The Valuation

The Government’s offer to Windward of EC\$4,700,000 was made by its authorized officer, Mr. Williams. Upon the appointment of the board of assessment, it was Mr. Williams’ duty under Section 13 of the Land Acquisition Act to furnish a report to the board about a number of matters, including his opinion of the value of the land for compensation purposes. Mr. Williams was not a valuer and his report made it clear that his opinion that the value was the \$4,700,000 he had offered was based on two factors. The first was the price which Windward had paid for the Estate. The second was a management survey by an adviser to the Government, Dr. W. Caldeira, a consultant from the Organization of American States.”

- [10] Learned Queen’s Counsel for the Defendant/Applicant in response submitted that a person could acquire expertise by formal qualification or by experience. Learned Queen’s Counsel referred the Court to the case of **Midtown Properties Inc v George Richardson** 139 Ga. App. 182 and to **Black’s Law Dictionary** 5th Edition the Meaning of Expert and Expert Testimony. It reads:

“Expert – One who is knowledgeable in specialized field, that knowledge being obtained from either education or personal experience. **Midtown Properties Inc v George F. Richardson Inc.**

Expert Testimony – Opinion evidence of some person who possess special skill or knowledge in some science, profession or business which is not common to the average man and which is possessed by the expert by reason of his special study or experience. **Board of Education of Claymont Special School Dist., v. 13 Terry 387**, A 2d 180. Testimony given in relation to some scientific, technical or professional matter by experts, i.e. persons qualified to speak authoritatively by reason of their special training, skill or familiarity with the subject. Evidence of persons who are skilled in some art, science, profession, or business which skill or knowledge is not common to their fellow men and which has come to such experts by reason of study and experience in such art, science, profession or business.”

[11] In **Midtown Properties Inc** at the hearing of a claim for breach of contract the Court refused the testimony of a witness in relation to the defectiveness and value of the floor installed. In excluding the testimony the Court stated at paragraph 3:

“... In this case Nabors could testify that the floor was dull, gouged and cracked, for these were characteristics readily observable and within his personal knowledge. However, his testimony that the floor was defective was inadmissible.

Since Nabors produced no competent testimony, and since the characteristics of good (as opposed to defective) permgrain are not within a layman’s ordinary knowledge, expert testimony was necessary. An expert is one who is knowledgeable in a specialized field, that knowledge being obtained from either education or personal experience. See **Carter v Marble Products Inc**, 179 Ga. 122. Nabors’ testimony clearly indicates that he was not so qualified, and the trial Court did not err in excluding his testimony.”

[12] Part 32 of CPR 2000 deals with the calling of expert witnesses. The relevant provisions are Part 32.6(1), (2) and (3) which reads as follows:

- “32.6 (1) A party may not call an expert witness or put in the report of an expert witness without the Court’s permission.
- (2) The general rule is that the Court’s permission is to be given at a case management conference.
- (3) When a party applies for permission under this rule –
 - (a) that party must name the expert witness and identify the nature of his or her expertise; and
 - (b) any permission granted shall be in relation to that expert witness only.”

[13] I will now consider whether the Defendant/Applicant has satisfied the requirements. The Defendant/Applicant has named the expert he proposed to call being Mr. Clifford Williams. In relation to the nature of his expertise I outlined above the relevant paragraphs of Mr. Williams’ affidavit. While Mr. Williams outlined his qualifications as a land surveyor Mr. Williams makes no mention of any qualification he has in relation to land valuation.

[14] I agree with the submission of Learned Queen’s Counsel that the expertise could be obtained by formal qualification or experience or a combination of both.

[15] In relation to his experience in land valuation Mr. Williams in his affidavit states that as Chief Surveyor his duties included land valuation also while at the Inland Revenue

Commission. He valued numerous lands and his valuations were accepted in arbitration and other proceedings. However, in the Windward Island case the Privy Council stated that Mr. Williams was not a valuer and his valuation was not accepted. The Court also stated that Dr. Caldeira was not a valuer but regarded Mr. Cremona-Simmons as a valuer but they rejected his valuation.

[16] I note that the Windward Island case was decided some twelve years ago. Since that time Mr. Williams could have developed experience in land valuation. His affidavit does not show that he has received any formal qualification in land valuation since 1995. In relation to experience, while in his affidavit he states he has forty-five years experience as a land surveyor no period is mentioned in relation to land valuation. The affidavit does not state the length of period Mr. Williams served as Chief Surveyor or at the Inland Revenue Commission. The Court is therefore not in a position to determine over what period of time Mr. Williams was involved in land valuation nor to determine whether Mr. Williams has done land valuation since 1995. The Court is therefore unable to find that Mr. Williams has developed the experience to be deemed an expert in the field of land valuation.

[17] The application is therefore dismissed.

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Gertel Thom
HIGH COURT JUDGE