

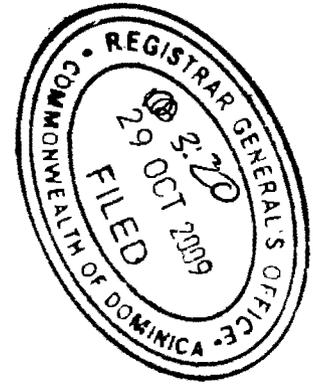
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

DOMHCV 1994/322

BETWEEN:

[1] LENA DURAND
[2] SANDRA DAVID



Claimants

and

CLEMETA BLEAU

Defendant

Before:

The Hon. Mr. E. Anthony Ross, QC

High Court Judge [Ag.]

Appearances:

Mrs. Singoalla Blomqvist-Williams for the first named Claimant

Mr. Bernard Wiltshire for the second named Claimant

Mrs. Zena Dyer for the Defendant

2009: July 13.

DECISION

[1] **ROSS, J. [AG.]:** Underlying and informing this litigation is competition for land within the context of the process of applying for a First Certificate of Title. I refer to the Statement of Claim, the Amended Statement of Claim and the relief sought as set out in items I through VIII following paragraph numbered 25.

[2] Having heard the evidence, and as I review the record, it is my finding that the Certificate of Title granted to the defendant Clemeta Bleau on 20th May 1994 and registered as G10, Folio 55 was obtained the face of (and probably resulted from) a material non-disclosure by the defendant, and should be set aside and the matter should be returned to the Registrar or whom-so-ever is dealing with the

Title by Registration process, for a full review of what constitutes the proper record leading up to the applications for First Title by the claimants and by the defendant.

[3] I particularly note a lease on file formed part of the trial record. It was a 5-year lease dated 1st August 1992 and recorded 11th August 1992. I note the Affidavit of Clemeta Bleau dated 13th February 1992 and filed 25th February 1992. I take the view that what is before me is litigation, not merely a review of what transpired preliminary to the issuing of the Title.

[4] A cursory review of the trial record and the wording of the Act, particularly that the schedule refers to titles as being indefeasible, could suggest that once a First Certificate is granted pursuant to the Act, title would be absolute. However it is my view that based on the material that was put before me, I cannot blindly accept the idea that title was indefeasible. The process for the issuing of a Certificate of Title must be on the presumption that the material against which the application would not constitute a fraud on the process. Accordingly, I must order that the title be set aside and the matter referred back to whatever process was appropriate pursuant to the **Title by Registration Act**.

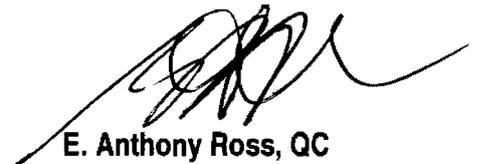
[5] As to the evidence at trial, I did not find the testimony of the surveyors and their drawings to be helpful. It is my view that they could have, as an absolute minimum, developed clear evidence supported by schematic representations if full surveys were not available or commissioned in order to assist the Court with the technical.

[6] The Witness Statements in support of the claimants' case were in my view substantially more persuasive than the evidence as given by Mr. Lewis who was the main witness for the defendant, Clemeta Bleau. Where there is any conflict between the evidence of the claimants and the evidence of Mr. Lewis, I prefer the evidence of the claimants and in this regard, the evidence of the claimants is supportive of the ruling that I have made.

[7] As far as the rest of the relief that is sought by the claimant covered under

paragraph I and II and from IV through VIII, I will not address those at this time. I believe when the matter is referred back to the appropriate Registrar for a determination of what should happen as far as the granting of Certificate of Title is concerned, that these issues would fall by the wayside. I therefore will not make any order with respect to any injunction and/or damages. I will go further and express the view that in the event that this matter is not settled and it goes back for a review and for the issuance of some title that there be provision made for a buyout of any improvements to the land that was made by the defendant.

[8] As to costs, I am reminded by counsel that the parties have agreed to costs follow the event in the amount of \$10,000.00. It is my ruling, however, that the costs payable by the defendant should be one bill payable to the claimants jointly. This is because for all intents and purposes, the claimants had the same case and counsel for the claimants at no time presented adverse positions.


E. Anthony Ross, QC
High Court Judge [Ag.]

