

GRENADA

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

CLAIM NO. GDAHCV2009/0229

BETWEEN:

THE ATTORNEY GENERAL OF GRENADA

Claimant

and

SEAVIEW CORPORATION LIMITED

Defendant

and

PHOENIX COMPANY LIMITED

Added Defendant

Appearances:

The Honourable Attorney General, appearing with him Ms. K. Marrast-Victor for the Claimant

Ms. C. Edwards, Q.C, with her Ms. V. Francis-Banfield and Ms. S. Khan-Ramdhani for the Added Defendant

2010: September 28

2011: August 29

JUDGMENT

[1] **PRICE FINDLAY, J.:** This matter arises out of an application by the Added Defendant to strike out the Claimant's application for forfeiture.

[2] The grounds of the application are as follows:

"1. On the 1st day of December 2008, Claim No. 587 of 2008 was filed on behalf of Jo Ann Parker anor.

2. On the 26th day of May 2009, the Claimants filed a Claim and Statement of Claim herein seeking the following relief:

(i) A declaration that the Defendant's right title and interest in the lot of land situate at Lower New Haven (Petit Trou) in the parish of Saint David containing by admeasurement 71 Acs. 3 Rds. 13.3 Pls. together with the off-shore island called "L'Islette" containing by admeasurement 1 Ac. 2 Rds. ("the Property") more particularly described in the plan or diagram thereof annexed to the Indenture of Conveyance made on February 23, 1966 between Lewis Colton John Thomas of the One part and the Defendant of the Other part and is recorded in the Deeds and Land Registry of Grenada in Liber A8X at page 237 is forfeited to the Government of Grenada.

(ii) Possession of the Property

(iii) Such further or other order as the Court shall deem fit.

3. By Order of Court dated the 22nd day of October 2009, Claim No. 587 of 2008 came up before the Honourable Madam Justice Clare Henry, a copy of the Order is exhibited hereto and marked "A", it was ordered as follows:

(a) The Attorney General be added as a party to the cause herein pursuant to CPR Part 19.3

(b) That the proceedings herein be stayed pending the determination of Civil Claim No. GDAHCV2009/0229 Attorney General of Grenada (Claimant) and Seaview Corporation Limited (Defendant)

(c) That the Attorney General do prosecute the said Claim No. GDAHCV 2009/0229 with all due dispatch.

4. By Application filed in September 2009 the Added Defendant and Jo Ann Parker made an application to be added as a party in Claim No. 229 of 2009.
5. On the 23rd day of November 2009 the Honourable Madam Justice Margaret Price Findlay ordered that Phoenix Company Limited be added as a defendant inter alia.
6. Pursuant to the Order of Her Ladyship Justice Price Findlay, the Added Defendant by its majority shareholder Jo Ann Parker filed and served a Defence.
7. By Application dated the 11th day of January 2010 the Claimant seeks an Order to strike out the Defence of the Added Defendant.
8. On the 13th day of January 2010 the Claimant's application to strike out the Defence came up before Her Ladyship Justice Price Findlay.
9. The Application to Strike Out was served on the Added Defendant on the 12th day of January 2010.
10. When the matter came up before her Ladyship directions were given to the parties for the filing of respective statements of case and the matter was adjourned to the 9th day of March 2010 at 9 a.m. in Chambers for the hearing of the application.
11. In the interim, between the 12th day of January 2010 and the 26th day of February 2010, the Claimant through the Government of Grenada have sought to compulsorily acquire the land the subject matter herein as is evidenced by the first publication in the Government Gazette dated the 26th day of February 2010, a copy of which is exhibited hereto and marked "B".

12. This act to compulsorily acquire the said land is a clear intention demonstrated by the Claimant that it intends to adopt the procedure set out in the Land Acquisition Act, Cap ... to acquire the said Land.
13. That the actions of the Claimant has clearly destroyed the underlying basis of their claim to forfeit the land; once properly and lawfully compulsory acquired under the Land Acquisition Act there would be nothing left for the Claimant to forfeit.
14. Further, the acts of Claimant amount to an abuse of the process of the Court for the following reasons:
 - a) The Claimant applied for and obtained an order to be joined in the First Claim, simply to make an application to stay those proceedings, which application was granted.
 - b) The Claimant then sought to resist an application of the Added Defendant/Applicant to be joined as a party to contest the Forfeiture. There was no real reason for the Claimant to seek to prevent the Added Defendant from being joined.
 - c) The Claimant was allowing the Court to proceed on the hearing of this matter, which it was taking actions to acquire the Land by a completely different method.
 - d) That the Claimant's actions to compulsory acquire, once successful, will effectively mean that the Court is embroiled in a useless and futile exercise.
 - e) That the Claimant has failed to signal any indication to this Honourable Court of their intention to compulsory acquire the said land."

- [3] The Court in hearing the application decided to deal with the following issue first, that is, as stated in the Attorney General's submissions - Whether the Claimant's claim for forfeiture is sustainable in light of the compulsory acquisition of the property, the subject matter of the forfeiture claim.
- [4] For a better understanding and appreciation of the application, I will recite the history of the matter in some detail.
- [5] The Defendant is a Limited Liability Company incorporated in Grenada sometime prior to February 1966.
- [6] The Defendant by way of an Indenture of Conveyance dated 23rd February 1966 purchased from Lewis Colton John Thomas, in fee simple, a lot of land situate at Lower New Haven (Petit Tout) in the parish of St. David, containing by admeasurement 71 Acres 3 Roods 13.3 Poles together with the offshore island of L'Islette containing by admeasurement 1 Acre 2 Roods.
- [7] The Defendant being an Alien under the Laws of Grenada applied for and was granted an Alien Land Holders Licence on 1st February 1966 by the Government of Grenada to hold the said lot of land. The Defendant represented to the Government and proposed to carry out a development on the property.
- [8] It was a condition of the licence that the Defendant would grant the offshore island L'Islette to the Government of Grenada and begin its proposed project within two years of the grant of the licence, that is, before 1968.
- [9] The island L'Islette was never conveyed to the Government of Grenada and the proposed project was never commenced by the Defendant within the stated time frame of two years.
- [10] The property was conveyed to Phoenix Limited sometime during the course of 1989. However, the original deed was misplaced and apparently never registered at the Deeds and Land Registry, but copies of the said document do exist and have been annexed to the various applications before this Court.

- [11] Phoenix Limited is also an alien company and in anticipation of its purchase of the lands in question from Seaview Ltd., applied for and was granted "in principle" approval for a licence under the Alien Land Holding Act. This information was conveyed to Phoenix Limited by the Permanent Secretary in the Office of the Prime Minister by way of letter dated 14th February 1989, under the rubric "Application for Licence under the Aliens (Land Holding Regulation) Ordinance – Phoenix Limited."
- [12] Phoenix Limited also applied for and received concessions approved by Cabinet. These concessions were communicated to Phoenix by way of letter from the Grenada Industrial Development Corporation dated 18th December 1987 and addressed to Phoenix's local agent, Mr. George de Bourg.
- [13] A further letter addressed to Mr. Glen Glendening of Phoenix Limited dated 29th December 1987 confirmed the grant of the concession in the earlier letter. Mr. Glendening was at the time a shareholder of Phoenix Limited.
- [14] The Government of Grenada, even though they must have been aware that the conditions for the grant of the licence to Seaview had not been fulfilled, did nothing to enforce their rights under the terms of the Alien (Land Holding Regulation) Act.
- [15] In fact they approved "in principle" the sale of the property with the exception of L'Islette from Seaview to Phoenix, and agreed to grant Phoenix certain concessions with respect to the pending ownership of the property.
- [16] It was only in 2009, some 43 years after the grant of the licence to Seaview and some 41 years after the expiration of the time limited for Seaview to commence the development, did the Government of Grenada commence forfeiture proceedings against Seaview.
- [17] Importantly, Seaview Ltd. had ceased operations some 20 years prior to 2009, having divested itself of ownership of the property in 1989.

- [18] It is not disputed by the Claimant that the property was sold by Seaview to Phoenix in 1989, but the Claimant contends that they are constrained to sue Seaview Ltd. as the records at the Deeds and Land Registry list Seaview Ltd. as the owner and not Phoenix Ltd. This is so even though in Grenada there is unregistered conveyancing and not registered. It is clear that there is in existence an executed deed by Seaview Ltd. to Phoenix Ltd. of the land in question.
- [19] It is clear from the evidence that the Government of Grenada, with the full knowledge that Seaview had failed to honour its commitments under the licence granted in 1966, approved of the sale of the subject property to Phoenix and granted Phoenix in principle approval for an Alien Land Holding Licence, as well as granting them concessions relative to the development of the lands in question.
- [20] All of this was done without the Government exercising its right to apply to the Court for forfeiture when it must have known or been aware that the right had arisen.
- [21] They acquiesced in the transfer of the interest in the land from Seaview to Phoenix.
- [22] The Government then in 2010 compulsorily acquired the land in question. The Defendant alleges that the Government has waived its right to forfeiture in these circumstances. The Government asserts that the right to forfeit still exists as the monies payable on the compulsory acquisition represent an interest in the land held by Seaview Ltd.
- [23] In *W. J. Alan & Co. v El Nasr Export (C.A.)* Lord Denning MR set out the principle of waiver in the following terms:

“If one party, by his conduct, leads another to believe that the strict rights arising under the contract will not be insisted upon, intending that the other should act on that belief, and he does act on it, then the first party will not afterwards be allowed to insist on the strict legal rights when it would be inequitable for him to do so. ... There may be no consideration moving from him who benefits by the waiver. There may be no detriment to him by acting on it. There may be nothing in writing. Nevertheless, the

one who waives his strict rights cannot afterwards insist on them. His strict rights are at any rate suspended so long as the waiver lasts. He may on occasion be able to revert to his strict legal rights for the future by giving reasonable notice in that behalf, or otherwise making it plain by his conduct that he will thereafter insist upon them."

- [24] As Justice of Appeal George Creque in the case of HCVAP 2007/021 **Chatham Bay Club Limited & Chatham Bay Development Corporation Limited v Judith Jones-Morgan (Attorney General for the State of Saint Vincent and the Grenadines)** at paragraph 24 of the judgment states: "It is well recognized and accepted that the words or conduct relied on as waiver must be clear and unequivocal."
- [25] In my view, given the actions of the Government in not only granting the approval in principle to Phoenix for licences, coupled with the concessions also granted and knowing that these grants related to the subject property as well as knowing that Seaview had failed to carry out the commitments contained in the licence, I find that the Government acquiesced in the failure by Seaview Ltd. and has waived its right to apply for forfeiture at this stage.
- [26] The grant of the licence to Phoenix Ltd. did not, to my mind, merely defer the time for bringing the forfeiture proceedings. I find that by their actions the Government had released Seaview for all time from their obligations to fulfill the conditions set out in the licence.
- [27] The Government could not agree in principle for the transfer of the property to Phoenix yet continue to hold Seaview to the conditions contained in the licence. Such a scenario would simply make no sense.
- [28] The Government by its very actions led Seaview Ltd. to believe that its strict rights arising under its obligations under the licence were not being insisted on and Seaview in entering into an agreement to sell and in fact selling the property to a third party, to wit, Phoenix, acted on that representation. The Government cannot now be allowed to insist on their strict legal rights. It would be inequitable to allow them to do so.

[29] I adopt Justice George-Creque's reasoning in paragraph 48 of **Chatham**: -

"I do not consider that mere delay is enough. The delay must be coupled with some conduct which affects the balance of justice as between the parties. As I stated earlier, the cleaning and securing of the Land as compared to the development to have been undertaken on the Land cannot be considered as material to the equity as between the Crown and Chatham Bay. Chatham Bay carried out no development of the Land as contemplated or indeed any development at all. The acts relied on are comparably insignificant. The learned Trial Judge was quite right in so finding and accordingly in rejecting the defences of delay, laches and acquiescence.

[30] I find that the balance of justice between the parties has been affected by the conduct of the Government in this case. The actions of the Government led Seaview to believe that no action would be taken against it in respect of the forfeiture of the property.

[31] As per Halsbury's 3rd Edition at para 1183:

"Acquiescence implies that the person acquiescing is aware of its rights and is in a position to complain of an infringement of them. Hence acquiescence depends on knowledge, capacity and freedom."

[32] The Government was a willing participant in the negotiations for the licences to be granted to Phoenix Ltd. They knew that Seaview had failed to develop the land, they cooperated fully with the entire process. They allowed both Seaview and Phoenix to act to their detriment. Seaview sold the property, Phoenix paid for it.

[33] The Government is now barred from exercising their right to forfeit the property at this stage.

[34] I find that here, unlike the **Chatham** case, the Government did engage with the Defendant and allowed the Defendant with the approval of the Government to divest itself of the subject property without enforcing its right to forfeiture. This

action led the Claimant to believe that the Government would not insist on its strict legal rights. For the Claimant to do so now after 41 years would be against the balance of justice.

[34] I therefore find that the Claimant's claim for forfeiture is not sustainable as they have acquiesced and that the compulsory acquisition of the property has no bearing on the matter in light of this finding.

[35] I would award costs to the Defendant on this application in the sum of \$2,000.00.

Margaret Price Findlay
High Court Judge