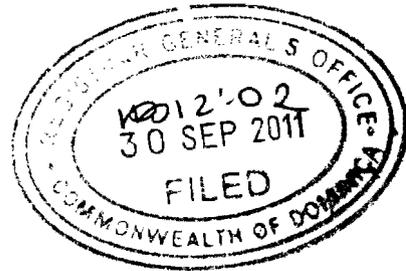


IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
(CIVIL)

Claim No. DOMHCV2002/0417



BETWEEN:-

MARIA YARD

Claimant

-and-

PAUL CHARLES

Defendant

Before:

Her Ladyship Justice Stephenson-Brooks

Appearances:

Mrs Hazel Johnson for the Claimant

Mrs Heather Felix Evans for the Defendant

2011: 28th February

2nd March

30th September

JUDGMENT

1. **BROOKS J.** This is a claim by the Claimant Maria Yarde against Paul Charles for certain reliefs in relation to the purchase by the Claimant of a parcel of land located at Gomier Stewart

in the Parish of St George containing 6000 square feet of land purchased for the price of EC\$36,000.00.

2. The reliefs sought are as follows:
 - (i) Rescission of contract;
 - (ii) Payment of the sum of EC\$41,320.00
 - (iii) Damages for misrepresentation;
 - (iv) Further or other relief;
 - (v) Costs.

THE CLAIMANT'S CASE:

3. The claimant's evidence was adduced by herself and three other witnesses and was to the effect that she purchased a piece of land from the defendant to build a house and that based on what the defendant showed her and told her about the land she purchased the land, only to find out when she was making arrangements to build on the land, that the boundaries for the parcel were not located where she was led to believe by the defendant and that the land was in fact wholly unsuitable to build on.
4. The claimant testified that she came to Dominica in September 2000 and met with the defendant and visited the area of Gomier Stewart where the defendant represented to her that he did not know the exact location of the boundaries to his land but that he owned the land that was adjoining the road on the east which was a flat portion of land with a portion of it sloping downwards. The claimant also stated that on the first visit to the land they also went to a lower road and she understood from the defendant that the land which he owned extended from the road above to the road below and from the neighboring lot on the right to the post on the left.
5. The claimant paid the defendant the agreed price for the land in October 2000 and on that day she made another visit to the land with the defendant. She also paid \$120.00 for the plans for the land to be put in her name and she also paid \$2,700.00 for the Government transfer fees. The receipts for these payments were exhibited. The arrangements for the survey and the

application for and obtaining of the Certificate of title was facilitated by the defendant's wife who worked at a Law Chambers.

6. The claimant went on and engaged the services of an architect one Mr Anthony Lebruin to design and prepare architectural drawings for a two bedroom house which was to be constructed on the parcel of land that she purchased from the defendant. She paid the sum of \$2,500.00 for those plans; a copy of the receipt was exhibited. The claimant also retained the services of Mr Matthew Burton a building contractor to build the said house for her.
7. The claimant returned to Dominica in February 2002 to make arrangements for the start of the construction of the house at Gomier Stuart and visited the site of the land with the contractor Mr Burton. On that visit Mr Burton was unable to locate the boundary markers so she along with Mr Burton visited one Mr. Hilroy Fingal who is the owner of the neighboring property and based on what Mr Burton learned from his conversation with Mr. Hilroy Fingal the claimant along with Mr Burton made contact with the defendant.
8. At this meeting with the defendant, the claimant says she told him that land that she was inquiring about (and thought she purchased) was not owned by him and that the land which he the defendant owned and sold to her was the steeply sloping land which extended only from the road below and adjoined the piece of flat land at the top which did not belong to him. This discovery prompted the claimant to visit the office of the surveyor Mr. Clement Fingal, the licensed surveyor who prepared the surveys for the parcel of land in question who confirmed to the claimant and the contractor where the land in question was located on the survey map.
9. After confirming where the land was on the survey map the claimant returned to the land at Gomier Stuart with Mr. Burton. He showed her that the land she purchased from the defendant was not in fact the land she thought she was purchasing based on the defendant's indications to her when they visited the property, and confirmed that the piece of land which she purchased was a portion of steeply sloping land towards the west of the portion of flat land which the claimant insists she was shown by the defendant and which the defendant claimed was his.

10. The claimant's contention is that the land is useless to her and it is not at all the land that she was led to believe she was purchasing by the defendant. The claimant maintains that the defendant represented to her that he was selling her a portion of land which included the flat land and that it was the flat land that was attractive to her because it would have been easy to build her house on it and because of the beautiful view that could be seen from the top. The claimant further claims that the defendant very well knew that he did not own the land which he represented to her was his.
11. The claimant's stepfather and sister also gave evidence and spoke of visiting the land with the claimant and the defendant and going first to the road on the east at the top of the land. They both spoke of the defendant indicating that the land he was selling extended from road to road that is from where they were standing on the top to where they went to on the bottom. Learned Counsel Mrs. Heather Felix Evans sought to make an issue of what vehicle they drove in to visit the sight in her cross examination. I am of the view that even though that line of cross examination could be considered helpful in deciding whether or not the witnesses were truthful or not with respect, I do not find that aspect of the evidence to be of great importance. I am satisfied that these two witnesses attended the land at Gomier Stuart with the complainant and the defendant and they witnessed the defendant pointing out the location of his land to be from the top to the bottom.
12. Mr. Matthew Burton, who was the contractor, also testified on behalf of the claimant. Essentially Mr Burton said that he visited the land with the claimant after his services were retained by her to build her house for her on the parcel of land in question. He said that the piece of land that the claimant pointed out to him as the land she purchased was from the road at the top to the road below and it was flat and gently sloping and well suited for the construction of a home.
13. Mr Burton said he had in his possession a copy of the survey map and attempted to locate the surveyor's points and had some difficulty doing so. He told the court that he knew the owner of the house Mr. Hilroy Fingal, which was on the adjoining lot and went in search of him to see if he could get some assistance. He told us that he had a conversation with Mr. Hilroy Fingal

and based on that conversation he relayed certain information to the claimant. Mr Burton spoke of being present when the claimant spoke to the defendant and told the defendant that the land which he claimed was his and sold to her was not in fact owned by him and he told us of the defendant's response was that he did not know where the boundaries were and that she should speak to the surveyor.

14. Mr. Burton told the court that he along with the claimant went to see Mr Clement Fingal who was the surveyor who confirmed the location of the land which belonged to the defendant and which was sold to the claimant. Mr Burton spoke of revisiting the land with the claimant and confirmed that the parcel of land which was sold by the defendant was a parcel of land closer to the road on the lower level with a high embankment of about eight feet and it was very steep with no immediate access from the top or the bottom. Mr Burton who has been in the construction field for some twenty five years and who has built all over the island of Dominica said that in his view the land was not suitable for building a home and if in fact construction were to take place there it would require heavy equipment which would be very costly given the nature of the land. This witness said that it would be very expensive and difficult to build on the parcel of land purchased by the claimant.

The Defendant's case.

15. The Defendant's evidence was adduced by himself and three other witnesses. The defendant denied misrepresenting to the claimant that the parcel of land that he owned extended from the road at the top on the east to the road at the bottom on the west. The defendant also denies that he showed the claimant the land belonging to Mr Vincent Riviere and represented that land to be his land.
16. The defendant said that he did not know where the boundaries of his land lay but that he did show the claimant the general idea of where the land was from at the top and from at the bottom. I found it strange that the defendant would take the claimant to the top road that is, the road on the east twice to show her where her land was when he is saying he knew his land was not near that road. I also found it difficult to understand why would the defendant take the claimant to a spot in the area where the bushes were taller than him to look down onto his

land. Having reviewed the defence, the defendant witness statement, his viva voce evidence and his cross examination I find that the defendant was not entirely truthful and forthcoming. Further, applying the reasonable man's test to the evidence given in this matter I find that the claimant's evidence as to the events leading up to the purchase of the land from the defendant to be the more probable version as to what really happened.

17. I am unable to understand why when the defendant took the claimant to the land whether it be one, two or three times why did he see it fit to take her to the road on the top (or to the east), if it is not that he did intend for her be misled into believing that the land he was selling was located there.
18. Mr. Charles was also adamant that he did not know that the claimant was coming in September and would have wanted to go to the land he was selling, however his own witness Mr White contradicted him and said that before the flight came in that he was informed by Mr Charles that someone was coming in on the flight from St Martin and before the flight came in he Mr. Charles told him that he had to take the person to the land he was selling and asked him to take them there.
19. The defendant in his evidence stated that it is the claimant who said that following the claimant's enquiries about engaging the services of a solicitor that his wife offered to prepare the necessary documents for the transaction and under cross examination he maintained that it was the claimant's idea that his wife prepare the documents, elsewhere under cross examination he said that it was the claimant who suggested that his wife prepare the documents.
20. Mr. Michael White and Mrs. Heather Charles the defendant's wife also gave evidence on behalf of the defendant which evidence has been reviewed and essentially Mr White was saying he took the party up to the land at Gomier Stewart in September 2000 and when he did so he did so in his personal vehicle rather than the customs vehicle as claimed by the claimant and her witnesses. When the claimant came to Dominica and he denied taking the claimant up to the land a second time. Mr White also spoke of defendant telling the claimant that he did not know the boundary points of his land. Mr White also said that when they visited the land at Gomier Stewart they never stepped onto the land but remained on the roadway and looked at

the land and that the defendant offered the claimant a copy of the survey map so she could ascertain where the boundary points were.

21. Mrs. Charles give evidence regarding the transaction and her role in the preparation of the documents she also gave evidence of the party visiting her home at Kings Hill and to giving the claimant a copy of the survey plans for the land at Gomier Stewart.
22. Mr Clement Fingal a licensed surveyor gave evidence on behalf of the defendant as to the exact location of the land. He told this court that he never met with the claimant however he did visit the parcel of land with Mr Burton and established the exact location of the parcel of land in question. He spoke of the embankment and that the land is buildable. Mr Fingal denied telling the claimant that the land was unusable.

Analysis

23. The case of Derry –v- Peek ¹says that

*"Fraud is proved when it is shewn that a false representation has been made knowingly or without belief in its truth or recklessly, without caring whether it is true or false."*²

- 24 I accept the claimant's evidence and I am of the view that the claimant was induced to purchase the land by the defendant's misrepresentations
25. I accept the claimant's case that the defendant told her that the land that he was selling her extended from the "road on the top to the road on the bottom" which was an untrue statement. I find that the defendant knew it to be untrue and that it is this statement which was made that influenced the claimant's decision as to whether or not to purchase the said parcel of land. I accept the evidence of the claimant that the defendant took her to the road to the east on the upper part of the land and represented that his parcel of land extended there. I also find as a fact that by taking

¹ Derry –v- Peek (1880) 14 App Cas.337

² Ibid @ p337 – Head note

the claimant there at least twice the defendant was inferring by his action that his land extended to the road on the top.

26. I am compelled to scrutinize in this case the defendant's conduct carefully and rigorously. He received the purchase money from the claimant which to my mind opens his actions to suspicion of being ready to make whatever representations necessary to induce her to purchase the land which she did.

27. I have had the opportunity to observe the demeanor of the defendant when he gave his evidence. I have also had the opportunity to read and reread the defence the witness statements of the defendant and his witnesses and also to the defendant's amplified witness statements his cross examination coupled with his actions and I find the following:

(i) That the defendant was intent on selling the parcel of land which he owned at Gomier Stuart when he took the claimant to see the said land;

(ii) That he did not know exactly where the location of the boundaries of his land was but he however knowingly and intentionally took the claimant to the eastern road at the top not once but at least twice giving the impression that his land extended there knowing full well that it did not reach the top road. He created the impression that it did. I accept the claimant's evidence and that evidence of her witnesses in this regard and I find as a fact that the defendant's conduct was absolutely not free from suspicion.

(iii) I do not accept defendant's evidence that he did not tell the claimant he did not own the land from the road from the top to the bottom. His actions in taking her to the top road at least twice belies his words and I find that it was his intention for the claimant to feel that the land she was going to purchase which he had for sale extended to the top road.

- 28 I find that the defendant's conduct in this matter could be and was construed as a representation. Representations can take the form of conduct. Though representations usually take the forms of words they can also take the form of actions. ³
- 29 A misrepresentation will not avoid a contract unless it induces the person to enter into the contract. The misrepresentation must have produced a misunderstanding in the party's mind which caused the person to enter into the contract.
- 30 In this case I find as a matter of fact that the defendant knew what the truth was. Even though he said he did not know exactly where the boundary points of his land were or that he never walked his land, he knew that the parcel of land that he owned did not extend to the road at the top and he knew to say so or even to infer so was untrue and he did so knowingly to influence the claimant to purchase the land.
- 31 The question could be asked did the defendant make an honest misrepresentation? I find as a fact that he did not. This to my mind is the primary fact in issue in the case at bar. Did the defendant make the statement that the parcel of land that he was showing the claimant and which he was selling to the claimant which in fact the claimant bought that it extended from the east that is the road at the top right down to the road at the bottom to the west. I have reviewed all the evidence in this case and the pleading and find as a fact that the defendant did tell the claimant that his land extended from the top road to the bottom and this is further underscored by his actions of taking her to the top road at least twice. I find that the defendant really did not have any business taking the claimant to the top road if his land did not extend there and he could not see his land from there because of the high grasses in the area.
- 32 In the case at bar from the evidence of the claimant which has been for the most part accepted by this court she was induced to enter the contract to purchase the land as I am of the view that the way the defendant led her to believe that the land that he was selling extended from the lower road in the west to the upper road in the east. I am of

³ See *Cottee –v- Douglas Seaton (Used Cars) Ltd* [1972] 1 WLR 1408

the view that the defendant knew at all material times that this was not so he had actual knowledge of the untruth of his representation.

33 The case of **Sile –v- Aromire**⁴ could be applied. In that case the purchaser bought a plot of land from the defendant who put up the piece of land for sale and in the advertisement mentioned a suit number suggesting that the piece of land that was being sold was part of the said law suit. The Defendant subsequently showed the claimant a copy of the judgment telling the claimant that he was the owner of the land and the judgment was evidence of same. In fact the judgment was related to a totally different piece of land but the misrepresentation made by the defendant induced the claimant to purchase the land. Subsequently to the purchase it was discovered that the piece of land purchased was an entirely different piece of land than the one referred to in the judgment. The claimant sued for damages and for the contract to be set aside.

34 The defendant contended that the claimant could have found out the location of the land (the truth) had he investigated what he was told. It was held that the claimant was misled by the defendant's misrepresentation and was as such entitled to rescission and damages.

35 This decision followed the decision in *Redgrave –v- Hurd* that was referred to be learned counsel for the claimant in her submissions to this court. It was held that it was no defence for the defendant to say that the claimant could have found out the truth. In the case at bar the defendant contends and repeats in his evidence that he told the claimant to go check the surveyor to find out or ascertain the boundary points to the parcel of land and the claimant did not do so. Applying these two decisions to the case at bar it is clear that such a defence is not available to the defendant. I find that the claimant was not compelled to go to the surveyor and ascertain where the boundaries to the land lay.

⁴ (1951) 20 NLR 20

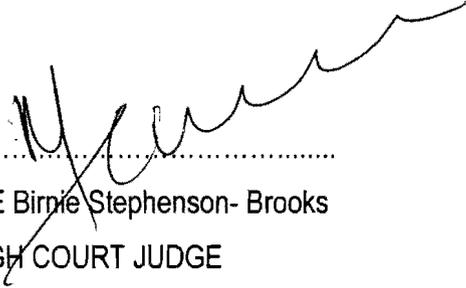
36 It is the view of this Court that there was misrepresentation on the part of the defendant and in doing so the Claimant was lured into purchasing the piece of land at Gomier Stewart. The claimant must prove her case on a balance of probabilities and having regard to all the circumstances of the case I am totally convinced that the claimant has established her case against the defendant on the balance of probabilities.

37 I therefore grant judgment in favour of the Claimant in the following terms:

- (i) That the contract completed on the 3rd October 2000 is hereby rescinded.
- (ii) That the defendant pays to the claimant the sum of EC\$41, 320.00 as special damages.
- (iii) The sum of EC\$5,700.00 damages for misrepresentation.
- (iv) Prescribed Costs be paid by the defendant

38 I wish to thank Counsel for their assistance in this matter.




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M E Birnie Stephenson- Brooks
HIGH COURT JUDGE