

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 199 of 2008



BETWEEN:

ROY DABRIEL

Claimant

and

KORINA DABRIEL

Defendant

Appearances: Mr. Duane Daniel for the Claimant.
Mr. Olin Dennie for the Defendant.

2011: September 27
2012: March 5

JUDGMENT

- [1] **THOM J:** The Claimant and the Defendant are siblings. In 1993 the Claimant lived and worked in the United Kingdom, while the Defendant was resident in Saint Vincent and the Grenadines.
- [2] The Claimant alleges that in 1993 he sent £10,000.00 to the Defendant for her to purchase six acres, 1 rood of land on his behalf at Grand Sable, Georgetown from Stalk Plantation Ltd. The purchase price of the land was EC \$100,000.00. He further instructed the Defendant to borrow by way of a mortgage on the said land the remaining EC \$50,000.00 from the Saint Vincent Building and Loan Association (The Association). This Loan was to be serviced from the proceeds of sale of bananas cultivated on the said land.

- [3] The defendant purchased the land in her name solely. He has fully repaid the mortgage and the Defendant has refused to transfer the land into his name. Consequently he instituted these proceedings in which he seeks the following reliefs:
- (a) A declaration that the parcel of land situate at Grand Sable and registered at the Registry of Saint Vincent and the Grenadines and bearing registration Number 731 of 1993 is the property of the Claimant.
 - (b) A declaration that the Defendant has no interest in the property.
 - (c) Specific performance of the written agreement dated 7th November 2000 between the Claimant and the Defendant.
- [4] In her defence the Defendant admits that the claimant sent her £10,000.00 but alleges that the money was to assist her in purchasing the land in her name. She had difficulties servicing the loan due to low returns on the sale of bananas. She agreed with the Claimant that the Claimant would repay the outstanding mortgage payments and thereafter she would transfer a part of the land to the Claimant. The Defendant denied that she agreed to transfer the entire parcel of land to the Claimant. The Defendant made no counterclaim.

EVIDENCE

- [5] The evidence on behalf of the Claimant is that in the year 1992 the Claimant held negotiations with one Alison Balcombe for the purchase of approximately six acres of land at Grand Sable. The land was owned by Stalk Plantation Ltd. He agreed the purchase price at EC \$100,000.00. He sent £10,000.00 to his sister the Defendant to pay the deposit for the land. He agreed with the Defendant for her to mortgage the land to pay the remaining \$50,000.00.
- [6] It was further agreed with the Defendant that she would cultivate the land with bananas and the mortgage would be paid from the proceeds of the sale of the bananas. He also organised for further sums of EC\$20,000.00 and \$15,000.00 to be given to the Defendant for her to pay towards the mortgage,

- [7] The Claimant further testified that he never agreed with the Defendant to give her £10,000.00 for her to purchase the land for herself. He never sent money to her for her to do renovation and maintenance to their mother's house where the Defendant resides, or to pay medical expenses. The Claimant never received records of the sale of the bananas from the Defendant.
- [8] In the year 2000 the Claimant became aware that the mortgage payments were not being made. He also became aware that the Deed was in the sole name of the Defendant. He agreed with the Defendant that he would pay the mortgage sum and thereafter she would transfer the land to him. He also agreed that if the Defendant could prove that she made any contribution towards the payment of the mortgage he would repay her the sum in cash or convey a part of the property to her. The agreement was prepared by the Defendant's lawyer.
- [9] The Claimant's testimony of full repayment of the loan outstanding in 2000 was supported by the evidence of his niece Mrs. Carol Jardine who made the payment of the \$119,777.95 to the Association on behalf of the Claimant.
- [10] Under cross-examination the Claimant agreed that stamp duties and legal fees had to be paid for the transaction. He also agreed that he did not know the total cost to complete the transaction. The Claimant testified that he expected the Defendant to borrow approximately EC\$60,000.000 to complete the transaction. He was not aware that the Deed for the land was in the Defendant's name. He only became aware of this in 2000. He had enquired about the Deed in 1995 but the Defendant said nothing. He denied renovations were done on the house in 1997 since he visited St. Vincent in 1997. He testified that renovations were not done to his mother's house until 2006 and they were done by his sibling Michael. He was led to believe by the Defendant that the income from the land would be sufficient to pay the monthly mortgage payment.
- [11] The evidence of the Defendant is that in 1993 she purchased six acres, 1 rood and three poles of land at the Grand Sable Estate. The purchase price of the land was EC \$100,000.00. The land is registered in her name in Deed Number 731 of 1993.

- [12] Her brother the Claimant gave her £10,000.00 to assist her with the purchase and she mortgaged the land to the Association for a sum of \$75,000.00. She used part of the loan to complete the purchase of the land and she used some to cultivate bananas and provisions on the said land.
- [13] Since the year 1993 she has serviced the loan at the Association with money she earned from the sale of bananas cultivated on the land. The Claimant made no mortgage payment.
- [14] Around the year 1997 the production of bananas declined due to economic factors and damage caused by the pink mealy bug. Consequently she had difficulties paying the mortgage payments.
- [15] In the year 2000 she informed the claimant of her difficulties and she entered into an agreement with him where he agreed to repay the mortgage in full and thereafter the land would be partitioned between the two of them. She has paid the taxes in relation to the said land.
- [16] Under cross-examination the Defendant agreed that the Deed was supposed to be in the Claimant's name. At the time of the purchase she had shares in the Association. She told the Defendant that the Deed was not in his name because of the mortgage at the Association. The Defendant agreed that if the Claimant had purchased the land cash then the Deed would have been in his name. The Defendant agreed that she received money from the sale of land by the Claimant but stated it was the sum of \$17,000.00 not \$20,000.00 as alleged by the Claimant. The Claimant did not give her instructions to use the money to pay the mortgage. He said the land had belonged to the family. She used most of the money to renovate the family home. The Defendant admitted receiving \$15,000.00 in 1998 but she testified that the Claimant gave her the money after she requested assistance from him to pay her medical expenses for an operation on her hand.

She also used some of the money to pay the workers who assisted with the cultivation of bananas.

[17] The Claimant agreed that the income from bananas was to be used to pay the mortgage and she did so until the decline in production. After the problem with bananas, between 1998 - 2000 she did not always pay the full monthly sum but she made some payments from the sale of pigs and goats.

[18] The Defendant further testified that when her shares matured at the Association a sum of \$8000 was paid towards the mortgage. The defendant agreed that she did not produce any documents to show she had paid any portion of the loan but stated that her entitlement is based on the agreement. She is entitled to two acres of the land.

SUBMISSIONS

[19] At the end of the trial an order was made for written submissions to be filed on or before October 4, 2010. No submissions were received from either party.

FINDINGS

[20] Having reviewed the evidence I believe the testimony of the Claimant. He was not contradicted under cross-examination. The Defendant in her witness statement stated that the £10,000.00 was to assist her in purchasing the property. However under cross-examination she admitted that the land was supposed to be registered in the name of the Claimant. This is consistent with the Claimant's testimony that he was resident in the United Kingdom and requested the Defendant to purchase the land for him.

[21] The Defendant also testified that she paid the property taxes, but the only receipt submitted was a receipt for the year 2008 and the receipt is dated the same date that the claim form was filed and served on the Defendant. Further in her testimony the Defendant did not state what sum she paid to the Association. The Defendant did not even give an estimate. The Defendant did not produce a single receipt showing any payment that she made to the Association.

- [22] I do not believe that the Claimant gave the Defendant a total of approximately \$65,000.00 which the Defendant admitted she received for her own benefit, and a further \$20,000.00. The Defendant admitted she received \$17,000.00 which she used for renovation to their mother's home where the Defendant resides.
- [23] In her testimony the Defendant also stated that she was not paid a salary for the seven years that she managed the cultivation of bananas. It is not disputed that the Defendant gave the Claimant no account of the proceeds received from the sale of bananas from the land. It is also not disputed that the defendant had the benefit and use of the land solely during the period.
- [24] The evidence of the Claimant that he only became aware in 2000 that the Association was about to sell the land for the arrears outstanding on the mortgage was supported by the evidence of his witness Mrs. Carol Jardine.
- [25] There is no counterclaim by the Defendant. Having reviewed the evidence I find that there is no evidence to show what if any mortgage payments were made to the Association by the Defendant. In any event any sum which the defendant would have paid would have been from the proceeds of the sale of bananas from the land. It is not disputed that she used some of the loan funds to pay the expenses of cultivation of the bananas. The Defendant never gave the Claimant any portion of the proceeds received from the sale of bananas during the period 1993 - 1997 when bananas were cultivated on the land. I do not believe her testimony under cross-examination that between 1998 - 2000 she paid "on and off" from the sale of pigs and goats. The Defendant could not say when the payments were made, how much money was paid on any occasion, nor did she produce any receipt from the Association showing payment. Unlike the Claimant who produced the various receipts showing the payments made on his behalf to the Association.

[26] In view of the above, I find that the Claimant has proved on a balance of probabilities that he is the owner of the land situated at Grand Sable Georgetown bearing registration number 731 of 1993. I find that the Defendant has no interest in the said land.

[27] It is ordered:

- (a) Judgment is entered for the Claimant.
- (b) A declaration is hereby granted that the parcel of land situate at Grand Sable and registered at the Registry of Saint Vincent and the Grenadines and bearing registration number 731 of 1993 is the property of the Claimant.
- (c) The Registrar of the Court is hereby authorised to sign the conveyance conveying the said property to the Claimant.
- (d) The Defendant shall pay the Claimant costs in the sum of \$7,250.00


Gertel Thom
HIGH COURT JUDGE