

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

COMMONWEALTH OF DOMINICA
DOMHCV2008/0287
BETWEEN:

DERRICK DANIEL
and
CLINTON DANIEL
VICTORIA MATTHEW (as joint Executors of the last will and
testament of Ravineau Daniel and Bernita Daniel)

Claimant
Defendants

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Bernard McDonald Christopher for the Claimant
Mrs. Laurina Vidal- Telemaque for the Defendants

JUDGMENT

[2012: February 23rd
[March 2nd
[June 21st]]

- [1] **COTTLE J:** This matter was remitted to the High Court by the Court of Appeal for hearing as a boundary dispute. The claimant has applied for a Certificate of Title to a parcel of land at Cottage admeasuring .68 acres. His application is premised upon a conveyance to him of the parcel in question by his father Uriah Daniel. The position of the defendants is that Uriah Daniel had no right or title to the parcel of land and therefore could not convey it to the claimant. Rather, the defendants say, Uriah's brother purchased "a little over an acre" from one Leopold Duverley and gave a small portion to Uriah to construct his dwelling house.
- [2] The question which must be decided by the court concerns that northern and eastern boundary of the parcel for which the claimant may obtain a certificate of title. Surveyor, Vincent Robinson, was appointed by the court and produced a report. He found there was no dispute as to the southern

boundary. It is a public Bye-Road. He also located the certificates of title of three adjacent land owners.

- [3] The western boundary of the parcel claimed by the claimant was established. It is to be noted that despite this, the defendant Clinton Daniel while being cross examined, indicated to the court that the claimant should only be entitled to a small portion of land immediately surrounding the house of Uriah Daniel. The effect of this claim is that he was challenging not only the eastern boundary of the parcel in question but the northern, and western boundary as well.
- [4] I was unable to ascertain a reason for this shift in position as he had indicated in his evidence in chief that the quarrel concerned only the northern and eastern boundaries of the contested parcel - this caused the court to regard his evidence in this matter as being less than reliable.
- [5] The defendants were intent on advancing a claim to have a larger parcel of land, including the contested parcel, shared among the persons entitled, under intestacy, to share in the estate of Esau Daniel. Unfortunately, this betrays a misunderstanding of the case before the court. As I understand it, the claimant says his father occupied certain lands without any permission from anyone for over 30 years. He had the required animus possidendi. Any rights which may have existed in other persons including the defendants and their predecessors in title were thereby extinguished.
- [6] The evidence is uncontested that Uriah Daniel occupied the land since 1958. The only issue which remained was an identification of the extent of the land occupied. There was some confusion with another parcel of land also owned by Uriah and evidenced by a letter or receipt. This land was purchased from Rose Thomas and appears to be distinct from the parcel in issue in this case.
- [7] It is interesting that the defendants also commissioned a survey. That survey by Mr. Balthazar Watt appears to coincide with the northern, western and southern boundaries as claimed by the claimant. The defendant has adduced no survey to indicate where the eastern boundary should be according to him. At the trial he struck the court as being determined to restrict the entitlement of the claimant to a parcel barely large enough to contain the house of Uriah, agreed to have been occupied by him since the late 1950's.
- [8] The claimant's case was not entirely free from contradictions but on a balance of probabilities it is to be preferred to the defendant's case. This court is content in the circumstances to rely on the evidence of the surveyor Mr. Robinson as to the location of the boundaries of the parcel claimed. This court thus resolves the boundary dispute in favour of the claimant and declares the boundaries of the parcel to be as depicted in the report of the surveyor Mr. Robinson.
- [9] As the claimant has succeeded he will also be awarded costs in this matter. Costs are fixed at \$7,500.00 being prescribed costs.

Brian Cottle

High Court Judge