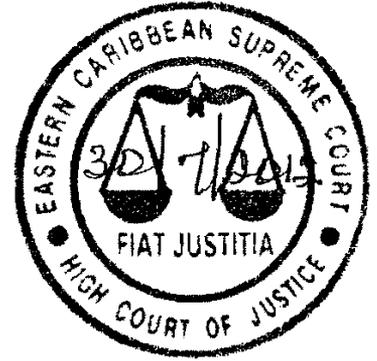


**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 444 OF 2008**



BETWEEN:

SYLVESTER SIMMONS

Claimant

AND

MARIE LEWIS (of Port Elizabeth, Bequia

Attorney-on-Record for Enid Santaria Henville a.k.a. Sentaria Henville nee

Lewis Administratrix of the Estate of Isabelle Henville nee Lewis a.k.a.

Esabella Lewis)

AND

ZOE ANNA LEWIS

AND

MARIE LEWIS

AND

TERESA MORGAN NEE LEWIS

AND

PHILLIP LEWIS

AND

HERBERT LEWIS

Defendants

Appearances:

Mrs. Zhing Horne Edwards for the Claimant

Mrs. Kay Bacchus-Browne for the Defendants

2011: November 9

2012: March 21

July 30

JUDGMENT

- (1) **THOM, J:** Mr. George Lewis Sr. and his wife Isabelle both now deceased resided on a parcel of land measuring approximately 4,931 square feet at Port Elizabeth in Bequia ("the property"). Mrs. Isabelle Lewis died on the 1st day of September 1958, her husband Mr. George Lewis Senior having predeceased her. They were the parents of six children including Mr. George Lewis Jr. and Ms. Enid Lewis a.k.a. Cynthia Lewis. All of the children are now deceased.

- (2) The Claimant alleges that he purchased the property in 2004 from Mrs. Odelia Lewis. Mrs. Odelia Lewis died before conveying the property to him. The property was conveyed to him by the Administratrix of Mrs. Odelia Lewis' Estate by Deed No. 1575 of 2008 and dated 14th April, 2008.

- (3) The Defendants are the children of Ms. Cynthia Lewis.

- (4) On the 24th day of October, 2007, the First Defendant applied as Attorney-on-record for Ms. Cynthia Lewis for Letters of Administration in the Estate of Ms. Isabelle Lewis. Letters of Administration No. 6 of 2008 was granted to her on the 9th day of January 2008. The property was included as part of the estate of Mrs. Isabelle Lewis. Ms. Cynthia Lewis was named as beneficiary of the estate.

- (5) On the 12th day of February 2008 the First Defendant as Attorney-on-record for the Administratrix of the estate of Mrs. Isabelle Lewis by Deed of Assent No. 1197 of 2008 conveyed the property to Ms. Cynthia Lewis. On the 13th February 2008 the First Defendant as Attorney-on-record for Ms. Cynthia Lewis conveyed the property to all of the Defendants.

- (6) On the 15th day of July 2008 the First Defendant by Application in Claim No. 225 of 2008 sought an injunction against the Claimant. She alleged that the Claimant trespassed on the property by authorizing others to pick coconuts from the trees on the property and by storing lumber in a building on the property.
- (7) On the 23rd December, 2008 the Claimant instituted these proceedings seeking:
- (1) a declaration that the Claimant is the lawful owner of the land described in the schedule to Deed Number 1575 of 2008.
 - (2) A declaration that the land described in the schedule to Deed Number 1197 of 2008 does not form part of the Estate of Isabelle Henville-Lewis.
 - (3) An Order canceling Deed of Assent Number 1197 of 2008.
 - (4) An Order canceling Deed of Gift Number 1198 of 2008.
- (8) The Defendants in paragraph 8 acknowledged that the property had belonged to Mrs. Isabelle Lewis. However they alleged that in 1958 Mrs. Isabelle Lewis was senile. Also Ms. Isabella Lewis and Mr. George Lewis Jr. did not have a good relationship he having beaten her and chased her off the property in 1954. Further, Deed No. 278 of 1958 which shows that Mrs. Isabelle Lewis conveyed the property to Mr. George Lewis Jr. was not properly executed, it was not attested in accordance with the provisions of the Illiterates Protection Act Chapter 288. Consequently no title to the property passed to Mr. George Lewis Jr. Further Mr. George Lewis Jr. left the property and migrated to Canada.

- (9) The Defendants further alleged that on January 6, 2004, Mrs. Odelia Lewis tried to purchase the property for EC\$100.00. This amounted to acknowledgment that the property did not belong to her.
- (10) The Defendants made a counterclaim in which they seek the following reliefs:
- (a) A declaration that the Defendants are the lawful owner of the property and that Deed No. 1198 of 2008 is valid and subsisting.
 - (b) A declaration that the said lands remained the estate of Mrs. Isabelle Lewis deceased until administrated by her daughter Ms. Cynthia Lewis.
 - (c) A declaration that the Deed of Assent 1197 of 2008 is valid.
 - (d) An Order canceling Deed Nos. 278 of 1958; 1568 of 1997; 1578 of 2008 and recalling Letters of Administration No. 23 of 2007.
- (11) By Order dated 28th day of May, 2009 Justice Monica Joseph consolidated Claim No. 225 of 2008 with Claim No. 444 of 2008.

ISSUE

- (12) The issue to be determined is who is the lawful owner of the property.

EVIDENCE

- (13) The Claimant gave evidence and called two witnesses being Mrs. Claudette Lindsay and Mrs. Minetha Ollivierre. The First Defendant gave evidence and called three witnesses being Ms. Wilma Williams, Ms. Ursella Forde nee Lewis and Ms. Edla Gurley.

- (14) The evidence on behalf of the Claimant is that the property was formerly owned by Ms. Isabella Lewis. Mr. George Lewis Jr. and his wife Odelia were married in 1955 and shortly thereafter they went to live at the property. At that time Ms. Cynthia Lewis and the Defendants also lived at the property.
- (15) By Deed No. 278 of 1958 and dated 15th April 1958 Mrs. Isabella Lewis conveyed the property to Mr. George Lewis Jr. Mr. George Lewis Jr. and his wife built a concrete building on the property which they used as a shop. They lived on the property until 1969 when they both emigrated to Canada. They rented the property to Mr. Paul Ollivierre and his wife Dotsy. Mr. Paul Ollivierre and his wife divorced and he married Ms. Minetha Bynoe. Mr. Paul Ollivierre died in 1995 and Ms. Minetha Ollivierre continued to live on the property until 2004.
- (16) Mr. George Lewis Jr. and his wife Odelia returned to reside in Bequia in 1995. They built a new home in Union Vale, Bequia where they resided. On 6th September 1995 Mr. George Lewis Jr. conveyed the property to his wife Odelia. The Deed is registered as Deed No. 1568 of 1997. Mr. George Lewis Jr. died in 1997. Mr. Herbert Lewis the sixth Defendant requested Ms. Odelia Lewis to rent the shop but she refused. Mrs. Odelia Lewis always assisted the Defendants and their mother financially.
- (17) In 2004 the Claimant purchased the property from Ms. Odelia Lewis for the sum of \$70,000 which he paid in two installments being \$60,000.00 and \$10,000.00. Receipts of Banker's Drafts payable to Mrs. Odelia Lewis were exhibited. Mrs. Odelia Lewis died before conveying the property to the Claimant. Letters of Administration No. 23 of 2007 was granted to Ms. Claudette Lindsey who conveyed the property to him by Deed No. 1575 of 2008. The Claimant rented the property to his cousin

Mr. Tony Quashie and his wife Pamela. They operated a snackette there.

- (18) While Mr. George Lewis and Mrs. Odelia Lewis were alive they rented the property, renovated it, maintained it and dealt with it as their own. The Defendants never challenged Mr. George Lewis Jr. and Odelia's ownership of the property while they were alive. It was not until 2008 that the Defendants made a claim to the property.
- (19) The evidence on behalf of the Defendants is that in 1954 Mr. George Lewis Jr. beat his mother and his sister Ms. Cynthia Lewis and put them off the property. Mr. George Lewis Jr. bought a shop and placed it on land owned by the Government and he gave it to his mother and his sister to live there. Ms. Isabelle Lewis became senile in 1954. Ms. Cynthia Lewis took care of her. Mr. George Lewis Jr. never passed by to see his mother and she never spoke to him after he put her off the property. Mr. George Lewis Jr. never took anyone to see Ms. Isabella Lewis nor for her to sign any document. Ms. Isabella Lewis was never alone. She fell ill in April 1958 and could not understand the nature of a deed. Further the Justice of the Peace Mr. Claude Hazell lived at Paget Farm. He was a family friend of Ms. Odelia Lewis who at that time was a nurse at Paget Farm. There were several other Justices of the Peace in Port Elizabeth including Mr. Percival Frederick, Mr. Claude Peters and Mr. Claude Gurley. In 1958 there were only two boats operating between Bequia and St. Vincent. The boat left at 8:00a.m. and arrived in St. Vincent between 2:00p.m. and 4:00p.m. In some instances the boat arrived at 8:00p.m., therefore the Deed which is dated 15th April could not be registered at 11:45a.m. the same day. Ms. Cynthia Lewis and the First Defendant always visited the property and picked fruits from the property.

SUBMISSIONS

(20) Learned Counsel for both the Claimants and the Defendants in their submissions addressed the following issues:

- (1) The validity of the Deed No. 278 of 1958, No. 1568 of 1997, No. 1575 of 2008 all relating to the Claimant's case, and Deed No. 1197 of 2008 and No. 1198 of 2008 in relation to the Defendant's case.
- (2) The Limitation Act.

VALIDITY OF DEEDS

Deed No. 278 of 1958

- (21) Learned Counsel for the Claimant submitted that Deed No. 278 of 1958 in which Isabella conveyed the property to George Jr. was properly executed in accordance with the provisions of the Illiterates Protection Act Chapter 288. Learned Counsel urged the Court to pay no regard to the allegations of abuse, dysfunctional relationship between Ms. Isabelle Lewis and Mr. George Lewis Jr. or to the evidence that boats did not arrive in St. Vincent from Bequia until 2:00p.m. or later on any given day. These allegations are spurious and they have no bearing on the validity of the Deed.
- (22) Learned Counsel for the Defendants submitted in response that the Deed was not executed in accordance with the Illiterates Protection Act in that the Justice of the Peace did a separate declaration in relation to the Deed, there was no attestation on the Deed itself and it was not done in the presence of Mrs. Isabella Lewis.
- (23) Learned Counsel further submitted that Mrs. Isabelle Lewis was senile and bedridden in 1958 and she therefore could not execute the Deed.

- (24) Learned Counsel urged the Court to accept the testimony on behalf of the Defendants that Mrs. Isabelle Lewis would not have given Mr. George Lewis Jr. the property since they did not have a good relationship. Also since boats from Bequia arrived at 2:00p.m. it was impossible for the Deed to be registered at 11:45a.m. on the same day that it was executed.

FINDINGS

- (25) The relevant sections of the Illiterates Protection Act are sections 2, 3 and 4. They read as follows:

"2. In this Act, unless the context otherwise requires

*—
....*

"illiterate person" includes a person who, at the time of the execution or purported execution of the document concerned, was unable to write his name, whether by reason of infirmity of mind or body or by reason of any physical or mental disability or for any reason whatsoever.

"3. (1) Members of the House of Assembly, Magistrates, the Registrar of the High Court, the Deputy Registrars, Senior Executive Officers serving in the Registry and the Ministry of Legal Affairs, Legal Officers in the service of the Crown, Justices of the Peace, Medical Officers and such other fit and proper persons as Cabinet may from time to time appoint shall be official attestors for the purpose of this Act.

(2) Cabinet may at any time revoke any appointment made under Subsection (1).

4. (1) *No document shall be made valid as against an illiterate person unless it shall be signed by him in the presence of an official attestor and attested by the official attestor.*
- (2) *Before the document is signed by the illiterate person, the official attestor shall explain it to him and shall refuse to attest it unless the illiterate person appears to understand its contents.*
- (3) *The attestation of an official attestator shall be conclusive evidence that the illiterate person understand and approved the contents of the document before signing it."*

(26) It is not disputed that Mr. Claude Hazell was a justice of the peace on the 15th April, 1958 and was therefore an official attestor within the meaning of section 3 of the Act. Learned Counsel for the Defendants argument is that the Attestation is not on the Deed and was not done in the presence of Ms. Isabelle Lewis. A careful reading of section 4 (1) shows that the illiterate person must sign the document in the presence of the official attestor and there must be an attestation by the official attestor. An examination of the Deed shows that Ms. Isabelle Lewis placed her mark on the deed on the 15th April, 1958 in the presence of Mr. Claude Hazell Justice of the Peace. The Document is marked "SIGNED SEALED AND DELIVERED BY THE WITHIN NAMED ISABELLA LEWIS in the presence of Claude A. Hazell J.P. Dated 15th April 1958." This in my opinion meets the requirements of Section 4 (1). There is no evidence to show that Mr. Claude Hazell J.P. did not sign the Deed in the presence of Isabella. Also a declaration by Mr. Claude Hazell dated the same day the 15th April, 1958 was exhibited with the Deed, in which he states that he was present and saw Ms. Isabelle Lewis make her mark on the Deed, and that the Deed was carefully read over and understood by Ms. Isabelle

Lewis. I find that there is no merit in the Defendants submission.

- (27) In relation to the issue of senility, I accept the declaration made by the Justice of the Peace which is dated the same day as the Deed, and which states that Mrs. Isabelle Lewis understood the nature of the document. Further section 4 (3) of the Act provides that the attestation of the official attestor is conclusive evidence that the illiterate person understood and approved the contents of the document before signing it.
- (28) In relation to the submission that Mrs. Isabelle Lewis would not have given the property to Mr. George Lewis Jr. this was only speculation on the part of the witnesses for the Defendants all of whom agreed that they were not in the presence of Mrs. Isabelle Lewis at all times. Similarly in relation to transportation from Bequia I agree with the submission of Learned Counsel for the Claimant that the witnesses for the Defendants only related to commercial transportation and not to private transportation. I also agree with the submission of Learned Counsel for the Claimant that it is settled law that fraud must be pleaded and the particulars of fraud must be set out in the statement of case. Chief Justice Byron (as he then was) in Ecedro Thomas (the Lawful Attorney for Alice Thomas and Alphonso Thomas, the Administrators of the Estate of Caeser Augustus Thomas deceased and Augustine Stoutt and Grethel Stoutt-Richardson the Administrators of the Estate of Richard C. Stoutt deceased and others Civil App. No. 1/1993 BV1 stated this principle in the following manner.

“The mere averment of fraud in general terms is not sufficient for any practical purpose in the prosecution of a case. It is necessary that particulars of the fraud are distinctly and carefully pleaded. There must be allegations of definite facts or specific conduct. A definite character must be given to the charges by stating the facts on which they rest.”

- (29) In stating this principle Chief Justice Byron referred to the following passage in the case of Wallingford v Mutual Society (1880) 5 App. Cas. P. 685 at p. 697:

“With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any court ought to take notice. And here I find nothing but perfectly general and vague allegations of fraud. No single material fact is condescended upon, in a manner which would enable any court to understand what it was that was alleged to be fraudulent. These allegations I think must be entirely disregarded.”

Deed No. 1568 of 1997

- (30) Learned Counsel for the Claimant submitted that the Defendants did not plead fraud in relation to Deed No. 1568 of 1997, the Deed by which Mr. George Lewis Jr. conveyed the property to his wife Odelia. The Court should therefore pay no regard to the assertion by the Defendants that Mr. George Lewis Jr. was senile and therefore could not execute the Deed.
- (31) Learned Counsel for the Defendants submitted that Deed No. 1568 of 1997 was not valid, the Deed was registered a year and a half after it was purportedly signed by Mr. George Lewis Jr. Further evidence shows that he was senile before his death.

FINDING

- (32) I agree with the submission of learned Counsel for the Claimant that Fraud was not pleaded. Further the evidence of the Defendants' witnesses is that Mr. George Lewis Jr. was senile before he died in 1997. The Deed was executed in 1995. There is no evidence that he was senile

when the Deed was executed. The fact that the Deed was registered one and a half years after it was executed is not a reason for it to be declared invalid.

Deed No. 1575 of 2008

(33) Learned Counsel for the Defendants submitted that Deed No. 1575 of 2008 by which Ms. Claudette Lindsey conveyed the property to the Claimant is not valid for the following reasons:

- (a) Ms. Claudette Lindsey was not entitled to the estate of Ms. Odelia Lewis since at her death Ms. Odelia Lewis had three sisters. Ms. Odelia Lewis also had an adopted son Mr. Ainsley Lewis.
- (b) Mr. Ainsley Lewis being the adopted son of Ms. Odelia Lewis he is the heir of Ms. Odelia Lewis' estate and the only one who could lawfully pass the property to the Claimant.
- (c) The Claimant gave conflicting evidence when he stated that he purchased the property from Ms. Odelia Lewis which is contrary to and the fourth recital of the Deed.

(34) Learned Counsel for the Claimant submitted that the Administratrix merely completed a sale transaction entered into by Ms. Odelia Lewis during her lifetime. The Administratrix was obligated to do so – see Halsbury's Laws 4th ed vol. 17 para 1513. The misrecital of the interest of the Administratrix has no effect on the validity of the deed as it was the clear intent to convey the property to the Claimant – Halsbury's Laws 4th ed vol. 12 paragraph 1569.

FINDINGS

(35) The evidence of the Claimant that he purchased the property from Ms. Odelia Lewis for \$70,000.00 was not contradicted. The Claimant exhibited the Bankers Draft receipts showing payment to Ms. Odelia Lewis of \$60,000.00 on January 25, 2005 and \$10,000.00 on March 3, 2005. It was not disputed that Ms. Odelia Lewis had an adopted son named Ainsley Lewis and that the whereabouts of Ainsley Lewis is unknown. It is also not disputed that Ms. Odelia Lewis died intestate. There is no legal impediment which prohibited Ms. Claudette Lindsey from being appointed the Administratrix of Ms. Odelia Lewis's estate. The fact that Mrs. Odelia Lewis had a son who may have survived her and would be the heir to her estate is not an impediment to Ms. Claudette Lindsey being approved Administratrix of the estate of Ms. Odelia Lewis. As Administratrix of the estate of Ms. Odelia Lewis, Ms. Claudette Lindsey had the power to complete the sale to the Claimant. Halsbury's Laws of England 4th ed vol. 17 para 1513 states

"Conveyance of Land Contracted to be Sold. The personal representatives of a person at whose death there wasan enforceable contract for the sale of his freehold interest in any land have power and are bound to convey the land for all their deceased's estate and interest in it."

This is so since the now deceased vendor having received the purchase price for the land would have become a trustee for the purchaser. I find that Ms. Claudette Lindsey as Administratrix of the estate of Ms. Odelia Lewis was empowered to convey the property to the Claimant.

(36) I agree with the submission of Learned Counsel for the Defendants that Deed No. 1575 of 2008 is at variance with the Claimant's and Ms. Claudette Lindsey's testimony. The Deed states very clearly that the Administratrix and Claimant agreed to the sale of the property to the

Claimant for \$70,000.00 which sum was paid by the Claimant to the Administratrix which sum she acknowledged she received. I believe their testimony. The information in the Deed is incorrect. It is not just the recital as indicated by Learned Counsel for the Claimant but the Deed is contrary to the testimony of the evidence on behalf of the Claimant. I therefore find that Deed should be cancelled.

THE LIMITATION ACT

(37) Learned Counsel for the Claimant submitted that the Claimant is an innocent party who purchased the property for valuable consideration. He is therefore protected under Section 32 (3) and 4 of the Limitation Act.

(38) Learned Counsel for the Defendants in reply submitted that the Claimant was not an innocent third party within Section 32 (3) and (4) since the Claimant admitted he knew the property belonged to Mr. George Lewis Jr. He also admitted that he knew the heir of Mrs. Odelia Lewis's estate was her son. He also testified that even though he bought the property in 2003-2004 he procrastinated about the Deed, this showed that he knew the property did not belong to Ms. Odelia Lewis.

FINDING

(39) To get the true hearing of Section 32 (3) and (4), these subsections must be read in the context of the entire section. Section 32 reads as follows:

"32 (1) Subject to subsection (3) where in the case of any action for which a period of limitation is prescribed by this Act, either –

(a) the action is based upon the fraud of the defendant.

(b) Any fact relevant to the plaintiff's right of action has been deliberately cancelled

- from him by the defendant; or
- (c) The action is for relief from the consequences of a mistake:

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case maybe) or could with reasonable diligence have discovered it.

Reference in this subsection to the defendant include references to the defendant's legal practitioner or agent and to any person through whom the defendant claims and his legal practitioner or agent.

- (2) *For the purpose of subsection (1), deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.*

- (3) *Nothing in this section shall enable any action –*

- (a) *to recover, or recover the value of, any property; or*
- (b) *to enforce any charge against, or set aside any transaction affecting, any property;*

to be brought against the purchaser of the property or any person claiming through him in any case where the property has been purchased for valuable consideration by an innocent third party since the fraud or concealment or, as the case maybe, the transaction in which the mistake was make took place.

- (4) *A purchaser is an innocent third party for the purposes of this section –*

- (a) *in the case of the fraud or concealment of any fact relevant to the plaintiff's right of action, if he was not a party to the fraud or, as the case maybe, to the concealment of that fact and did not at the time of the purchase know or have*

reason to believe that the fraud or concealment had taken place; and

(b) in the case of mistake, if he did not at the time of the purchase know or have reason to believe that the mistake had been made."

(40) Section 32 creates an exception to the application of the limitation periods prescribed in the Limitation Act in the cases of fraud, concealment of fact or where there is a mistake. However subsection (3) provides that this provision does not enable a person to bring an action to recover property from an innocent person who has purchased the property for valuable consideration after the fraud, concealment or mistake took place. Subsection (4) defines an innocent person as one who is not a party to the fraud or concealment and also did not know at the time of the purchase that the fraud or concealment or mistake had taken place.

(41) In this case fraud was not properly pleaded. Also no evidence of fraud was led. This section is not applicable in this case. Even if the section was applicable the Claimant would fall within the definition of an innocent third party within the meaning of subsection (4). The evidence on behalf of the Claimant shows that he was not a party to any fraud or concealment or that he knew of a mistake at the time of purchase. There was no evidence on behalf of the Defendants that contradict the evidence of the Claimant. Contrary to the submission of Learned Counsel for the Defendant where she stated that the Claimant admitted that the property belonged to Mr. George Lewis Sr., the Claimant clarified his evidence that the property belonged to Mr. George Lewis Jr. Mr. Lewis rented the property. The Claimant further testified that he did not know Mr. George Lewis Sr. In 1958 the year when Mrs. Isabelle Lewis died the Claimant

was only 14 years old. Moreso the property was not neighboring land to his home. It is situate in Port Elizabeth and the Claimant grew up and lived in Lower Bay.

- (42) I find that even if there was a fraud by George Lewis Jr. in relation to Deed No. 278 of 1958 or Mrs. Odelia Lewis in relation to Deed No. 1568 of 1997 and I do not so find, having regard to the evidence the Claimant was not a party to either fraud and did not know of any fraud at the time of the purchase.

Administration of Estates Act

- (43) Learned Counsel for the Defendants also submitted that even if Ms. Isabelle Lewis wished to convey her interest in the property to Mr. George Lewis Jr., she could not give him the entire property since it is not disputed that the property belonged to Mr. George Lewis Sr., Mr. George Lewis Sr. having died intestate. On administration Mrs. Isabelle Lewis would by virtue of the provisions of the Administration of Estates Act only have had 1/3 of the property to give to Mr. George Lewis Jr. Thus the principle "Nemo dat quad non habet" is applicable. Learned Counsel did acknowledge that the Defendants in their pleaded case and evidence stated that the property belonged to Ms. Isabelle Lewis. However Learned Counsel submitted the Defendants did not say it belonged exclusively to Ms. Isabelle Lewis.

FINDING

- (44) I find this to be a disingenuous submission. The Defendants pleaded case and the evidence led on behalf of the Defendants is that the property belonged to Mrs. Isabelle Lewis. The Defendants Deed No. 1198 of 2008 by which they claim ownership of the property was conveyed to them by Ms. Cynthia Lewis who claimed ownership by Deed No. 1197 of

2008 as the beneficiary of the estate of Mrs. Isabelle Lewis she having administered the estate of Mrs. Isabelle Lewis and included the property as being part of the estate of Mrs. Isabelle Lewis. It is incorrect to state that it is not disputed that the property belonged to George Lewis Sr. The pleaded case of both parties is that the property belonged to Mrs. Isabelle Lewis. Witnesses on both sides testified that the property belonged to Mrs. Isabelle Lewis. Having regard to the evidence, I find that the entire property belonged to Mrs. Isabelle Lewis and that she was therefore empowered to convey it to her son Mr. George Lewis Jr.

The Cheque

- (45) Learned Counsel for the Defendants also submitted that the cheque issued by Mrs. Odelia Lewis to Ms. Cynthia Lewis in 2004 for EC\$100.00 was an attempt by Mrs. Odelia Lewis to purchase the property from Ms. Cynthia Lewis. This shows that Mrs. Odelia Lewis did not regard the property as belonging to herself or her husband. This amounted to acknowledgement within the meaning of section 29 of the Limitation Act.
- (46) Learned Counsel for the Claimant in response submitted that the intention of Mrs. Odelia Lewis in writing the cheque cannot be established by merely producing the cheque. Further no evidence was produced to support the Defendants' counterclaim that Ms. Odelia Lewis was seeking to purchase the property for \$100.00.

FINDINGS

- (47) Section 29 of the Limitation Act deals with the situation where a person acknowledges the other title or makes part payment to a claim. In such a case there is a fresh accrual of action from the date of acknowledgement or part payment. This section has no application to the present case. I agree with the submission of Learned Counsel for the

Claimant. Further it is inconceivable that 4,931 square feet of land at Port Elizabeth, the centre of Bequia could be purchased for EC\$100.00 in 2004. I accept the evidence on behalf of the Claimant that Ms. Odelia Lewis on occasions gave financial assistance to Ms. Cynthia Lewis her sister-in-law.

Deed No. 1197 of 2008 and Deed No. 1198 of 2008

(48) Having regard to my findings earlier that Deed No. 278 of 1958 and No. 1568 of 1997 were valid, Mrs. Isabelle Lewis having conveyed the property to Mr. George Lewis Jr. in 1958, the property did not form part of her estate on her death. Ms. Cynthia Lewis therefore did not inherit the property as the beneficiary of the estate of Mrs. Isabelle Lewis by Deed No. 1197 of 2008. Consequently Ms. Cynthia Lewis could not convey the property to the Defendants by Deed No. 1198 of 2008.

CONCLUSION

(49) In conclusion I find that Deed No. 278 of 1958 and No. 1568 of 1997 were valid. I find also that while the Administratrix of Ms. Odelia Lewis' estate is empowered to convey the land to the Claimant the facts as stated in Deed No. 1575 of 2008 are incorrect. I will therefore make an order canceling Deed No. 1575 of 2008. I find further that there are no grounds for recalling Letters of Administration No. 23 of 2007. I also find that the land described in Deed No. 278 of 1958 and No. 1568 of 1997 did not form part of the estate of Mrs. Isabelle Lewis at her death.

(50) In relation to costs, both parties having had some measure of success, I therefore find that each party should bear their own costs.

(51) It is ordered that:

- (a) Judgment is entered for the Claimant.
- (b) It is declared that the Claimant is the beneficial owner of the land described in Deed No. 1568 of 1997 which forms part of the estate of Mrs. Odelia Lewis and is entitled to have the legal estate in the land conveyed to him.
- (c) Deed No. 1575 of 2008 is hereby cancelled.
- (d) It is declared that the land described in the schedule to Deed No. 1568 of 1997 does not form part of the Estate of Mrs. Isabelle Henville nee Lewis deceased.
- (e) The counterclaim is hereby dismissed.
- (f) Deed No. 1197 of 2008 and No. 1198 of 2008 are cancelled.
- (g) Each party shall bear their own costs.



.....

Gertel Thom

HIGH COURT JUDGE