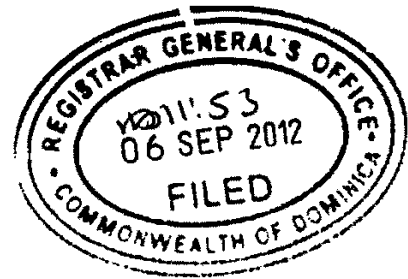


IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

DOMHCV2010/0216

[CIVIL]



BETWEEN:

LUCRETIA GABRIEL NEE SCOTLAND

Claimant

and

JOSEPH RAPHAEL LEBLANC

Defendant

Before:

The Hon. Justice Brian Cottle

Appearances:

Mr. Geoffrey Letang for the Claimant

Mrs. Noelize Knight-Didier for the Defendant

[2011: December 5th
[2012: February 2nd, 14th
: September 6th

JUDGMENT

- [1] **COTTLE J:** This claim concerns the ownership of two parcels of land at Vieille Case in the Commonwealth of Dominica. Both parcels are registered in the name of Dellie Marie Scotland. Certificates of Title in respect of these parcels have been issued in the name of Dellie Marie Scotland. The claimant is the daughter of the holder of the certificates of title, who unhappily is now deceased. The claimant is the executrix of her will.
- [2] In or around April 2010 the defendant entered upon the parcels. He erected signs and claimed ownership of the parcels. He says the land belonged to his mother who had given the parcels to him.

- [3] Some background is needed to appreciate the issues which arise in this claim. In 1987 and 1989 Dellie Marie Scotland applied for the issue to her for a first certificate of title for the respective parcels. One Clifford Royer lodged caveats. These caveat matters came before Waddell J and Joseph J respectively. In both matters the court dismissed the caveats and directed the Registrar of Lands to issue the first certificate of title to Dellie Marie Scotland. Those certificates were duly issued in 1997 and 1999.
- [4] After the issue of these certificates there was no further contest as to the ownership of the lands during the lifetime of Dellie Marie Scotland who departed this world in December 2008. It was only when the defendant entered upon the lands in 2010 that the present dispute arose. The claimant brought the present action for trespass- a claim for defamation was abandoned at trial. The defendant denies trespass and avers that he is the true owner of the lands, the claimant's certificates of title having been obtained by fraud. One issue that arose early was that of res judicata or issue estoppel.
- [5] Mr. Letang for the claimant argues that the issue of the ownership of the land having been determined by a court of competent jurisdiction, re-litigation of the same issue ought not to be allowed. Mrs. Didier for the defendant argues that the defendant was not a party to the earlier suits. Neither of the contestants for the ownership of the land was the true owner. The decision of the court was merely that Dellie Marie Scotland showed a better title than Clifford Royer. The defendant is not thereby precluded from now advancing his claim.
- [6] Several curious issues arise when the earlier suits are examined. Firstly the judgment of Joseph J reveals that one of the witnesses for Clifford Royer bore the same name as the mother of the defendant. The defendant says that whoever that witness was she was not his mother. Mrs. Didier points out that witnesses are not asked for proof of identity and invites the court to conclude that it is at least doubtful that this witness was indeed the mother of the defendant. I find it difficult to accept that in a bitterly contested dispute over land ownership in a small village, an unknown person could attend and claim to be the mother of the defendant if this was not the case.
- [7] Also I was not provided by the defendant with any explanation which I can accept concerning his failure to raise the entitlement of his mother at the trial. He says he attended court for both matters. He was representing his mother's interest. Yet he permitted the decisions awarding the properties to the mother of the claimant to remain unchallenged until he filed a counterclaim in the present action.
- [8] The claimant has certificates of title for the properties in question. This means that her title is indefeasible save in very limited circumstances. In the present case the defendant avers that her title was obtained by fraud. This is a serious allegation. The defendant must substantiate this by credible evidence.
- [9] It is here that the defendant founders. For the defendant to succeed he must show that Dellie Marie Scotland misled both Justice Waddell and Justice Joseph in the 1987 and 1989 claims. She and her witnesses must have made representations to the court with a view to them being acted on when they knew those representations to be false. I do not see how this court, without the benefit of seeing or hearing those witnesses whose testimony was subject to cross examination, can be in a position to pronounce their testimony false.

[10] There is also the troubling matter of the claimant's mother Emelda Leblanc, appearing as witness to support the claim of Clifford Royer. This is the same Emelda Leblanc through whom the claimant says he has come to own the land. Without any need to address the issue of res judicata it is clear that the defendant must fail. The evidence which he adduces to demonstrate fraud in the acquisition of the certificates of title is woefully inadequate. I am satisfied that his mother attended the earlier trials and testified for Clifford Royer despite the denial of this by the defendant. Had there been any merit in the suggestion that his mother was the true owner, neither his mother nor himself would have failed to raise it earlier.

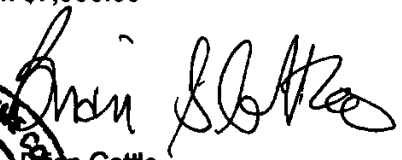
[11] I have no hesitation in rejecting it out of hand. I saw the defendant being cross examined. When it was asked directly of him what fraud he was alleging he seemed unable to articulate it. There is no denial by the defendant that he has entered on the lands comprised in the claimant's certificate of title. I have found that he has no basis to challenge the claimant's certificate of title. The counterclaim must therefore be dismissed and judgment entered for the claimant on the claim.

Damages

[12] The claimant did not establish any loss apart from the entry of the defendant onto the land. In her witness statement the claimant says she has lost the opportunity to complete sales of the lands. I do not see this as providing me with a basis for awarding damages. Instead I would award the reasonable letting value of the property from the date of the defendant's entry but I have no reliable value of this. I am thus constrained to award nominal damages, which I fix at \$1,000.00 in the circumstances of this claim.

The Order

- 1) The injunction is granted restraining the defendant, his servants or agents from entering or remaining on the lands comprised in the claimant's certificate of title as pleaded.
- 2) Nominal damages of \$1,000.00 are awarded to the claimant.
- 3) The defendant will also pay prescribed costs to the claimant in the sum on \$7,500.00


Brian Cottle
High Court Judge

