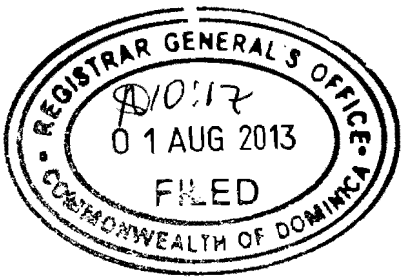
**IN THE HIGH COURT OF JUSTICE**

**COMMONWEALTH OF DOMINICA**

**DOMHCV2012/0296**

**[CIVIL]**




**BETWEEN:**

**J.F RUPERT CASIMIR**

**The Estate of Alix Boyd nee Green** **Claimant**

**and**

**STEPHEN K M ISIDORE** **Defendant**

**Before:** **The Hon. Justice Brian Cottle**

**Appearances:**

Mr. Henry Shillingford for Claimant
Mrs. Heather Felix-Evans for Defendant

[2013: March 4th]
[ August 1st]

**JUDGMENT**

[1] **COTTLE J:** The claimant; as executor of Alix Boyd nee Green, (Alix) claimed against the defendant for possession of a small parcel of unregistered land situated in Roseau. The parcel admeasures some 500 square feet and is adjacent to a lot comprising 1,935 square feet upon which Rupert Green, the father of Alix, had his dwelling house. The larger portion was registered land but Rupert Green occupied and treated both as a single holding. He enclosed the lots by a rubble wall and treated the unregistered 500 square feet as part of the yard of his dwelling house.

[2] After the death of Rupert Green, Alix as his executor sold the registered portion of land to Joffre and Florence Green. Under the will of Rupert Green the property had been left to Alix and her two siblings jointly. The claimant says that only the registered portion was sold to Joffre and Florence Green. Joffre and Florence Green occupied the entire parcel comprising both the registered lot and the smaller unregistered portion. Joffre Green stored a boat on this portion for some 15 years.

Joffre and Florence Green say that they purchased the entire holding, both the registered and unregistered bits. They later sold both to the defendant.

**[3]** Counsel for the claimant argues that as the unregistered part was never sold, it remains undistributed as part of Rupert Green's estate. He, as the executor of Rupert Green's estate, claims to be entitled to possession. The pleaded case for the defendant is simple. He says he bought both parcels from Joffre and Florence Green who had purchased them from Alix.

The case for the claimant

**[4]** It is not usual for me to reproduce verbatim the arguments advanced by litigants in support of their case. I depart from that usual practice to ensure that I omit nothing from the claimant's arguments.

> **" We submit that essentially this is a matter as to caveat emptor and the Statute of Frauds two of the most ancient and important principles of the Common Law that is to say "buyer beware' and "all purchase of land must be in writing" respectively. They both make extreme sense in law and logic. As to first it says simply that; before one parts with their valuables ensure to the fullest extent what you are exchanging it for. That is; is it fit the purpose, will it withstand the test you will put it through, does the person exchanging the good for your valuables have a right to so exchange. The principle holds that you must be sure of these elements before you part with your valuables because if you have not there is no recourse and the good fails for any reason you do not have a right to recovery to your valuables, in other words simply put the law pragmatically states "prevention is better than cure"**
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> **"Has the defendant done all he can, has he ensured Title. Now for a good like land, title and description (i.e location ) are critical. His witnesses and his vendor have all admitted that there was no written instrument in respect of the land in issue moving if from the root of title which it is accepted that same is in the Claimants estate, hence clear indisputable evidence form the defence of 'no contract in writing'. But that since the defendant is ignorant of the Statute of Frauds it is likely he would not have appreciated that a written contract was necessary. We submit that ignorance of the law is no defense to a case at bar and certainly not if the person relying on it is an attorney who held himself out as such. The Conveyancing and Law of Property Act in fact codifies these two elements first by insisting on contract in writing or a memorandum in writing referring to such contract sec 4 and secondly by stating that the vendor can only pass title he has himself sec 15 hence buyer beware or buyer be sure"**
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> **"These are really the ancient principles of law that arbitrates this case, the attempts to throw/pry the legal representatives of the claimant into arena was really regrettable not because attorneys are sacrosanct or any other protection of attorney qua attorney. No it was because it disclosed the 'spin' on the facts put forward by the defendants were an attempt to take the courts eye from the fact that there was no conveyance of the said property for the Rupert Green estate c'est tout and therefore the land in question remains part of the estate of Rupert Green.**
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> **My Lord; our case and our claim is that the defendant has trespassed upon my client unregistered land i.e. the land of the estate of RM Green for which he is personal representative of, it is an accepted fact by all parties, as to where the land is and that is unregistered land. Our position is simple the Title, the Root of Title to**

**that said land has been and still is with the Estate of Rupert Green, it has never been alienated and therefore still forms part of the property of the estate of Rupert Green. As said earlier this latter fact is accepted by the defendant that is to say that the root of Title for that land is with the Estate of Rupert M Green, he said so in his evidence under cross examination unequivocally. Hence in order to show he now has Title he must show how the Title moved from the estate of RM Green to him. I would just hesitate here and remind the court that the entire defence is a defence at law that there is no 'equity' raised in any part of the defence. Nor I submit can any equity be raised by operation of Law.**

[5] If I understand the claimant's case he says that the defendant has no claim to the unregistered portion of land as they have no deed to it and no writing evidences the sale to him of the unregistered 500 square feet. The claimant testified and was cross examined. He was first shown a valuation by Mr. E.P. Munro a real estate appraiser and valuer. Mr Munro had valued the land and the house on it at the instance of Alix on November 24th 1992. Mr. Munro described the land as ***"divided into two adjacent parcels, with the main parcel held under certificate of title No 259/75 registered in Book of Titles D3 Folio 83. They are however occupied as one entity".*** Mr Munro fixed a value of $338,175.00, for the entire parcel. The claimant when cross examined said he had never seen the document before. That was also his response when shown a letter from Alix to Joffre Green. The letter records an agreement by Alix and the other then owners of the property to sell the whole property as valued by Mr. Munro to Joffre and Florence Green for $300,000.00.

[6] The Memorandum of Transfer dated January 31st 1995 records the sale by Alix and the other co-owners to Joffre and Florence Green of the registered portion of the property at a price of $270,000.00. There is no memorandum of transfer of the unregistered portion of the land. Both Florence and Joffre Green gave evidence. They say they purchased the entire property for $300,000.00 as the agreement reflects. Candia Williams, one of the vendors also testified that the entire parcel was sold to Joffre and Florence Green for $300,000.00. All witnesses agree that Joffre and Florence Green occupied the entire parcel.

[7] Despite all the overwhelming evidence of the sale of the property to Joffre and Florence Green, Mr. Shillingford for the claimant urges the court to conclude that the sale is ineffective as no deed was executed. He points to section 4 (1) of the Conveyancing and Law of Property Act chap 54:01 of the Laws of Dominica.

[8] It seems to me that the position adopted by counsel for the claimant cannot be correct. Firstly, the defendant and his predecessors in title have brought no action upon the contract. But even if they choose to do so to compel a formal conveyance of the unregistered land to Joffre and Florence Green and then to the defendant, the legislation does not require that the contract for the sale of land be by deed. It is important to note that section 4 (1) does not render a contract for the sale of land without a memorandum in writing void or illegal. It is merely unenforceable by action in a court. (see for example Steadman v Steadman [1976] AC 536 at 540 per Lord Reid)

[9] The memorandum to which section 4(1) speaks requires no special form. In the present case the written agreement of Alix and the other owners to sell the entire property to Joffre and Florence Green is more than adequate in the circumstances. It follows that the sale to them was successful

in alienating the entire property and as such it no longer formed part of the estate of Rupert Green. This is sufficient to dispose of the case of the claimant. His claim as executor is based on his contention that the property has not been sold from the estate of Rupert Green. I have explained that the contention is erroneous. The claim is therefore dismissed. The claimant will pay the defendant prescribed costs.

**[10]** Counsel for the defendant submits that this claim be valued at $300,000.00 as this was the value the claimant placed on the unregistered portion of land in a letter before action by counsel. Under CPR 2000 part 65.9 a party can apply to have the value of the claim to be determined for the purposes of costs calculation. The defendants did not adopt this available course of action. The court thus falls back on CPR 2000 part 65 (2) (iii) and values this claim at $50,000.00.Prescribed costs are awarded to the defendant in the sum of $7,500.00

Brian Cottle
High Court Judge