IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE

SUIT NO. GDAHCV2007/0311

BETWEEN:

Denzil Gilbert

Claimant

AND

Grenada Distillers Limited

Formally Grenada Sugar factory

Defendant

2012: September 21st

2014: February 26th

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[1] TAYLOR-ALEXANDER M: The claimant sues the defendant for breach of contract and for specific performance for that he, leased from the defendant in or about 1985, 1 1/2 acres of land at Westerhall in the Parish of St. David in Grenada under a lease to own agreement. The lands, which he claims he occupies, are used primarily for the cultivation of sugarcane, which he sells to the defendant. The claimant pleads that he proposed purchasing the lands and the defendant agreed that he make a down payment and thereafter he was to have made yearly instalments that would come from the proceeds of the cane he produced and sold to them. He relies on DG1 in support of his averments. DG1 is a letter written to the Board of Directors of the Woodland Sugar Factory, (whom I have assumed was a predecessor of the defendant). He states that the offer was accepted with the defendant agreeing to sell to him 1 ½ acres of land or the equivalent of 65,340 sq ft. at a costs of $130, 680.00, a cost of $2.00 per sq ft. Unfortunately, when Grenada was ravaged by hurricane Ivan which destroyed the lives and livelihoods of the resilient people of

Grenada, the claimant states, it also destroyed important documentation proving the defendant's acceptance of his offer.

[3] The claimant alleges that the defendant caused 1 ½ acres to be surveyed by Andrew Alleyne, who was paid the sum of $600.00 by the claimant. Additionally he commenced making instalment payments, some of which was made to a named employee of the defendant in the sum of $400.00, whom he said never issued him a receipt. He thereafter decided that instead of the instalment payments he would phase the purchase of the property, purchasing a ½ acre first, so as to enable him to get a conveyance for that piece of property and thereafter to purchase the balance. The defendant, he claims, assisted in that process by commissioning a survey of the first ½ acre on the 23rd March 1996, to facilitate the phased purchase.

[4] On the 17th of October 1996 the claimant purchased a half acre or 21, 780 sq ft of the Calivigny Estate, paying 43,560.00. Additionally and of the receipts that he says were not lost in Hurricane Ivan he provides proof of further payments towards the larger piece of property (the disputed lands) of $40,000.00, paid in October 1995 and $5000.00 paid in March 1996. In 2005 the claimant through his Attorney requested that the parties proceed with the purchase of the second lot.

[5] The claimant states that all was well until June 2007, when things changed. A scrap metal dealer who had initially been made a party to these proceedings informed the claimant that he had received permission from the defendant to use the remaining one acre of land (the disputed lands), to store his used metal. He claims that the scrap metal dealer unlawfully dumped the scrap metal on lands which he had since acquired and on lands he was in the process of acquiring and which he was still in possession of and under a lease arrangement with the defendant. He states that two 15 ton trucks loaded with scrap metal dumped their loads on the disputed lands and also on his half acre, earlier purchased.

Factual contentions of the defendant

(6) The defendant sets up an entirely different version of events, denying that the claimant is renting the disputed lands, nor admitting that the claimant has been cultivating the disputed lands with

sugarcane. Instead, the defendant states that the claimant leased 1 ½ acres of land from the defendant situated at Hope Vale St. Georges and a ½ acre at Calivigny St. Georges. The defendant admits that the claimant had proposed purchasing 1 ½ acres of land at Calivigny and in October 1995 had paid $40,000.00. Subsequent to that, the defendant states the claimant returned to the defendant requesting that he be refunded the $40,000.00 as he could no longer purchase the 1 ½ acres of land. The claimant then asked to purchase a ½ acre of land from the defendant, which was sold to the claimant on the 17th October 1996, for the total sum of $43,560.00 and for which he paid a deposit of $5000.00 being "DG8". These monies were secured by a loan from Grenada Building and Loan Association who took out a mortgage over the ½ acre of land excised from the Calivigny Estate.

[7] The defendant avers that there was no agreement for the phased purchase of the remaining lands and any such agreement in any event, is statute barred by virtue of section 4 of the Real and Personal Property (Special Provisions) Act Cap 273 of the 1990 Revised Laws of Grenada, there being no written note or memorandum of the agreement to sell the remaining ½ acre or 1 acre of land to the claimant.

[8] The defendant states that in any event assuming the existence of the contract or contracts alleged, the defendant has not tendered performance nor has he shown that he is ready willing or able to perform under the contracts. The first defendant states that apart from the sum of $43,560.00 paid by the claimant for the ½ acre the defendant denies ever receiving any other monies from the claimant. The disputed lands are now leased to a third party.

The Evidence

[9] This case is not legally or factually dense. The defendant has done a factual reconstruction based largely on documentary evidence in its possession which provided a helpful chronology of the events relating to Denzil Gilbert's quest to purchase 1 ½ acres of land at the Calivigny Estate.

[10] Both parties exhibited a 1988 letter written by the claimant offering to purchase a piece of property forming part of the Calivigny Estate which the claimant claimed to be occupying by virtue a lease.

The terms of the offer were that payments were to be made by a specified down payment and unspecified yearly instalments. The defendant decided to solicit the recommendations of a review board in its consideration of a sale to the claimant and the defendant thereafter decided to sell the lands to the claimant at $2.00 per sq ft. The offer was made to the claimant who was required to respond within 2 weeks and he was given 6 weeks in which to pay off the land. Thereafter, it appears that on the request of the claimant, the defendant extended the date for the purchase of the property to September 1995, a letter to that effect was sent to the claimant on the 17th August 1995. In October 1995 the defendant paid a deposit of $40,000.00 towards the purchase of the land and was issued a receipt. It seems the claimant would have sought a reduction of the sale price to which the company responded on the 12th December 1995 stating that it was not prepared to reduce the sale price of the land. On or about the 11th March 1996 the defendant received a request from the claimant who asked that the defendant consider selling him the lands that he then had under cane production, which the defendant was not prepared to entertain. The claimant eventually paid the sum of $40,000.00 toward the purchase of the 1 ½ acre lot, but the $40,000.00 was subsequently refunded at the request of the defendant. There is no other record of payments made to secure any other purchase of land from the defendant. As to the $5000.00 payment that is supported by receipt. This was a deposit paid by the claimant after the return of the $40,000.00, to secure his interest in the purchase of a ½ acre excised from the 1 ½ acre.

Assessment of the evidence

[11] Overall, I was more convinced by the defendant's factual reconstruction which presented a more consistent version of events supported by documentary proof. The defendant's case is that the company had sold one lot of land at Calivigny to the claimant measuring a ½ acre, but thereafter there is no record of an agreement to sell any other land to the claimant, or in any event there was no agreement to sell the claimant 43,560 sq ft. The defendant claims it has not held any cash deposit in furtherance of any such agreement. Despite being written to over the years by various attorneys on the claimant's behalf, the defendant has remained consistent in its response. In fact the defendant claimed that it has for a long time been in negotiations with the Government of Grenada for the relocation onto that property of Lincoln Ross the scrap metal dealer who had previously been located at Port Louis. The defendant admits the initial offering to the claimant in

1995, which was extended to September 30th 1995. Although there is evidence of a cheque being paid by the claimant towards the purchase of the disputed lands, the defendant states that that sum was returned to the claimant at his request and there is no record in the company accounts during 1995, 1996 or 1997 of land sale deposits exceeding $40,000.00.

[12] In contrast I found the claimant's evidence to be incoherent in parts and on material issues. The claimant and the defendant shared different relationships. There was the relationship of lessor and lessee; that of and as seller and purchaser of lands; and a purchaser of and supplier of, goods. In relation to the first two, the claimant's own evidence was that he was under an obligation to make instalment payments to the defendant. He is however unable to establish whether certain receipts which he had recovered were in fact receipts that represented payments towards he lease obligations or towards his intention to purchase. He was inconsistent in establishing an agreement for the sale and purchase of the disputed lands on terms understood and agreed to by both parties. It is my sense from his evidence that the claimant harboured a desire to always own the lands, but was unable to meet a financial arrangement satisfactory to the defendant, and having tried over a number of years and engaging the defendant with different proposals he seemed to appear confused as to the status of the lands.

[13] By his own evidence, he abandoned the terms originally agreed by the parties opting instead to phase the purchase of the 1 ½ acres at Calivigny. The revised terms to which he refers are unsupported by the documentary evidence. The defendant vehemently denies receiving or retaining any deposit for a further transaction with the claimant. The defendant has offered evidence to contradict the claimant's evidence that he in fact paid $45,000.00 towards the purchase of a second lot of land or in any event an excess after purchase of the first lot $1440.00 towards the continuing agreed obligation to purchase the other two lots. As to the sum of $45,000.00 referred to by the claimant, the defendant states that at the request of the claimant the sum of $40,000.00 initially paid as a deposit for the 1 ½ acre was refunded. The sum of $5000.00 paid to the defendant and evidenced by receipt was a sum paid by the claimant after the return of the $40,000.00, to secure his interest in the purchase of a ½ acre out from the 1 ½ acre. I accept that evidence. It is consistent with the factual history presented by the defendant, and explains why the claimant did not pursue the execution of a second indenture in his favour. He simply had not

paid for the property. I am also satisfied that there had been no terms renegotiated for the phased purchase of the lots after the claimant reneged on his original intention to purchase the 1 ½ acre.

Application of the facts to the law

[14] The formalities of a contract are contained in the Real and Personal Property (Special Provisions) Act Cap 273 of the 1990 Revised Laws of Grenada and section 4 is instructive:—

> *"No action shall be brought whereby to charge any person upon any contract for sale of lands, or any interest in lands or any interest in or concerning them, unless agreement upon which the action is brought, or some memorandum or note thereof is in writing and signed by the person to be charged therewith or some other person thereunto by him lawfully authorised."*

The claimant agrees that this is the proper statement of the law but he relies on the authority of Steadman v Steadman [1974] 2 AllER977 to supports his submission that if one party to an agreement stands by and lets the other party incur expense or prejudice his position on the faith of the agreement being valid he will not be allowed to turn around and assert that the agreement is unenforceable, and as such the courts would not allow the statute to be used as an instrument of fraud.

[16] I have no quarrel with the principle supported by Steadman and Steadman which reflects the approach of the courts of equity when interpreting a UK statutory provision identical in its wording to the Grenada statute. But in order to rely on the Steadman principle the claimant must first establish an agreement between the parties. I have already indicated that his evidence in that regard is unconvincing and it is not supported by the documentary evidence. In addition the claimant has difficulty showing that he suffered prejudice. I find that despite his evidence to the contrary, the claimant had never been in occupation of the remaining 1 acre of land. I find from the evidence that the claimant was only in occupation of the first lot which he subsequently purchased. That is borne out by the minutes of the board of the defendant dated the 11th March 1996, referring to a letter from the claimant asking for him to purchase a ½ acre lot which is where he said he

occupied with his crop. In consequence I find the claimant has not met the statutory requirement for a valid and enforceable agreement.

[17] Even if I were wrong, I agree with the submissions of the defence that it would be unreasonable given the passage of so much time, to grant an order of specific performance, especially as the defendant has now incurred contractual obligations to a third party. The claimant's asserts that time was not of the essence in the completion of the contract, and thus should not be a bar to specific performance. That submission is unreasoned. The defendant had informed the claimant of its policy for any further land sales to him at the Calivigny Estate from the disputed lands. It would have had to be on a cash basis and within one year of the sale of the first lot.

[18] For all of the reasons stated above, I find that the claimant's claim to unproven and find there was no contract established between the parties for the phased purchase of the lands at the Calivigny Estate. I therefore dismiss the claim with the costs on the claim and on the injunction to be agreed or otherwise assessed. If costs are not agreed the parties are to file and exchange submissions on costs on or before the 5th March 2014, and the matter is to come on for the assessment of costs at the next hearing before the Master.

V. GEORGIS TAYLOR-ALEXANDER
High Court Master