

EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2008/0039

BETWEEN:

DOMINICA AGRICULTURAL INDUSTRIAL
DEVELOPMENT BANK

Claimant

And

JEFFREY CHARLES

Defendant

And

LOVETTE CHARLES

Interested Party

Appearances:

Mr. Christopher Forde of Isidore & Associates for the Claimant

Mrs. Dawn Yearwood-Stewart and Ms. Saudia Cyrus of Dawn Yearwood Chambers for the
Interested Party

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2013: October 25th

2014: April 15th
.....

DECISION

- [1] **THOMAS, J [AG]:** Following a default in the payment of a mortgage loan granted by the claimant, Dominica Agricultural Industrial and Development Bank, to the defendant, Jeffrey Charles, the process of enforcement by the claimant began, and reached the stage of an application for the settling of Articles of Sale of the mortgaged property.
- [2] The mortgaged property is land situate in Marigot in the parish of St. Andrew containing 29, 775 square feet and registered in Book of Titles T5 Folio 100 of the Register of Titles is affected by an order made by the court on 29th November 2011 wherein it was ordered that:
1. "The husband pay the wife a lump sum of \$200, 000.00 in full settlement of all matters of ancillary relief
 2. The wife to vacate the disco property upon payment of the lump sum within 30 days of receipt of payment
 3. If the husband fails to pay the said amount, the wife is at liberty to apply to the court for the sale of real estate to satisfy the order."
- [3] The wife is Lovette Charles, who on 18th July, 2012 filed a Notice of Opposition in relation to the application to settle the Articles for sale. The matter was heard having regard to the spirit and intendment of leave granted to the wife to sell real estate to satisfy the order of 29th November, 2011.
- [4] The notice is supported by an affidavit sworn to by the said Lovette Charles. The essence of the affidavit, as deposed by the affiant; is as follows: she occupied the property from 1988 with the children of the marriage and operates a shop therein; the claimant bank is seeking to sell the property for the sum of \$244,000.00 when the sum of \$265,327.75 is owed by the claimant; the Order of the court on 29th November 2011 was that she should vacate the said property 30 days after the claimant had paid her \$200,000.00 in full settlement of all matters of ancillary relief; she is unable to recover the said sum against any of the claimant's other properties since they have either been sold or mortgaged; and that her attorney has advised her that since the mortgage bank did not

make enquiries before granting the defendant a mortgage then its claim as mortgagee to possession is defeated by her overriding interest.

- [5] The issue for determination is whether the interested party has an overriding interest to which the claimants right to sell the property, being a portion of land in Marigot in the parish of St. Andrew containing 29, 775 square feet and registered in Book of Titles T5 Folio 100 of the Register of Titles of the Commonwealth of Dominica.

Submissions

- [6] In submissions on behalf of the interested party reliance is placed on section 70 (1) (a) of the **Registered Land Act, 1925**¹ and **William' s and Glyn's Bank v Boland**², section 23 of the **Married Woman Property Act**³ and sections 42 (i), 80 and 85 (i) (a) and (b) of the **Conveyancing and Property Act**⁴
- [7] According to learned counsel for the interested party: "it is submitted that Mrs. Charles has an equitable interest in the said property which is capable of binding her interest therein. The application to settle articles of sale and to fix the upset price for the sale of the said property should not be granted since the claimant bank is affected by constructive notice of Mrs. Charles equitable interest."
- [8] In submissions in reply, the submissions on behalf of the interested party are opposed on two grounds: (1) the contention that the interested party has an overriding interest is not grounded in the laws of the Commonwealth of Dominica; (2) the interested party's interest in the marital property has already been decided in ancillary proceedings in the Order of Justice Cottle; and (3) assuming the court were to find that the interested party has an overriding interest in the subject property, the claimant posits the defence of

¹ UK

² [1981] AC 487

³ Cap. 35:60

⁴ Cap. 54:01

laches and submits that it would be unjust to allow the interested party to realize its overriding interest equitable to the detriment of the claimant.

Reasoning and conclusion

[9] But the nature and extent of an overriding interest is made clear by the following definition contained in **Oxford Dictionary of Law**⁵ at page 349:

“Certain rights and interest in registered land, listed in the Land Registration Act 1925, that cannot be protected by registration but, unless overreached, will bind the registered proprietor and any third party acquiring the land or interest in it. The list includes legal easements and profits *à prendre*, rights of persons in actual occupation, rights acquired under the Limitation Acts.... and leases granted for terms up to 21 years.”

[10] In so far as the interested party’s claim or assertion of an overriding interest is concerned, the plain position is that no reception provision in a Dominican statute for the reception of the English Law of Property Act, 1925 in general, or section 70 thereof in particular. Nor is there any provision in the **Title by Registration Act**⁶ which speaks to an overriding interest in property.

[11] The interested party also places reliance on section 23 of the **Married Women’s Property Act**⁷ and section 42 (i) of the **Conveyancing and Law of Property Act**⁸ to ground what she claims.

[12] Section 23 of the Married Woman Property Act is in these terms:

“Notwithstanding that a married woman is restrained from anticipation the court may if it thinks fit, where it appears to the court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.”

[13] On the other hand, section 42 (i) of the **Conveyancing and Law of Property Act** provides that:

⁵ 5th Ed., 2002

⁶ Chap 56:50

⁷ Chap. 35:60

⁸ Cap 54:01

"A mortgagee exercising a power of sale comprised by this Act shall have power, by deed, to convey the property sold for such estate and interest therein as is the subject of the mortgage, freed from all estates, interest and rights to which the mortgage has priority, but subject to all estates, interest and rights which have priority to the mortgage."

[14] In essence, learned counsel for the interested party submits that: "It is evident that the wife has an equitable interest in the subject property by having resided there for over 15 years. Based on the foregoing, the court should bind the interest of Mrs. Lovette Charles as it will be for her benefit since she is in actual occupation of the property."

[15] As far as learned counsel for the claimant is concerned, the contention as to the application as of sections 23 of the **Married Woman's Property Act** and 43 (i) of the **Conveyancing and Law of Property Act** are premised on the existence of an interest, and since the interested party has no such interest the provisions do not assist her as there is nothing to show that the interested party has interest under the law relied on which overrides the claimant's mortgage interest.

[16] With respect to section 85 (i) and (b) of the **Conveyancing and Law of Property Act**, as relied on by the interested party, learned counsel for the claimant submits the following: "The interested party however fails to set out exactly how section 85 (i) (a) and (b) [of the **Conveyancing and Property Act**] supports her submission of an overriding equitable interest in registered land with a mortgage."

Conclusion

[17] The overriding interest which the interested part claims is not and interest known to the law of the Commonwealth of Dominica. In any event, the right claimed runs through the entirety of the application with a predictable result. Further, any right of this nature must necessarily be known or registered on the Register of Titles. Further still, at the time of the determination of the ancillary rights, the right claimed should have been advanced, which it was not. This leads to the emergence of the defence of laches, as contended by

learned counsel for the claimant⁹, and with which the court agrees. In any event, the Order of 29th November 2011 made in this regard cannot, without statutory authority, be interpreted as giving the interested party priority over the claimant's contractual and statutory rights.

[18] All the order sought to do is to allow the interested party to realize her award of \$200,000.00 by way of a payment by her husband, the Order goes on to say that: "if the husband fails to pay the said amount, the wife is at liberty to apply to the court for sale of real estate to satisfy the order." But the interested party has deposed in her affidavit in support that the residue of the real estate owned by the defendant has either been sold or mortgaged. And hence the claim with respect to the subject property.

[19] The application is hereby denied for the reasons given.

Costs

[20] In the circumstances of this case there is no order as to costs.

ORDER

IT IS HEREBY ORDERED AND DECLARED as follow:

1. The interested party has no overriding interest under any enactment or rule of law applicable to or in force in Dominica; and the application in that regard is accordingly denied.
2. There is no order as to costs.

Justice Errol L. Thomas

High Court Judge [AG]

⁹ Authorities cited: Lindsey Petroleum Co. v Hurd [1874] LR 5 P.C. 221; Anachuna Nwakobi and ORS v Eugene Nzekwu and Anor [1964] 1 W.L.R 1019