

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

ANGUILLA

Claim Number: AXAHCV2011/0075

Between

MAUREEN DANIELS

Claimant

And

MORIEX HULIGAR
JOSELYN HULIGAR

Defendants

Before:

Justice Cheryl Mathurin

Appearances:

Ms. S Hunter for the Claimant
Ms. Paulette Harrigan for the Defendants

2014: April 15th; 16th; 28th
May 8th; July 10th

JUDGMENT

- [1] **MATHURIN, J;** The claimant, Mrs. Daniels is registered proprietor of a parcel of land (the land) described as South Central Block 38512B Parcel 35. The parcel was previously registered in the name of her ex husband Clement Daniels and herself as joint owners. Mr. Daniels died in 2000 and the land was subsequently registered in her name as sole surviving joint tenant in 2010.
- [2] The defendants (Moriex and Joselyn Huligar) had in 2001 lodged a Caution against the land claiming a beneficial interest in the land pursuant to an Agreement with Mr. Daniels dated 26th October 1999 for the sale and purchase of the land for US\$50,000.00. The Caution was removed for failure of the Huligars to file a claim in the High Court before 28th July 2011 pursuant to a

direction of the Land Registrar and the land was subsequently registered to Mrs. Daniels as sole owner.

- [3] After the Caution was removed, Mrs. Daniels wrote to the Huligars requesting that they vacate the land. The Huligars have refused to move and Mrs. Daniels brought this claim seeking a declaration that they are not entitled to remain on the land and an injunction restraining them from entering and using the land and also compelling them to remove vehicles which they had parked on the land. Mrs. Daniels also seeks damages for trespass.
- [4] The Huligars state that Mrs. Daniel has always been aware of the agreement for sale and had actually agreed to it some time after September 1999. Moriex states that he called her and that she told him that if Mr. Daniels wanted money he could go ahead and sell the land. Moriex states that he also told her that he would be the one purchasing the land.
- [5] Moriex states that it was after this conversation that Joselyn paid Mr. Daniels US\$25,000.00 in October 1999 with the agreement in writing that he would pay the balance of US\$25,000.00 within 18 months after which time the parties could reconsider the deadline if the balance had not been paid by then. This is evidenced by a receipt dated October 26th 1999. (see tab 9 of core bundle).
- [6] The balance was never paid. Shortly after the first payment, the Huligars state that it was discovered that the boundaries were moved. Joselyn states that Mr. Daniels together with the then Registrar of Lands and a land surveyor attended the property and he states that he was assured by Mr. Daniel that the problem would be sorted out. Regrettably Mr. Daniels fell ill and died overseas in December 2001 without sorting out the boundary issue.
- [7] Mrs. Daniel insists that she was unaware of any agreement for sale with the Huligars and was not privy to same. She states that she did not give her consent or authority for such an agreement and that despite her demands through her Attorney for them to vacate the land, they have refused to do so. The Huligars counterclaim that Mrs. Daniels should be estopped from denying she consented to or encouraged them to purchase the land. They also claim that they have an overriding interest in the land and seek court orders for a survey of the land, adjusted value and payment as well as the transfer of the land to them.

Evidence

- [8] I found the evidence of Mrs. Daniels to be inconsistent in some material aspects. She asserts in her witness statement that she knew nothing of the transaction for the sale of land but on cross examination she admitted that before October 1999, Moriex told her on the phone that Mr. Daniels was going to sell the land. Further, in arguments before the Land Registrar for the removal of the Caution, Mrs. Daniel's then Attorney Mr. Meade states that "*some time in 1999, the respondent*

(Moriex) called the applicant and told her that Mr. Daniels was selling the land and that after the sale she would receive her share of the proceeds."

- [9] On being questioned in examination in chief about the witness statement of Ms. Anne Edwards her friend and cousin, a witness for the Huligars, she denied telling Ms. Edwards that monies had been paid and that she was expecting payment of the balance. She also denies telling Ms. Edwards that Moriex had the option of paying the balance or having his money returned and her getting back the land.
- [10] Mrs. Daniels also states that she did not ask her Attorney Mr. Wigley to speak to the Huligars or to act for her to facilitate correspondence with them about the land. However Mr. Wigley, on cross examination states that Mrs. Daniel asked him to act in relation to the land to facilitate communication between her and the Huligars. Mr. Wigley states however that he was not instructed to collect the outstanding balance of US\$25,000.00 although he did state that Joselyn told him of the boundary issues stating that if they were fixed he would pay Mrs. Daniels the money.
- [11] The evidence of the Huligars also was in instances inconsistent. Moriex states that he did not know the land was jointly owned. He states that he contacted Mrs. Daniels because she needed to know that the land was being sold and that he was in favor of her getting the money because she used to be married to Mr. Daniels. In his witness statement however at paragraph 10 he states "*If the Claimant had objected to the sale of the land I would not have proceeded with the transaction but based upon the Claimant's representations that she consented to the sale and her encouragement that I could buy the land I went to Caribbean Commercial Bank on the 19th October 1999..."*
- [12] Moriex also stated on cross examination that he never told Mrs. Daniels that he wanted to buy the land but that she was the one who suggested he buy it, however in his witness statement he states that "*I told her I wanted to buy the land and the Claimant stated that if Clement Daniels needed the money, he could sell the land and I could purchase it."* He maintained however that Mrs. Daniels did state that if Mr. Daniels was in need of money he could sell the land.
- [13] Joselyn stated in his witness statement that when he told Mr. Daniels that he wanted to purchase the land, "*he indicated that the Claimant's name was on that piece of land and when I expressed concern about his ability to sell the land to me, Clement Daniels made it clear to me that it would not be a problem."* On cross examination he reiterated that he did tell Moriex that Mrs. Daniels was a joint owner of the land.
- [14] Joselyn also stated that he heard Mr. Daniels speaking to Mrs. Daniels on speaker phone and she told him to go ahead and sell the land if he needed the money. On cross examination, he insisted

that Mrs. Daniels did give her consent to the sale and he was encouraged to purchase the land by virtue of that conversation.

[15] Ms. Anne Edwards gave a witness statement on behalf of the Defendants. She stated that she was a cousin and friend of Mrs. Daniels and that she met with her in either 2001 or 2002 and that in the course of conversation, Mrs. Daniels told her that Moriex had paid Mr. Daniels some money as a deposit but had not finished the final payment and she was expecting to get the rest of the payment. She stated that Mrs. Daniels said that Moriex had the option of paying the agreed balance or she would return the money he had paid and get back the land. She also stated that Mrs. Daniels never stated that she objected to the sale of the land. On cross examination she contradicted herself saying that Mrs. Daniels never said she was expecting to receive the rest of the money in relation to the land. I did not find her evidence to be truthful.

[16] Having heard all the witnesses, I find as a fact that Moriex and Joselyn did know about Mrs. Daniels' interest in the land when they agreed to purchase it from Mr. Daniel. The inconsistencies in their evidence lead the Court to believe that they are not being truthful in this regard. I also find that Mrs. Daniels was not truthful in saying she did not know of the sale of the land and I believe that she had given her consent for its sale when Mr. Daniels, who had fallen ill, needed the funds.

Overriding Interest

[17] The Registered Land Act (RLA) section 28 states;

"Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without there being noted on the register –

...

(g) The rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such persons and the rights are not disclosed.

...

But the Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he thinks fit."

This section applies to all registered land in Anguilla. I note that there is no evidence that any inquiry was made of the Hulgars as to the quality in which they occupied the land.

[18] Remy J in **Oliver Adams and Olivia Adams v Pamela Adams** (ANUHCV2006/0666) referred to the Court of Appeal decision **Andre Winter and Stephan Winter v Charles Richardson**

(HCVAP2006/0025 Antigua) wherein it was held that *"the rights of a person in actual occupation under section 28 (g) of the Registered Land Act are not protected as an overriding interest where that person is a bare or gratuitous licensee."* Remy J goes on to explain that a person can only protect a **proprietary** interest by actual occupation and that the intent of the section is to give legal effect to the rights that people have if they are in actual occupation of the land but their rights are not registered.

- [19] I note that the fact that section 28(g) protects the rights of a person who is in actual occupation of land as a purchaser whose title was not registered has received specific judicial approval in the case of **Spiricor of St. Lucia Ltd v Attorney General of St. Lucia and Another** (1997) 55 WIR 123 where it was stated;

"In my view although the section does not refer to the equitable interest of a purchaser whose title has not been registered as an overriding interest, it could and should be included among those equitable rights which are treated as overriding if the purchaser is in actual occupation. This has been the construction given to similar provisions in the English land registration legislation. Given occupation, ie presence on the land, I do not think that the word "actual" was intended to introduce any additional qualification, certainly not to suggest that possession must be "adverse"; it merely emphasizes that what is required is physical presence, not some entitlement in law."

- [20] The Huligars state that they have been in occupation of the land before and since the payment of the US\$25,000.00 in October 1999. Mrs. Daniels claims that she noted the defendants' occupation in 2001. The payment of the money and the occupation of the land are not in dispute and based on the facts and the law before me, I am of the view that an overriding interest has been established. The claim therefore that the Huligars are trespassers cannot be sustained and as such that claim is dismissed.

Counterclaim

- [21] The Huligars claim that the land is not 1¼ acres in accordance with the agreement made with Mr. Daniels and they are seeking an order directing that Mrs. Daniels survey the land in question. They also seek an order that they pay a prorated balance based on that survey if necessary. They rely on their witness statements and the Caution placed on the land in April of 2001. The Caution was subsequently removed in June 2011 for failure by the Joselyn to file a claim with respect to his interest in the land over the period of 10 years. The Huligars have presented no expert evidence, Land Registry map or survey to substantiate the claim that the boundaries are not in accordance with the Land Register.

- [22] Section 17 of the RLA states that

- “(1) Except where, under section 18, it is noted in the register that the boundaries of a parcel have been fixed, the Registry Map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel”*
- (2) Where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.*
- (3) Where the Registrar exercises the power conferred by subsection (2), he shall make a note to that effect on the Registry Map and in the register and shall file the plan or description as may be necessary to record his decision.*
- (4) No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.*

[23] That the Huligars are interested parties is clear as they are in actual occupation of the land and there is no dispute that they paid US\$25,000.00 to Mr. Daniels. The Registrar of Land must have been persuaded that the Huligars held an unregistrable interest in order for her to have put the Caution on the land in the first place. In accordance with the RLA, it was therefore the Huligars' duty as purchasers to inspect and ensure that what they intended to purchase was in accordance with the Land Register. They cannot seek to have this issue resolved in a claim before the court not having complied with the provisions of the RLA. This is expressly prohibited by subsection (4) above.

[24] Accordingly this court, having no jurisdiction to deal with disputes arising as to the position of a boundary, that primary jurisdiction being exclusively reposed in the Registrar of Lands, dismisses the counterclaim. Additionally the court will not make an order for the specific performance of the contract where by the representations of Counsel the boundary is in dispute and has the potential therefore to affect any adjoining land owners.

[25] In conclusion, the Order of the court is summarized as follows:

- (a) That the claim herein is dismissed.
- (b) That the counterclaim herein is dismissed
- (c) That each party bear their own costs.

Cheryl Mathurin
High Court Judge