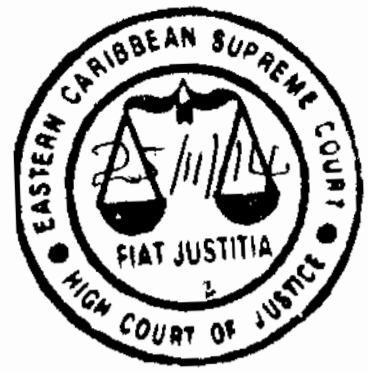


ST VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)



CLAIM NO 94 OF 2009

BETWEEN:

POMME-GRANTE LTD (formerly CPCT (SVG))
Ltd(acting through its director INGRID PUNNETT)

Claimant

AND

- [1] GREGORY BROWNE
- [2] SHELLY-ANN SUTHERLAND

Defendants

Appearances

Ms Patricia Marks for the Claimants

Mr Carlyle Dougan, QC for the Defendants

.....
2014: November 25
.....

JUDGMENT

[1] **LANNS, J [Ag]** By Fixed Date Claim Form accompanied by a Statement of Claim filed on 29th March 2009, the Claimant, Pomme-Grante Ltd (Pomme-Grante) sought the following reliefs from the Court:

- (a) Recovery of possession of a parcel of land at Belvedere, forthwith;
- (b) An order that the Defendants do forthwith vacate the said property situate at Belvedere

- (c) Mesne profits as of 31st March, 2009 in the amount of \$416.67 and continuing at \$138.89 per month until judgment
- (d) Costs

THE CLAIMANT'S CASE

- [2] Pomme-Grante's pleaded case is that by virtue of an agreement dated 31st May 2002, it leased premises situate at Belvedere to the First named Defendant, Gregory Browne (Mr Browne). By letter dated 23rd January 2006, Mr Browne was granted an extension of the lease to 31st December 2008. By a Notice to Quit dated 8th July 2008, the Defendants were asked to vacate the premises by 31st December 2008. They refused to vacate the premises and thus, Pomme-Grante deems them to be tenants at will with the result that the Claimant is being deprived of its right to possession of the property. The Defendants continue their unlawful occupation of the property and have not paid up the amounts owing upon the Defendants vacating the premises.

THE DEFENDANTS' CASE

- [3] The Defendants' pleaded case is that they admit that Mr Browne entered into a lease agreement with Pomme-Grante and paid the rent as stipulated in the lease. The Defendants also admitted that they signed the letter dated 23rd January 2006 agreeing to the lease of the subject property for an extended period of three years. However, the Defendants contended that the Claimant is not the legal owner of the land, and that the Notice to Quit was unsigned. They counterclaimed for cancellation of Pomme-Grante's Deed numbered 299 of 2001 on the basis that its predecessor in title did not legally own the subject land and thus, they say that the predecessor's Deed should also be cancelled. They further counterclaimed for repayment of the sum of \$8,000.00 and damages for misrepresentation. On the strength or weakness of the Defence and Counterclaim, Pomme-Grante moved to strike the Defendants' Statement of Case in its totality.

THE APPLICATION TO STRIKE

- [4] The application to strike was heard by Her Ladyship Justice Gertel Thom on 11th November 2012, and the Learned Judge, in a written decision delivered 11th March 2013, acceded to Pomme-Grante's application and struck out the Defence and Counterclaim. The Defendants were ordered to pay costs in the sum of \$1,110.00, and the matter was adjourned to 24th April 2013. Meanwhile, the Defendants, being aggrieved by the decision of the Learned Judge, filed a Notice of Appeal against the said decision. Pomme-Grante answered the Defendants' Notice of Appeal with an application to strike out the said Notice of Appeal on the ground that the Notice was filed without leave of the Court. The appeal was heard by a single Judge of the Court of Appeal (Blenman, J.A.) who, on the 20th day of March 2014, struck out the Notice of Appeal as being a nullity having been filed without leave of the Court.
- [5] On the 9th of July 2014, the Defendants filed an application intituled: "In the Supreme Court of St Vincent and the Grenadines and the West Indies Associated States High Court of Justice" for an order that leave

be granted to extend the time to apply for leave to appeal to the Court of Appeal. The application came up before me on the 30th of September 2014. I dismissed the application for want of jurisdiction as I was of the view that the application should have been intitled in the Eastern Caribbean Supreme Court, Court of Appeal, and not in the High Court of Justice.

- [6] On the 20th November 2014, the matter came up before me once again for further consideration. Ms Patricia Marks appeared for the Claimants and Mr Cecil Williams appeared holding for Mr Carlyle Dougan QC for the Defendants. When the Court enquired as to the status of the matter, Ms Marks gave a brief outline of the events that marked the progress of the matter through the system. Counsel went on to indicate that the matter is before me for continuation as no judgment has been entered in the matter. Mr Dougan QC who was present, asked for an audience (despite not being properly attired for such audience). The Court reluctantly afforded Mr Dougan QC the courtesy of an audience whereupon Learned Queen's Counsel expressed his intention to appeal the decision of the single Judge before the FULL COURT of Appeal. I indicated that I was prepared to continue the matter since there was nothing before me that hindered it from proceeding with the matter. At that point, Mr Dougan QC indicated that he was engaged in a matter in the Criminal Assizes, and he sought a short adjournment to allow him to complete some research in preparation for his trial which was to continue on next day Friday 21st. November. Without objection from Ms Marks, I granted a short adjournment to Tuesday 25th November 2014.

DISPOSITION

- [7] I have had sight of, and have read the well reasoned Judgment of the Learned trial Judge, in which she struck out the Defendants' Defence and Counterclaim. To my mind, the effect of striking out the Defence and Counterclaim is that the Claimant is entitled to the relief claimed in the Statement of Claim and costs up to and including the date of hearing. However, in so far as the damages are concerned, the Claimant will be required to prove same.

I have also had sight of an Order from the Court of Appeal (His Lordship Michel, J.A.) dated the 21st day of June 2013, refusing an application by the Intended Appellants Gregory Browne and Shelley-Ann Sutherland for a stay of the execution of the said Order made by Thom J on the 11th March 2013, on the ground that the application does not satisfy the criteria for granting a stay of proceedings.

Additionally, I have had sight of the Order of Her Ladyship Blenman, J.A. dated 20th March 2014, striking out the Intended Appellants' Notice of Appeal as being a nullity, it having been filed without leave of the Court. As far as I am aware, there has been no appeal, or leave to appeal against the aforementioned Orders of the Court of Appeal. In the foregoing premises, I enter judgment for the Claimant in the following terms:-

- [1] The Defendants do within three months of today's date quit and deliver up vacant possession of the property which is the subject of these proceedings, being:

ALL THAT Lot, piece or parcel of land situate at Belvedere in the State of St Vincent and the Grenadines, known as Lot Number 2 containing by admeasurement Ten Thousand, Seven Hundred and Seventy (10,770) Square Feet , abutted and bounded howsoever, and is more particularly described in the Schedule to Deed of Indenture numbered 299 of 2009 dated 31st December 2000 in favour of CPCTI (SVG) Limited (now Pomme-Grante Ltd).

- [2] The Defendants do pay to the Claimant damages and costs to be assessed upon application by the Claimants.
- [3] The Claimant shall file and serve its application for assessment within 30 days of today's date.


PEARLETTA E LANIS

High Court Judge [Ag]