

**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**SAINT VINCENT AND THE GRENADINES**

**SVGHCV2008/0157**

**BETWEEN:**

**PAUL O'GARRO of Fair Hall in the State of  
St. Vincent and the Grenadines**

(In substitution for LEON O'GARRO Deceased)

**-and-**

**FIRST CLAIMANT**

**PAUL O'GARRO of Fair Hall in the State of  
St. Vincent and the Grenadines**

**SECOND CLAIMANT**

**- AND -**

**RANDOLPH CARR formerly of the State of  
St. Vincent and the Grenadines but who is believed  
to be living abroad**

**DEFENDANT**

Appearances: Mr Parnel R. Campbell Q.C. Counsel for the Claimants, and Mr Carlyle  
Dougan Q.C. Counsel for the Defendant.

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2015: Jan.14

Mar. 18

Apr. 15  
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**Decision**

**BACKGROUND**

[1] **Henry, J. (Ag.):** The subject matter of this claim is property located at Prospect which allegedly served as the residence of Leon O'Garro deceased. Paul O'Garro is Leon O'garro's grandson allegedly. The claim in this matter was

commenced by Leon O'Garro and Paul O'garro by Fixed Date Claim Form.<sup>i</sup> Leon O'garro has since died. Paul O'garro was substituted in his place and now represents his estate's interest in the claim. From the pleadings, it is alleged that Randolph Carr once resided with Mr and Mrs Leon O'garro in the property at Prospect. It is alleged further that Mrs O'Garro is Mr Carr's aunt. By Deed of Gift 2499 of 1997 the subject property was purportedly conveyed to Randolph Carr, *ex facie* by Leon O'Garro. Leon O'Garro subsequently executed Deed of Gift No. 3433 of 2003 purportedly transferring the property to Paul O'Garro.

[2] Paul O'Garro<sup>ii</sup> seeks an order from the court revoking the former Deed<sup>iii</sup> on the ground that it is a fraudulent conveyance which Leon O'Garro did not knowingly sign. Randolph Carr contends that the deed is not fraudulent and he has counter-claimed seeking among other things a declaration that he is entitled to possession of the property. Paul O'Garro filed submissions<sup>iv</sup> on two preliminary points of law, the first in respect of non-payment of stamp duty on the impugned Deed which he contends makes it inadmissible. He argues that Randolph Carr's counterclaim for possession of the property is statute-barred. He seeks an order firstly, that Deed of Gift 2499 of 1997 is inadmissible.

[3] Secondly, he asserts that any right which Randolph Carr might have had in the property has become statute-barred through adverse possession based on Leon O'Garro's unbroken occupation and possession (to the exclusion of Randolph Carr) from 1997<sup>v</sup> until his death. Consequently, he has mounted a challenge to Randolph Carr's defence and counterclaim presumably seeking to have his defence and counterclaim struck out. Alternatively, he might have contemplated that it would lead to successful disposition by summary judgment. He has stopped short of expressly seeking either order but such intention may be implied. Randolph Carr filed submissions in response belatedly<sup>vi</sup> countering that Paul O'Garro faces similar issues with respect to the admissibility of Deed No 3433 of 2003. The implication is that the O'Garros' statements of case should be

struck out. He contends however that the preferred outcome is for a full ventilation of all the issues at trial.

## **ISSUES**

[4] The issues which arise for consideration are whether:

1. Deed No. 2499 of 1997 and/or Deed No. 3433 of 2003 should be ruled inadmissible in the proceedings?
2. Randolph Carr's statement of case should be struck out or summary judgment entered for Paul O'Garro, representative of Leon O'Garro's estate or for Paul O'Garro in his personal capacity?
3. Paul O'Garro's statement of case brought in his personal capacity or as representative of Leon O'Garro's estate should be struck out?

## **ANALYSIS**

### **Issue No 1 - Should Deed No. 2499 of 1997 be ruled inadmissible in these proceedings?**

[5] Paul O'Garro submits that Deed of Gift 2499 of 1997<sup>vii</sup> erroneously describes Leon O'Garro as Randolph Carr's father. He contends further that the two are not blood relatives as implied in the attached statutory declaration of the attorney who registered the deed and that the attorney made a mistake by declaring that the transfer did not attract stamp duty. He submits that the deed was subject to payment of stamp duty and was improperly exempted because of those dual assertions on the face of the document. Further, Paul O'Garro argues that while Randolph Carr neither admits nor refutes that Leon O'Garro is his father, he implicitly acknowledges the non-existence of that blood relationship between them.<sup>viii</sup> Consequently, he contends that the non-payment of stamp duty renders the deed inadmissible as evidence in the proceedings.

[6] Randolph Carr submits in response that if Paul O'Garro's submission is correct and Deed No 2499 of 1997 is thereby rendered inadmissible, the same principle will apply in respect of Deed No 3433 of 2003. He contends that this is because as on the pleadings, there is no satisfactory evidence of the existence of the relationship of grandfather and grandson between Leon O'Garro and Paul O'Garro. In this regard, Mr Carr argues that he does not accept that such a relationship exists because the pleadings indicate that Leon O'Garro was not married to Paul O'Garro's grandmother when she conceived his mother. Mr Carr maintains that unless it is established that Leon O'Garro is the father of Paul O'Garro's mother, there is no proof of that relationship before the court. He contends further that proof of that relationship for purposes of succession to property can be provided only through admission or establishment of paternity during the putative father's lifetime.<sup>ix</sup> He cited the Status of Children Act<sup>x</sup> and **McKenzie v Sampson**<sup>xi</sup> in support of these submissions. The judges in that case considered the provisions of that Status of Children Act. Mr Carr concludes that the justice of the case demands full ventilation of the issues at a trial and the court may exercise its discretion to enable the parties to make the necessary arrangements to pay the prescribed stamp duty on the respective Deeds.<sup>xii</sup>

[7] The law mandates that (with few exceptions) that documents dealing with title to and transfer of real estate must be registered in the Registry of the High Court.<sup>xiii</sup> Once registered, documents operate at law and in equity to convey the right, title or interest it purports to transfer according to the priority of the date of registration.<sup>xiv</sup> *Inter vivos* conveyances or transfers of real property attract stamp duty if the sale price differs from the open market price, except where the parties to the agreement are spouses, brothers and sisters, parents and children, grandparent and grandchild.<sup>xv</sup> A Deed of Gift or Conveyance which is not stamped with the prescribed stamp duty is not admissible in evidence in court unless and until the applicable stamp duty and a penalty are paid.<sup>xvi</sup>

[8] Nonetheless, the presiding judge is empowered to grant an adjournment to facilitate the payment of stamp duty.<sup>xvii</sup> In exercising this discretion, the judge is required to take account of all the facts and circumstances of the case including whether any party would be prejudiced by such adjournment. In doing so he must take into account the overriding objective of the Civil Procedure Rules 2000 (“CPR”) which is to dispense with matters fairly and justly. There is no evidence before the court on which to assess the relevant facts regarding Paul O’Garro’s mother’s paternity or that of Randolph Carr. It would likely be prejudicial to the parties to render a decision on the pleadings with no evidence having been led by any of them. I agree with Randolph Carr’s submissions that it is just to permit a full ventilation of this issue at the trial and to defer a ruling on the admissibility of the Deeds until that time. Both parties are represented by experienced and learned Queens Counsel who have both demonstrated a full appreciation of the applicable law and legal principles and their capacity to provide appropriate guidance to their respective clients on whether stamp duty is payable and if so how much. I make no finding regarding whether either Deed attracts stamp duty. This is however an appropriate case which requires scrutiny by the Accountant General. The learned Registrar will accordingly be permitted to provide him with a copy of this decision.

**Issue No. 2 - Should Randolph Carr’s statement of case should be struck out or summary judgment entered for Paul O’Garro, representative of Leon O’Garro’s estate or for Paul O’garro in his personal capacity?**

[9] Part 15 of the CPR establishes the procedural framework governing application and disposal of summary judgment proceedings. The court is empowered to give summary judgment on the claim or an issue in the claim if it considers that the claimant on the one hand has no real prospect of succeeding on, and the defendant on the other hand has no real prospect of successfully defending the claim or issue.<sup>xviii</sup> However, summary judgment is not available in proceedings begun by fixed date claim.<sup>xix</sup>

### Summary judgment

[10] A party seeking summary judgment must serve a Notice of Application not less than 14 days before the hearing of the application supported by affidavit evidence.<sup>xx</sup> In the application he must identify the issues that he proposes the court to deal with.<sup>xxi</sup> Paul O'Garro has not filed a Notice of Application and affidavit in support in his personal capacity or as representative for Leon O'Garro's estate pursuant to these provisions. There is therefore no formal application for summary judgment before the court as contemplated by those rules. Furthermore, this claim having being commenced by Fixed Date Claim Form is not amenable to summary judgment. If the import of Paul O'Garro's submissions on this issue is to move the court to grant him summary judgment, this is not permitted and his request would have to be dismissed. No order for summary judgment can therefore be made in favour of any of the parties in this case.

### Striking out – Randolph Carr's statement of case

[11] Paul O'Garro submits that based on the pleadings, the court is entitled to find that:

- i) Leon O'Garro resided continuously in the disputed property which served as his home and the source of his livelihood at all material times;<sup>xxii</sup>
- ii) Leon O'Garro never relinquished possession of the disputed property at any time and his continuous possession must be accepted as evidence that he exercised adverse possession in opposition to Randolph Carr's paper title in Deed No. 2499 of 1997;<sup>xxiii</sup>
- iii) Randolph Carr would have acquired the right to immediate possession of the disputed property immediately on registration of Deed No. 2499 of 1997 yet he never entered possession of the disputed property, having lived in the USA at all material times, and he did not bring a claim to enforce any such right or interest until 2003 by which time his claim would have been barred. Paul O'Garro submits that consequently Leon

O'Garro's continued occupation of the disputed property made him a person in adverse possession in the absence of:

- a) any claim, admission or proof that he did so with Randolph Carr's consent; or
- b) acknowledgment of Mr Carr's title to the property;
- c) any pleadings tending to establish a trust relationship between Leon O'Garro as trustee and Randolph Carr as beneficiary;<sup>xxiv</sup>
- iv) Leon O'Garro remained in adverse possession for 12 years and over one month;<sup>xxv</sup>

and in those circumstances any right, title or interest acquired by Randolph Carr through the disputed deed became statute-barred and extinguished by September 2009 before Leon O'Garro died.<sup>xxvi</sup> Based on the foregoing, the O'Garros presumably seek an order that Randolph Carr's statement of case be struck out in respect of any right, title or interest he might have acquired by Deed No. 2499 of 1997.

[12] Essentially, the O'Garros seek an order striking out Randolph Carr's Defence on the ground that it does not establish any basis on which Mr Carr can successfully defend Leon O'garro's claim to adverse possession of the disputed property. Carr counters that striking out the defence is not the appropriate manner for the court to determine issues related to adverse possession and limitation.

[13] The court may strike out the whole or part of a claimant's or defendant's statement of case if it discloses no reasonable ground for bringing or defending the claim.<sup>xxvii</sup> However, the court exercises this discretion "sparingly and only in the most clear and obvious cases ... because it errs on the side of having trials on the merits of cases."<sup>xxviii</sup> When considering an application to strike out a statement of case, the court reviews the statements of case and examines the particulars to see if a cause of action is thereby established. During this exercise, it is assumed that the allegations contained in the pleadings are truthful and the

court is not required to conduct a detailed and minute examination of the facts, allegations and documents to ascertain whether it discloses a cause of action.<sup>xxix</sup>

[14] Similarly, the court is not concerned with analyzing the evidence to determine its prospects of success or whether a party can prove his case.<sup>xxx</sup> The court must be mindful that even if the case is weak and not likely to succeed that is no basis for striking it out, provided that the statement of claim or particulars discloses a cause of action or raises a question which the judge must decide.<sup>xxxi</sup> The court is also required to give effect to the overriding objective to deal with cases justly.<sup>xxxii</sup>

[15] This matter was initiated by Fixed Date Claim Form on May 13, 2008. The O'Garros obtained leave of the court to effect service on Mr Carr by publication in the Newspaper.<sup>xxxiii</sup> Randolph Carr filed his Acknowledgement of Service on June 12, 2008 acknowledging service of the claim form and statement of claim on June 9, 2008. He filed his Defence on August 22, 2008. Both his Acknowledgement and Defence were filed within the 42 days specified by court order.<sup>xxxiv</sup> The O'Garros filed a Reply three years later.<sup>xxxv</sup> Five years and three months after filing his defence, Randolph Carr filed an amended Defence and Counterclaim<sup>xxxvi</sup> to which the O'Garros filed an Amended Reply to Amended Defence, Defence to Counterclaim and Counterclaim to Counterclaim a month later.<sup>xxxvii</sup> Just last month,<sup>xxxviii</sup> some 7 years after the initial claim, Mr Carr filed a Reply to the Claimant's Defence to Counterclaim and Defence to the Claimants' Counterclaim to Counterclaim. This multiplicity of protracted pleadings raises the sub-issue of which pleadings are relevant in determining the O'Garros' application and Mr Carr's cross-application.

#### Sub-issue: Which pleadings are validly before the court?

[16] No procedural irregularity arises with respect to filing of the Defence. The O'garros' Reply was filed within the extended time period granted by the court.<sup>xxxix</sup> It is therefore validly filed. Randolph Carr has not applied for extension of time to file his Amended Defence but it is not invalidated for that reason. The



general rule is that a Defence should be filed within 28 days after service of the claim form and may by agreement between the parties be filed up to 56 days after that deadline.<sup>xi</sup> Mr Carr's Amended Defence was filed late having being filed after the 42 days in the court order. However, his Defence is not thereby invalidated because a defendant may file a Defence late without leave of the court<sup>xii</sup> and may apply for extension of time to do so.<sup>xiii</sup> He is also entitled to amend his statement of case once without the court's leave, provided it is done before the first case management conference.<sup>xiii</sup>

[17] Although, no case management conference (so called) appears to have been fixed, this is not an irregularity in the proceedings as this case was commenced by Fixed Date Claim Form.<sup>xiv</sup> Accordingly, the court is empowered to exercise case management powers from the first hearing throughout the progress of proceedings until the case is fully resolved.<sup>xiv</sup> Prior to the date of filing Amended Defence and Counterclaim, the learned Master (at the first hearing) gave directions for the matter to be set down for an urgent hearing as soon as possible after the August/September 2011 long vacation. No further case management conferences were held before the filing of the Amended Defence and Counterclaim or after. Implicit in this Order is the notion that a further case management conference was being dispensed with.<sup>xvi</sup> In such a case, it would have been necessary for Mr Carr to obtain the court's permission to file his Amended Defence and Counterclaim. Otherwise, it would be deemed to be validly filed.

[18] The court has a duty to actively manage cases by among other things fixing timetables and otherwise controlling the progress of the case. Sadly, that duty was not observed in this case. The state of the pleadings suggests that case management directions are desirable. It would be unjust in those circumstances to penalize either party by denying them the benefit of the legal positions contained in pleadings filed after the first hearing as no further case management conference directions were given. In those circumstances, in deciding whether to

strike out either statement of case, the court must have regard to all pleadings filed up to this point.

- [19] The issues of adverse possession and limitation are raised for the first time in the O'Garros' Defence to Counterclaim and Counterclaim to Counterclaim where they aver *inter alia*.<sup>xlvii</sup>

*“15. ... it is therefore common ground that the Defendant never entered into physical possession of the disputed premises from the date of registration of the Defendant's alleged Deed of Gift Number 2499 of 1997 ... continuously until the death of the First Claimant Leon O'Garro on 27<sup>th</sup> September 2009, a period of 12 years, 1 month and 12 days.*

*16. ... the Claimants aver that for the purposes of section 17 of the Limitation Act ... the Defendant's cause of action (if any) would have arisen on 16<sup>th</sup> August 1997. By the date of death of the First Claimant on 27<sup>th</sup> September 2009, therefore a period of over 12 years and 1 month would have elapsed during which the Defendant had not brought any action against the First Claimant to establish possession, let alone to recover possession of, the disputed property... the First Claimant's said possession was throughout that period adverse to the Defendant's purported interest in the disputed property in that ... the First Claimant remained in possession of the disputed property as owner thereof...as Life Tenant... up to the date of his death.”*

- [20] Randolph Carr's Reply and Defence expressly raise an assertion that Leon O'Garro occupied the disputed property with his consent. He asserts:<sup>xlviii</sup>

*“3. In reply to paragraphs 15 and 16 the Defendant avers that after the First Claimant had transferred title to the said property he consented to the First Claimant continuing in occupation thereof as his home which he considered in all the circumstances to be fitting and appropriate.*

*The Defendant denies the Counterclaim on the following grounds:*

*4. The Defendant repeats paragraphs 2 and 3 of the Reply to the Claimants' Defence to Counterclaim."*

[21] This averment suggests that Leon O'Garro had Mr Carr's consent to reside in the disputed property. It provides a viable defence to the O'Garros' argument that Leon O'Garro has successfully defeated Mr Carr's claim, right or interest in the property through adverse possession and limitation. Accordingly, there is no basis on which the court can conclude that Mr Carr's statement of case does not disclose any reasonable ground for defending the O'Garros' claim to adverse possession. I therefore dismiss the O'Garros' application that Randolph Carr's statement of case may be struck out in respect of any right, title or interest he might have acquired by Deed No. 2499 of 1997.

Striking out – O'Garros' statement of case

[22] Randolph Carr challenges the O'Garros' reliance on Deed No. 3433 of 2003 as their basis for claiming adverse possession. He submits that Leon O'Garro could not have acquired a claim to adverse possession when that Deed was executed in 2003, a mere six years after the first Deed was registered. This appears to be a misstatement of the O'Garros' position. As I understand it, the O'Garros are asserting adverse possession from August 1997 to September 2009, and not from 1997 to 2003. If however the pleadings admit of that interpretation, Mr Carr argues that Deed No. 3433 of 2003 would have the effect of creating in Leon O'Garro's favour, not an interest in the property, but merely a voluntary assignment of expectancy. He submits that the Deed was voluntary and no valuable consideration was provided in exchange for the assignment. In those circumstances, he contends that Leon O'Garro is a volunteer who created an imperfect trust which equity would not enforce.

[23] Mr Carr points to the Statutory Declaration (which is attached to that deed), made by Mrs Cato, attorney for Leon O'Garro where she declares that the transfer

operated and effected for no consideration. In her words:

*“...the transaction evidenced by the instrument annexed hereto made between LEON O’GARRO and PAUL O’GARRO and dated the 26th day of September 2003, and signed by me as the legal practitioner preparing the same, is a bona fide transfer of property operating wholly and exclusively as a voluntary disposition inter vivos for no consideration in money or money’s worth...”(underlining added)*

[24] Mr Carr cites the case of **Re Ellenborough**<sup>xlix</sup> as authority for the contention that while a volunteer may assign future property, possibilities and expectancies for value in equity and successfully enforce those interests in a court, he is not permitted to do so in the absence of valuable consideration under the contract.<sup>1</sup> He argues that since the purported transfer to Paul O’Garro was effected without valuable consideration, it is not enforceable in a court and the O’Garros may not rely on it to enforce any right in the disputed property. The O’Garros have made no submissions in response. While there is merit in Mr Carr’s submission, it could conceivably be defeated depending on the outcome of any subsequent intervention by the Accountant General with respect to the matter of stamp duty addressed previously or through other related processes. In all the circumstances, this too is a point which is best resolved at trial. I am not satisfied on these submissions that the O’Garros’ statement of case fails to disclose grounds for bringing the action in relation to the O’Garros’ claim to adverse possession. I will therefore not order that it be struck out.

[25] Having considered the respective submissions, the applicable principles as rehearsed above and the overriding objective, this is an appropriate case in which justice is best served by having all of the issues (discussed in this decision) determined at a trial. The implicit applications for orders that Deeds No. 2499 of 1997 and 3433 of 2003 be declared inadmissible and to strike out the respective statements of case are refused.

**ORDER**

[26] It is therefore ordered as follows:

1. The O'Garros' application for an order that Randolph Carr's statement of case be struck out in respect of any right, title or interest he might have acquired by Deed No. 2499 of 1997 is dismissed.
2. Randolph Carr's application for an order that the O'Garros' statement of case be struck out in respect of any right, title or interest Leon O'Garro and/or Paul O'Garro claim to be created or acquired by Deed No. 3433 of 2003 is dismissed.
3. No order for summary judgment is made in respect of the O'Garros application.
4. No order is made as to whether Deed No. 2499 of 1997 and/or Deed No. 3433 of 2003 are admissible in these proceedings. A decision on both counts is deferred until the trial of this matter.
5. No order as to costs.

[27] Having regard to the length of time that has elapsed since this matter commenced, and the other circumstances alluded to in this judgment, it is fitting that full and final case management directions be given as soon as possible with a view to expediting the trial of this matter. The court expresses gratitude to all counsel for their submissions.

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**Esco L. Henry**  
**HIGH COURT JUDGE (Ag.)**

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<sup>i</sup> Filed on May 13, 2008.

<sup>ii</sup> References to Paul O'Garro in this judgment means Paul O'Garro in his personal capacity and also as representative for Leon O'Garro's estate unless the context indicates otherwise.

<sup>iii</sup> Deed of Gift No. 2499 of 1997.

<sup>iv</sup> On 20<sup>th</sup> November, 2014 pursuant to a court order to file them on or before November 19, 2014.

<sup>v</sup> The date of execution of Deed No. 2499 of 1997.

<sup>vi</sup> On March 12 and 27, 2015 after failing to file them on November 26, 2014 as initially ordered or on March 4, 2014 after an extension of time was granted to that date.

<sup>vii</sup> Which is exhibited to the Fixed Date Claim Form as Exhibit "L.O.G. 2".

<sup>viii</sup> See paragraph 11 of the Claimants' Submission filed on November 20, 2014.

<sup>ix</sup> See paragraphs 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 3.9 and 3.10 of the Defendant's skeleton submissions filed March 27, 2015.

<sup>x</sup> Cap. 243 of the Revised Laws of Saint Vincent and the Grenadines 2009. NOTE: That Act has been repealed and replaced by the Status of Children Act No. 21 of 2011 which does not contain some of the earlier provisions addressed by the court in **McKenzie v Sampson SVGHCV2004/0012**.

<sup>xi</sup> **Ibid at paras. [13] per Saunders JA** (as he then was) where he stated:

"[13] Section 10 therefore permits the making of declarations of paternity in circumstances where the father of the child or both of them are dead. However, the conjoined effect of sections 10 and 7 is that where such declaration is made, the applicant cannot succeed to property unless there is a compliance with section 7(1)(b). The latter section in turn requires us to examine section 8."

<sup>xii</sup> *Supra.* at paragraph 3.12 of the Defendant's skeleton submissions.

<sup>xiii</sup> Sections 3 (1) (a) and 4 of the Registration of Documents Act, Cap. 132 of the Revised Laws of Saint Vincent and the Grenadines, 2009 which provide:

"3. (1) The following documents shall be registered under this Act-

(a) Documents relating to the title to, transfer of or incumbrance on, any real estate;

4. The following documents need not be registered under this Act-

(a) documents creating or evidencing a tenancy of real estate from year to year, or any less interest in real estate or any tenancy at will;

(b) documents relating to the use or occupation of real estate, or the disposal of the rents, crops or produce thereof, whether in the nature of partnership contracts or otherwise, for a term not exceeding one year from the making of such documents."

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<sup>xiv</sup> Ibid. at section 5 (1) which states:

**“5. Effect of registration**

- (1) Every document relating to real estate required to be registered under this Act shall, on registration, operate both at law and in equity according to the priority of time of registration and the right, title and interest of the person conveying, incumbering or otherwise dealing with such real estate against every other document subsequently registered with respect to such real estate.”

<sup>xv</sup> Section 3 (1) and the Schedule to the Stamp Act, Cap. 440 of the Revised Laws of Saint Vincent and the Grenadines 2009. Section 3 (1) provides in part:

**“3. Stamp Duties**

- (1) There shall be granted, charged and collected, upon the several instruments in the Schedule, the duties in the Schedule specified:”

The relevant item in the Schedule is item 24 which states:

**“24. CONVEYANCE OR TRANSFER OPERATING AS A VOLUNTARY DISPOSITION INTER VIVOS OR ANY TRANSACTION WHERE THE SALE PRICE IS NOT THE OPEN MARKET PRICE-**

The stamp duty shall be ten percent of the value of real estate involved in the conveyance or transfer on sale, of which five per cent shall be paid by the transferor and five percent by the transferee:

Provided that-

- (1) No stamp duty shall be payable in respect of any conveyance or transfer operating as a voluntary disposition inter vivos without consideration in money's worth between-
- (a) parents and children (including grand-children, great grand-children, great great grand-children, and great great great grand-children);
  - (b) brothers and sisters (either of the whole blood or half blood);
  - (c) spouses, including transfer made within three years after the grant of a decree absolute whether such transfers are voluntary or made pursuant to an order of the High Court in connection with a property settlement:

Provided that the Status of Children Act, shall apply for the purpose of establishing the relationships mentioned in paragraphs (a) and (b).

(2) ...

(3) ...

- (4) Notwithstanding anything contained in any written law to the contrary, no instrument of transfer purporting to be a transfer falling within the provisions of this item (and thus purportedly exempted from stamp duty shall be registered free of stamp duty unless there is endorsed on the face thereof a declaration by a legal practitioner actually practicing law in Saint Vincent and the Grenadines, signed personally before the Registrar...”

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<sup>xvi</sup> Ibid. at sections 37 and 38 which provide:

**“37. Unstamped document inadmissible in evidence**

No instrument made liable by this Act to any duty shall be pleaded, or given in evidence in any court, unless the same be duly stamped, except as is hereinafter provided.

**38. Production of unstamped instrument**

Upon the production of any instrument as evidence in any action or other proceeding in any court or in judge’s chambers, it shall be the duty of the Registrar or clerk of the court to call the attention of the court or judge to any omission or insufficiency of stamp upon such instrument, and the same shall not be received in evidence, or otherwise used in such action or proceeding, until the stamp duty imposed by law thereon, together with a penalty of twenty four dollars, have been paid.

Provided that the presiding judge may, if he thinks fit, allow an adjournment to enable the person producing such instrument to have the same stamped by the Accountant-General in the same manner hereinbefore provided.”

<sup>xvii</sup> Ibid. Proviso to section 38.

<sup>xviii</sup> CPR Part 15.2 which provides:

“15.2 The court may give summary judgment on the claim or on a particular issue if it considers that the-

- (a) claimant has no real prospect of succeeding on the claim or the issue; or
- (b) defendant has no real prospect of successfully defending the claim or the issue.”

<sup>xix</sup> Ibid. at rule 15.3 (c) which provides:

“15.3 The court may give summary judgment in any type of proceedings except-

- (a) admiralty proceedings...
- (b) probate proceedings;
- (c) Proceedings by way of fixed date claim;”

<sup>xx</sup> Ibid. at 15.4 (1) and 15.5(1) (a).

<sup>xxi</sup> Ibid. at rule 15.4 (2).

<sup>xxii</sup> Supra. at paragraph 3 (a) of the Claimants’ Submissions.

<sup>xxiii</sup> Ibid. at paragraph 18 of the Claimants’ Submissions.

<sup>xxiv</sup> Ibid. at paragraph 3 (c), (d) and (e) and 21 (a), (b) and (c) of the Claimants’ submissions.



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<sup>xxv</sup> From August 1997 when the Deed of Gift 2499 of 1997 was registered until his death on September 27, 2009.

<sup>xxvi</sup> Supra. at paragraph 3 (f) and (g), 18 of the Claimants' submissions (where by oblique reference to paragraph 16 of the Amended Reply to Amended Defence filed on December 5, 2012) he cited section 17 of the Limitation Act Cap. 440 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

<sup>xxvii</sup> Ibid. at rule 26.3(1) which states:

“26.3 (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that-

- (a) there has been a failure to comply with a rule, practice direction, order...
- (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
- (c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or
- (d) the statement of case or the part to be struck out is prolix or does not comply...”.

<sup>xxviii</sup> Per Rawlins J (as he then was) in **Julian Prevost v Rayburn Blackmore et al DOMHCV2005/0177 at para. 6**

<sup>xxix</sup> **M4 Investments v CLICO (Barbados) Ltd. (2006) 68 WIR 65 at page 82.**

<sup>xxx</sup> **Lonhro Case [1991] 4 All E.R. 965.**

<sup>xxxi</sup> **Re: Davey v Benton [1893] 1 QB 185; Wenlock v Maloney [1965] 2 All E.R. 871, CA.**

<sup>xxxii</sup> CPR 1.2 which provides:

“1.2 The court must seek to give effect to the overriding objective when it-

- (a) exercises any discretion given to it by the Rules; or
- (b) interprets any Rule.”

<sup>xxxiii</sup> By Order dated May 16, 2008.

<sup>xxxiv</sup> Ibid. at paragraph 2.

<sup>xxxv</sup> On July 28, 2011.

<sup>xxxvi</sup> On November 7, 2013.

<sup>xxxvii</sup> On December 5, 2013.

<sup>xxxviii</sup> On March 13, 2015.

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<sup>xxxix</sup> See Order of Master Actie dated June 22, 2011 which gave leave o the Claimants to file a Reply on or before July 28, 2011.

<sup>xi</sup> CPR 10.3 (1), (2), (5), (6) and (7) which provide:

“10.3 (1) The general rule is that the period for filing a defence is the period of 28 days after the date of service of the claim form.

(2) If a claim form is issued in one Member State, Territory or circuit and served in another, the period is 42 days after the date of service of the claim form.

(5) The parties may agree to extend the period for filing a defence specified in paragraph (1), (2), (3) or (4).

(6) The parties may not make more than two agreements under paragraph (5).

(7) The maximum total extension of time that may be agreed is 56 days.”

<sup>xli</sup> See **Attorney General v. Keron Matthew [2011] UKPC 38.**

<sup>xlii</sup> CPR Part 10.3(9) and 20.1 (1) and (2) which state:

“10.3 (9) A defendant may apply for an order extending the time for filing a defence.”

20.1 (1) A statement of case may be amended once, without the court’s permission, at any time prior to the date fixed by the court for the first case management conference.

(2) The court may give permission to amend a statement of case at a case management conference or at any time on an application to the court.”

<sup>xliii</sup>

<sup>xliv</sup> See CPR 27.3 (1) which provides:

“27.3 (1) The general rule is that the court office must fix a case management conference immediately upon the filing of a defence to a claim other than a fixed date claim.”

<sup>xlv</sup> See CPR 27.2 (1) and (2) which states:

“27.2 (1) When a fixed date claim is issued the court must fix a date for the first hearing of the claim.

(2) On that hearing, in addition to any other powers that the court may have, the court shall have all the powers of a case management conference.”

See also Part 26 which lists some of the court’s case management powers.

<sup>xlvi</sup> In accordance with CPR 27.6 (1) (a) and (b).

<sup>xlvii</sup> At paragraphs 15 and 16.

<sup>xlviii</sup> At paragraphs 3 and 4.

<sup>1</sup> Ibid. at pages 700 and 701 per Buckley J. where he stated:

“The deed was purely voluntary. The question is whether a volunteer can enforce a contract made by deed to dispose of expectancy... Future property, possibilities, and expectancies are all assignable in equity for value: *Tailby v. Official Receiver*. (1) But when the assurance is not for value, a Court of Equity will not assist a volunteer. In *Meek v. Kettlewell* (2), affirmed by Lord Lyndhurst (3), the exact point arose which I have here to decide, and it was held that a voluntary assignment of an expectancy, even though under seal, would not be enforced by a Court of Equity. “The assignment of expectancy,” says Lord Lyndhurst (4), “such as this is, cannot be supported unless made for a valuable consideration...”

“In *Be Tilt* (2) there was again a voluntary assignment of an expectancy, and the point was not regarded as arguable.” It was rightly admitted " said Chitty J., "that as, when this plaintiff executed the deed of 1880, she had no interest whatever in the fund in question, which was a mere expectancy, the deed was wholly inoperative both at law and in equity, being entirely voluntary...”