

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

DOMHCV2005/0089

[CIVIL]



BETWEEN:

JOSEPH R. LEBLANC

Claimant

and

JAMES S.W. CYRILLE

Defendant

Before:

The Hon. Justice Brian Cottle

Appearances:

Ms. Collen Felix for the Claimant

Mrs. Zena Dyer for the Defendant

[2009: July 23rd
[2010: December 1st, 10th
[2011: April, 13th
September 15th

JUDGMENT

[1] **COTTLE J:** The Claimant is the nephew of the Defendant. On 6th March 2003 the Defendant obtained from the Registrar of Lands a First Certificate of Title in respect of 3.530 acres of land at Vieille Case. The Claimant brings the instant claim seeking a declaration that the said certificate of Title was obtained by fraud.

[2] Under the Title by Registration Act Chap 56:50 of the Laws of the Commonwealth of Dominica a certificate of title, properly issued by the Registrar is indefeasible except in very limited

circumstances. An example of one such case is where there has been fraud connected with the issue of the certificate of title.

[3] In the application to ground the issue of the certificate of title the defendant had sworn an affidavit. He swore:

- I. His father had gifted the lands to his mother in the 1940's to hold for the Defendant and his siblings***
- II. His mother retained possession of the land during her lifetime, employing tenants to cultivate the land,***
- III. There were no disputes concerning the land***

[4] The Defendant also had Mr. Philson Victor and Mr. Clanis Brumant swear affidavits in support, attesting that the Defendant and his predecessors in title had been in undisturbed possession of the land for more than 30 years.

[5] In his evidence the Claimant sought to demonstrate that the affidavits were untrue and the Defendant must have known them to be untrue. In his witness statement the Claimant says the land was given to his parents as a wedding gift in 1947 or 1948. His mother cultivated the land and a cousin Charles Victor was permitted to rear pigs on a small portion. He paid rent for that portion by giving pork and coals which he made on the land, to the parents of the Claimant.

[6] One Della Marie Scotland made a claim to neighbouring lands which the Claimant says belonged to his grandfather. Ms. Scotland succeeded and was named proprietor of some 6 acres. During cross-examination it emerged that Ms. Scotland also laid claim to the lands in issue in this claim. The Defendant presented a caveat. At the trial he gave evidence and the claim of Mrs. Scotland was withdrawn. The Defendant went on to apply for and obtain a certificate of title himself.

[7] The Claimant also testified that in 1997 the Defendant attempted to survey the property but was prevented from doing so by the Claimant. He denies that the Defendant has ever been in possession or exercised any acts of ownership over the property.

[8] As I understand it, the Claimant argues that the Certificate of Title of the Defendant should be set aside on the basis that it was obtained by fraud. The statements in his affidavit were false to the knowledge of the Defendant in that he knew the land was the subject of a family dispute and that he and his predecessors had not been in possession for more than thirty years or at all.

[9] The Defendant presents a different version. There are, however some matters that which cause this court to prefer the version of the Defendant. When pressed to explain why he did not challenge the Defendant's application for a certificate of title the Claimant explained that he was not at the time owner of the lands. I found this explanation difficult to follow. More significantly, the Claimant was aware of the attempt by Mrs. Scotland to claim the land. He attended the trial with the Defendant to support him in resisting Mrs. Scotland claim. The caveat that the Defendant caused to be entered against Mrs. Scotland's claim was premised on the Defendant's ownership of the lands in question.

- [10] It is unlikely that the Claimant would have supported the Defendant's claim to the lands against Mrs. Scotland if he did not accept that the Defendant was the legitimate owner. The Claimant in his witness statement says that his cousin worked the land (Charles Victor) in his cross-examination he denied that Charles Victor worked the land. Not only does this inconsistency cast doubt on the credibility of the Claimant but it underlines the importance of Charles Victor. It is Mr. Victor who was notified of the Defendant's application for title. Why would the cousin and tenant of the Claimant not notify him of the Defendants application for a certificate of title?
- [11] The Claimant suggests that he was unaware of the Defendants application but I reject that suggestion because I believe that Charles Victor would have notified him of the application for a certificate of title. The Claimant has alleged fraud in the Defendant. He must lead evidence to establish his case. I am not satisfied that he has discharged this burden. I therefore find for the Defendant. The claim is dismissed. The Claimant will pay costs to the Defendant in the sum of \$14,000.00 being prescribed costs.



Brian J. Cottle
Brian Cottle
High Court Judge