

COURT OF APPEAL SITTING

ANGUILLA

Monday 5th July 2010

Date: **Monday 5th July 2010**

Coram: **Hon. Mr. Hugh A. Rawlins, Chief Justice
Hon. Mde. Ola Mae Edwards, Justice of Appeal
Hon. Mr. Davidson Baptiste, Justice of Appeal**

HIGH COURT CIVIL APPEALS

**Rose Jones (as Administrator Ad Litem in the
Estate of Dorothy Isles) v Michael Fleming
[Civil Appeal No. 2 of 2009]**

Appearances:

Appellant: **Ms. Eustella Fontaine**

Respondent: **Mrs. Keesha Carty**

**Issues
(Application):** **Application of Appellant filed 5th July 2010 to include
documents omitted from record filed 7th May 2010 –
Relief from sanctions – Costs in the cause**

**Issues
(Substantive
Appeal):** **Whether the agreement and ancillary documents were a
valid and binding agreement against Dorothy Isles for
the sale of the land – Whether the agreement was
enforceable and if so properly enforceable against
Dorothy Isles – Whether a sub-agent could bind the
agent and/or the principal in the transaction for the sale
of the land – Whether the learned judge wrongly
determined that there was an agreement/memo in
writing evidencing the sale by owner to the purported
purchaser or by the authorised agent as required by
section 37(2) of the Registered Land Act, RSA, Ch R30
– Whether the receipt given to the purported purchaser**

constituted evidence of sale of the land to the purported purchaser within the meaning of section 112(1) of the Registered Land Act, RSA, Ch R30 – Whether the learned judge wrongly relied on oral evidence of the alleged agreement of the owner to sell to the purported purchaser – Whether the learned judge wrongly considered the agent as owner or properly authorised to sell the land on behalf of the owner – Whether the learned judge wrongly determined that the agent could properly delegate another power to sell – Whether the learned judge failed to consider that the purported purchaser was put on notice or enquiry (in the circumstances) to satisfy himself that the owner had authorised the sale – Whether the learned judge erred in determining that the respondent is entitled to specific performance

Result:

(Of Application)

By Consent:

- 1. Application filed herein on 5th July 2010 is granted and the applicant is accordingly relieved from sanctions.**
- 2. The record of appeal filed herein on 7th May 2010 is expanded to include the documents exhibited to affidavit of Justin Duncan in support filed 5th July 2010, except the handwritten letter of McLean Webster dated 9th December 2010.**

(Of Appeal)

- 1. The appeal is allowed and the matter is remitted to the High Court for trial de novo and for that purpose the case shall be set down immediately for directions to be given in relation to the capacity of the appellant and for that purpose the court shall be cognisant that the appellant in her present capacity as administrator ad litem is the defendant in the claim.**
- 2. The appellant shall pay US \$13,000.00 agreed costs to the respondent being costs in the High Court and in this Court, the same to be paid within 90 days.**

Reason:

The issue of the death of the defendant before the trial commenced and the absence of the appellant's authority to represent the deceased defendant at the

trial was canvassed by the Court and both counsel agreed that this would result in a mistrial and that the case had to be tried over de novo.

Case Name: **Grazina Adamczyk (as Personal Representative of the Estate of Adamczyk deceased) v Rafael Vegas [Civil Appeal No. 5 of 2009]**

Appearances:
Appellant: Ms. Eustella Fontaine
Respondent: Ms. Merlanih Lim

Issues: Whether the respondent is entitled to damages for unpaid rent – Whether agreement is binding and enforceable against the personal representative of the appellant’s estate – Whether agreement is binding and enforceable against the appellant’s estate – Whether agreement survived the death of the appellant as against the personal representative of the appellant’s estate

Result: The appeal shall be set down for hearing at the next sitting of the Court in Anguilla.

Reason: The respondent’s counsel Ms. Lim informed the Court that an application for security for costs was being prepared for filing and she requested an adjournment.