

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF THE
CO-OPERATIVE REPUBLIC OF GUYANA**

**CCJ Appeal No. CV 13 of 2007
GY Civil Appeal No 46 of 2003**

BETWEEN

ELIZABETH ROSS

APPELLANT

AND

COREEN SINCLAIR

RESPONDENT

**Before The Right Honourable
and the Honourables**

**Mr. Justice de la Bastide, President
Mr. Justice Pollard
Mr. Justice Saunders
Mme. Justice Bernard
Mr. Justice Hayton**

Appearances

Mr Stephen Fraser, Mr Teni Housty and Mr Roger Yearwood for the Appellant

Mr Timothy Jonas for the Respondent

JUDGMENT

of

The President and Justices Pollard, Saunders, Bernard and Hayton

Delivered jointly by

The President and The Honourable Mr. Justice Adrian Saunders

on the 8th day of October 2009

JUDGMENT

Introduction

[1] In this case we must decide which of two ladies is entitled to the ownership of a condominium unit (“the unit”). The unit was originally owned by the Central Housing and Planning Authority (“the Authority”), a statutory corporation created under the Housing Act. The Authority purported to sell the unit twice. In each case the full purchase price of \$25,000 was paid. Obviously, the Authority acted in a reprehensible manner. The Authority first agreed to sell the property to Sybille Sinclair whom for reasons of clarity we take the liberty of referring to as “Sybille”. After receiving from her a substantial part of the purchase price, the Authority proceeded to transport the unit to Elizabeth Ross whom, to be consistent, we shall refer to as “Elizabeth”, even though it had received from Sybille’s daughter the balance outstanding on Sybille’s agreement. In the resulting litigation the trial court and the Court of Appeal awarded the unit to Sybille’s daughter, as administratrix of Sybille’s estate. Elizabeth has appealed to us and we consider that her appeal should be upheld.

The Factual Background

[2] The unit in question is Lot 95 Laing Avenue, West Ruimveldt, Georgetown. It is one of a number of units that comprise a condominium scheme owned by the Authority. In 1993 Sybille was registered as a tenant of the Authority in respect of the unit. Elizabeth and Sybille then resided in the unit. Sybille received from Elizabeth a monthly sum for the latter’s use and occupation of a part of the unit. The tenancy agreement under which Sybille held the apartment did not permit her to assign or underlet any part of the premises without the consent in writing of the Authority. That agreement stipulated that the tenancy could be terminated by either party at any time serving upon the other 14 days’ notice in writing of intention to terminate the same.

- [3] In 1996 the Authority decided to sell off the units in the condominium. They were priced at \$25,000. The Condominium Act required the Authority to give preference to a tenant of the unit who had been residing in the unit immediately before the sale.¹ The Authority agreed to sell the unit to Sybille but apparently she was unable to pay at once the whole of the purchase price. She paid \$23,000. Unfortunately, she died intestate on the 2nd September, 1996 with the balance of \$2,000 still unpaid.
- [4] Sybille's daughter, Coreen Sinclair ("Coreen") has never resided in the unit but on the 19th September, 1996 shortly after the death of her mother, she paid and the Authority accepted the remaining \$2,000. At the time she had not yet obtained a grant of letters of administration of her mother's estate. Elizabeth continued to occupy the unit. Effectively, Coreen became Elizabeth's landlady. As Elizabeth now occupied the entire property, Coreen increased the sum being paid by Elizabeth for use and occupation of the unit.
- [5] At some point, it seems, the Authority learned that Coreen was collecting "rent" from Elizabeth. On 1st December, 1997 the Authority ordered Coreen to refund Elizabeth all the monies which she had collected from Elizabeth and that same day the Authority registered Elizabeth as the tenant of the unit. On 3rd December, 1997 the unit was sold to Elizabeth who paid the Authority the entire purchase price of \$25,000. On 23rd November, 1998 the Authority issued a Certificate of Sale to Elizabeth. The Certificate was filed in the Deeds Registry on 14th December, 1998 as No. 330 of 1998.
- [6] Coreen obtained letters of administration of her mother's estate on 2nd February, 2000. Armed with the grant of letters of administration, she instituted this action against Elizabeth and the Authority. The essence of the claim, as filed in the High

¹ Section 50(2) states : "In selling ... any unit in a condominium ... the owner thereof shall give preference to a tenant of the unit who has been residing in the unit immediately before the sale."

Court, was that the Authority purported to transfer and sell to Elizabeth rights and title that it did not possess and that the sale to Elizabeth was void for mistake. Coreen claimed specific performance of the agreement to sell the unit to Sybille and a declaration that, as administratrix of her mother's estate, she was entitled to possession and ownership of the unit. She also claimed against the Defendants, jointly and severally, an order of *mandamus* commanding them to transfer ownership in the unit to her.

- [7] Although it was served with the proceedings the Authority did not enter an appearance. Nor did it appear at the trial. Both Coreen and Elizabeth gave evidence at the trial. Coreen called one witness, an employee of the Authority.

The Judgment of the Trial Judge

- [8] The trial judge found that the Authority had “committed a grave error” in agreeing the sale to Elizabeth. The judge was persuaded by counsel for Coreen that the Authority was at all material times exercising a statutory function and that as such it was bound by the agreement it had entered into with Sybille. The court held that the purported sale to Elizabeth was *ultra vires* and void and conveyed no interest to Elizabeth because there was nothing in the Condominium Act (pursuant to which the unit was being sold) which permitted the Authority to breach its contract with Sybille by selling the same unit to Elizabeth. The case of *Ashbury Rly Co. v Richie* (1875) L R 7 HL 653 was relied upon. On the authority of *Potter v. Shillingford* [1945] LRBG 129, the trial judge held that at best, the Authority was no more than a trustee of the premises in favour of Sybille and hence, since the latter was entitled to specific performance during her lifetime, after her death her Administratrix was also so entitled. The judge accordingly made the orders sought in the Statement of Claim.

The Court of Appeal

[9] Elizabeth appealed the judgment of the trial judge to the Court of Appeal. The Authority was not made a party to the appeal. Regrettably, they were thus permitted to remove themselves, relatively unscathed, from the imbroglio they had created. Counsel for Elizabeth submitted to the Court of Appeal that under Guyana law, no interest in land passed to Sybille as a result of her contract with the Authority. Under the Condominium Act, the sale of a unit is a multi-layered process and since Elizabeth had satisfied all the stages, unlike Sybille, the sale to Elizabeth could not be considered *ultra vires*. For Coreen, it was submitted that Sybille was the beneficial owner of the unit and that the Authority was a trustee with no beneficial interest. The contract between the Authority and Elizabeth was void for mistake.

[10] In delivering the judgment of the Court of Appeal, Chang JA made the following points: he held that the Certificate of Sale made out to Elizabeth represented mere evidence of a concluded sale. Although no Certificate had been issued to either of the Sinclairs, when Coreen paid and the Authority accepted the balance of \$2,000 outstanding on Sybille's agreement, the sale to her was completed and that ownership of the unit passed unless the Authority could have shown that there was some outstanding condition to be fulfilled by Sybille and/or Coreen. Since the Authority had not established that there was any such outstanding condition to be satisfied, it followed that the sale of the unit was concluded on the 19th September, 1996 and the subsequent purported sale of the unit to Elizabeth was a nullity. Sybille had a legitimate expectation that upon payment of the remaining balance of \$2,000 the Authority would have transferred to her registered ownership of the unit. The Authority had advanced no overriding public interest to justify the disappointment of this expectation. The Authority had exercised its decision to sell the unit to Elizabeth unfairly and unreasonably in breach of the substantive legitimate expectation of Sybille and her estate and such sale was therefore a nullity. The Court of Appeal held that the orders for specific

performance and mandamus made by the trial judge were superfluous because the contract between Sybille's estate and the Authority had already been specifically performed when the \$2,000 balance was paid. The judgment of the trial judge was therefore upheld in all respects save for the making of those orders of specific performance and mandamus.

The Relevant Legislation

[11] Two pieces of legislation are directly relevant to a determination of this matter. They are the Condominium (Regulation and Miscellaneous Provisions) Act, Act No. 4 of 1989 Chapter 36:22 and the Deeds Registry Act, Chapter 5:01. The former Act applies both to condominiums owned by the Government as well as those owned by private entities. Part III of the Act deals with condominiums in the public sector such as that of which the unit in question formed part. Section 50 makes provision for the sale of units. While selling any unit in any condominium the owner, in this case the Authority, may stipulate that the sale is subject to all or any of a variety of conditions listed in the legislation.² The owner may issue to any person to whom the sale of any unit has been approved, a certificate to the effect that the unit has been sold to that person. The conditions under which a sale is made are required to be specified in the certificate³. Before issuing a certificate, the Authority must first satisfy itself the purchase price has been fully paid and that other conditions, which are required to be satisfied before the sale, have been satisfied by the intending purchaser.⁴ The Certificate of Sale, bearing the terms and conditions subject to which a sale is made, is binding on the owner of the unit who sold it and the person who purchased it and their successors in interest.⁵ The certificate is to be treated for all purposes as if it were a transport or other document effecting the conveyance of the unit mentioned therein.⁶

² Section 50(3)

³ Section 50(6)

⁴ Section 50(1)

⁵ Section 50(6)

⁶ Section 50(7)

Each unit shall for all purposes constitute an interest in land and may be disposed of or dealt with in the same manner and form as land under the Deeds Registry Act.⁷

[12] In light of these provisions, contrary to the Court of Appeal's view in the matter, it is quite evident that a Certificate of Sale does indeed constitute the completion of a sale. A tenant who seeks to purchase a unit and who has paid a portion or even the whole of the purchase price has an agreement to purchase but there cannot be any doubt that the sale of the unit to that tenant is not completed until the Certificate of Sale is issued. Finally, when one examines the Condominium Act it is clear that in selling the units the legislative policy is to favour tenants who personally occupy the units.

[13] The Deeds Registry Act was enacted in 1920, a few years after the passage of the Civil Law of Guyana Act. The effect of these two Acts on Real Property law in Guyana was recently the subject of comment by this Court. In *Ramdass v Jairam*⁸ this Court confirmed that, consequent upon the provisions of these two Acts, equitable interests in immovable property are not recognized and cannot be acquired in Guyana⁹. Further, section 23 of the Deeds Registry Act provides that every transport of immovable property other than a judicial sale transport shall vest in the transferee the full and absolute title to the immovable property subject only to certain specified claims, incumbrances, registered interests and registered leases. A proviso to that section, however, states that any transport obtained by fraud shall be liable in the hands of all parties or privies to the fraud to be declared void by the Court if the action is brought within twelve months after the discovery of the fraud.

⁷ Section 25(1)

⁸ See [2008] CCJ 6 (AJ)

⁹ See *Br. Colonial Film Exchange v ss de Freitas* [1938] LRBG 35; *Dias v Cornette* (1960) LRBG 215; *Kitty and Alexanderville Village Council v Veira* (1961) 3 W.I.R. 249; *Singh v Bayne* (Guyana Civil Appeal No 61 of 1991); *Fazal v Annamunthodo* (1991) 48 W.I.R. 150

[14] The courts below rested their decision to award the unit to Coreen on two broad bases. Firstly, it was held that the estate of Sybille had a good claim in equity against the Authority and Elizabeth. Secondly, it was stated that the subsequent sale to Elizabeth was *ultra vires* the power of the Authority and was in breach of a legitimate expectation - whether held by Sybille or by Coreen, her Administratrix - that the Authority would convey the unit in keeping with its agreement with Sybille.

The issues of Public Law

[15] In an ably presented argument, Mr Jonas, for Coreen, sought to support both broad bases for the decision of the Court of Appeal. He argued that, having agreed with the Authority to purchase the unit and having paid a substantial portion of the purchase money, Sybille did indeed hold the legitimate expectation found by the Court of Appeal. He also submitted that the Authority had acted in a manner that was *ultra vires* because it was *functus officio* after it had reached its decision to sell the unit to Sybille. It could not subsequently, he stated, sell the same unit to Elizabeth. He claimed that his client was entitled to public law remedies. We do not agree.

[16] So far as the argument is made that the Authority was *functus* one must examine the provisions of the Condominium Act to determine how and in what circumstances a Certificate of Sale may be issued. As indicated at [12] above, on a proper interpretation of the Act the Authority retained the power to withhold the issuance of a Certificate of Sale even after it had received all of the purchase price. Completion of a sale is conditional not just upon full payment of the purchase price but also upon satisfaction of “other conditions of the sale, which are required to be satisfied before the sale” and the issuance of a Certificate of Sale. Accordingly until the Certificate of Sale is issued there is the possibility of the agreement for sale being rescinded (for good reason or bad) by the Authority and therefore there is no question of the Authority being *functus* at that stage

[17] It may reasonably be inferred from the provisions of the Act that the Authority was under an obligation to issue Sybille with a Certificate of Sale in respect of unit 95 upon payment by her of the remaining \$2,000.00 together with fulfillment of such other conditions as might have been lawfully imposed on her. This obligation was embodied in the contractual arrangement into which she had entered with the Authority. For any non-observance of this contract Sybille was entitled to complain of a breach of contract and in launching this suit Coreen, as her administratrix, did so complain. But the mere fact that the vendor in this case was a public authority did not also entitle Coreen automatically to seek public law remedies and in particular to rely on the doctrine of legitimate expectation. Legitimate expectations are rooted in the concept of fairness in public administration. Recourse is had to them when persons complain that, because of some misuse of power or an unfair exercise of discretion in the execution of policy, they have been deprived by a public authority of a procedural or substantive benefit to which they feel entitled in view of a promise or assurance that had been made to them in the past. The Authority's exercise of its power to sell units may be subject to judicial review because there are statutory restrictions on the manner of its exercise which are tied to a policy that underpins the Act. But Mr Jonas did not point to anything in the facts of this case that involved a misuse or abuse of power or an unfair exercise of discretion. There was nothing here that took the action of the Authority outside the realm of contract law and into that of public law. On the specific facts of this case the pleaded claim was rightly premised on private law. The nature of the complaint, an important indicator of whether the action was grounded in public law or otherwise, was that the Authority was in breach of contract. The Authority may have breached its contract with Sybille in selling the unit to Elizabeth, who was at the time recorded as the tenant, but there was no suggestion that the Authority had transgressed the legislative framework within which it was required to operate or that there was a

departure from the policy underlying that framework. There was not introduced into the dispute any additional factor of a public law nature.¹⁰

[18] In these circumstances, there are no grounds upon which the decision of the Authority can properly be challenged in public law. The rights of Sybille and of her administratrix which were undoubtedly infringed were private rights for which Coreen was entitled to seek and obtain private law remedies.

The Deeds Registry Act

[19] In this case, Elizabeth is entitled to rely on the express provisions of the Deeds Registry Act and the notion that on registration her certificate of title was indefeasible save for fraud. Mr Jonas has indicated that, despite the provisions of the statute, fraud was not the only ground on which such registered title could be rendered ineffectual. That is certainly true and *Coddett v Thomas*¹¹ demonstrates this. In that case the West Indian Court of Appeal (Mathieu-Perez and Gomes C.JJ. and Stoby, C.J. (ag.)) rightly noted that:

- i. “... a transport confers on the transportee an indefeasible title. In our view that quality of indefeasibility does not render the transport unimpeachable in every circumstance; for example, possession for the statutory period may defeat it even against an innocent purchaser and if there be error or omission in the transport it can be rectified...
- ii. ...The element of indefeasibility which a purchaser obtains when he receives his title is derived or flows from adherence to the statutory procedure prescribed, including the voluntary act of the seller in surrendering his own title, together with affidavits of purchaser and seller.”

¹⁰ See *R v Bolsover District Council, ex p Pepper* [2001] L.G.R. 43 at [33] and also *Mass Energy Limited v Birmingham City Council* (1994) Env LR 298

¹¹ [1957] L.R.B.G. 181

[20] In *Coddett*, a landowner, T, who was resident outside of Guyana, had a portion of her land (which she held by transport) included in a transport passed to C, the appellant. The inclusion of the portion was attributable to the deliberate, unwarranted and wrongful act of the sub-Registrar. T had no notice of the inclusion and the prescribed statutory procedure was not followed when the portion of land was conveyed to C. The conveyance to C was set aside by the court. *Coddett* and the other cases cited by Mr Jonas¹² are, however, clearly distinguishable. These are all cases of mis-description or mistake or failure to follow the appropriate statutory procedure or some combination of these matters rendering invalid the respective transports that in each instance had been passed. In each case, the transportee alleging the indefeasibility of his title was seeking to profit from some error or irregularity granting him immovable property in excess of or different from that for which he had genuinely bargained and, moreover, at the expense of some other transportee whose title also had to be treated as being indefeasible. These were all attempts “to use the conveyancing statutes of the Colony as a shield and protection for fraud”.¹³ But rightly, the courts would have none of it. There being no issue of public law to resolve here, it is unnecessary for the Court to determine whether, as a public law remedy, a Certificate of Sale may also be cancelled in circumstances where a public authority has abused or misused its power in issuing a transport to an innocent purchaser. What is clear is that in the circumstances here Elizabeth’s title is protected by the provisions of the Deeds Registry Act.

[21] Contrary to the view of Chang JA, immediately before Elizabeth obtained her transport for the unit, the Authority was lawfully seised of the legal estate in the unit. Ownership of the unit did not pass and could not have passed to the administratrix merely upon performance of the purchasers obligations under Sybill’s contract. In this connection it must be said that the case of *Potter v*

¹² *Alexander v Austin* [1965] L.R.B.G. 121; *Baynes v Prince* [1949] L.R.B.G. 99; *Heeralall v. Shivcharran* [1958] L.R.B.G. 132

¹³ Per Worley, C.J. in *Baynes v. Prince* [1949] L.R.B.G. 99 at 102

*Shillingford*¹⁴ ought not to have been relied upon by the trial judge. The report in that case is of an appeal from the Dominica circuit of the old Supreme Court of the Windward and Leeward Islands. Real property law in Dominica, however, is very different from the law applicable to immovables in Guyana. Dominica has no legislation akin to the Civil Law of Guyana Act. That Act makes it clear that the English common law of real property does not apply to Guyana and that the only form of ownership of immovables known to the law of Guyana is full ownership. While the Authority may have been contractually bound to pass to Sybille or to her estate the legal ownership of the unit, it cannot be said that the Authority lacked the capacity to do otherwise. As administratrix of her mother's estate Coreen certainly had a good cause of action against the Authority. But on the facts here the remedy of specific performance was out of the question. The Authority was no longer in a position specifically to perform the contract as it had already passed the ownership to Elizabeth and nothing had been pleaded nor any evidence given to suggest that Elizabeth was other than an innocent purchaser who had faithfully complied with all the requisite statutory conditions.

[22] In these circumstances, the claims of the administratrix are limited to a claim in damages against the Authority. Elizabeth's registered title cannot properly be impeached. She is protected by the provisions of the Deeds Registry Act. The policy of that Act is twofold, firstly to produce a measure of certainty in real property transactions and secondly to assure innocent transportees who have purchased for value, who have obtained that for which they have bargained and who have otherwise complied with the procedural legal requirements, that their transports, if challenged, will be held to be good.

[23] In an effort to impugn Elizabeth's conscience and invalidate her transport, Mr Jonas argued that because Elizabeth paid rent both to Sybille and subsequently to Coreen, she had actual or constructive notice of Sybille's "title" and was therefore not an innocent purchaser. This was not pleaded. Moreover, in the absence of

¹⁴ [1945] LRBG 129

further evidence on the point, the payments made by Elizabeth were not inconsistent with a continuing acknowledgment by her that, until she was registered as the tenant herself, she was a sub-tenant or licensee first of Sybille and, after the latter's death, of her estate represented by Coreen as *executor de son tort* before taking out letters of administration. There was before the court no evidence that Elizabeth made payments to Sybille or to Coreen in their supposed capacity *as owner* of the unit. In this respect, this case bears some similarity to the case of *Ramdeo v Heralall*¹⁵ where Hayton, J. writing for the Court stated that:

- i. “In a democratic society where the rule of law prevails it is fundamental that if a plaintiff seeks to establish a factual basis for allegations that the defendant defrauded him, he must in his pleadings specify precisely the nature of the allegations upon which such very serious charge is founded and set out in full factual particulars to justify such allegations...”¹⁶

[24] One is naturally extremely sympathetic to the lamentable position in which Coreen finds herself. It is regrettable that, in effect, the Authority has been permitted to escape the consequence of their “grave error”. The course that should have been taken by Coreen is that she should have pursued a case against the Authority for damages as an alternative to her hopeless case for mandamus or specific performance or cancellation of Elizabeth's transport. Had this been done then she would have at least been able to obtain adequate monetary compensation and recover the \$25,000 paid for the wrong done to her. This is not the first occasion in recent times that we have had to deal with a situation where the real wrong-doer in cases of this sort has been allowed quietly to exit the stage, unnoticed, leaving two innocent parties to tough it out one of whom ultimately is bound to lose. This was also the case in *Ramdass v Jairam*¹⁷ and *Ramdeo v*

¹⁵ [2009] CCJ 3 (AJ)

¹⁶ Ibid at [53]

¹⁷ supra

