

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

EXECUTIVE SUMMARY

In this case the Court had to decide which of the two parties in the matter before it, was 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 first agreed to sell the unit to its tenant, Sybille Sinclair (“Sybille”). The Authority received from Sybille \$23,000 of the \$25,000 purchase price. Sybille died and her daughter, Coreen Sinclair (“Coreen”), paid to the Authority the outstanding balance of \$2,000. Coreen was not issued with a Certificate of Sale. Subsequent to this, the Authority installed the Appellant, Elizabeth Ross (“Elizabeth”), as the tenant of the unit and in what was described as a “grave error”, the Authority received from Elizabeth the full purchase price of \$25,000. The Authority then issued a Certificate of Sale to Elizabeth who promptly registered the same.

In the litigation that ensued between Coreen and Elizabeth the trial court and the Court of Appeal awarded the unit to Coreen, as administratrix of Sybille’s estate. The courts below rested their decision on two broad bases. Firstly, that after Coreen had paid to the Authority the balance of the purchase price a sale to her was completed and she had then become owner of the unit.

The subsequent purported sale of the unit to Elizabeth was therefore a nullity. Secondly, it was stated that the subsequent issuance of a Certificate of 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.

In reversing the decision of the courts below this Court held that the relevant legislation - The Condominium (Regulation and Miscellaneous Provisions) Act, Chapter 36:22 ("the Condominium Act") – had to be examined to determine how and in what circumstances a Certificate of Sale may be issued. Section 50(1) of the Condominium Act provides that before issuing a Certificate of Sale to a person to whom the sale of a unit has been approved, the Authority must first satisfy itself that 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.

In light of the provisions of the Condominium Act and contrary to the Court of Appeal's view in the matter, the Certificate of Sale constituted the completion of the sale. According to 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. Under the Act, completion of a sale is conditional not just upon full payment of the purchase price but also upon satisfaction of other conditions, which are required to be satisfied before the sale.

The mere fact that the vendor in this case was a public authority did not 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 promise to Sybille that, upon payment by her of the remaining \$2,000.00 and upon fulfillment of such other conditions as might have been lawfully imposed upon her, she would be issued with a Certificate

of Sale in respect of the unit, was embodied in the contractual arrangement into which she had entered with the Authority. For any non-observance of that promise Sybille was entitled to complain of a breach of contract.

There was nothing in this case 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 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. Accordingly, there were no grounds upon which the decision of the Authority could properly be challenged in public law.

Pursuant to the provisions of the Condominium Act, a Certificate of Sale for a condominium unit is to be treated for all purposes as if it were a transport or other document effecting the conveyance of the unit mentioned therein. 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. In this case, Elizabeth is entitled to rely on the express provisions of the Deeds Registry Act and on the notion that on registration her certificate of title was indefeasible save for fraud.

As administratrix of her mother's estate Coreen had a good cause of action against the Authority. But, on the facts here, the remedy of specific performance was not available. 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 for value who had faithfully complied with all the requisite statutory conditions.

In these circumstances, Coreen's claim as administratrix is 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.

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.

The Court trusts nonetheless that good sense will prevail and that the Authority, as a responsible body in a democratic society that strives to abide by the rule of law, will act in an appropriate manner so as financially to undo the effects of its breach of contract.

In all the circumstances the appeal was allowed and the orders made by the courts below were quashed. No order as to costs was made.