

judgment 200, 1007

O N A P P E A L

FROM THE COURT OF APPEAL OF THE WEST INDIES
ASSOCIATED STATES SUPREME COURT (ST.LUCIA)

B E T W E E N :

JOHN BERTRAM GODDARD Plaintiff-Respondent - Appellant

- and -

LAURENT JOHN Defendant-Appellant - Respondent

C A S E F O R T H E A P P E L L A N T

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Record

1. This is an appeal from a decision of the West Indies Associated States Supreme Court (Lewis, C.J., Lewis J.A. and Louisy J.A.(Acting)) delivered on the 10th day of September, 1971, which allowed with costs an appeal by the Respondent which sought the reversal of the decision of the High Court of Justice (Civil) of the West Indies Associated States Supreme Court (Renwick J. (Acting)), whereby Judgment' was entered for the Appellant and specific performance of the option to purchase five carres of land known as "Petit Trou" situate in the Quarter of Laborie in the State of Saint Lucia as contained in Clause 3 of the Lease by the Respondentg to the Appellant was granted to the Appellant.

p.31
p.24, 1, 27
p.23, 11.1-3
p.21, 11.27-32

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2. The appeal arises out of a lease with a promise of sale (option to purchase) in writing by the Respondent to the Appellant executed before M.M. Mason, Notary Royal, on the 12th day of July 1965 and registered on the 17th day of July 1965 in Vol. 118a No. 80074 whereby the Respondent granted to the Appellant a lease for five years over a small Estate known as Petit Trou" with an option on the part of the Lessee to renew the Lease for a further period of five years. By Clause 3 of the said Lease the Appellant had the option at any time during the continuation of the said Lease to purchase the said immovable property

pp.40-41
p.1, 1.22-2, 1.7

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from the Respondent and to pay for the same the sum of Three thousand Dollars as well as all arrears of the rental due for the remaining period of any of the five year periods.

pp.1-3

p.2,11.41-44

p.3,1.4

3. On the 30th day of July 1970, the Appellant filed a Declaration in the High Court of Justice (Civil) of the Associated States Supreme Court claiming among other things specific performance of the option to purchase contained in Clause 3 of the said lease, and costs.

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p.4,11.22-25

p.5,11.10-11

p.5,11.20-21

p.5,11.28-30

4. In his Defence the Respondent pleaded that he never executed the said lease nor authorised it to be executed. He, however, stated that he had orally agreed a lease of the land, which had been reduced to writing, and the agreement executed by both the Appellant and the Respondent, and that the agreement did not give the Appellant an option to purchase the said land. This latter lease or agreement was not produced by the Respondent though he stated in his evidence that the Appellant brought it or a copy of it back to him.

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p.12,11.26-34

p.4,11.26-27

5. The Respondent also admitted in his Defence that he had neglected to take any steps to conclude the sale.

p.42,11.1-8

6. The Appellant produced as Exhibit C(1) in the case a receipt from the Respondent dated the 16th August 1965 in the amount of sixty dollars for the lease of the said land from the 16th day of July 1965 to the 15th day of July 1966. This receipt, issued little more than one month after the lease exhibited had been signed, incorporated by reference the lease exhibited in the case itself, by including in its body the number of the lease stamped on the lease by the Treasurer of Saint Lucia namely, Reg. No. 2517. This number appearing on the lease exhibited is repeated in the body of the receipt issued by the Respondent to the Appellant as the number of the lease in respect of which the payment of sixty dollars was received by the Respondent from the Appellant. This Exhibit was not challenged by the Respondent nor did he deny his signature to it.

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p.39,1.18

p.42,1.6

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p.20,11.27-33

7. At the trial of the action, Renwick J. (Acting) stated that he had no doubt in his mind that the Respondent did in fact sign the lease which was exhibited in this case. That finding, in his view, put an end to the matter

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since it was admitted that all the covenants on the part of the Appellant to be obeyed had been obeyed by him, and further that the Appellant had validly exercised his option. He accordingly awarded Judgment to the Appellant and ordered specific performance of the option to purchase contained in Clause 3 of the Lease with costs to be taxed.

p.20,11.34-37

10 8. The Respondent appealed to the Court of Appeal of the West Indies Associated States Supreme Court seeking to have the decision of Renwick J. (Acting) reversed.

p.23,11.1-3

9. The Appeal was heard by the Court of Appeal of the West Indies Associated States Supreme Court (Lewis C.J., Cecil Lewis J.A., and Louisy J.A. (Acting)) on the 9th and 10th days of September 1971 and the Court delivered a unanimous decision allowing the appeal with costs.

p.31,11.14-18

p.31,11.21-23

20 10. Louisy J.A. (Acting) commenced his judgment by reviewing the evidence. He found that the cross-examination of the Appellant revealed that the lease produced had been signed at the home of Mr. Testanier, a Justice of the Peace, at Laborie, and that it had been signed also by the Respondent and the Appellant and that the lease had not been signed before the Notary Royal Mason in Castries. He stated that the lease
30 purported to be a notarial instrument, and as such to be an authentic writing. On that point, he referred to Articles 1139, 1141, and 1142 of the Civil Code.

pp.25-29

p.25,11.44-
p.26,1.3

p.27,11.38-41

11. He noted that the evidence proved that the lease in the action was not executed before a Notary and that it could not therefore be authentic. And though he clearly recognised that the issue between the Respondent and the Appellant was whether or not the document
40 had been signed by the Respondent, he found that the document having been shown to be false would, if this had been prayed for by the Respondent in his defence, have been set aside; and that the Court even though it did not formally set aside the document could not give it any authenticity nor found any judgment upon it. Accordingly, he allowed the appeal and set
50 aside the judgment of the trial judge.

p.28,11.1-4

p.28,11.36-43

p.29,11.1-2

12. Lewis C.J. commenced his judgment by saying that he agreed with the judgment of Louisy J.A. (Acting), and that he wished only to add a few observations. He stated that the learned judge had made a finding of fact

pp.29-30

p.29,11.9-22

that the lease had not been signed before the Notary, neither had it been signed at Castries as it stated; that that finding involved the authenticity of the document; and that it indicated that out of the mouth of the Appellant, the deed of lease relied upon was proved to be a false document. He held that the judge's subsequent finding that the lease had been signed by the Respondent, and that therefore he could grant specific performance of the agreement to sell, did not take account of the fact mentioned by Louisy J., that the Court could not found any judgment upon a document which had been proved to be false. He stated that the authenticity of a notarial instrument depended upon the fact that the conditions set out in the articles to which Louisy J. had referred and other relevant articles of the Code had been truly and faithfully satisfied - that a notary had been present when a deed or a will was signed, and had seen the parties sign - when he put his signature to it, and stated that the deed was executed before him. He continued by saying that if this case was any indication that a practice had been growing up of sending deeds out to be signed before persons who were not notaries, to be followed by a subsequent signature by a notary which testified to an untruth, that practice, if it were to be established, would cut at the very root of the notarial system, and destroy the confidence which the public was invited by the law of Saint Lucia to place in the profession.

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p.29,1.31-
p.30,1.9

p.30
p.30.11.19-21
p.30.11.27-32

13. Cecil Lewis J.A. in his judgment agreed that the appeal should be allowed for the reasons given by Louisy, J.A. (Acting). He concluded by saying that he wholly and entirely supported what Lewis C.J. had said and he hoped that no further attempt would be made to undermine the integrity of the profession or to evade the conditions laid down in the Code for the protection of the notarial system.

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14. The Appellant respectfully submits that the Court of Appeal in considering the question of the authenticity of documents and of the notarial system in Saint Lucia clearly restricted themselves to consideration of too narrow a portion of the provisions of the Civil Code of Saint Lucia and that they did not address their minds to the fact

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- (1) that a lease of a rural estate under Articles 1509 and 1514, and a simple promise of sale (option to purchase)

10 which under Article 1386 is not equiv-
alent to a sale, are not required by
the Laws of Saint Lucia to be in the
form of a notarial instrument but
that, between the parties, it is
sufficient if they be in the form of
a private writing;

20 (2) that even if they were required to be
in the form of an authentic writing
or notarial instrument, Articles 1153
and 1154 made special provisions for
a writing which is not authentic by
reason of any defect of form, or of the
incompetency of the officer, to have
effect as a private writing if it had
been signed by all the parties, and
for private writings acknowledged by
the party against whom they are
set up, or legally held to be acknow-
ledged or proved, to have the same
effect as evidence between the parties
thereto, and between their heirs and
legal representatives, as authentic
30 writings. In this case, the lease
exhibited has the same effect as
evidence between the Appellant and
the Respondent as an authentic
writing since the provisions of
Article 1154 of the Civil Code of
Saint Lucia have been satisfied in
that the trial judge, Renwick J.
(Acting), found that the Respondent
had in fact signed the lease which
was exhibited in this case - a
40 finding which the Court of Appeal
accepted and did not reject -
and so the lease exhibited had it
contained the alleged defects would
have had the same effect between the
Appellant and the Respondent as it
would have had, had it not contained
those defects and had it been in all
respects an authentic writing which,
under Article 1141 is complete proof
50 between the parties to it.

p.20,11.27-
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p.26,11.1-2
p.29,11.16-17

60 15. The **Appellant** also respectfully submits
that the Respondent's defence was confined to a
denial that he ever executed the lease exhibited p.4,11.22-25
in the case or authorised it to be executed.
The Respondent did not in his defence set up
the inauthenticity of the lease exhibited on
the grounds that he had not appended his signa-
ture before the Notary nor that he had not
done so at Castries. This he clearly did
not nor, indeed, could not do since it would

Record

p.4.11.22-25
p.8.11.10-20
p.8.11.43-45

have involved a clear contradiction of his plea that he did not execute the lease exhibited nor authorise it to be executed. The point arose in the course of the cross-examination of the Appellant when counsel for the Respondent raised the questions of where the lease had been signed and before whom it had been executed. The Appellant respectfully submits that unless the illegality was properly pleaded or appeared on the plaintiff's case, the questions could not have been put in that context in cross-examination. No such point had been raised by the pleadings pursuant to the requirements of the Rules of the Supreme Court 1970 nor did the pleadings of the Respondent throw on the Appellant any duty to bring forward evidence to rebut any presumption of illegality or irregularity connected with where or before whom the lease had been executed. In the circumstances, the Appellant respectfully submits that in the absence of amended pleadings followed by full evidence on the alleged illegality the Court of Appeal was precluded from basing its decision on questions which should not have been put in that context in cross-examination.

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pp.38 & 39

16. The Appellant applied to the Court of Appeal of the West Indies Associated States Supreme Court for Leave to Appeal to Her Majesty in Council, and on the 8th day of March 1972, the said Court of Appeal granted the Appellant final Leave to Appeal to Her Majesty in Council

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p.31,11.21-23

17. The Appellant respectfully submits that the decision of the Court of Appeal of the West Indies Associated States Supreme Court, allowing the appeal with costs to the Respondent, be reversed, and the decision of the High Court of Justice (Renwick J. (Acting)) be affirmed, with costs here and in the Courts below, for the following among other

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R E A S O N S

- (1) BECAUSE the Respondent did in fact sign the lease which contained the simple promise of sale (option to purchase) and which was exhibited in the case
- (2) BECAUSE under the Laws of Saint Lucia a simple promise of sale (option to purchase) is not required to be in

the form of a notarial instrument or authentic writing

- 10 (3) BECAUSE even if the promise of sale was required to be in the form of a notarial instrument or authentic writing, the finding of the trial judge, accepted by the Court of Appeal, that the Respondent did in fact sign the lease, which contained the promise of sale, gave the document the same effect as evidence between the Appellant and the Respondent as a notarial instrument or authentic writing
- 20 (4) BECAUSE the failure of the Respondent to produce the lease agreement which he said had been executed by both the Appellant and himself and which he stated did not contain an option to purchase, precluded him from giving oral testimony of it, he having admitted in his evidence that the Appellant had brought it or a copy of it back to him, and he having given no proof that the lease agreement or the copy of it had been lost by unforeseen
- 30 accident, or was in the possession of the adverse party or of a third person without collusion of the Respondent, as required by the laws of Saint Lucia
- (5) BECAUSE the Respondent at paragraph 2 of his Defence admitted that he had neglected to take any steps to conclude the sale
- 40 (6) BECAUSE the Respondent did not specifically plead that the lease exhibited in the case was fraudulent or illegal in that it had not been signed at Castries, nor before the Notary as it purported.
- (7) BECAUSE no illegality appeared on the face of the lease exhibited in the case
- 50 (8) BECAUSE such a plea as at 5 above would have been clearly inconsistent with the Respondent's pleading at paragraph 1 of his Defence that he never executed nor authorised to be

Record

executed the lease exhibited in the case and therefore contrary to the Rules of the Supreme Court 1970

- (9) BECAUSE the Court of Appeal ought not to have found for the Respondent on the basis of replies to questions which should not have been put in cross-examination for the purpose for which they were used, nor in the absence of properly amended pleadings and full evidence on the point. 10
- (10) BECAUSE of the other reasons given in the judgment of Renwick J.(Acting).

KENNETH A. ^HK. FOSTER

IN THE PRIVY COUNCIL

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B E T W E E N

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Plaintiff-Respondent -
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- and -

LAURENT JOHN
Defendant-Appellant =
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CASE FOR THE APPELLANT
