



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2014HCV06007

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|----------------|---|--------------------------------|
| BETWEEN | DENNIS BARRETT | 1ST CLAIMANT |
| | SOPHIA GEDDES | 2ND CLAIMANT |
| AND | DORCELYN EBANKS (Representative Estate ERROL EBANKS) | DEFENDANT |

Application to strike out Claim – Previous Claim on same subject matter ended with Consent Order – Unilateral Mistake – Whether Consent Order should be set aside

Mr. John Givans and Lori Ann Givans instructed by Givans & Company for Claimants.

Judith M. Clarke instructed by Judith M. Clarke & Co. for Defendant.

Heard: 20th June, 2016 & 14th October, 2016

IN CHAMBERS

COR: BATTS, J.

[1] On the 20th June 2016 I made the following Orders:

- a) The Claim is Struck Out
- b) Costs to the Defendant to be taxed or agreed
- c) Leave to appeal granted

I promised then to put my reasons in writing. This judgment is the fulfilment of that promise.

- [2] The Defendant applied to strike out this suit on the basis that the issues to be determined have been litigated and determined in suit No. E015 of 1998. That suit ended in a Consent Judgment.
- [3] The Claimants do not deny that the earlier suit ended in a consent judgment. Nor indeed do they deny that it concerned the same claim to the same land. They say however that the instant suit seeks to have the consent judgment set aside. They say that they made an error when agreeing to the consent judgment and hence are entitled to have it set aside.
- [4] When asked to state an authority in support of that proposition Mr. Givans was unable to do so. The position in law is I believe, that where a consent judgment takes the form of an agreement between the parties it can only be set aside for reasons analogous to those which may vitiate a contract. These being common fundamental mistake, fraud, misrepresentation or frustration, see ***Vincent v Bailey RMCA No. 9/2013 Unreported Judgment of 18 March, 2015, Siebe Gorman & Co Limited v Pneupac Limited; CA [1982] 1 WLR 185 @ 189.*** Whereas the categories may not be absolutely closed, a unilateral mistake to which the other side was not privy is not a basis to void a contract, or set aside a Consent Judgment of the kind under discussion.
- [5] In the case at bar the facts are that the Claimants and Mr. Errol Ebanks, now deceased, had a dispute as to the ownership of certain land. The deceased in consequence filed suit in CLE015 of 1998 against the present Claimants. The parties and their respective attorneys held settlement discussions. Both parties were privy to a surveyor's report. Each party also had receipts for taxes. These bore differing land valuation numbers. The Claimants erroneously thought that because the receipts had different land valuation numbers, they concerned separate parcels of land.

[6] A consent judgment was entered into on the 15th day of December 2008. The material paragraph is as follows:

“The Claimant is the equitable owner and the person entitled to possession of all that parcel of land part of Bigwoods in the parish of St. Elizabeth butting and bounding as appears in the Prechecked plan bearing Survey Department identification number 270701 and bearing land valuation number 200030040120.”

[7] The Claimants cannot succeed. It may be that other remedies are available against those who may have misled them. It may be the agency of the state which gave differing valuation numbers to the same parcel of land may have a duty. I do not know. However, it is manifest that the dispute as to entitlement to the land described in the consent judgment has been settled. The Claimants unilateral error is not a basis to set aside the consent judgment.

David Batts
Puisne Judge