

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. 1266 of 2005

BETWEEN

ALBERT GEORGE

Plaintiff

AND

RAMDIAL MOHAN

Defendant



Before The Hon. Madam Justice C. Pemberton

Appearances:

For the Plaintiff: Mr C. Selvon

For the Defendant: Mr A. Singh

2005: September 19th

2005: November 7th

2006: January 18th

DECISION

[1] This action was begun by Writ of Summons dated 24th May 2005, seeking the relief of recession of an agreement for sale of certain property situate in South Maloney and repayment of Mr George's deposit of \$24,000.00.

Mr George seeks to base his substantive action on the following:

- (1) Mr Mohan has a possessory title (See Deed of Conveyance – himself to himself confirming that fact);
- (2) That Possessory title is not a good marketable title and is therefore defective;
- (3) Mr Mohan therefore cannot convey the property to him.

[2] The court records reveal certain curiosities since the filing of the Writ of Summons and Statement of Claim. On 15th June 2005 one Denise Mohan Mahabir filed an affidavit in purported support of an application filed by Mr Mohan to have service of Mr George's Writ set aside. There was no Summons to pin this affidavit onto and therefore that matter never ripened for the court's consideration.

[3] On 8th July 2005 Mr George filed an application pursuant to Order 84 (83 sic) seeking recession of the agreement and repayment of the deposit. This was supported by Mr George's affidavit of even date. The application came up for hearing before this court on 19th September 2005, neither party was present and the application was duly dismissed.

[4] On 28th September 2005 Mr George filed another application, which was to come up for hearing on 7th November 2005. On 17th October 2005 Mr George filed an affidavit to which the following Notice to read and use was attached:

TAKE NOTICE that the paper writing hereto attached is a true and correct copy of the Affidavit of Albert George sworn and filed on the 8th day of July 2005.

AND FURTHER TAKE NOTICE that the said Affidavit will be read and used in Support of the Summons filed herein on the 28th day of September 2005.

[5] It does not appear on the face of the Affidavit that Mr George sought or had been given leave of the Court to use this Affidavit in support of his summons.

[6] Be that as it may, on 7th November 2005 I invited the parties to make Written Submissions on the application. As far as I can see, Mr Mohan's submissions were late, and filed without leave of the Court.

[7] Again, be that as it may I considered the submissions.

PRELIMINARY POINTS

There were two preliminary points raised by Mr Mohan. They are:

- (1) That the Summons was premature;
- (2) That Mr George's affidavit contains statements of information and belief.

[8] **SUMMONS PREMATURE**

Mr Mohan's contention is that the Summons was premature since at the date of filing 28th September 2005, proper service had not been effected on him.

[9] **STATEMENTS OF INFORMATION AND BELIEF**

Those parts of Mr George's affidavit in so far as they contain statements of information and belief should be struck from the record.

These statements Mr Mohan claims, offend Order 83 Rule 2 (1) of the Rules of the Supreme Court, 1975. Even though they are allowed in UK practice, there is no equivalent of those provisions in our RSC 1975, which permit use of material based on information and belief in an affidavit in support of an application hereunder.

[10] **ANALYSIS**

Mr Mohan's submission on these issues accord with my own view of the proper procedure to be used in these matters. The court record does not reveal an affidavit of service of either the substantive action or the application on Mr Mohan. There is an Entry of Appearance on behalf of Mr Mohan filed 31st October 2005, days after the filing of the application under Order 83 and months after the filing of the Writ of Summons and Statement of Claim.

[11] Order 83 Rule 1(2) enables a Plaintiff to make an application under that Rule whether or not the Defendant has entered an appearance. Surely the Defendant must be served as a first step. Since there is no evidence that there was service on Mr Mohan as at the date of the filing of the Summons, Mr George cannot seek the umbrella provided by this Rule. The Summons is therefore premature.

[12] I need go no further but I must commend Order 83 in its entirety to the parties especially Rules 2 and 4 (1). The words "or otherwise" in Rule 4 (1) cannot admit to use of material in the manner employed by Mr George.

[13] I wish to further commend to the parties that they enter negotiations with a view to settling this matter in light of what may be revealed in a study and true construction of our local law as contained in the **CONVEYANCING AND LAW OF PROPERTY ORDINANCE**¹ and the cases from this jurisdiction.

¹ Ch. 27 No 12 of the Laws of Trinidad and Tobago

Should settlement negotiations not bear fruit, my opinion is that this matter will benefit from ventilation at a trial.

[14] **COSTS**

Even though the usual order should be against Mr George in costs, I am of the view that to achieve ends of fairness that each party should bear his own costs.

ORDER:

- That the Summons filed by the Plaintiff is premature and cannot be proceeded upon.
- Each party to bear his own costs.
- Further Pre Trial Review 4th April 2006 at 10:00 a.m. Room POS#17.

CHARMAINE PEMBERTON
HIGH COURT JUDGE