

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHCV2023/0342

BETWEEN:

ELVIS YANNICK LEON

Claimant

and

[1] THE DIRECTOR OF FINANCE AND PLANNING
[2] ACCOUNTANT GENERAL
[3] COMPTROLLER OF INLAND REVENUE

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Wauneen Louis-Harris for the Claimant

Mr. Seryozha Cenac with Mrs. Rochelle John-Charles for the Defendants

2024: June 12; (Trial)
2026: March 16. (Decision)

JUDGMENT

[1] **CENAC-PHULGENCE J:** Before the Court is a claim for judicial review arising out of the submission of a Deed of Sale to the Inland Revenue Department (“IRD”) and which seeks to challenge the actions of the Comptroller of Inland Revenue in issuing a query and not collecting the stamp duty and stamping the Deed of Sale.

[2] The claimant, Mr. Elvis Yannick Leon (“Mr. Leon”) submitted a Deed of Sale which had been executed on 7th June 2023 (“the Deed of Sale”) for the purchase of a one half share of Block and Parcel 1251B 38 (“the Property”) to the IRD to be stamped, together with a cheque for payment of stamp duty in the sum of \$420.00 based on the amount of the consideration of \$20,000.00.

- [3] The Deed of Sale was returned by the IRD with a handwritten note stating “Could you please indicate why property is being sold for \$20,000.00”. The Deed of Sale was then resubmitted to the IRD without any further amendments, supporting documents addressing the query or attempts to clarify the note. It was not stamped. The Deed of Sale remained in the custody of IRD until 25th July 2023 when it was returned to Mr. Leon’s attorney along with a letter. The decision to query the Deed of Sale and the IRD’s failure to stamp the instrument is challenged by the claimant. The response of the IRD placed heavy reliance on section 12 of the **Stamp Duty Act**¹ (“the Act”).
- [4] It may be useful to set out the chronology of events in this matter to set the stage for the discussion of the issues.
- About 7th June 2023-the Deed of Sale along with a cheque in the sum of \$420.00 was submitted to the IRD;
 - 9th June 2023- the Deed of Sale and cheque were returned by the IRD to Mr. Leon’s attorney accompanied by a note asking why the Property was being sold for \$20,000.00;
 - 12th June 2023-Deed of Sale and cheque returned to the IRD;
 - 12th July 2023-Mr. Leon’s attorney wrote a letter to the IRD, Director of Finance and Planning and the Accountant General;
 - 25th July 2023-the Deed of Sale was returned along with the cheque to Mr. Leon’s attorney along with a letter issued on behalf of the Comptroller of Inland Revenue, Ms. Marcia Vité (“Ms. Vité”);
- [5] Mr. Leon alleges that the defendants refused to collect and receive the stamp duty and stamp the Deed of Sale. His position is that the defendants have acted ultra vires the Act by withholding the collection and receipt of the stamp duty and not stamping the Deed of Sale on the basis of a request for details made pursuant to section 12 of the Act which Mr. Leon contends does not give the defendants any power to withhold the receipt of stamp duty and the stamping of the Deed of Sale. Mr. Leon contends that the decision to refuse to collect and receive the stamp duty and to stamp the Deed of Sale is unlawful, irrational and procedurally improper.

¹ Cap. 15.11 of the Revised Laws of Saint Lucia 2020.

[6] It is Mr. Leon's contention that the defendants failed to discharge their duty or abused their power by failing and/or refusing to receive the stamp duty and stamp the Deed of Sale.

[7] Mr. Leon seeks the following relief on his claim:

- (a) an order of mandamus to compel the defendants herein to comply with section 3 of the Stamp Duty Act to raise, levy and collect and pay to Her Majesty for the public use of Saint Lucia the sum of \$20,000.00 upon and in receipt of the conveyance of sale specified in the Schedule of the Act as Instrument No. 36-conveyance or transfer or sale of any immovable property, such duty to be paid by the purchaser whereupon the stamp duty payable is 2 per cent ad valorem, the said Instrument being the Deed of Sale executed by Elaine Eulalie Watson formerly Elaine Eulalie Leon as the Vendor to Elvis Yannick Leon as the Purchaser on the 7th June, 2023;
- (b) a declaration that the actions and decisions of the defendants were made on the basis of: (i) illegality; (ii) irrationality (iii) procedural impropriety;
- (c) a declaration that the actions and decisions or lack thereof of the defendants herein are unlawful, arbitrary and must be reconsidered;
- (d) a declaration that the defendants acted ultra vires of the Stamp Duty Act in failing and or refusing to receive, collect the stamp duty and stamp the Instrument;
- (e) a declaration that the defendants acted in breach of their statutory duties under the Act which entitles the claimant to damages;
- (f) damages for the losses sustained by the claimant as result of the matters stated in the foregoing;
- (g) interest on all sums awarded at the rate of 6 per cent per annum;
- (h) further or other relief.
- (i) costs.

[8] The IRD, which is headed by the Comptroller of Inland Revenue administers the Act under the direction of the Director of Finance and Planning by assessing, collecting and enforcing the legislation in relation to legal transactions for property among other things.

Issues

[9] I will address the issues as identified by the parties which in my opinion are at the crux of this matter with minor modifications.

Issue 1: Whether section 12 of the Act confers the power to the defendants to inquire of the claimant as to the facts and circumstances affecting the liability of the Deed of Sale to duty or the amount of duty with which the Deed of Sale is chargeable?

Issue 2: Whether the failure or refusal of the defendants to receive and collect the stamp duty and stamp the Deed of Sale was ultra vires section 3 and 12 of the Act?

Issue 3: Whether the actions or refusal of the Inland Revenue to collect the stamp duty and stamp the Deed of Sale were made based on illegality, irrationality or procedural impropriety?

Issue 4: Whether an assessment of stamp duty on a separate independent deed has an impact on the defendant's assessment or stamp duty on the claimant's Deed of Sale?

Issue 5: Whether the claimant is entitled to damages, and if so, what quantum?

Issue 6: Whether the claimant is entitled to the costs of the proceedings and if so, how are costs to be assessed?

Relevant Legislation

[10] The relevant sections of the Act are as follows:

“Section 3: Duties Imposed

(1) There shall be raised, levied, collected and paid unto Her Majesty for the public use of Saint Lucia upon and in respect of the several instruments specified in the Schedule, the several duties in such Schedule specified, subject to the exemptions contained therein and in any Act in force.

(2) Cabinet may by regulations alter the said schedule by increasing or decreasing the amount of any duties therein specified or by annulling any of the said duties or by adding any instrument not specified in the said Schedule and imposing duties thereto or in any other manner as they may deem necessary.

(3) The provisions of this Act apply to every instrument which may be declared by this or any other Act to be liable to stamp duty.”

“Section 4: Denomination and Management of Duties

The duties imposed and regulated by this Act shall be denominated stamp duties, and shall be under the management of the Director of Finance and

Planning, who has all necessary power and authority for carrying this Act into execution, subject however to the general control and direction of the Governor General.”

“Section 8: Pre-payment Necessary

A public officer shall not apply or affix any stamp unless the amount of such stamp shall have been previously paid by the party requiring the same.”

“Section 12: Facts and circumstances affecting duty to be set out in instruments

All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set out in the instrument; and every person who, with intent to defraud Her Majesty-

- (a) executes any instrument in which all the said facts and circumstances are not fully and truly set out; or
- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set out therein all the said facts and circumstances, shall incur a fine not exceeding \$50.

“Section 35: Meaning of “conveyance on sale”

For the purposes of this Act the expression “conveyance on sale” includes every instrument whereby any property or any estate or interest in any property upon the sale thereof is transferred to or vested in a purchaser or any other person on his or her behalf or by his or her direction.”

Discussion and Analysis

Issue 1: Whether section 12 of the Act confers the power to the defendants to inquire of the claimant as to the facts and circumstances affecting the liability of the Deed of Sale to duty or the amount of duty with which the Deed of Sale is chargeable?

- [11] Counsel, Mrs. Wauneen Louis-Harris (“Mrs. Louis-Harris”) submits on behalf of Mr. Leon that section 12 of the Act is to be interpreted to mean that a criminal sanction is to be imposed in the event of a violation of the section, that is where a person fails to fully and truly set out all the facts and circumstances of the instrument. Mrs. Louis-Harris calls for a literal interpretation of the provision and posits that since the section provides for a criminal sanction for non-compliance, the defendants are not at liberty to withhold the stamping of an instrument, in this case, the Deed of Sale and the collection of duty. Therefore, according to Counsel, where an instrument fails to comply with the

requirements of section 12, the IRD is mandated to stamp the instrument with the only consequence being a \$50 fine.

[12] The claimant also submits that the IRD wants to assess the stamp duty chargeable on the Deed of Sale based on the value of the Property and not the consideration specified in the Deed of Sale. It is clear from the defendants' evidence and submissions that they do not hold this view. Counsel for the defendants, Mr. Seryozha Cenac ("Mr. Cenac") in submissions accepts that the stamp duty payable on a Deed of Sale is based on the consideration stated in that Deed. However, he submits that the defendants have requested further details regarding the low purchase price as it is not reflected in the Deed of Sale.

[13] Having read section 12 of the Act (which is the same wording as section 5 of the **Stamp Duty Act 1891** of the United Kingdom ("the Stamp Duty Act 1891"), I am of the view that it does not align with the claimant's argument. From my interpretation, section 12 operates as follows:

(a) All the facts and circumstances affecting the liability of any instrument to duty, or the amount of duty with which any instrument is chargeable, **are to be fully and truly set out in the instrument**. That is, at the time of submission of the instrument to the Director of Finance & Planning (or whom he appoints, in this case the IRD) for assessment of stamp duty, the instrument ought to have set out all the facts and circumstances as required.

(b) In the event that a person with intent to defraud executes any instrument in which all the said facts and circumstances are not fully and truly set out or being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set out all the facts and circumstances, that person shall incur a fine not exceeding \$50. That is, the fact of a person not fully and truly setting out all the said facts and circumstances in the instrument coupled with an intention to defraud, will result in the incurring of a fine of \$50.

(c) The section implies a discretion on the part of the assessor to determine whether all of the facts and circumstances were not fully and truly set out in the instrument.

[14] On close assessment of section 12 of the Act, in my view it does not mandate the assessor to stamp the instrument and then apply the fine. Neither does the section deal with the power of the assessor to refuse to stamp an instrument or not. Rather, it speaks to the obligation on the part of the person submitting the instrument, to fully and truly set out all the facts and circumstances in the instrument and the role of the assessor in ensuring that the provision is complied with.

[15] Section 3 of the Act speaks to the duties imposed but it does not detail the actions of the assessor during this assessment period, nor does it speak to the ability of the assessor to refuse stamping of an instrument. Rather, the management of the Act is set out in section 4, which by itself does not say much. The Act itself appears to be actually silent on the exercise of power by the Director of Finance and Planning with respect to the exercise of this function, and it may be fair to assume that this is regulated by some internal document, procedure or practice.

[16] Counsel for the defendants, Mr. Cenac relies on UK authorities to support their arguments that the purpose of section 12 is to empower the defendants to request such information that may reasonably affect a person's liability to stamp duty, with the corollary that a failure of a taxpayer to provide that information entitles the defendants to refuse to stamp the instrument. However, the UK legislation is different. Buttressing section 5 is section 12 of the Stamp Duty Act 1891 which provides as follows:

“Adjudication by Commissioners.

(1) Subject to such regulations as the Commissioners may think fit to make, the Commissioners may be required by any person to adjudicate with reference to any executed instrument upon the questions—

(a) whether it is chargeable with duty;

(b) with what amount of duty it is chargeable;

- (c) whether any penalty is payable under section 15B (penalty on late stamping);
- (d) what penalty is in their opinion correct and appropriate.

(2) The Commissioners may require to be furnished with an abstract of the instrument and with such evidence as they may require as to the facts and circumstances relevant to those questions.

(3) The Commissioners shall give notice of their decision upon those questions to the person by whom the adjudication was required.

(4) If the Commissioners decide that the instrument is not chargeable with any duty, it may be stamped with a particular stamp denoting that it has been the subject of adjudication and is not chargeable with any duty.

(5) If the Commissioners decide that the instrument is chargeable with duty and assess the amount of duty chargeable, the instrument when stamped in accordance with their decision may be stamped with a particular stamp denoting that it has been the subject of adjudication and is duly stamped.

(6) Every instrument stamped in accordance with subsection (4) or (5) shall be admissible in evidence and available for all purposes notwithstanding any objection relating to duty.” (my emphasis)

[17] According to the Government of United Kingdom’s website², the following is said of section 5 of the UK Stamp Duty Act:

“As previously mentioned (see STSM011010) Stamp Duty (SD) is charged on instruments, not transactions. Section 5 Stamp Act 1891 provides that all the facts and circumstances that affect the liability of a document to duty should be “fully and truly set forth in the instrument”. It also imposes penalties for deliberate failure to comply with this provision.

It is particularly important that all the consideration given for the subject matter of the transaction is accurate and it is the responsibility both of the person preparing the document and of all signatories to ensure that this is so. This does not mean that the consideration must be quantified; for example, a stock transfer form may refer to “the consideration stated in an agreement of even date between the parties hereto”. This would be acceptable but the cited agreement would need to be presented with the document to be stamped so that the stamp duty examiner could determine the amount of the chargeable consideration.

² <https://www.gov.uk/hmrc-internal-manuals/stamp-taxes-shares-manual/stsm012030>

It is likely that the agent would wish to have the adjudication stamp applied to such an instrument. This is perfectly acceptable provided that the document examiner is confident that the correct SD has been paid. This does not, however, apply to documents which are stamped on a provisional basis (see STSM017030). The adjudication stamp can only be applied on final stamping.”

[18] The website³ further describes the interplay between section 5 and section 12 of the Stamp Duty Act 1891 as follows:

“When presenting an instrument to HMRC the customer must ensure that all the facts and circumstances affecting its liability to duty, or the amount of duty chargeable, are “fully and truly set forth” in the instrument (section 5 Stamp Act 1891).

Where necessary, HMRC may ask for copies of contracts, valuations, supporting documents and other background material in order to calculate the duty.

Where an instrument is to be adjudicated (see STSM012020) under section 12 SA1891, HMRC’s right to require evidence to be provided is detailed in section 12(2) SA1891 (see STSM012030).”

[19] As can be seen, the UK Stamp Duty Act specifically provides for the commissioners to require further documents and evidence as they may deem necessary in order to be satisfied as to whether all facts and circumstances affecting the liability of the instrument to duty or the amount of duty chargeable on that instrument have been fully and truly set out (see section 12(2) of the Stamp Duty Act 1891). I have not found an identical provision in the Act nor otherwise.

[20] Section 3 of the Act does not assist because it speaks to imposition of stamp duties not the management of the responsibilities associated with that imposition. This is provided for by section 4 which simply states that the stamp duties imposed shall be under the management of the Director of Finance and Planning, who ‘has all necessary power and authority for carrying the Act into execution’, subject however to the general control and direction of the Governor General. It does not provide any further details.

³<https://www.gov.uk/hmrc-internal-manuals/stamp-taxes-shares-manual/stsm141070>

[21] In comparison to the Stamp Duty Act 1891, the Act appears to be silent on the powers of the assessors.

[22] In the Opinion of the Court of Appeal, **In the matter of the Attorney General's Reference (Constitutional Questions) Act Cap. 17.18 of the Revised Laws of Saint Lucia 2006**,⁴ the Court of Appeal gave a unanimous opinion regarding important questions relating to section 35 and instruments 3 and 26 and section 16 of the **Stamp Duty Act**.

[23] Whilst the crux of the Court of Appeal's opinion focused on the interpretation of section 35 and the basis upon which those instruments are charged, it does shed some light on the interpretation of section 12. Ventose JA [Ag], delivering the opinion of the Court of Appeal, states as follows:

“[17] ... The SDA is not concerned with the identification of the nature and way in which parties determine the consideration that is payable for any conveyance or transfer on sale. This is a commercial matter between the parties. The SDA, however, makes provision for the determination of the amount of stamp duty that must be paid on every instrument that is liable to stamp duty. Under section 35 of the SDA, one must first identify the instrument by which property is transferred from a seller to as purchaser. Second, one must then determine the amount or value of the consideration for the sale. Once the consideration is identified, its amount or value is then used in the assessment of the ad valorem duty that is payable. **Section 12 makes clear that all the facts and circumstances affecting the stamp duty must be set out in the instrument.**

[18] I agree with the submission of the First Interested Party that: (1) the consideration which is the contemplated basis for the assessment is not the value of the assets transferred to the purchaser, but what is the quid pro quo, or what is given by the purchaser to the seller, to induce the seller to part with its property; and (2) **the quid pro quo will be determined between the vendor and purchaser typically on a commercial basis, and the Inland Revenue Department will be entitled to look at all relevant facts and documents to ensure that the full consideration for a sale is not understated.**

...

⁴ SLUHCVP2021/0015, (delivered 31st January 2024, unreported).

[20] As mentioned above, the SDA is not concerned with determining the types of consideration or the way in which parties have determined the consideration for the sale. However, as the decision of the House of Lords in *Oughtred v Inland Revenue Commissioners* [1960] AC 206] makes clear, the court has the power to determine whether the amount stated in the instrument for the sale is the actual amount of consideration for the sale that is subject to stamp duty. **In this respect, I agree with the First Interested Party that the court may have regard to all relevant documents and surrounding circumstances to enable it to determine the amount of the consideration for sale.**” (My emphasis)

[24] In *Oughtred v Inland Revenue Commissioners*,⁵ the House of Lords did not consider section 5 of the UK Stamp Duty Act at all, and I am therefore not certain that it is applicable to the issue at hand. As previously mentioned, in the UK, the basis for requiring further documents is section 12 of the Stamp Duty Act 1891 of which there is no apparent equivalent in the Saint Lucia Act. Notwithstanding, the Court in the *Attorney General's Reference* accepted that the IRD was entitled to look at all relevant facts and documents to ensure that the full consideration for the sale is not understated.

[25] Mr. Cenac, on behalf of the defendants submits that section 12 of the Act must be construed in a manner that would allow the defendants to refuse to stamp an instrument which does not contain all the relevant facts and circumstances affecting the instrument's liability to duty, until that information is provided. I can accept this submission. To say otherwise would render the section useless.

[26] As stated above, in my opinion, section 12 of the Act does not touch or concern the ability to refuse stamping in the first instance, although, as I have stated, I agree with the defendants that the section ought to be construed in that way. Section 12 sets out the obligations of the person executing and preparing the instrument and the consequence for failing to fully and truly set out in the facts and circumstances in the instrument. Utilising a literal approach, it appears that the section speaks only to the information which is provided in the instrument and not to external sources.

⁵ [1960] AC 206.

- [27] The defendants allege that Mr. Leon has failed to recite in its instrument the reason that the consideration for the transaction is much lower than the previous transaction relating to the Property.⁶ This I can accept on a reading of section 12.
- [28] However, I entertain some reservation as to whether without specific provision being made, section 12 of the Act on its own empowers the assessor to require sources outside of the instrument. That being said, whilst the Act does not have the equivalent of section 12 of the UK Stamp Duty Act 1891, I am not of the opinion that the assessor does not have the ability to ask for supporting documents for the reasons which follow.
- [29] Mr. Cenac, Counsel for the defendants relies on section 17(3) of the **Interpretation Act**,⁷ which states as follows:
- “Where an enactment empowers any person or authority do any act or thing, all such powers shall be deemed to be also given as are reasonably necessary to enable that person or authority to do that act or thing or are incidental to the doing thereof.”
- [30] If one reads section 4 of the Act and section 17(3) of the **Interpretation Act** together, I think that this provides a sound basis for the assessor requiring supporting documents and supports the defendants’ argument for a need for the claimant to provide the agreement for sale where facts and circumstances are not fully set out in an instrument as required by section 12 of the Act.
- [31] The Court of Appeal in its opinion in the **Attorney General’s Reference** in its interpretation of section 12 was of the view that this section allows for inquiries and requests for further documents to be provided. As Mr. Cenac submits on behalf of the defendants, section 12 must be construed in a manner that would allow the defendants to refuse to stamp an instrument which does not contain all the relevant facts and circumstances affecting the instrument’s liability to duty, until that information is provided and I fully agree.

⁶ See paras 24 and 25 of the defendants’ submissions filed 2nd May 2024.

⁷ Cap. 1.06 of the Revised Laws of Saint Lucia, 2020.

- [32] Mrs. Louis-Harris seems to suggest that section 12 does not allow for the IRD to refuse to stamp an instrument as the section provides a criminal sanction.
- [33] In **Sergeant & Sims on Stamp Taxes** under the rubric “Instruments Must Set Out All Facts and Circumstances Relevant To Stamp Duty”,⁸ the learned authors state in relation to the statutory duty imposed by section 5 of the Stamp Duty Act 1891 to disclose all relevant facts and circumstances in any chargeable instrument, that no fine is imposed in the absence of an intent to defraud. They go on to state that the penalties under the Stamp Duty Act are administrative and not criminal.
- [34] Mr. Cenac submits that the mischief behind the Act is for the defendants to collect stamp duty in proportion to the actual consideration paid on instruments submitted for assessment. The defendants therefore argue that in order to discharge their statutory duty under section 3 of the Act, the purpose of section 12 is to allow the Comptroller to request such information that may reasonably affect an instrument’s liability to stamp duty. They therefore argue that section 12 should be given such construction that would suppress the ability of persons to avoid or evade the application of the correct stamp duty being assessed.
- [35] In addressing this claim, it is apparent to me that there may be need for an amendment to section 12 of the Act to bring some legislative clarity to this area. I have already looked at the UK Stamp Duty legislation. Section 11(1) of the Hong Kong Stamp Duty Ordinance Cap 117 is in similar terms to the first part of our section 12. Section 11(2) of the Hong Kong Ordinance provides for persons who act with intent to defraud but it expressly makes it an offence. Of significance is section 11(4) which makes clear that ‘where any of the facts and circumstances affecting liability of any instrument to stamp duty, or the amount of the stamp duty chargeable on the instrument, are not fully and truly set forth in the instrument’, then the Collector can refuse to stamp the instrument or stamp the instrument subject to such conditions as he may think fit.

⁸ A19.4 at para [1465].

[36] The Stamp Office Interpretation and Practice Notes No. 3 issued by the Hong Kong Inland Revenue Department⁹ at No 23 in discussing the disclosure requirements under their section 11 which is in some way similar to our section 12, states:

“The Stamp Office may, if it is considered necessary, make enquiries in relation to the facts and circumstances of a transaction before stamping the instruments concerned.”

[37] Even without it being stated in the section, this is the practical approach taken in relation to the section. By way of another example, in the Stamp Duty Act of Kenya, Cap 480, the legislature has spelt out the powers of the Collector and provides in section 10(2) that the collector may require any person executing or any person involved in the preparation of the instrument to give evidence on oath or by statutory declaration, as to the fullness and truth of the facts and circumstances stated. The Collector can summon any person for the taking of evidence and that person is legally bound to answer such questions and to produce such documents, as the collector may put to him or require to be produced relating to those facts and circumstances. That is a more comprehensive approach which makes clear the powers of the assessor/collector.

[38] Having considered the Court of Appeal’s opinion in the Attorney General’s Reference, I agree that section 12 does not preclude the IRD assessor from raising a query with respect to for example, consideration paid as in this case where all the facts and circumstances in relation to that aspect have not been stated and especially in light of the previous transaction history. Whilst the IRD cannot use their own information which they obtain through independent inquiry to assess the stamp duty, I see nothing which prevents them from raising a query with the person who submits an instrument for assessment based on such inquiries.

[39] I am also of the view that section 4 of the Act is written in very wide terms when it speaks to the Director of Planning (delegated to the IRD Comptroller) having all necessary power and authority for carrying the Act into execution. It

⁹ <https://www.ird.gov.hk/eng/pdf/soipn03.pdf>.

could hardly be that there would be a requirement for compliance with a section of the Act but the persons who administer the Act have no power to raise a query. Coupled with section 17 of the Interpretation Act, it makes for a strong case that the IRD can raise a query where it is of the view that all facts and circumstances have not been fully set out in the instrument.

[40] I am of the opinion that section 12 is not a provision as Mrs. Louis-Harris submits, which mandates the assessor to stamp the instrument if all the facts and circumstances of the instrument are not fully and truly set out on the face of it. As a result, the assessor was within his/her right, to refuse to stamp the document and raise a query. Whilst I am of the view that the manner in which the query was raised leaves much to be desired (a handwritten note scribbled on a sticky note, not referencing the instrument to which it relates, not addressed to anyone in particular, not dated and the query not detailed enough) the issuing of a query was not outside of the remit of the Comptroller of Inland Revenue through her officers.

[41] Before I proceed to the next issue, I wish to note that when Mr. Leon would have received the 'note' with a query, his response was to simply re-submit the Deed of Sale without seeking to ascertain what the query meant or to address it in any way. His Counsel could have simply written to seek clarification on the matter and perhaps provide some information which may have satisfied the Comptroller or seek to have dialogue with the IRD. We see from the chronology that the Deed of Sale was returned on 9th June 2023, and it was re-submitted on 12th June 2023 as originally submitted. Mr. Leon's attorney would have then written to the IRD a month later and in that month, nothing was done to seek clarity on the issue. Mr. Leon cannot blame anyone but himself for the delay which he faces as it is directly linked to how he chose to confront the IRD's query.

[42] In conclusion, my answer to Issue 1 is yes, when section 12 is read together with section 3 and 4 of the Act and section 17(2) of the Interpretation Act.

Issue 2-Whether the failure or refusal of the defendants to receive and collect the stamp duty and stamp the Deed of Sale was ultra vires section 3 and 12 of the Act?

Issue 3-Whether the actions or refusal of the Inland Revenue to collect the stamp duty and stamp the Deed of Sale were made based on illegality, irrationality or procedural impropriety?

[43] I think it is important to note that from the evidence, the Comptroller of Inland Revenue has not failed or refused to receive or collect stamp duty and stamp the Deed of Sale. The Comptroller issued a query asking a question which was later further addressed in response to Mr. Leon's Counsel's letter dated 12th July 2023. In the letter of 25th July 2023, the Comptroller of Inland Revenue indicated that:

“...In September, 2003 the property identified in your letter under reply sold for \$45,000.00. Based on the aforementioned the Department requests that in keeping with section 12 that:

All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set out in the instrument;...

We therefore request further support for details in your instrument.” (Emphasis added)

[44] The last sentence of the Comptroller of Inland Revenue's letter to my mind does not suggest a refusal or failure to receive or collect stamp duty and stamp the Deed of Sale.

[45] Given the finding that there was no failure or refusal to collect stamp duty or stamp the Deed of Sale on the part of the Comptroller of Inland Revenue and in any event, as a result of my conclusion on Issue 1, Issues 2 and 3 must be answered in the negative.

Issues 4, 5 and 6

[46] Given the Court's findings on Issues 1, 2 and 3, it is not necessary to determine Issues 4, 5 and 6. Suffice it to say that in relation to Issue 4, the Court is of the view that assessment of stamp duty on a separate independent Deed like those referred to in the affidavit of Gertrude Patricia Nelson is of no moment and their treatment cannot impact the treatment or assessment of Mr. Leon's Deed of Sale unless there is some connection between the transactions.

Conclusion

[47] In light of the foregoing discussion, the claimant's claim is dismissed. Given that there is a dearth of authorities on the main issue in this matter, the Court does not consider that Mr. Leon has acted unreasonably in filing or in the conduct of this claim and in keeping with CPR 56.11(6) will make no order as to costs.

Order

[48] The claim is dismissed with no order as to costs. The claimant is encouraged to have dialogue with the IRD to bring resolution to this matter.

[49] The Court wishes to thank Counsel for their submissions and for their patience in awaiting the delivery of the decision.

Kimberly Cenac-Phulgence
High Court Judge

By The Court



Registrar