

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 10 of 1988

BETWEEN: THERESA ESTEPHANE  
JOSEPH ESTEPHANE - Appellants  
and  
EDISON PETER - REspondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice  
The Honourable Mr. Justice Bishop  
The Honourable Mr. Justice Moe

Appearances: H. Deterville for the Appellants  
E. Lewis for the Respondent

---

1988; Oct. 26, 27.  
1989: Jan. 23.

---

JUDGMENT

MOE, J.A.

This appeal is against the dismissal by a Judge of the High Court of the appellants' claim for payment by the respondent of the costs of certain improvements which they say they made to the land of the respondent.

The appellants are husband and wife. On July 6, 1969, the first appellant bought a wooden house at the time sited on the land owned by her mother. The first appellant got permission from her mother to keep the house on the land and the appellants went into possession shortly after purchase. In course of time, the appellants extended the house and converted part of the floor from wood to concrete. They also built a rubble wall to prevent the land from being flooded as well as concrete steps leading to the land to make it more accessible. On June 30, 1980, the respondent purchased the land concerned. In 1984 the respondent sent a letter to the appellants notifying that they would have to pay rent of \$10 per month.

The appellants brought their claim for reimbursement of the costs of the improvements made to the land or alternatively conveyance of the property to the appellants on payment by them of the estimated value of the house spot; possession of the property and damages.

It was common ground between the parties that the main issue before the learned Judge was whether Article 372 of the Civil Code applies.

/Article.....

Article 372 provides:-

"When improvements have been made by a possessor with his own materials, the right of the owner to such improvements depends on their nature and the good or bad faith of such possessor.

If they were necessary, the owner of the land cannot have them taken away. He must, in all cases, pay what they cost, even when they no longer exist; except, in the case of bad faith, the compensation of rents issues and profits.

If they were not necessary, and were made by a possessor in good faith, the owner is obliged to keep them, if they still exist, and to pay either the amount they cost or that to the extent of which the value of the land has been augmented.

If, on the contrary, the possessor were in bad faith, the owner has the option either of keeping them, upon paying what they cost on their actual value, or of permitting such possessor, if the latter can do so with advantage to himself without deteriorating the land, to remove them at his own expense. Otherwise, in each case, the improvements belong to the owner, without indemnification. The owner may, in every case, compel the possessor in bad faith to remove them."

The learned trial Judge found that the construction of the rubble wall and access steps were necessary improvements to the land. He did not so find for the concrete floor. On the basis of evidence given by a surveyor and valuer, the learned Judge calculated the cost of the improvements made to the land. He did not allow for the steps and arrived at a total cost of \$7,780.00.

The learned Judge stated "since the land is that of the defendant (respondent) and the plaintiffs (appellant) are in occupation, it follows that if Article 372 applies the defendant would have to compensate the plaintiffs to an amount of \$7,780". However, having held the appellants to be tenants at sufferance he referred to a passage in the judgment of Peterkin J.A. in *Stanley Black v The Mayor and Citizens of Castries*, Civil Appeal No. 4 of 1977, Saint Lucia. He held that the appellants were not claiming the land "animus domini" and in his judgment Article 372 was not available to them. He therefore dismissed their claim.

The main ground of the appellants' appeal is that the learned trial Judge erred in holding that Article 372 is not available to the appellants. The contention is that having found as he did that the

\*\*\*

/appellants.....

appellants were possessors in good faith and that the improvements made to the land were necessary improvements, the learned Judge ought to have found that paragraph 2 of the Article applied. The respondent stated to the Court he was not questioning the Judge's finding that the appellants were possessors in good faith nor that the improvements made to the land were necessary improvements but submitted that Article 372 was not applicable in view of Article 367 of the Civil Code.

Article 367 provides:

"A possessor is in good faith when he possesses in virtue of a title the defects of which as well as the happening of the resolatory cause which puts an end to it are unknown to him. Such good faith ceases only from the moment that these defects or the resolatory cause are made known to him by proceedings at law."

The respondent's submission was an effort to support the Judge's decision on grounds other than that on which the Judge reached his decision. There was no respondent's notice in accordance with Order 64<sup>1</sup> Supreme Court Rules and the submission was not entertained.

In Stanley Black's case (supra) Peterkin J.A. quoted the following passage from the judgment of Lewis J in *Simeon v Beaubrun*, High Court action No. 25 of 1965, Saint Lucia: "In the case of *Chenic Hardware Co. v Laurent*, I.R.J.278, noted in *Beauchamp General Digest*, vol. 11 Col 1358 No. 36a it was held that Article 417 of the civil Code of Quebec (Our 372) applies in general, only to third parties who possess *animo domini* for themselves and on their own account, in good or bad faith, and does not apply to those who possess by virtue of a contract, such as farmers, lessees, usufructuaries, etc. In those cases the rights and obligations of the parties are governed by the principles applicable to the contracts by virtue of which they possess. The position of lessees with respect to improvements made by them is regulated by Article 1544 of the Civil Code (corresponding to the Quebec Civil Code Article 1640)".

In that passage the distinction was drawn between those whose possession was not by virtue of a contract with the owner in which case Article 372 applies and those who possess by virtue of a contract which would govern the relationship between the possessor and the owner. The learned Judge stressed the use of the words "*animo domini*" in the above passage from the judgment in *Simeon v Beaubrun* as indicating a distinctive feature of those in the category of non-contract possessor. This category would clearly include those who after the appropriate statutory period would acquire a right to possessory title.

/The finding.....

The finding that the appellants did not fall within the category of non-contract possessors only to whom Article 372 applies is consistent with the position taken by all the parties that the appellants are tenants by sufferance.

Article 1515 of the Civil Code provides:-

"Persons holding real property by sufferance of the owner, without lease, are held to be lessees, and bound to pay the annual value of the property.

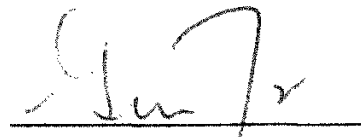
Such holding is regarded as an annual lease or hire terminating on the first day of May of each year.

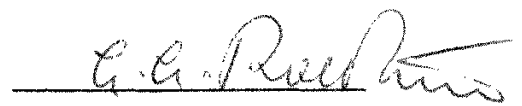
It is subject to tacit renewal and to all the rules of law applicable to leases.

Persons so holding are liable to ejection for non-payment of rent for a period exceeding three months, and for any other causes for which a lease may be rescinded."

By that provision a contract is deemed to exist between the parties and the relationship between them governed by the law applicable to leases.

I would uphold the decision of the learned Judge that Article 372 was not applicable in the instant case and dismiss the appeal. The respondent to have his costs.

  
G.C.R. MOE,  
Justice of Appeal

  
L.L. ROBOTHAM,  
Chief Justice

  
E.H.A. BISHOP  
Justice of Appeal