SEALEY, AUGUSTIN V NICHOLAS MELIUS

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1995

Suit **No. 326** of **1993**

BETWEEN:

AUGUSTIN SEALEY

Plaintiff

v.

NICHOLAS MELIUS

Defendant

Mr. K. Monplaisir Q.C. for Plaintiff

Mr. O. Larcher for Defendant

1995: April 12 and 26.

J U D G M E N T

MATTHEW J. (In Chambers).

On May 14, 1993 the Plaintiff filed a writ of summons indorsed with statement of claim asking for payment of the purchase price of $9,000 for land sold to the Defendant.

The Plaintiff first leased a portion of land to the Defendant then on or about January 6, 1992 he agreed to sell the land to the Defendant whereupon the latter renovated his wooden structure and erected a concrete structure.

In the prayer to his statement of claim the Plaintiff asked for the purchase price of $9,000 and in the alternative an injunction to break down and remove the Defendant's structure.

The Defendant entered appearance on June 2, 1993 and filed a defence on August 12, 1993. In his defence the Defendant alleged that a portion of the land which the Plaintiff proposes to sell to him is Reserve land belonging to the Government of Saint Lucia and that the cause of the difficulty in obtaining a conveyance in favour of the Plaintiff.

A request for hearing was filed on November 3, 1993.

On March 13, 1995 the Plaintiff took out a summons asking for an interlocutory injunction to restrain the Defendant from further building on the premises leased to him until the trial of the action. In an affidavit by the Plaintiff in support of the summons he alleged that the Defendant since February 26, 1995 had commenced building an extension to the premises which was leased to him. That allegation sworn to on March 1995 has to be read with paragraph 4 of the statement of claim filed on May 14, 1993. From that earlier date the Defendant had already erected a concrete structure when there had already been an agreement for sale. The most that can be meant by the later allegation is that the Defendant may have commenced another concrete building on land which the Plaintiff had agreed to sell to him.

The Defendant filed an affidavit in reply on April 4, 1995. He tendered exhibits to his affidavit. On plan "A" he showed a drawing by Land Surveyor Pierre containing 4139 square feet of land which bordered on a "RESERVE". That plan was lodged on August 22, 1975.

In another drawing No. C7944 done on October 1991 the Defendant shows that the area of land to be sold contains 868 square feet as a portion of the Reserve from the 1845 square feet which the Plaintiff agreed to sell him.

The Defendant in his affidavit is setting up the fact that the Plaintiff is selling to him not only the Plaintiff's land but land belonging to the Government of Saint Lucia.

The Defendant in his affidavit denied making any extension to his dwelling house but because the plumbing and toilet facilities in his dwelling house have deteriorated he has begun to relocate his toilet facilities on the outside of the dwelling house. The Defendant asks that he continue the completion of his toilet facilities which is an essential health required.

In his submissions learned counsel for the Plaintiff referred to the apparent inconsistencies in paragraphs 9, 11 and 13 of the Defendant's affidavit. Counsel agreed that the land was first leased to the Defendant and then there was an agreement to sell to

him but he had not paid for the land and in fact had commenced to build another construction.

In his submissions in reply learned Counsel for the Defendant stated that the proposed extension was on the Reserve land which belongs to the Government of St. Lucia. Counsel stated that the Defendant was willing to pay but his bankers wanted the Reserve area removed from the wider portion for the conveyance to take place. Counsel stated that the deed of sale was already prepared but the difficulty was the Reserve area containing 868 square feet of the total of approximately 1845 square feet agreed to be sold.

In his reply learned Counsel for the Plaintiff did not dispute the presence of the Reserve area but submitted that the Reserve area was for the benefit of the owner of the land, that the owner had right of user and the rights were not outside of the vendor's rights.

It is clear to me that the Defendant already has a concrete structure on the 1845 square feet of land. That was the case since May 1993. Having regard to the area of the land it is difficult to see what difference it would make to the Plaintiff if another concrete structure is erected there. He has already agreed to sell the land. His interest is in his money and he seems to want the injunction to force payment of his money. The prayer for the perpetual injunction is only an alternative to payment of the

purchase price.

Further it is doubtful whether the proposed extension would be on the Plaintiff's land. I have stated above what learned Counsel for the Plaintiff submitted in respect of the Reserve area. I would like to hear what the Development Control Authority or the appropriate Authority says in this regard. And in this context I am of the view that such a body should be joined in the action. I perceive the Plaintiff is saying, albeit subtly, that he has a right to sell the Reserve area. I would need to be convinced of such a right.

I have regard to the principles laid down in AMERICAN CYANAMID v. ETHICON LTD. 1975 AC 396 and I have also looked at the United Kingdom Supreme Court Practice, 1979, Volume 1 where these principles are also set out at paragraphs 29/1/11; 29/1/11 A and 29/1/11 B.

The balance of convenience suggests that the application for interlocutory injunction be refused and that the Defendant be permitted to continue to build his toilet facilities.

Costs in this matter shall be reserved.

A.N.J. MATTHEW

Puisne Judge