SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996

Suit No. 879 of 1994

BETWEEN:

DAVIJEAN INVESTMENTS LTD.

Plaintiff

and

FRANCIS ETIENNE

Defendant

Mr. K. Monplaisir Q.C., and Miss C. Hinkson for Plaintiff
Mrs. E. Ernest for Defendant

1996: January 10 and 16.

J U D G M E N T

MATTHEW J. (In Chambers).

On November 16, 1994 the Plaintiff filed a writ of summons indorsed with statement of claim asking for, among other things, an order that the Defendant do forthwith pull down, demolish and remove the buildings erected on certain property of which it said it was the owner situate at Morne Fortune in Castries.

The Defendant was personally served with the writ of summons on February 28, 1995 and he entered appearance on March 10, 1995.

On November 16, 1994 the Plaintiff took out a summons for an interlocutory injunction to restrain the Defendant from trespassing or remaining or in any way interfering with the land.

It appears that on March 8, 1995 injunctive relief was granted against the Defendant who appeared in person before the Chamber

Judge. The copy of the order in the file states that the order was

entered on March 23, 1995.

On October 30, 1995 the Defendant took out a summons asking for an order that the injunction granted on March 8, 1995 and entered on March 23, 1995 be set aside; that the statement of claim be struck out as disclosing no cause of action; and in the alternative that the Defendant be granted leave to file and serve his defence.

On November 16, 1995 the Plaintiff entered judgment in default of defence and the Registrar adjudged that the Defendant do pay the Plaintiff damages to be assessed.

At the hearing of the summons dated October 30, 1995 learned Counsel for the Defendant did not pursue the application for leave to file and serve a defence despite the Court's reminder to Counsel. In fact learned Counsel for the Plaintiff when his turn came said he had an answer to that application but it was not pursued and would not respond to it unless the Court wished him to make a response. The Court declined.

The application to set the injunction aside was based on the fact that the order of injunction was not filed within 14 days of obtaining the order since the order was obtained on March 8, 1995 and it was filed on March 22, 1995.

As learned Counsel for the Plaintiff observed the application was based on Order 42 Rule 5(1) of the Rules of the Supreme Court. That rule states:-

> "Every judgment or order shall, unless otherwise ordered, be drawn up and lodged with the Registrar by the party having the conduct of the suit or the carriage of the order not later than fourteen days from the date when the judgment was pronounced or the order made according to the circumstances of the case."

The important period envisaged by the rule is between the date of making the order and its lodgment with the Registrar. The filing of the order comes later on as indicated in paragraph (4) of Rule 5.

Learned Counsel for the Plaintiff by reference to the affidavit of Bernard Joseph, a clerk in his chambers and an accompanying exhibit, submitted that the draft order as required by paragraph (3) of Rule 5 was left with the Deputy Registrar on March 10, 1995 and was approved on March 13, 1995.

Joseph deposed that the final order was deposited with the Registrar on March 14, 1995 and it was not until the Deputy Registrar had affixed her signature to the order on March 23, 1995 that the Plaintiff was able to file it.

I am of the view that the Plaintiff is not in breach of Order 42 Rule 5(1) and I refuse to set aside the order of injunction.

Learned Counsel for the Defendant referred to paragraphs 1 and 2 of the statement of claim which is as follows:

> "1. The Plaintiff is and was at all material times owner in possession of the property situate at Morne Fortune, Castries.
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> 2. The Plaintiff ordinarily resides in Martinique and on a routine visit to St. Lucia in the month of June discovered that the Defendant trespassed on the land and constructed houses thereon."

My first observation was to know how a company could make routine visits to another country but that is another matter.

Learned Counsel for the Defendant submitted that the statement of claim failed to state the title under which the Plaintiff claims to be the owner of the property and failed to refer to the nature of

the deeds if any by which he claims title to the land. Counsel relied on the authority of the 1991 United Kingdom Supreme Court Practice for the submission. The passage is as follows:

> "**Possession of land** - In an action for possession of land of which the plaintiff has never been in possession, and where the defendant is not estopped from disputing his title, the statement of claim must state the nature of the deeds, etc., on which the plaintiff relied in deducing his title from the person under whom he claims: these are "material facts." It is insufficient to state that the plaintiff is entitled "under and by virtue of certain deeds, etc., in the possession of the defendant," without further describing them; that has been held embarrassing (Philipps v. Philipps (1878) 4 Q.B.D. 127; Darbyshire v. Leigh [1896] 1 Q.B. 554). So where the plaintiff sued as a reversion by virtue of the Grantees of Reversion Act 1540, he had to show the devolution of the estate to himself (Davis v. James (1884) 26 Ch.D. 778).
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> Similarly, the defendant in an action for possession of land must plead specifically every ground of defence on which he relied and give all the necessary particulars in support of his allegations, for it is not sufficient for him to plead that he is in possession by himself or his tenant (r.8(2))."

Learned Counsel for the Plaintiff submitted that the important words in the passage cited above are "never been in possession" and paragraph 1 of the statement of claim alleges that the Plaintiff is and was at all material times owner in possession. He observed that there was an important precondition to make the rule applicable and that was absent here.

Learned Counsel for the Defendant had nothing to say in reply.

I agree with the submission of learned Counsel for the Plaintiff and I refuse to strike out the statement of claim.

The Defendant is to pay the Plaintiff's costs in the sum of $350.00.

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A.N.J. Matthew
Puisne Judge