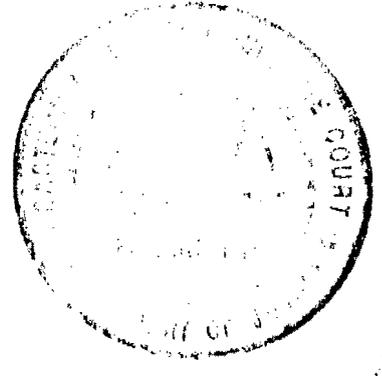


SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SUIT NO.: 113 of 1996



BETWEEN:

DOREEN JACK

PLAINTIFF

V

THE INCORPORATED TRUSTEES OF ST. VINCENT
AND THE GRENADINES STAR OF EDEN LODGE NO.1

DEFENDANT

A Cummings Esq for the Plaintiff
JB Frederick Esq for the Defendant

Mitchell J

JUDGMENT

This case began by a Writ of Summons issued out of the Registry of the Supreme Court in St Vincent and the Grenadines on 18 March 1996. The Writ was endorsed with a Statement of Claim by which the Plaintiff claimed that in 1984 she had to vacate and give up her rented premises at Richmond Hill. She approached the Defendant through its then "Eminence" Elijah Baynes seeking sanction to put a home for herself and her children on an unused piece of land belonging to the Defendant. It was agreed that the Plaintiff would construct her home on the land and when she was in a position to pay for the land she would be allowed to purchase the area of the land. Some years later she was asked to pay a peppercorn rent for the land until she could purchase it. Relying on the said agreement the Plaintiff constructed her home, completing it in 1985. The foundation of the home was lined out by the present "Eminence" of the Star of Eden Lodge No 1, Mr Edwin Providence. Material for the construction was transported by another member, Vincent "Zarrack" John. The house occupies roughly 1,012 sq ft of the land. The lower storey is made of concrete and blocks and the upper storey is made of timber. It is valued at \$60,720.00. After several years the Plaintiff intimated to the Defendant that she was now in a position to buy the land as promised and agreed. To the Plaintiff's consternation, surprise and dismay the Defendant refused to carry out the terms of the agreement. The Plaintiff says that the Defendant is estopped from denying the Plaintiff's claim, interest, right and property in and to the land. The Plaintiff claims an order for specific performance of the agreement. Further, the Plaintiff claims an order that the Defendant do execute a conveyance in fee simple of 1,012 sq ft of land at Frenches in Kingstown, the Plaintiff paying a reasonable price therefor. The Plaintiff claims an injunction to restrain the Defendant from disposing of the 1,012 sq ft of

land to any one else. With leave and over the objection of the Defendant the Plaintiff was permitted to add a further prayer to her claim towards the close of the case. She now also claims an order that the Defendant be estopped from denying the Plaintiff's right, claim, interest or property in the Premises.

By its Defence filed on 30 April 1996 the Defendant states that the Plaintiff is and was at all material times a senior member of the Defendant society and is bound by its Bye-laws, Constitution and control. The ~~Defendant~~^{Plaintiff} accepted, enjoyed, practised and is bound by the Constitution, Bye-laws and control of the Defendant, and enjoyed the full confidentiality of the Defendant. The Plaintiff had in her possession the keys and full access to the Defendant, its records and secrets and continued so up to the time of the service of the Writ on the Defendant. The Defendant further claims that the Plaintiff has not exhausted the local remedies available to her and so cannot invoke the jurisdiction of the Court in the matter. The Defendant is not empowered to transact any business with a view to legal relations except by a Committee of Management comprised of the duly elected officers and 5 elected members duly convened and having the particular business with a view to legal relations stated and deliberated upon at such meeting. At no time whatsoever was there a motion put to it or any application or request made to it by the Plaintiff for the sale of any lands to the Plaintiff. Neither Elijah Baynes nor Edwin Providence could and did not agree, make any agreement or act on behalf of the Defendant to sell or promise to sell to the Plaintiff the lands of the Defendant. Moreover the Defendant says that the Plaintiff's case for specific performance is a nullity in law in that there cannot be an agreement for the sale of land by implication, on a basis of sympathy, and without consideration. The Plaintiff's Statement of Claim discloses no cause of action. A naked "intention and commitment" to sell land, without more, is not actionable. The Plaintiff's alleged contract with the Defendant was not evidenced in writing and is therefore unenforceable under the Statute of Frauds of 1677. Finally, the Defendant claims that the Plaintiff well knows that it is an impossibility to grant rights of ownership over the land on which the subject building stands particularly because there is no curtilage to the Plaintiff's building as required by the Rules of the Planning Division. There can be no right of way granted over the steps of the Lodge through the Lodge to the Plaintiff's building, there being no other access to the Plaintiff's building, and a vendor of land must provide access to the land to be sold, or face action for a "way of necessity" which cannot be granted through the essential premises of the Lodge; and, finally, the spot on which the Plaintiff's building stands is too small for a saleable building lot.

The case has been ready for hearing since a Request for Hearing was filed on 8 October 1996. The case came up for trial on 3 July 1997 on the list and commenced on that day and was concluded on 4 July. I find the following facts.

The Defendant is by virtue of the St Vincent and the Grenadines Star of Eden Lodge No 1 (Incorporation) Act, 1984, No 11 of 1984, a statutory corporation. The Act, as its long title

indicates, incorporates the Trustees of the St Vincent and the Grenadines Star of Eden Lodge No 1 of the Ancient and Illustrious Order of the Star of Bethlehem. Section 3 of the Act creates the first named trustees a body corporate under the name of the Incorporated Trustees. By section 3 the Incorporated Trustees have perpetual succession and may sue and be sued on behalf of the Lodge in such name and shall use a Common Seal. The property specified in the Schedule to the Act (which is the 6,218 sq ft property, a part of which is in this dispute) is vested in the Incorporated Trustees. By section 5 the Incorporated Trustees, subject to the Bye-laws, Constitution and control of the Lodge, have full power to acquire property for the Lodge. By section 6 the Incorporated Trustees, subject to the Bye-laws, the Constitution, and control of the Lodge, may sell or otherwise dispose of any property of the Lodge. The Lodge is to fill any vacancy that arises in the Incorporated Trustees. The Lodge ceases to exist if the number of Incorporated Trustees operative in St Vincent falls below the minimum of 2.

A copy of the 1965 Bye-laws was put in evidence. From the Bye-laws it is apparent that the Lodge is a friendly society. Its stated purpose is to be a burial society and to offer sick relief and relief to distressed members. The chairman is termed the "Commander", the secretary is the "Scribe", and so on. The officers, including the 3 Trustees, are elected annually. There is also a "Legate" whose role is not defined in the Bye-laws but who was described in evidence as the representative between the head office of the Lodge in Panama and the subordinate Lodge in St Vincent. The business of the Lodge is conducted by a "Management Committee" consisting of the Officers and 5 elected members. By rule 26.4 all disputes arising between members and all claims by members under the rules shall be heard by the Management Committee. Any member whose rights are affected by the action of the Lodge may appeal to the "Eminent Grand Organizer" for satisfaction. Further appeal is to the "Eminent Grand Committee", which is not further explained in the Bye-laws.

The Plaintiff Mrs Jack is 73 years old and a long-time faithful and devoted member of the Lodge having joined in 1975. She has served in high office including that of Commander and Past Commander. In 1984 the Lodge constructed its present building at Frenches in Kingstown. The Plaintiff was at that time living at rented accommodation at Kingstown Hill, and had been given notice to quit by her landlord. She was very poor and could find nowhere that she could afford to live. She appealed to senior members of the Lodge for assistance. The land on which the members of the Lodge were at that time constructing their new building was on a slope. There was a deep eroded drain or ravine running down the length of it. The road ran at the top of the land where the Lodge building was being constructed over the filled in ravine. The Lodge building did not physically occupy all the 6,218 sq ft of the land. Behind the Lodge building and further down the slope was a small area just over 1,000 sq ft eroded and unused at the time by the Lodge. The members of the Lodge met and agreed to allow the Plaintiff to put her house on this part of the lot. I find that it was to have been a temporary arrangement until she could find a more permanent place to put her home. It is not unusual for a chattel house to be put down on

someone else's land with or without their permission. In St Vincent if one can get away with squatting on someone else's land for the statutory period then one may even lay claim to title, resulting in the large number of law suits past and presently awaiting trial. Given the uneven surface of the land offered to the Plaintiff, the ravine and the slope, it was necessary for a concrete support for the wooden floor to be constructed. This concrete foundation touched the land at the top of the slope, and as is evident from the photograph put in evidence, its bottom part was suspended several feet above the land lower down the slope, and held up by concrete columns. The house was built with self help, and no planning permission was felt necessary. A few able members of the Lodge assisted the Plaintiff in preparing the surface, laying out the concrete columns for the planned wooden super-structure, in the subsequent carpentry work, in obtaining Welfare - supplied materials, and in transporting them to the spot. Mr Baynes, then the Legate, even went with her to the bank and personally stood security for a loan of \$2,265.94 to assist with materials and labour. As the building went up the Plaintiff needed to find extra room for her kitchen, and took advantage of the natural slope of the land to excavate the land below the wooden house. After the original one story wooden house was built she blocked in and constructed out of concrete a lower floor to extend the house underneath, originally just enough for the kitchen but later enlarged as the need arose. The walls and floor of the upper story are timber, while the walls and floor of the lower story are concrete. A professional valuer valued it in February 1996 at \$15,000.00 for the land and \$60,720.00 for the house (1012 sq ft at \$60.00 per sq ft). Access to the Plaintiff's house, some 100 ft from the road, is by way of the steps, constructed by Public Works when repairing the roadway, down from the road onto the pavement or platform surrounding the Lodge building, down alongside the Lodge building, and then by way of further steps on to the Plaintiff's building. Some 10-12 ft separate the Plaintiff's building from the Lodge building. This space is not unusually narrow in these circumstances.

After the house was built the Plaintiff continued as an active member of the Lodge. She regularly cleaned the Lodge building, and for this purpose kept the keys to the building. Her two daughters have now grown up and there are several grandchildren also now living in the building. The little house now has 5 bedrooms, one of which has been excavated out of the downstairs slope, kitchen, dining room, and bathroom-toilet. After the Plaintiff had been living there for 4 to 5 years the issue came up at a Lodge meeting in the presence of the Plaintiff. Zarrack brought up the concern that the Plaintiff could get an interest in the land if she did not acknowledge that it belonged to the Lodge. It was put to her that she should pay a peppercorn rent of \$5.00 per year now increased to \$10.00, and she agreed to that. Some time later the Plaintiff approached the then Legate, Mr Baynes now deceased, and spoke to him. She asked him to sell her the land on which her house stood. She claims that it was then, years after the house was built, that the Legate promised her the land. She confirmed in re-examination that the promise on which she relies was made after the house had been built, not before. She also says the Legate told that she will have to apply to the Lodge. She therefore wrote a hand-written letter to the Lodge sometime prior to Mr Baynes' death in 1992. That letter is now lost, and no

copy of it was supplied. It appears that what she did was to apply to the Lodge to be permitted to purchase the lot on which her house stood. She subsequently raised the application in a general meeting of the Lodge. The Lodge members and Management Committee both declined to accept her offer to purchase. Some time later she sought legal advice. In February 1996 she had her solicitor write the Lodge setting out her claim to the effect that there had been a clear and unambiguous understanding that she would be allowed to purchase the land when she was able to do so. The solicitor pointed out that given the proximity of the 2 buildings the members of the Lodge must have known that she had constructed a concrete building, and never warned her. He urged that it was only fair, just, equitable, right and proper that she be given a deed for the land on which her home now permanently rests. That letter was discussed at a Lodge meeting and it was decided not to accede to the Plaintiff's request for title, hence this action.

I find that the Plaintiff from the beginning knew that she was being allowed by her Lodge a temporary place of refuge for her house. The original offer was a spot for her to place her chattel house. Neither the Lodge members nor the Management Committee, nor any responsible member of it, ever as she alleged in her claim promised her that she would be able to buy the spot when she could afford it. The idea of buying only arose some years after the house was built when the Plaintiff had settled in and become attached to the spot and realized that she did not want to move. No witness for her independent of herself and her daughter could substantiate her claim that any member of the Lodge had ever considered selling her the spot on which her house stood. Her own witness Thomas Maxwell a former member of the Lodge could not say that he ever had the expectation that the land would belong to her. From her own testimony this promise, if it was made by the then Legate Mr Baynes as she claims, was made some 3 years after she built the house. In any event Mr Baynes from the evidence would have had no authority to offer the land to her. From the beginning I find she knew that she only had temporary use of the house spot. Her subsequent agreeing to pay rent was a conscious and binding acknowledgment on her part that she was making no claim to adverse possession of the spot, and indeed she does not claim by adverse possession. But, at the time of that agreement to pay the peppercorn rent, there was a concern, that she admits to, among members of the Lodge that something had to be done to ensure that she acquired no rights to the spot of land through her possession. The fact that she and her daughters and grandchildren have now come to see the spot as their own and to be unwilling to contemplate moving is not from the evidence to be blamed on the members of the Lodge. At the time that she incurred the expense of building her house she knew that it was a temporary convenience or favour and that one day she would have to move the house either when she found a permanent spot to acquire or when the Lodge lawfully demanded the site of her. She nevertheless, for her own convenience and comfort and that of her family, expended this money on the property of the Lodge without at the time any expectation that the land would one day become hers. She is now trying the court to see if there is some relief here.

There is very little room to pass at the side of the Lodge building to get to and from the Plaintiff's house. The removal of a chattel house is usually a matter of placing the small building on a vehicle and transporting it from one place to the other. The Plaintiff's house will have to be dismantled to remove it bit by bit. The concrete downstairs portion will have to be demolished. In any event, the evidence is that the Lodge is not seeking at this time to evict the Plaintiff. The Lodge has not sought any relief against the Plaintiff, it is the Plaintiff who brought the action against the Lodge.

It will be apparent that I find that the Plaintiff has not made out her case to be entitled to a conveyance either by way of contract or agreement or by estoppel. However, I would not want the members of the Lodge to be persuaded to take precipitate action against the sister as a result of a simple dismissal of the suit. Several Lodge members confirmed in evidence that there is no intention on the part of the Lodge to throw the Plaintiff off the site. When she has passed away, if not before, her family will have to make other arrangements to find a place to rebuild their house. In the meantime some Order should be made by the court to give effect to the stated desire to have the Plaintiff left in peace on the site, though without any entitlement to an inheritable interest on her part in the site. I believe that the best interests of the parties and the justice of the case are served by an Order in favour of the Plaintiff that will secure the Plaintiff and her family temporarily while avoiding future litigation to define the rights of the parties. I therefore order that the Plaintiff and her family are peacefully to be permitted to occupy the site of their house at Richmond Hill on the property of the Defendant Lodge during the lifetime of the Plaintiff using the common pedestrian access to the main road and paying therefor the peppercorn rent of \$10.00 per year which sum is deemed without more to have been paid in advance on the date of this Judgment dismantling and removing their house from the site after the death of the Plaintiff upon one year's written notice to quit from the Lodge. I make no order as to costs.



ID Mitchell QC
High Court Judge (Ag)
July 31 1997