SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT No 519 of 1993

BETWEEN

MAURA DESIR

Plaintiff

Vs

MC GREGOR AGDOMER

Defendant

Appearances
Mrs. S. Lewis for Plaintiff
Mr. T. Chong for Defendant

2000 February 29th
May 31st

JUDGMENT

[1] **d'Auvergne J:** The Plaintiff is the owner of a portion of land situated at Bocage which she purchased from one Edison Gabriel (hereinafter called the landlord) and which is registered as Block 1047C Parcel 620 and measures 0.03 hectares. Both the Plaintiff and the Defendant have their houses situated on that said portion of land and were both tenants of the said landlord before the purchase by the Plaintiff.

[2] On the 18th day of August 1993 the Plaintiff filed a claim against the Defendant seeking Special Damages in the sum of $145.00, General Damages, costs and also that the Defendant do vacate her land forthwith.

[3] On the 2nd of February 1994 a Defence and Counterclaim was filed by the Defendant. In the defence the Defendant denied being in unlawful occupation of the house spot on which his house is situated for he has been a tenant of the landlord from 1988 at a rental of Twenty Five dollars ($25.00) per month. He however acknowledged receiving notices to quit from both landlord and the Plaintiff but ignored them since he maintains that he is entitled to remain in possession having made substantial improvements to the land by the erection of his dwelling house made up partly of wall and partly of wood with the consent, knowledge, approval and assistance of the landlord and consequently was claiming damages and costs.

[4] In the Plaintiff's Defence to counterclaim she sought the unpaid rental of Twenty Five dollars ($25.00) from August 1993 to the present date.

[5] The matter was heard on the 28th and 29th days of February 2000.
At the trial the Plaintiff and the landlord gave evidence in support of the Plaintiff's case.

[6] The Plaintiff told the Court that she purchased the parcel of land in issue from the landlord and exhibited the register and survey plan of the land. She told the Court that Defendant's house was also on the land, that although she was the first to commence her house she took such a long time in completing it that the Defendant completed his house and commenced habitation before her. She narrated an occasion where the landlord in her presence informed the Defendant that from then onwards he the Defendant would be renting from her, the Plaintiff and Defendant refused outright saying that he was neither buying nor renting any land since the landlord had no land. She said that the Defendant was a nuisance for he continued to persist in his use of insultive words, playing loud music, threatening to kill her and to burn down her house which resulted in her reporting his behaviour to the Police Authorities on many occasions. She said that she observed the Defendant building the bottom part of his house in concrete but she paid no heed for she was then a tenant. She urged the Court to order the Defendant to leave her land and pay up the arrears.

[7] Edison Gabriel confirmed that he was the landlord of both Plaintiff and Defendant before Plaintiff purchased the land, that the Defendant built his wooden house on pillars and was living in it for about one year when one day he heard some knocking at Defendant's house and he went to see what was happening and noticed someone constructing a wall at the bottom of

that house, he stopped the worker and later chastised the Defendant for placing fixtures on his land without permission; whereupon based on the explanation given by the Defendant he undertook to build the concrete structure with his own funds, but asked the Defendant to pay Five Hundred dollars ($500.00) to two young workmen which Defendant did. He told the Court that he facilitated the Defendant getting funds from a bank to pay the said workmen. He denied that he ever offered any land for sale to the Defendant despite the contents of the letters written to him by the Defendant's solicitors. He insisted that the Defendant never paid for the construction of the concrete part of the house. He said that the Defendant refused to pay rental to both himself and the Plaintiff. This witness also told the Court of the behaviour of the Defendant.

[8] The Defendant gave evidence on his own behalf. He told the Court that he rented a spot from the landlord from 1988 at Twenty Five dollars ($25.00) monthly. He said that he sought and was granted permission to build the bottom storey of his wooden house in concrete, that he beseeched the said landlord to give him "something in writing" but the later refused to, that he obtained a loan for the intended project for which he supplied all the material and paid for the labour. That the landlord was the builder of the project from whom he bought most of the material needed. The Defendant tendered five receipts, four of which he said were signed by the landlord who denied that he ever promised to sell the spot to the

Defendant or that he signed any documents. He insisted that the wall part of his house measuring 18 x 14 feet which supports the wooden part forms one structure, that there was an internal access stairway between the two storeys and that the concrete part of his house was built by the landlord who was paid for the material and labour supplied. He insisted that the concrete part of his house belonged to him.

[9] **Arguments**

Learned Counsel for the Defendant commenced his arguments by stating that there was no evidence led on the aspect of special damages pleaded nor was there any mention of rental and mense profits in the statement of claim and reminded the court that the Plaintiff said that she did not want costs. He argued that the main issue in the case was whether the Defendant was entitled to compensation for improvements made to the land which the Defendant said he made valued at $55,000.00. He reminded the court that the amount was not disputed.

[10] Learned Counsel noted the undisputed and disputed aspects of the evidence and urged the Court to accept that the Defendant is the owner of the entire building that was seen by the court. He quoted **Articles 334, 335, 338 and 372 of the Civil Code of St Lucia.**

Article 334 provides:

> "Property is immovable either by its nature or by its destination, or by reason of the object to which it is attached, or lastly by determination of law."

Article 335 provides:

> "Lands, steam-mills, water-mills, wind-mills and buildings are immovable by their nature."

Article 338 provides:

> "Those things are considered as being attached for a permanency which are placed by the proprietor and fastened with iron and nails, imbedded in plaster, lime or cement, or which cannot be removed without breakage, or without destroying or deteriorating that part of the property to which they are attached.
>
> Mirrors, pictures and other ornaments are considered to have been placed permanently when without them the part of the room they cover would remain incomplete or imperfect."

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."

[11] Learned Counsel urged the Court to accept that the landlord did not only consent to the building of the concrete bottom storey but that he undertook the building of the concrete structure himself but at the expense of the Defendant. Consequently, the Defendant would be entitled to an overriding interest in the Land. **Land Registration Act 1984 Section 28.**

He argued that it was trite law that any purchaser, in this case the Plaintiff purchases the rights and obligation, that the purchased portion of land was subjected to and must therefore stand in the shoes of the landlord**, Suit 704 of 1988 Portland v Felicien.** He quoted the St Lucia case of **Estephane v Peter, Suit 12 of 1986** and its subsequent **Appeal No 10 of 1988,** where the Learned trial Judge noted the case of **Jerome Simeon v Clive Anthony Beaubrum** decided on 17th January 1956, in which Lewis J. referred to the case **Chenic Hardware Co. v Laurent I R. J. 278**, noted in **Beauchamp, General Digest Vol 111 Col 358 No 36a** where 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.

[12] He quoted the case of **Stanley Black v Mayor and Citizens of Castries Civil Appeal No 4 of 1977.**

[13] He contended that the Defendant is also protected in Equity by the doctrine of Proprietary Estoppel which is applicable where one party knowingly encourages another to act, or acquiesces in the other's actions, to his detriment and in infringement of the first party's rights. (**Hansbury & Maudsley Modern Equity 13th Edition.**

[14] He quoted the cases of **Mc Collin v Carter 1974 26 WIR Page 4 para. B** and **Mc Clurg v Rogers 1976 27 WIR Page 63** where **Lord Denning** Master of the Rolls as he then was said "Successors in title … are clearly bound by … equity".

[15] Learned Counsel for the Plaintiff commenced her arguments by stating that the Defendant acted in bad faith and therefore **Sections 372 & 373** of the Civil Code did not apply. She argued that the Defendant was not entitled to payment for improvements for he is a tenant at sufferance and therefore should be ordered to remove his house.

[16] **Conclusion**

The evidence discloses that the Defendant is in actual possession of the land in question and therefore he has an overriding interest in the land. **Section 28 (g) of Land Registration Act 1984**. A comparison of **Section 28 (g) of the St Lucia Land Registration Act 1984** and **Section 70 (1) (g) of the Land Registration Act 1925 of the United Kingdom** will show that they are similar.

[17] In **Strand Securities Limited v Caswell 1965 1AER 820 Lord Denning Master of the Rolls** dealt with **Section 70 (1)(g)** of the Land Registration Act of the United Kingdom and stated the following at page 826:

> "Section 70 (1) (g) is an important provision. Fundamentally its object is to protect a person in actual occupation of the land from

having his rights lost in the welter of registration. He can stay there and do noting yet he will be protected. No one can buy the land over his head and thereby take away or diminish his rights. It is up to every purchaser before he buys to make inquiry of the premises. If he fails to do so, it is at his own risk. He must take subject to whatever rights the occupier may have." Consequently, the Plaintiff must take subject to whatever rights the Defendant has.

[18] Learned Counsel for the Plaintiff argued that the Defendant possesses in bad faith. I do not find so, for the Defendant entered as a lessee notwithstanding that he never paid any rental, moreover the landlord had full knowledge and infact assisted the Defendant in the building of the bottom storey. I find that the bottom story belongs to the Defendant. I do not believe the landlord that he built it with his own material and free of charge except for the Defendant paying $500.00 to the two boys who were employed in the construction. It is also my belief that the landlord once promised the Defendant to sell the portion of the land on which his house is situated to him and that it was with the encouragement of the landlord, that the Defendant expended his money on the bottom storey, in the expectation of being allowed to stay there. **Mc Clurg v Rogers** noted earlier at page 63 para C. This being the case this Court will not allow that expectation to be defeated where it would be inequitable to do so.

[19] In **Jerome Simeon v Clive Anthony Beaubrum** decided on 17th January 1956 and confirmed in **Black v The Mayor and Citizens of Castries St Lucia No 4 of 1877** it was held that the position of lessees with respect to improvements made by them is regulated not by Article 372 but by Article 1544 of the Civil Code and I so hold.

[20] Article 1544 provides:

"the lessee has a right to remove, before the expiration of the lease, improvement and additions which he has made, provided he leaves the property in the state in which he receives it; nevertheless, if the improvements or additions he incorporated with the thing leased, with nails, lime, or cement, the lessor may retain them on paying the value."

I therefore find that the Defendant is in good faith and entitled to compensation for improvements.

[21] As stated earlier, I find that the Defendant acted in good faith and therefore both in equity and law is entitled to improvements done to the land. I visited the Locus and it is an undisputed fact that the portion of land is too small to be divided, mutated and owned by two people.

[22] The question now to be answered is in my judgment whether that wall structure could be considered an improvement.

[23] Having gone to the site and examined the structure I have arrived at the conclusion that the workmanship is of extremely poor quality and has not improved the land in anyway. I consider it a hazard. Infact the Plaintiff will have no alternative but to knock down the concrete work.

[24] "What is the best solution that can be arrived at. As I see it the Defendant should be ordered to remove the wooden upper storey of his house since this can be done with no injury to the land. He has expended some money on the construction of the bottom storey, which as I have stated is not an improvement. He now owes the Plaintiff seven (7) years rental at $25.00 per month. (He admitted to being aware that she was the owner but never paid rental.) The land was registered on the 24th May 1993 so he now owes her $2,100.00. But the Plaintiff has testified that she did not wish to have any award for the rental nor the costs of the action.

[25] I agree with Learned Counsel for the Defendant that no evidence was led to substantiate the claim for special damages and that I should not grant that claim.

[26] My order is therefore as follows:

(1) That the Defendant do remove the wooden upper storey of his house on or before the 1st of October 2000.

(2) That the Plaintiff as owner of the said parcel of land namely **Block 1047 C Parcel 620 Lot 3C** is entitled to possession of the entire area.

(3) That there be no order as to Costs.

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Suzie d'Auvergne
High Court Judge