SAINT LUCIA

Comment [a1]: Final copy. Issued to Parties on June 7, 2001.

IN THE HIGH COURT OF JUSTICE
(Civil)

Civil Suit No. 326 of 1999

BETWEEN:

(1) EDWARD PHILLIP MATHURIN
(2) MARTIN JULIAN

Plaintiffs

and

(1) MAGDALENE WILSON
(2) LUCIELLE WILSON
(3) ERIC JUSTIN
(4) LUCINA JUSTIN

Defendants

Appearances:

Mr. Robert Innocent for the Plaintiffs.
Mrs. Petra Jeffrey-Nelson for the Defendants.

2001: February 9 and March 8.

RULING

[1] Barrow J: The Plaintiffs are in occupation of one portion of a parcel of land. The Plaintiffs accept that they do not have and have never had any title to the land in contention. The Plaintiffs do not claim a right to title. The Plaintiffs do not plead that they have the benefit of any limitation period; neither do they assert that they have prescribed. Therefore, say the Defendants, the Plaintiffs are mere squatters and have no *locus standi* to bring an action against the Defendants to impeach their title. The Defendants are the former and current registered holders of absolute title to the land. The land in contention is Block 1450B Parcel 116 in the Dauphin Registration Section.

[2] By summons dated 31st August, 1999 the Defendants applied for the trial as a preliminary issue of the point raised by them in their Defence that the Plaintiffs

have no *locus standi* and therefore cannot maintain this action. The Defendants also sought, by that summons, to strike out certain paragraphs of the prayer for relief as being frivolous, vexatious and an abuse of process.

[3] *Saunders J* heard the summons on 25th October 2000. He agreed with the Defendants that the Plaintiffs' Statement of Claim was deficient; it did not state any basis for the Plaintiffs' claim to be entitled to continue their occupation; it stated no facts which would give the Plaintiffs some right or interest over the portion of the land they occupied. The learned Judge found that apart from being embarrassing, the deficiency meant that the court itself was in no position to ascertain what was the real question in controversy between the parties. Instead of striking out, *Saunders J* exercised his discretion and gave leave to amend paragraph 1 of the Statement of Claim to give full particulars of the basis of the Plaintiffs' occupation. He expressly left it open for the Defendants to renew all limbs of their application.

[4] The burnished paragraph 1 of the Amended Statement of Claim is in these terms:

> "1. At all material times hereto the Plaintiffs were and continue to be persons in actual occupation and in the process of acquiring the right of ownership by prescription of the greater portion of a parcel of land registered as Block 1450B Parcel 116 (hereinafter called the Property) in the name of Phillip Felix."

The full particulars of the Plaintiffs' occupation set out thereunder do not need to be recited.

[5] The Amended Defence and Counterclaim contains a vigorous denial of any right of the Plaintiffs. It denies that the Plaintiffs are in the process of acquiring prescriptive ownership and avers that the Plaintiffs can never prescribe because the First Plaintiff's occupation commenced as a matter of family arrangement and even during the land registration titling project the Plaintiffs claimed the property in the name of Phillip Felix. As with the Amended Statement of Claim, the amplitude of the

Amended Defence and Counterclaim needs only to be acknowledged and not recited. At paragraph 11 is the point of law pleaded by the Defendants that the Plaintiffs have no *locus standi* because they have no title at all to the property and the institution of this action is frivolous, vexatious and an abuse of the Court process.

[6] Before granting the application for the trial of the preliminary issue I considered that the saving of time and costs offered by this course is often a *Jack O'Lantern*, taking proceedings into the swampland of assumed facts, speculation and hypotheses. The clear warning sounded by Lord Scarman in *Tilling v Whiteman* [1979] 1 All E.R. 737 at 744 is to resist this beckoning when it leads down the "treachous short cuts" of assuming facts which the Court will afterwards still have to try.

[7] On the present application I am satisfied that there is no need for the Court to assume any facts. To try the issue I simply need to decide, based on the contents of their pleading, whether the Plaintiffs' claim is frivolous, vexatious and an abuse of the process of the Court. Confining myself to the averments they make in their pleadings I need, as well, to decide the kindred question raised by the Defendants: do the Plaintiffs have the necessary standing to bring this action?

[8] The Plaintiffs say that they are "persons in actual occupation and in the process of acquiring the right of ownership by prescription to the greater portion of the land." The first Plaintiff says that he went into possession of the land, in his own right, from the date of the death of his grandmother in 1990. This assertion appears in two places in the Plaintiffs' skeleton argument as well as at paragraph 1(c) of their Statement of Claim. The Plaintiffs also claim the benefit of an overriding interest being their "rights acquired or in the process of being acquired by virtue of any law relating to the limitation of actions or by prescription" based upon section 28 (f) of

the Land Registration Act. There was some justification for the protest by Counsel for the Defendants that this last claim was made only in the Plaintiffs' skeleton arguments and formed no part of either the original or the amended Statement of Claim.

[9] In their pleading the Plaintiffs focus less on their rights to the land and overwhelmingly on impeaching the Defendants' title to the land. Their whole case is that the Defendants were guilty of fraud when they petitioned the court for the declaration of title. In their skeleton arguments, however, the Plaintiffs launched an all out prescription offensive, relying on the Civil Code, regional decisions and learning from Quebec to establish that the nature of their activities and presence was of a prescriptive character.

[10] The first and second Defendants, both sides agree, were declared the prescriptive owners of the land by an order of the High Court dated 21st October 1998. These two Defendants thereupon became registered as absolute owners of the land. The third and fourth Defendants bought from the first and second Defendants and in turn became registered as absolute owners of the land. These latter Defendants were also guilty of fraud, say the Plaintiffs, because they had knowledge of and contributed to the first two Defendants' fraudulent petition.

[11] The relief that the Plaintiffs claim includes a declaration that the first two Defendants are not the absolute owners of the property and that they are not entitled to any interest in the property. The Plaintiffs also seek rectification of the Register and damages to the Plaintiffs for the damage they have suffered" by reason of the Defendants fraudulently acquiring ownership of the land and their subsequent dealings with the land".

[12] The argument of the Defendants is that it is only one who is entitled to be registered in place of the registered title holder who can challenge the latter's title. This is the central proposition of the Defendants. Counsel for the Defendants cited the case of *C B Bahamas Ltd vs. Arawak Homes Ltd* (1984) 38 WIR 8 in support of this proposition. In that case the Plaintiff asserted that their certificate of title was indefeasible and that the Defendant lacked the *locus standi* to mount a challenge to the validity of their certificate of title because the Defendants lacked sufficient interest in the land. *Gonsalves-Sabola J* (as he then was) accepted the proposition cited in the earlier case of *Johnson v Exuma Estates Ltd* (unreported) that:

> "Such a plaintiff must, I think first prove that he or she had an interest in the land in question which, if it had been brought to the notice of the court in the investigation of title proceedings, that Court would not only have directed a notice to issue to that person under section 7(1) of the Quieting Titles Act but also that the interest in the land thus disclosed was such as would be likely to defeat the title upon which that Court adjudicated and ordered a certificate of title to issue. *Put another way, a plaintiff is to show that he has a prima facie title to the land which would have been likely to defeat the title presented to the court in the quieting of title proceedings.* [emphasis supplied]"

In that case the challengers got past the *locus standi* objection because they showed a *prima facie* title to the land which was found likely to defeat the title that was being challenged.

[13] A number of other contentions were advanced by Counsel for the Defendants. Shortly put, these included –

(a) the Plaintiffs can never prescribe;

(b) the Plaintiffs' occupation is not adverse;

(c) the Plaintiffs' occupation fails to satisfy the requirements that it be continuous and uninterrupted, peaceable, public, unequivocal and as proprietor, in accordance with Article 2057 of the Civil Code.

[14] I decline to embark upon any examination of the merits of these propositions because that would involve a fact finding exercise which must form no part of the Court's functions upon the trial of the preliminary issue. Moreover, I do not know that prescription is relevant for present purposes. The Plaintiffs claim is not for a declaration of title. They accept that they have not prescribed. Which is why the great industry of counsel for the Plaintiffs in expounding the law relating to prescription is unrequited. It is useful to recall that the Plaintiffs' suit is to challenge the Defendants' registered title. The Plaintiffs do not even make a claim for possession.

[15] On the locus standi point the Plaintiffs responded by arguing that possession in itself is a right in relation to property since the possessor can exclude anyone but the true owner. This proposition finds solid support in law. In *Megarry & Wade, The Law of Real Property*, 3rd ed., at p. 997, it is stated that "Possession by itself gives a good title against all the world, except someone having a better legal right to possession". Based upon this possession, the Plaintiffs say, they have a sufficient interest in the land to entitle them to sue. And, the Plaintiffs urge, it must be the case that a possessor has *locus standi* to challenge the title of a registered proprietor, otherwise how could a possessor ever stand up to a wrongly registered proprietor? Pressed for authority counsel for the Plaintiffs made a broad appeal to "equity" for support for this proposition.

[16] Further, argued the Plaintiffs, since these registered owners became registered by fraud they are not the true owners. This means that their own possession is unaffected by the Defendants' title, say the Plaintiffs, since that title is a nullity.

[17] The high judicial authority of the Privy Council says that counsel cannot get off the ground with that last part of his argument. In the case of *Isaacs v Robertson* [1984] 3 All ER 140 their Lordships declared that it is entirely wrong to call any order of a

Court of competent jurisdiction a nullity; until it is reversed on appeal or set aside such an order is valid and binding and must be obeyed. Although he pleaded that the first two Defendants were declared prescriptive owners by order of this Court, the significance of this fact seems to have escaped counsel for the Plaintiffs in his pleading. Those Defendants were registered as owners by virtue of that order. There can be no rectification of the Land Register, for which the Plaintiffs pray, without first setting aside that order. But the Plaintiffs do not ask for any relief in relation to that order. The farthest that the Plaintiffs go is in paragraph 10 of their Statement of Claim:

> "10. The Court Order granting absolute ownership of the property to the First and Second Defendant was made without sufficient evidence."

Reasonable or unreasonable, the Plaintiffs are entitled to any view they may choose to hold: what view they choose to hold is entirely their business. But in the proceedings before this Court that view is entirely irrelevant. In their pleading before this Court such an assertion appears to be scandalous and abusive. The Court order declaring that the Defendants acquired prescriptive title stands. So long as it stands the registered title issued in consequence of that order is a perfect title. It is not a nullity.

[18] Where does that leave the Plaintiffs? It leaves them with their allegation of fraud. On a close examination it emerges that the fraud that the Plaintiffs are alleging is in the evidence presented by the Defendants in their petition for prescriptive title. The Plaintiffs are not alleging fraud in the registration process which fraud alone is a ground for rectification, *Webster v Fleming*, Civil Appeal No.6 of 1993, (Anguilla), p.11. They are alleging that the Court Order was procured by fraud. It is probably the case that, without saying so, the Plaintiffs are seeking to set aside the Court order declaring prescriptive title in favour of the first two Plaintiffs. Which is where the Defendants' locus standi objection kicks in.

[19] I did not have the benefit of any discussion or authority on the meaning or essentials of *locus standi* which the parties must have regarded as self evident. In *Whitfield v. Attorney General of Bahamas* 44 WIR 90 the *locus standi* point was raised full face and the Court considered the requirement of standing in the context of the making of a declaration of right – which is the essence of what the Plaintiffs in the instant case are claiming - which the Court emphasized was always a matter for the Court's discretion. " A Court will not grant relief to a plaintiff whose claim is too indirect and unsubstantial and would not give him relief in any real sense, that is relieve him from any liability, disadvantage or difficulty ...". It is, therefore, clear that there are those basic requirements that must be satisfied before Courts will allow a person to litigate a question or issue. The litigant must have some recognizable legal or other interest in the issue not being merely intellectual, prospective or indirect. The rationale for the requirement of *locus standi* is well established. There must be a limit to the category of persons who can be allowed to litigate an issue otherwise any idle or completely unconnected person would be able to mount a challenge to something with which he has not the slightest legally recognizable connection.

[20] In administrative law the requirement of standing is contained in the statutorily established expression "sufficient interest". Lord Diplock discussed the liberalization of standing in English law in *Inland Revenue Commissioners v. National Federation of Self-Employed And Small Businesses Ltd* [1982] A.C. 617. He thought that it was important "to leave the Court an unfettered discretion to decide what in its own good judgment it considers to be "a sufficient interest" on the part of an applicant in the particular circumstances of the case before it. For my part I would not strain to give them any narrower meaning" (p. 642). I do not need to consider the degree of similarity in the requirements of standing in private law and in administrative law. I rely on that discussion only to inform myself that I should take a liberal view on the issue of standing.

[21] The estate of Phillip Felix, the deceased former owner of the land, would seem incontrovertibly to have *locus standi.* The first two Defendants prescribed against the title of Phillip Felix. The estate would seem to be the proper party to challenge the prescriptive title which defeated the title of the deceased. If the Defendants perpetrated a fraud then the estate was the victim of that fraud; if there was fraud, the estate was defrauded. It has not been argued or even suggested that anyone else can claim to have been defrauded. It is no part of the present exercise to speculate why the estate are not challenging the Defendants' prescription, far less alleging fraud. However, the Plaintiffs themselves offer material which shows why this may be so. The Plaintiffs plead that the first two Defendants are the grandchildren of Phillip Felix. This may be the reason why the estate is not challenging the Defendants' title. However, I remind myself that this is mere speculation and, I am satisfied, it is quite unnecessary for present purposes to identify the reason for the estate's inaction. Because what is definitive is that unless the estate challenges the Defendants' title it must be treated as accepting the Defendants' title. This therefore leads to the question: If the estate accepts the title why should the Plaintiffs, who claim adversely to the estate, be allowed to challenge it?

[22] The further question also arises; If the Plaintiffs have the rights of a possessor, whatever they conceive them to be, or have section 28 (f) rights in relation to the land, do those rights depend for their existence on who is the title holder? The Plaintiffs have not emitted even a hint that they have any recognizable rights which may possibly be affected, as a matter of law, by the fact that Phillip Felix was replaced, as title holder, by the Defendants. It strongly appears that the Plaintiffs want to choose the title holder against whom to assert their rights. If that is the sole or dominant interest of the Plaintiffs in the issue of title to the land it would seem

"too indirect or unsubstantial" to entitle the Plaintiffs to relief and to give them standing.

[23] As to the nature of the rights that a possessor has, this question calls for no discussion because the Plaintiffs concede that their possession does not confer title. But, urges counsel, a possessor need not have a rival title that can be entered on the register if he is able to prove that the Defendants' title was fraudulently obtained. In this case, he urges, it would be open to the Court to put in place of the title declared to be fraudulent the title of the previous owner, Phillip Felix.

[24] It does appear that the Plaintiffs are being driven, indirectly, to assert the title of Phillip Felix. This must be awkward for the Plaintiffs because it is the very title against which they themselves want to prescribe. Given their ultimate objective, which is to get the land (or a portion) for themselves, the Plaintiffs cannot assert that title. If they do so they would be falling afoul of article 2088 of the Civil Code which says that "Prescription is interrupted ... by any acknowledgement which the possessor ... makes of the right of the person against whom the prescription runs." So the Plaintiffs must refrain from asserting any title and leave it to the Court to itself propound Phillip Felix's title. Against which they, the Plaintiffs, will later be free to assert prescriptive rights.

[25] This examination sharpens the focus on the question raised by counsel for the Defendants: can anyone other than a competing title holder be allowed to challenge the title of a registered owner with absolute title?

[26] Reasoning says no. The *Arawak* case cited by the Defendants says no. The efforts of the Plaintiffs' counsel did nothing to weaken in any way the proposition for which counsel for the Defendants cited the case.

[27] Against this decision, which is of sound persuasive value, the Plaintiffs have been able to cite no authority which goes towards supporting their having standing. It seems inescapable that whatever may be their aspirations in relation to the land, the Plaintiffs have no title or claim to title in it sufficient to compete with the Defendants' title. If the Defendants' title were to be stricken from the Register it would not be replaced by a title in the names of the Plaintiffs. This the Plaintiffs would readily concede since they accept that they have no title. The replacement title, say the Plaintiffs, would be that of Phillip Felix. Ultimately, the Plaintiffs are bringing this litigation to assert the title of Phillip Felix over that of the Defendants. Does the law ever permit one private individual, not as a defence but by way of attack, to assert the rights of another private individual, without the latter's permission? If it ever does, this does not seem to me to be an instance in which it can be permitted. In *Megarry & Wade*, at page 997, there appears the following note

> "It is well settled that in an action of trespass a defendant may not set up a *jus tertii*. He may set up title in himself, or show that he acted on the authority of the real owner, but he cannot set up a mere *jus tertii*" : *Nicholls v. Ely Beet Sugar Factory (No 1)* [1931] 2 Ch 84 at 86, per Farwell J."

If title in another cannot be set up as a defence, in trespass, then it is even more the case that it cannot be set up as the entire foundation for a cause of action, in a claim for a " negative declaration of title".

[28] I therefore accept the submission of the Defendants and rule in their favour on both limbs of their application: the Defendants have no *locus standi* and these proceedings are an abuse of the process of the Court.

[29] In the result, I order that the Plaintiffs' statement of claim be struck out under the Rules of the Supreme Court, 1970, Order 18, rule 19 and under the inherent jurisdiction of the Court on the ground that it discloses no reasonable cause of action in the Plaintiffs and it is an abuse of the process of the Court and that the

Plaintiffs' action against the Defendants be dismissed with costs. The Defendants shall be at liberty to enter judgment against the Plaintiffs for their costs, including the costs of this application, in the sum of $4,000.00. The counter claim remains to be determined.

DENYS A BARROW S.C.
High Court Judge (Ag.)