THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CASE NUMBER 2003/0906

BETWEEN

ANTONIUS AUGUSTIN

Claimant

AND

1. HENRY BORIEL
2. THOMAS BORIEL

Defendants

Appearances:
Mr. Kenneth Foster QC for the Claimant
Miss Beverley Downes for the Defendant

……..

2005: February 15
February 17

……

JUDGMENT

Introduction

1. This is a claim for the value of banana crops and various items of agricultural equipment which the Claimant says were wrongfully destroyed or removed by the Defendants in March 2003. The Defendants admit that they cleared some crops but say that they were entitled to do so as the land in question was theirs. They deny any knowledge of the other items.

2. The Second Defendant died some time in 2004. At the outset of the trial I ordered that the First Defendant, his brother, represent his succession for the purposes of the claim and that the trial should continue. I heard evidence from the Claimant, his step mother Cecily Daniels, Stephen Williams who witnessed events in March 2003 and from the

First Defendant. I have also been greatly assisted, particularly in relation to Articles 372 and 374 of the Civil Code, by Ms Downes' written submissions.

Facts

3. The case arises out of a long-standing land dispute between the Claimant's and Defendants' respective families. The Defendants are the registered owners of the Canelles Estate near Vieux Fort. During the land registration process in the 1980s the Claimant's father Joseph Daniel made a claim under the Land Adjudication Act 1984 to 12 acres of land on the estate on behalf of the heirs of Justin Daniel, his father. This claim was rejected by the Adjudicator in January 1987. Mr. Daniel's appeal was also rejected in January 1988.

4. In about 2000 the Claimant went onto the land and took over a plantation which the Defendants had leased out. According to the First Defendant's evidence (which I accept) the Claimant proceeded to clear the land and cultivate bananas. He threatened the Defendants' tenants, claiming that they were occupying his family land. He said he was acting with his father's authority. Around the same time, Mr Daniel started a claim against the Defendants claiming ownership of the land. In November 2000 D'Auvergne J granted an injunction in favour of the Defendants ordering Mr Daniel not to interfere with the Defendants' property. In May 2001 Barrow J struck out Mr Daniel's statement of claim.

5. In or about July 2001 the Defendants brought a claim against the Claimant and Mr Daniel for possession of the land which they had still not vacated. The claim came before Charles J in May 2002. Having established that there was no basis for any claim to the land by the Claimant and Mr Daniel she made an order that they vacate the Defendants' land by 31 August 2002. Charles J records in her judgment dated 6 May 2002 that the defendants in that claim (Mr Daniel and the Claimant in this claim) had asked the court for time to vacate the land and remove their crops and that the court had complied with that request. The First Defendant also states in his witness statement (and I accept) that he and his brother indicated to the court that they did not wish to keep the Claimant's cultivation and were not willing to pay compensation for it and that the Claimant elected to remove his crops and was granted until 31 August to

do so. An appeal against the decision of Charles J was dismissed by the Court of Appeal on 16 May 2003.

6. It is not disputed that the Defendants re-occupied the land and cleared any cultivation left on it by the Claimant in March 2003. However, the First Defendant says he knows nothing of the other items which the Claimant says were taken and denies that he or his brother took any of them. In the absence of any other evidence in relation to these items beyond the Claimant's assertion that they were missing at some unspecified time, I find that if they existed at all the Defendants had no part in removing them. Given that finding of fact I need only consider the claim in relation to the crops.

Law

7. The basic rule is not surprisingly that the owner of land is presumed to own the plantations on it and that he has the right to do what he likes with what he owns (see Articles 361, 363, 369 and 370). However, if improvements have been made to land by someone in possession (and it is clear that improvements include cultivation: *St Ville v Francis* (CA 16.3.68)) the rights of the owner to such improvements and of the possessor to compensation depend on the terms of Article 372.

8. Article 372 provides that in relation to unnecessary improvements (which we are dealing with here) the respective rights depend on whether the possessor was acting in good or bad faith: if in good faith, the owner must keep the improvements and pay compensation; if in bad faith, the owner has the option of keeping them upon paying their actual value or of permitting the possessor to remove them at his own cost and, if they are then not removed, they become the property of the owner "without indemnification". Article 367 defines when a possessor is in good faith: this is when he is in possession by virtue of a title the defects of which "as well as the happening of the resolutory cause which puts an end to it" are unknown to him.

9. Article 374 provides that the possessor has a right to retain land until he has been re-imbursed in a case where he has a right to re-imbursement. This right is without prejudice to any right of recourse to obtain payment and is in the nature of a lien. Although Mr Foster referred a number of times to this Article, I am not sure of its

relevance to this case, since the Defendants long ago took back possession of the land under the order of Charles J and the only claim in these proceedings is a money claim.

Findings

10. The Defendants maintain that the Claimant's possession of the land was in bad faith, as defined in Article 367. I am satisfied that that was the case. The Claimant remembered the land adjudication process and that his father had made a claim to the 12 acres but he was adamant in the witness box that the claim was not rejected and the appeal was not lost. I am satisfied that the Claimant was very close to his father and that he must have been aware both that there were defects in his family's title to the land and that the Adjudicator and the appeal panel had ruled against his father (either of which would be sufficient on my reading of Article 367), if only because he must have been aware that neither he nor his father had sought possession of the land between 1988 and 2000 and there is no suggestion that anything changed then.

11. In those circumstances his entitlement, if any, was to receive compensation if the owner decided to keep the crops or to remove them at his own expense if the owner opted for that. In this case, on the findings I have made as to what happened in court before Charles J, it is clear that the Defendants chose the latter option and that the Claimant thereupon had a right to remove his crops at his own expense. It would have been clear to the Claimant that this right was to be exercised by 31 August 2002. In so far as the Claimant failed to exercise that right the remaining crops became the property of the Defendants, who were entitled to destroy and/or remove them. There is therefore no basis for the claim in respect of the banana crops.

12. Ms Downes raised another point. She relied on the order of Charles J as giving rise to an estoppel by *res judicata*. It seems clear that the proper way to bring a claim for compensation under Article 372 is by way of counterclaim in an action for possession. Although it does not appear that this was formally done by the Claimant in the 2001 proceedings, the question of compensation was raised with Charles J and the matter resolved by her order that the Claimant could have until 31 August 2003 to remove his crops. I accept Ms Downes' point that this gave rise to an estoppel which prevents the Claimant now re-opening the question of compensation.

13. There were other problems with the claim which were raised by Ms Downes. Most significant among them is the fact that there is no admissible evidence before the court as to the value of the crops which were on the land before the Defendants removed them. In those circumstances the court would have been in great difficulty assessing any compensation. She also raised Article 1163 of the Code in relation to "proof by testimony". Without deciding the point finally it seems to me that the evidence in support of the claim would have been admissible under Articles 1163(5) since this is a case about an obligation arising in delict (ie a claim for compensation for damaging crops); so on that point I would have been against Ms Downes. But on her other points I am with her and the consequence is that the claim must be dismissed.

Outcome

14. The claim shall be dismissed. I will hear submissions on costs. At the moment I would be inclined to order the Claimant to pay the Defendants' costs on the prescribed basis for a claim for $65,390. I hope that this judgment will bring a final end to the long drawn out litigation between the parties.

JUSTICE MURRAY SHANKS
High Court Judge (Acting)