

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2004/0006

BETWEEN:

TREVOR JORDON

Claimant

AND

BENJAMIN DRAKES

Defendant

Appearances:

Vern Gill for Claimant

Defendant in person (initially assisted by Winston Hinkson)

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2005: April 12

April 15
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Introduction

1. **SHANKS J:** This is a claim for possession, arrears of rent and mense profits in respect of a portion of parcel 0849D 243 at Vide Bouteille which is now owned by the Claimant and which was rented to the Defendant and his father before him. The Defendant says that he should not be required to give up possession because when his father rented the land 30 or 40 years ago he was granted an option to purchase it. He also counterclaims \$28,045 for the cost of swamp clearing carried out by himself and members of his family and others when the land was first rented, \$38,980 for the construction of a concrete road on the parcel and \$9,300 for fruit trees which he says the Claimant's wife cut down.

Possession

2. The Defendant's case about the option to purchase as set out in his Defence was that in 1959 his father had agreed with four members of the Claimant's family who were then the owners of the land that he would rent part of it to build a family house with an "eventual option to buy". There was no evidence that the Defendant personally witnessed this agreement. The Claimant's evidence was that the land was rented to the Defendant's father on a short term basis to get him and his family through a difficult situation and that no option to purchase was given. He said that he was one of the co-owners at the time the land was first rented and that no question of an option to purchase was raised with him as it would have been if any such agreement had been made. I accept the Claimant's evidence about this and I therefore reject the Defendant's case that his father was given an option to purchase.
3. In any event, in my view, even if I had found that an option to purchase had been granted, it would not have provided any answer to the claim for possession. The option was not granted to the Defendant but to his father and no grounds were put forward for maintaining that the Defendant was now entitled to exercise it. There was no written record of the option to purchase and it is not registered in any way. The option as described by the Defendant is too vague to enforce. And the Defendant has not sought to exercise it or to claim specific performance. The Defendant himself phrased any obligation in moral rather than legal terms.

4. Subject to any lien which may exist under Art 374 of the Civil Code, I therefore find that the Claimant is entitled to possession of the land and to arrears of rent and mense profits at the rate of \$40 per month, which total \$2,600.

Swamp clearing and road

5. Mr Gill for the Claimant accepted that the Defendant as a tenant may be entitled in principle to compensation for improvements to the land under Art 372 of the Civil Code.
6. The Defendant's case about clearing the swamp land as set out in his Defence was that this was done after the original rental agreement was made with his father by the Defendant himself and his father, family members and friends and that it took seven months and cost \$28,045. In his witness statement he just says that the land rented was swamp land and it was prepared and rehabilitated for the construction of the family house (which was a wooden house originally). The Claimant's evidence was that the Defendant's family did not clear any land but that they in fact took a different piece of land to that which had been offered which did not require clearing. Again I tend to accept the Claimant's evidence about this but, in any event, the Defendant's witness statement gave no details of any expenditure on swamp clearance and failed to provide any supporting evidence for the claimed \$28,045. I therefore reject this claim.
7. The claim in respect of the building of a road was equally unsupported save that after the evidence was finished the Defendant stated that he had a bill for the road in the sum of \$108,000. The Claimant very fairly accepted through Mr Gill that the Defendant had personally built a road which represented an improvement and offered to pay

\$20,000 in compensation. It seems to me that the court should act on this open offer. I will therefore order that the Claimant should compensate the Defendant for the road in the sum of \$20,000 and that he should retain his lien under Art 374 until that sum (less the arrears) is paid.

Fruit trees

8. There was nothing in the Defendant's witness statement about this matter and the Defendant did not cross examine the Claimant's wife about it although he was given an opportunity to do so. I therefore reject this counterclaim.

Result

9. I therefore order that the Defendant must deliver possession of the land he is occupying on parcel 0849D 243 to the Claimant forthwith upon payment by the Claimant to him of \$17,400. I would be inclined to make no order for costs but the parties may make submissions to the contrary.

Murray shanks
High Court Judge (Ag)