

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 2002/379

BETWEEN:

NICHOLAS LANSIQUOT

Claimant

AND

1. IGNATIUS LEON
2. PAULA MARIUS
3. MERISE LANSIQUOT
4. JOAN FELIX
5. LLYN LANSIQUOT
6. JOHN LANSIQUOT

Defendants

Appearances:

Winston Hinkson for the Claimant
Colin Foster for the Defendants

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2005: JUNE 13, 17

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JUDGMENT

Introduction

- [1] **SHANKS J:** The Claimant is the registered owner of a parcel of land (no 0253B 3) which is about six acres (2.4 hectares) in size on the Belvedere estate in the Quarter of Soufriere. The Defendants are in occupation of about 3 ½ acres of the parcel and the

Claimant seeks possession against them. The Defendants say that they have an overriding interest based on a proprietary estoppel or by prescription under Art 2103A of the Civil Code. Alternatively they claim compensation under Art 372 of the Code.

Facts

- [2] The main factual issue for me to resolve is the basis on which Defendants occupy the land. Issues were also raised as to whether the Defendants had raised a claim in the course of the land adjudication process in the 1980s and when they had notice of the Claimant's claim (though I am not sure that either of these issues have any great bearing on the outcome of the case). I heard evidence from the Claimant, the Defendants and Peter Alexander who is a neighbour. Various documents were also produced at trial, namely a copy of the relevant part of the Land Register, decisions of the Adjudication Officer and the Adjudication Tribunal dated 5 May 1987 and 6 April 1988 respectively concerning the land and three copy letters from Mr Hinkson on behalf of the Claimant dated 23 April 1996, 27 January 1999 and 1 April 1999.
- [3] The First Defendant is 80 years old. He has lived on the land all his life with members of his family peacefully and without objection. The Second to Fifth Defendants are daughters of the Claimant who all live on the land. Paula Marius is 33; in about 1995 she built a three bedroom wall house on the land; she lives there with her five children. Meries Lansiquot is 37; she built a wall and wooden house with a bar in about 1996 and lives there with nine or ten children. Joan Felix is 34; she built a wall and wooden house in about 1994 and lives there with her five children. Llyn Lansiquot is 43; she built a wall house in about 1991 and lives there with her nine children. The Sixth Defendant is Llyn's son; he is 25 and built a plywood house on the land in about 1998 where he lives with his two children. None of this evidence was really challenged on behalf of the Claimant.
- [4] The Claimant is 76 years old. His paternal grandfather Leon Romauld acquired the land by virtue of a Crown grant in 1879. He died in 1882. The Claimant's father Paul Lansiquot inherited the land. Paul Lansiquot died in 1941 and the Claimant's mother died in 1989. The Claimant made a claim to the land on behalf of the heirs of Leon Remauld during the land adjudication process and was awarded parcel no 0253B 3 by

the Adjudicator on 5 May 1987 which he duly registered on 19 August 1987. The Claimant's surviving siblings renounced their rights in 1993. The Claimant made a declaration of succession in 2001 and was registered as owner of the land in his own name on 6 March 2002.

- [5] The First Defendant accepts that the land in question was owned by the Claimant's father Paul Lansiquot. His evidence was that he was told that Paul Lansiquot promised his mother that she and her family could live on the land and make it their home for as long as they wished. On the strength of that promise he says that his mother built a house and cultivated the land (a fact of which Paul Lansiquot was well aware because he used to visit from time to time) and he and his children, grandchildren and great grandchildren have continued to live on the land, build houses and cultivate it to this day. In cross-examination he said that he had been a witness to the conversation between his mother and Paul Lansiquot when he was eight or nine years old: I do not accept that evidence since it was not included in his witness statement and it seemed to me rather unlikely that an eight year old would understand or remember such a conversation.
- [6] Mr Alexander, who is 87 and has always lived in Belvedere, gave evidence that all the residents of Belvedere knew at the time that Paul Lansiquot had promised the First Defendant's mother that she could have the land and allowed her to cultivate it and live there with her family.
- [7] The Claimant had no evidence of his own to counter that of the First Defendant and Mr Alexander. There was a suggestion in the course of the Claimant's cross-examination that the First Defendant and his children had only occupied the land after the death of the Claimant's mother in 1989 but I am quite satisfied that that is not the case since it is contradicted by all the other evidence and the decision of the Adjudication Officer in 1987 expressly records that the Claimant told the Adjudication Officer at that stage that his father (Paul Lansiquot) had put the First Defendant's mother on the land when he could no longer work it and that the First Defendant had carried on in charge of the land. (I note incidentally that he also told the Adjudication Officer that the First Defendant paid him in produce for the use of the land, an allegation which significantly was not raised at the trial of this claim.)

- [8] Although the evidence in support of the Defendants' contention as to the arrangement between Paul Lansiquot and the First Defendant's mother is hearsay, no objection was raised to its admission by Mr Hinkson. Since Mr Alexander was an independent witness and what he said had the clear ring of truth and since there was no evidence to the contrary I am inclined to accept it notwithstanding that it is hearsay. I therefore find that the First Defendant's mother and her descendants built houses and lived on and cultivated the land on the strength of a promise made to her by the Claimant's father and predecessor in title that she and her family could live there and make it their home for as long as they wished.
- [9] The First Defendant was cross-examined about whether he had made a claim to the land during the land adjudication process. He appeared to be under the impression that a lady called Rose Alva Lansiquot had made a claim on his behalf but it is apparent from the decision of the Adjudication Officer that no claim was made on his behalf and that Rose Alva was claiming in her own right (and indeed she was awarded a different but neighbouring piece of land). Since the First Defendant speaks only Creole it is perfectly understandable that he was under this misconception.
- [10] The Claimant produced in evidence three copy letters written on his behalf by Mr Hinkson. The first is dated 23 April 1996 and is addressed to the First Defendant; it accuses him of entering the lands of Leon Remauld and starting to build two concrete structures and threatens legal proceedings. The second is dated 27 January 1999 and is addressed to Meries Lansiquot and informs her that she is in illegal occupation and that she should not proceed with building a structure or legal proceedings will be issued. The third is dated 1 April 1999 and is addressed to the First Defendant and asks him to leave the land and again threatens legal action. There was no mention of these letters in the Claimant's witness statement and they were not put to the Defendants save that the First Defendant was asked about and admitted to being asked to leave the land by the Claimant and to receiving some kind of notice five or six years ago. Save to the extent of this admission I do not find the Defendants were notified of the Claimant's intention to claim possession of the lands they were occupying until these proceedings were started in 2002.

Conclusions

- [11] Mr Foster for the Defendants referred me to the well known case of *Inwards v Baker* [1965] 1 AllER 446, a decision of the English Court of Appeal presided over by Lord Denning MR. On the basis of this case and in the light of my findings of fact it seems clear to me that the First Defendant's mother and her descendants are entitled to an equity allowing them to remain in occupation of the land. Such an equity is clearly a right within section 28(g) of the Land Registration Act 1984 to which the Claimant's registered title is subject. In those circumstances the Claimant cannot succeed in his claim for possession.
- [12] But even if in fact the First Defendant's mother was never given permission to remain on the land in the way I have found I am satisfied nevertheless that the Claimant cannot succeed in his claim. The evidence indicates that all the Defendants save for the Sixth have been on the land continuously, peaceably, publicly, unequivocally and (assuming they were not there with Paul Lansiquot's permission) "as proprietors" for at least thirty years: as such they have acquired a prescriptive title (see: Arts 2057 and 2103A of the Civil Code). Such title is also an overriding interest to which the Claimant's registered title is subject by virtue of section 28(f) of the Law Registration Act 1984.
- [13] Mr Hinkson submitted that the Defendants could not defeat the Claimant's registered title because they failed to make a claim in the adjudication process or appeal the decision of Adjudication Officer and have not sought rectification of the Register on the basis of fraud or mistake. With respect this submission is misconceived. I have found that the Defendants were never party to any proceedings in the adjudication process and they cannot therefore be bound by any decision made by the Adjudication Officer or the Adjudication Tribunal. Their defence in these proceedings is based on rights flowing from occupation which override the Claimant's rights as registered proprietor by virtue of section 28(f) or (g) of the Land Registration Act 1984. As such there is no need for them to have registered their rights or sought to rectify the Register at any stage.

Result

- [13] The claim is dismissed. Subject to any submissions to the contrary I would propose to award the Defendants the costs of the claim under CPR 65.5(2)(b)(iii).
- [14] Although there was no claim by the Defendants for a rectification of the Register in these proceedings it may be helpful to both parties if the Registrar of Lands were invited to amend the Register pursuant to the proviso to section 28 of the Land Registration Act 1984 to reflect the conclusions in this judgment. For this purpose I would assume they would need to employ a surveyor to establish which part of parcel 0235B 3 is occupied by the Defendants so that the land can be partitioned and re-registered.

Murray Shanks
High Court Judge (Ag)