

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
CLAIM NO. DOMHCV2004/0006

BETWEEN:

BURTON RIVIERE

CLAIMANT

VS

JUDITH DURAND

DEFENDANTS

Appearances: Ms. Gina Dyer Counsel for Claimant
Ms. Noelize Knight Counsel for Defendant

23, 24, 27 March 2006
DECISION – 11th April 2006

- [1] **LEWIS S. HUNTE J. [AG]:** The Claimant, Burton Riviere states that he is the owner in possession of a portion of land at Beausejour Estate in the parish of St. Paul, Dominica, comprising 2321 square feet. The land, he said, is bounded on the north, by land of Joseph John and part of the remainder of Beausejour Estate separated by an access road; on the south by part of the remainder of Beausejour Estate; on the east by part of the remainder of Beausejour Estate and on the west by part of the remainder of Beausejour Estate separated by a foot path. This, he said was part of a larger portion of land that belonged to his father, Lawrence Riviere who, incidentally, gave evidence for the Claimant.
- [2] According to a survey map dated November, 1953 and prepared by licensed surveyor, Jerome A. Robinson, the whole of the

Beausejour Estate consisted of some 216 acres and 1 rood. That map was produced in evidence by the Claimant. Also produced in evidence was a Certificate of Title for the Beausejour Estate which showed that as of 5 March, 1969 the entire Beausejour Estate vested in ten persons; namely Joseph Alexander Riviere, Peter Davidson Riviere, Denis Oscar Riviere, Marie Louise Riviere, Robert Raphael Riviere, Rupert Samuel as personal representative of Alice Samuel (nee Riviere), James Norris Cuthbert Riviere, Louisa Victoria Riviere, personal representative of William Osmund Riviere, Arthur John Sebastien Riviere and William Davidson Riviere was also known as "Son".

- [3] Lawrence Riviere was the only child of Joseph Alexander Riviere and inherited his father's one-tenth share of the Beausejour Estate or just over twenty-one acres of land. When he gave evidence, he said that he has title to the land but that the Certificate of Title was not produced in Court. It is therefore not clear as to when he obtained title.
- [4] It would appear from the evidence before me that, at one stage William Davidson "Son" Riviere used to manage the estate and that he rented out lots to individuals. The witness, Lawrence Riviere, said at paragraph 10 of his Witness Statement that at one point Davidson Riviere fell ill and could no longer manage the affairs of the estate. It is not clear when Davidson Riviere began or ceased to manage the affairs of the estate but the witness Lawrence Riviere said that he, Lawrence Riviere, never took over the management of the estate.
- [5] It is very important to have a clear picture of the foregoing in order to assess what now follows.

- [6] The Claimant is seeking:
- (a) possession of 2,321 square feet of land occupied by the Defendant;
 - (b) mense profits from November, 2003 till delivery up of possession;
 - (c) an injunction preventing the Defendant from further construction on the land in question;
 - (d) a mandatory injunction compelling the Defendant to pull down and remove any structure on the land;
 - (e) further and other relief;
 - (f) costs.

[7] Lawrence Riviere, sometime in the year 2002, surveyed 6.062 acres of the twenty-one acres plus, belonging to him for the purpose of giving the same to his son, the Claimant. When he was carrying out the survey he faced opposition from the Defendant who complained to him that he was trespassing on her property. According to the Defendant, Davidson Riviere rented her a portion of the Beausejour estate. This would appear to have happened when Davidson Riviere was managing the Estate.

[8] She testified that she entered on the land as a tenant in 1980 and paid rent until 1984. She claimed that Davidson Riviere measured the land for her and gave her "a paper". The "paper" he gave her is not an exhibit in this case. She did produce one witness, Augustus Mark who said that on July 14, 1984, a Saturday, between 5:30pm and 6:00pm Davidson Riviere came up on the hill at Morne Scope in the south part of Mahaut (also called Beausejour Estate) and measured a portion of Beausejour for him

and that he paid him for it. He said that, that same afternoon, Davidson Riviere went higher up and measured a portion for the Defendant. This, Augustus Mark claimed, he witnessed. He not only recalled the date and year but the day of the week as well.

[9] According to the Defendant, the amount that was measured for her is 4, 900 square feet.

[10] The Claimant, who is 43 years old, said when he was being examined in chief by his Counsel, Ms. Dyer, that it is not true that Davidson Riviere ever agreed to sell land to the Defendant. The Defendant's father Lawrence Riviere, who is 68 years old, was less specific when being examined in chief also by Ms. Dyer. This is what he said:

“I would not know about Davidson Riviere agreeing to sell land to the Defendant. If that happened in 1984, I would not know about it at all.”

Lawrence Riviere also said, while under cross-examination by Ms. Knight, that in 2002 when he surveyed the portion of land for the Claimant, the Claimant was not in possession of the land. I conclude that it is more probable that Lawrence Riviere, a primary owner of the land, would have been more informed about the land than his son. Lawrence Riviere categorically stated that he would not know what happened in 1984. The reason for this would appear to be that Davidson Riviere was the one managing the land at that time.

[11] As explained earlier, Lawrence Riviere said that at one stage his uncle, Davidson Riviere fell ill and could no longer manage the affairs of the estate. He, Lawrence, did not take over the

management and he never said who took over the management. The Defendant said that she never paid any rent since 1984. Lawrence Riviere never claimed to have received any rent from her. It is therefore probable that the Defendant never paid rent to anyone since Davidson Riviere ceased management of the estate which most likely was the year 1984.

[12] The undisputed evidence is that the Defendant had a house on the land and that the house was destroyed by fire. The Defendant said that the house was burnt in the year 1995. The Claimant and Lawrence Riviere said it was burnt in 1993. What is clear, however, is that the Defendant lived with her brother in his house which is on a lot adjacent to the lot where her house stood.

[13] It is the contention of the Claimant and his witness Lawrence Riviere, that the Defendant had abandoned the lot on which her house stood; which lot, she claimed, Davidson Riviere measured for her. The Defendant insists that she never abandoned it. If she is correct then she has been in uninterrupted possession without paying rent since 1984, which is a period in excess of twelve years and any attempt to remove her will have been statute barred. She will also be able to apply for title under relevant section of the Registration of Titles Act. If, on the other hand, she abandoned the land as the Claimant and his witness state, then any rights she had will have been extinguished and her defence will collapse. I will now consider the evidence as it relates to this issue.

[14] It has not been disputed that the Defendant lived on the land in a house she built there and that the house was burnt either in the year 1993 or 1995. For the purposes of determining this issue the actual year is immaterial. There is also undisputed evidence that

there is a water stand-pipe on the land. The Claimant, under cross-examination, said that the Defendant started to build a house on the land and that the pipe is only a few feet away from where she started to build. He also confirmed that the Defendant used the pipe for purposes of bathing and washing her clothes. He, nevertheless, insisted that it was public stand-pipe and was put there by the Dominica Water and Sewage Company (DOWASCO).

[15] Lawrence Riviere confirmed that the stand-pipe is on the land but also insisted that DOWASCO put it there a long time ago and that other people who live in the area also use it. He went a little further than the Claimant and said, in answer to a question put to him while under cross-examination: “When I know the pipe there was no galvanize around it.” This is the first time the Court heard of any galvanize being erected around the pipe.

[16] The Defendant in her evidence said that she put the stand-pipe on the land and that she pays for the water. She confirmed that she uses the water to wash and to bathe and that it is located close to the spot where she used to live. She also stated that she tried to rebuild her house in the year 2002. Evidently, this is the building to which the Claimant referred. She said that it is she who put the galvanize around the pipe and I conclude that the purpose of the galvanize is to provide for privacy when she is having a bath. She said that her reason for installing the pipe is that her brother’s house where she lives, after the destruction of hers, is unfinished and is without running water.

[17] There is also the question as to whether it is correct that the pipe was placed in its position by DOWASCO. It is beyond dispute that

the pipe is on private property and it would certainly be a trespass for DOWASCO to place a stand-pipe on private property for use by the public at large. In the absence of evidence from DOWASCO itself, I do not accept that the pipe is public property. It is my view that it is the property of the Defendant and is used by her for the purposes she described. I believe that she pays for the water and erected the galvanize paling around the pipe to afford herself a degree of privacy when bathing. Her witness Augustus Mark who knew when the pipe was installed said that the Defendant put it there around the year 1990 and that she had never abandoned the property.

[18] There is no evidence that the Defendant was ever served with a notice to quit. Thus it appears to have been acknowledged that she is not a tenant. She is being sued for recovery of possession. The only question for consideration, therefore, is whether the action for recovery of possession is statute barred under section 3 of the Real Property Limitation Act Cap 54:07 of the Laws of Dominica.

[19] The circumstances of this case do not permit me to hold that the Defendant ever abandoned the land. No one who has abandoned land would install running water on it. Although this is enough to satisfy me that the Defendant never abandoned the land, there is also her evidence that she has always reaped fruits from the land and sold them in the village. I therefore hold that the Claimant's action is statute barred, the Defendant having occupied it since the year 1984 without payment of rent to anyone. The action is dismissed with costs to the Defendant in the sum of \$5, 000.00. Lawrence Riviere must therefore exclude from the 6.062 acres he has earmarked for the Claimant, the area of 2321 square feet land

which is part of 4, 900 square feet the Defendant occupies. The interlocutory injunction granted on 23 January 2004 is discharged.

[20] As much as I would have preferred to put an end to this dispute once and for all by ordering that the Defendant be issued a Certificate of Title for the area she occupies, I am unable to do so since there is no counterclaim.

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LEWIS S. HUNTE J (AG)