

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV2006/0214

BETWEEN:

- 1. GABRIEL MATHURIN**
- 2. JULIA MATHURIN**

Claimants

and

- 1. FRANCISCA MATHURIN**
- 2. CLAUDE MATHURIN**
- 3. NATASHA MATHURIN**

Defendants

Appearances :

Mrs. A. Gokool Foster for the Claimants
Mr. K. Monplaisir Q.C. for the Defendants

2007: June 25;
July 12.

JUDGMENT

[1] **COTTLE, J.:** The Claimants bought an action in which they seek to recover possession of certain property. They also sought to have the first Defendant pull down or demolish a building on the property.

[2] The Defendants filed a defence and counterclaim. They were prepared to vacate the property but wished to be compensated for the improvements made thereto.

- [3] At the trial both sides agreed that the sole issue for determination by the Court was the extent of compensation payable by the Claimants to the Defendants for the improvements to the property.
- [4] It is important to note that the parties are all closely related. The Claimants are husband and wife. Defendants one and two are siblings and children of the Claimants. The third Defendant is the daughter of the first Defendant and the Claimants are her grandparents.
- [5] The parcel of land in question is registered as Block 1254B Parcel 309. The first Claimant is the registered proprietor of an undivided one third share of the parcel of land. The second Claimant has no entitlement to the land and ought not to have been a party to this claim at all.
- [6] Gabriel Mathurin (Gabriel) permitted Francisca Mathurin (Francisca) to construct a wooden house on the land. The statement of claim puts the date of this transaction in about 1992 to 1993. In her evidence Francisca accepts that the year of building that initial wooden structure was 1992. She says that some 9 years ago she began to transform that house to a structure built of concrete blocks. She continued to do so until the present claim was filed in March 2006. Since then she has put on doors to the lower storey of the structure to prevent access by thieves. The Claimants aver that the partial conversion of the initial chattel house into a "concrete/wall" structure commenced between 2004-2005 and was done without consent. Francisca says that she had the consent of her father.
- [7] The relationship between the Claimants and the Defendants has now deteriorated to a large extent. At the hearing there were charges and counter charges of disrespect and unseemly behaviour which I do not repeat here. Suffice it to say it is not the type of conduct one usually associates with close family members.

- [8] The Court heard evidence from both Claimants as well as Francisca and her daughter Natasha. All were cross examined. The facts as I found them follow.
- [9] In 1992 Gabriel allowed Francisca to erect a small chattel house admeasuring 10 x 14 on lands that he expected to inherit. The lands are now vested in him. In or around 1998 he permitted her to convert the wooden structure into a part wall structure. The construction took several years. Francisca first built a basement area under the original wooden building. She did much of the construction herself. She mixed the molar and erected the bricks. Gabriel, who lived nearby, assisted her in the building exercise. After the basement was largely completed Francisca proceeded to begin transforming the upper wooden section of the building to wall. In 2006 unhappy differences arose between Francisca and Gabriel. He brought this claim and construction ceased.
- [10] I pause here to emphasize that I reject completely the story of Gabriel that this protracted construction project was done without his knowledge or consent. I believe that he happily permitted his daughter to build. I believe he helped her in so doing.
- [11] He now wishes to have her remove from his property. She is willing to leave. She wishes to be compensated.
- [12] Mr. Kenneth Monplaisir Q.C. for the Defendants says that the applicable law is to be found at Articles 372 and 374 of the Civil Code of St. Lucia.

Article 372 reads:

“When improvements have been made by a possessor with his own materials, the right of the owner to such improvements depends on their nature and the good or bad faith of such possessor.”

Article 374 reads:

“In case the party in possession is forced to give up the immovable upon which he has made improvements for which he is entitled to be reimbursed, he has a right to retain the property until such reimbursement is made, without prejudice to his personal recourse to obtain repayment; except in the case of surrender in any hypothecary action, as specially provided for in the Book respecting *Privileges and Hypothecs*.”

- [13] Under Article 2066 good faith is always presumed. It is for the Claimant to demonstrate bad faith and there has been no evidence led in that regard. Mrs. A. Foster for the Claimants agrees that Articles 372 and 374 apply. She referred the Court to the Canadian case of Gagnon v Loubier [1925] 4 DLR 289. This case was decided on the interpretation of Article 417 of the Quebec Civil Code. That Article is echoed in Article 372 of the St. Lucia Civil Code.
- [14] From a reading of the case, it appears that a Defendant's right to compensation for improvement depends on his good faith. And for the purposes of this Article, good faith consists in a possessor's belief that he is really the owner.
- [15] On the facts of the present case Francisca did not construct the improvements on a mistaken belief that she was the owner of the land. She knew all along that the land belonged to her father. She is not now entitled to retain possession. Nor is she entitled to be compensated for any improvements made.
- [16] Before this Court, the Claimant indicated that he is prepared to permit the first Defendant to remove from the land as much of her house as she is able to do so.
- [17] I therefore enter judgment of the Claimant for possession of the land. The Defendant is not entitled to compensation for improvements as they were not

made in good faith. I make no order as to costs, as I am convinced that the Claimant gave permission for the building of the house and even assisted in its erection.

BRIAN S. COTTLE
HIGH COURT JUDGE