SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP 2004/026

BETWEEN:

[1] HARRIS STEPHEN
[2] AGATHA THOMAS

Appellants

and

AGATHA SONSON

Respondent

Before:

The Hon. Mr. Brian Alleyne, SC	Chief Justice [Ag]
The Hon. Mr. Michael Gordon, QC	Justice of Appeal
The Hon Mr. Hugh Rawlins	Justice of Appeal

Appearances:

Mrs. Wauneen Louis Harris for the Appellants
Mr. Hilford Deterville QC., with Ms. Samantha Charles for the Respondent

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2007: February 27;
2008: January 28.

Civil Appeal – Notice to quit – Absolute title – section 28 Land Registration Act 1984 – Usufructaries – article 394 to 436 Civil Code of Saint Lucia – article 1980 Civil Code – Tenants at sufferance – article 1515 Civil Code – Counter-claims – Whether compensation is payable by the respondents for improvements – article 372 Civil Code – proof of evidence for improvements Claim for damages – lack of proof of damage – Costs – counter-claims and costs – whether costs should be prescribed

The respondent is the owner with absolute title to the land. The second appellant claimed that she was granted the usufruct by whom she considered to be the true owners, in the land or alternatively that she was a tenant at sufferance and that she entered prior to the respondent's ownership of the said land. The second appellant claims that she believed that she has a genuine interest in the land as a result of being an heir of the deceased Anita Baptists (main beneficiary by virtue of Deed of Donation dated 23rd December 1968).The appellants believe that they are entitled to remain on the land until payment of compensation for improvements they have made on the

land. A counter notice was filed by the respondent challenging the trial judge's order on costs and claiming prescribed costs based on the amount claimed in the Counter-claim of the appellants in the court below.

Held; dismissing the appeal with costs at two thirds of the costs awarded in the court below that a claim for usufruct cannot succeed unless the owner who purports to convey the usufruct has a registered title and a claim for damages for improvements can only succeed if the evidence of value is sufficient to persuade the court . The counter notice by the respondent is allowed with costs. to the respondent at two-thirds of the costs now ordered in the court below.

Nicholas Lansiquot v Ignatius Leon et al Civil Appeal No. 29 of 2005 (SLU) delivered July 2007 followed.

Stanley Black v Mayor and Citizens of Castries Civil Appeal No. 4 of 1977 (Saint Lucia) cited.

JUDGMENT

[1] GORDON, J.A.: In 1984 two landmark statutes were passed which were to effect a sea-change in the conveyancing practice of St. Lucia. Prior to 1984 conveyancing practice was characterized by what might be called 'registration of title'. The changes effected in 1984 created a system of registration of land. Before the changes envisioned by the principal statute, the Land Registration Act (LRA), could be implemented, there was the requirement for the mechanism for the change over to be given the effect of law. This was done by virtue of the Land Adjudication Act, (LAA). In effect the LAA legislated for a massive exercise to be undertaken whereby all persons who owned land or thought that they owned land or any interest in land to appear before a Land Adjudicator who would, after an exercise in demarcating the particular land award it to the claimant if there was no dispute and proper documentary evidence of ownership could be provided, or adjudicate between competing claimants and make an award in favour of one or the other. The LAA established a whole judicial process which involved appeals from the Land Adjudicator all the way to the Privy Council. There was an elision of the extant system of civil jurisdiction and the statutorily created hierarchy of appeals at the level of the Court of Appeal.

[2] At the end of the process of adjudication an obvious requirement of society was that there be certainty and finality.

[3] In 1986 the adjudication process in respect of a parcel of land, then known as Block 1052 B Parcel 334, took place. The parcel was awarded to Morgianna Sebastien and to Anita Baptiste in common. In subsequent years, that parcel was separated into two parcels by a process of what is referred to in the LRA as mutation. Two new parcel numbers were ascribed to the two parts of what had been parcel 334, viz Block 1052B parcels 520 and 521.This was as a result of a partition between the two owners in common. In 1990 Morgianna Sebastien sold Parcel 520 to the respondent. Since that time the respondent has caused a number of mutations to be made at the Land Registry. It is sufficient for the purposes of this decision if I simply remark that the land which is the subject of this decision is now known as Block 1052B Parcel 726 which is hereafter referred to in this judgment as "the Land".

[4] Deriving the facts from the judgment of the trial court, sometime after June 1998 the respondent served a notice to quit on the appellants. In response to the notice to quit the first appellant erected a fence on the land as a result of which the respondent was deprived of the use and enjoyment of her property. That was the genesis of the claim by the respondent. Quoting directly from the judgment of the court below:

> "The Defendants (appellants) have admitted that the Claimant (respondent) is the owner with absolute title to the land. However, they allege that they are not trespassers on the land. Instead, they claim that in or about 1962, the Second Defendant had the authorization of persons whom they considered to be the true owners to occupy the land and that she entered the land prior to the Claimant's ownership based on the genuine and honest belief that she had an interest in the said land by virtue of being an heir of the deceased Anita Baptiste who was the named beneficiary by virtue of a Deed of Donation dated 23rd December 1968. The Defendants (appellants) allege that at the very least, they are entitled to remain on the land until they have been reimbursed the value of their "alleged" improvements."[1]

[1] Paragraph 5 of judgment

[5] The essence of the defence of the appellants, as defendants, was not that they challenged the title of the respondent but rather that they were entitled to remain on the disputed lands until certain improvements which they allege they carried out in good faith were paid for by the respondent. Indeed, the finding by the learned trial judge at paragraph 13 of her judgment that : "Based on the uncontroverted evidence adduced in this case and the admissions of both defendants, I find that the Claimant is entitled to a declaration that she is the owner with absolute title …. of Parcel 1052B 726" has not been appealed against by the appellants.

[6] The Order of the trial court was in the following terms:

> "1. That the claimant, Agatha Sonson, is declared the owner with absolute title to Parcel 1052B 726 and is entitled to immediate possession thereof.
> 2. That both defendants, Harris Stephen and Agatha Thomas vacate Parcel 1052B 726 forthwith.
> 3. That the defendants are not entitled to be reimbursed for any improvements made to parcel 1052B 726.
> 4. That the defendants be restrained whether by themselves, their servants or agents from entering or remaining on Parcel 1052B 726.
> 5. That the first defendant Harris Stephen, whether by himself, his servants or agents be restrained from threatening, assaulting or doing any unlawful acts towards the claimant Agatha Sonson her servants or agents in respect of parcel 1052B 726.
> 6. That the defendants do pay to the claimant the prescribed costs of $14,000.00.
> 7. That the counterclaims for both defendants are dismissed with costs to the claimant in the sum of $6,000.00. The total costs to the claimant in the sum of $20,000.00".

[7] The appellants have appealed against the judgment of the court below on the following three bases:

(a) That the trial judge erred in law in failing to find that the appellants were entitled to an overriding interest in Parcel 1052 B 726 as usufructaries or otherwise in the said land.

(b) That the trial judge failed to hold that the appellants were entitled to remain in possession of the said land until payment of compensation

pursuant to the principle in Stanley Black v Mayor and Citizens of Castries[2]

(c) That the trial judge erred in law in making an order that the first named appellant whether by himself, his servants or agents be restrained from threatening, assaulting or doing any unlawful acts towards the claimant Agatha Sonson her servants or agents in respect of parcel 1052B 726

(d) That the trial judge failed to dismiss the claim of the respondent for possession due to the fact that the appellants as tenants at sufferance had not been given a valid notice to quit.

[8] It is immediately apparent that the grounds (a) and (c) would have to be argued in the alternative because a usufructary is in quite a different legal circumstance from a tenant at sufferance, and indeed, learned counsel for the appellants did so indicate.

[9] The LRA, section 28 reads in part:

> "Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may subsist and affect the same, without their being noted on the register—
>
> ……
>
> (f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription prescription;
>
> (g) the rights of a person in actual occupation of land or in receipt of the income thereof save where inquiry is made of such person and the rights are not disclosed"

[10] Articles 394 to 436 of the Civil Code of Saint Lucia set out the law relating to usufruct. It is quite clear that in the context with which we are dealing in this case, the usufruct being argued for is one created by man, rather than law. It therefore becomes apposite to recall article 1980 of the Civil Code which reads as follows:

> "1980. All acts *inter vivos*, conveying the ownership, *nuda proprietas* or usufruct of an immovable must be registered at length or by an abstract hereinafter called a memorial.

[2] Civil Appeal No. 4 of 1977 (Saint Lucia)

> In default of such registration, the title of conveyance cannot be invoked against any third party who has purchased the same property or received an onerous gift of it from the same vendor or donor for a valuable consideration and whose title is registered.
>
> Every conveyance by will of the ownership, *nuda proprietas* or usufruct of an immovable must be registered either at length or by memorial, with a declaration of the date of the death of the testator and the designation of the immovable.
>
> The transmission of the ownership, *nuda proprietas* or usufruct of an immovable by succession must be registered by means of a declaration setting forth the name of the heir, his degree of relationship to the deceased, the name of the latter, the date of his death, and the designation of the immovable.
>
> Provided always that all acts *inter vivos* purporting to convey the ownership, *nuda proprietas* or usufruct of an immovable shall be null and void, unless prior to the execution of such acts the title of the person or persons purporting to make such conveyance shall have been registered; but this proviso shall not annul or render void any act whereby the Crown purports to make any such conveyance, or in any manner whatsoever affect any right of the Crown. (Substituted by Act 10 of 1904)" (Emphasis added)."

[11] The appellant Agatha Thomas exhibited to her witness statement a document which is included in the appeal record immediately after her witness statement at page 93. On the face of the document appears the description: "Deposit by Anita Baptists also called Anita Jn Baptiste of A document constituting a gift of property by the late Alfred Juliet". The document is dated 23rd December 1970, though the document deposited is dated July 10, 1968. I shall hereafter refer to this document as the Deed of Deposit. It is this document, the Deed of Deposit, which the appellants argue gives rise to their right to a usufruct in the disputed land. The Deed of Deposit deposits a document worthy of replication here:

> "TO WHOM IT MAY CONCERN: I, the rightful heirs [sic] of the late Robert E. Juliet wish to give my sister Mrs Francis Sebastien, and to the child of my late brother, Taylor Juliet, Mrs Anita Baptiste all property movable, and unmovable [sic] left by our father, the late Robert E. Juliet to be used as they see fit, and also their children."

The document was signed by Alfred Juliet.

[12] Also exhibited and made part of the record of appeal was the Petition for Letters of Administration in the estate of Alfred Juliet, the Affidavit of Assets and Liabilities accompanying such Petition as required by Article 1015 of the Code of Civil Procedure

and Letters of Administration duly granted by the Court to Elsie Juliet, widow of Alfred Juliet dated 4th November 1975. The interesting fact to be derived from the documents referred to in this paragraph is that the assets of Alfred Juliet are stated to be only some $30,000.00 being the sum deposited by the Government. There is no mention of any immovable property forming part of Alfred Juliet's estate.

[13] Also exhibited to the court below was the written decision of Mr. J.M.F. White, an Adjudicator under the LAA, in respect of the land in dispute handed down on 1st April 1986. The land was awarded to Mrs John B Louis and Mrs Francis Sebastien. Beyond the award of the land, the decision is of interest in that at the 4th paragraph it states:

> "Mr. Harris Stephen stated during the hearing that he had claimed the land on behalf of Thomas Juliet, the son of Alfred Juliet as he believed the land belonged to him. He was totally unaware of the above documents."

[14] I conclude from that statement that Mr. H. Stephen, appellant No. 1, was from April 1986 aware of the decision of the Adjudicator and from that time, if he was aggrieved, could have made use of the procedure for challenging the decision. He did not do so.

[15] The following conclusions are logical imperatives from the above: (a) The Deed of Deposit pre-dated the Letters of Administration and both documents predated the decision of Mr. J.M.F. White. (b) In order for the Deed of Deposit to give rise to a usufruct in the disputed land Alfred Juliet would have had to have had a registered title to the land. The Record of Appeal is bereft of evidence that such registered title existed. (c) In the absence of usufructary rights, and in the face of the grant of permission, the highest rights that could be enjoyed by the appellants would be that of tenants at sufferance.

[17] The above conclusion disposes of the issue of usufruct and brings into focus the rights of a tenant at sufferance. In Nicholas Lansiquot v Ignatius Leon et al[3] Rawlins JA was faced with a similar circumstance of notice given to a tenant at sufferance not terminating on May 1st as required by Article 1515 of the Civil Code of Saint Lucia. The learned Justice

[3] Civil Appeal No. 29 of 2005 (SLU) delivered July 2007

of Appeal simply declared that the tenancy terminated at the next 1st of May. I shall do the same and order that the appellants do give up possession of the disputed land to the respondent on or before 1st May 2008.

[18] Such a decision raises the issue as to whether compensation is payable by the respondent to the appellants for improvements within the context of Article 372 et seq of the Civil Code made to the land by the appellants, and, if payable, whether such compensation must be paid prior to the respondents giving up possession. The respondents claim, in their counter-claim, that they executed three forms of improvements, namely they planted fruit trees to a value of $1,600.00; they built a building valued at $20,000.00; and, that they placed backfill on the land to a value of $300,015.00. Thus in addition to a claim for "damages' there was a claim for $321,615.00 being the value of the improvements.

[19] As far as I can determine, there is no evidence in the record of appeal of the value of any crops which may have been planted on the land, nor is there any evidence of the value of the immovable portion of the house. It is a most basic premise of law that he who asserts must prove. On the basis of lack of proof of damage, this court can go no further than to dismiss the claim for the two items.

[20] According to the appellants' own expert, Mr. Roosevelt Isaac, an engineer employed by the appellants to determine the quantity of fill placed upon the land by the appellants, such fill was not only not an improvement, but would have to be removed, at a cost, prior to any substantial structure being placed on the land. In other words, the placing of fill was not an improvement, but rather damage to the land.

[21] Without in any way commenting of the applicability of the Stanley Black case, but rather based only on the evidence, I can only confirm the learned trial judge's decision not to award compensation to the appellants, though this should not be seen as endorsing her reasoning in arriving at her conclusion.

[22] In sum, therefore, the appeal of the appellants is dismissed with costs at two thirds of the costs awarded in the court below, this figure not being the subject of any appeal, to the respondent.

[23] The respondent applied for and received leave to file a Counter Notice out of time. The Counter Notice was in fact filed some nine months after the filing of the original Notice of Appeal. The Counter Notice sought to challenge only the trial judge's order as to costs. The order appealed ran thus: "That the counterclaims of both defendants are dismissed with costs to the claimant in the sum of $6,000.00…". The grounds of appeal were that the trial judge erred in refusing to give costs on the counterclaims calculated on the basis of prescribed costs and in failing to give any reasons why such costs should not be calculated on the prescribed costs basis, and, that the trial judge was wrong in effectively overruling the order of the court made at case management that costs should be on the basis of prescribed costs.

[24] It is accepted by both sides that the Master at Case Management made an order that costs in this case would be prescribed costs. This order was not appealed, nor challenged in any way. At paragraphs 46 and 49 of the judgment of the trial judge she says the following:

> "46 At two Case Management Conferences held on 10th December 2003 and 13th January 2004 respectively, the learned Master ordered that costs be prescribed costs. All Counsels partook in those proceedings.
> "49 Both Mr. Theodore and Mrs. Harris now challenge the order made by the Learned Master. They both argue, albeit late, that the trial judge and not the master is better positioned to make an award of costs at the end of a trial. While this argument has merit, the time has come for lawyers to be more proactive at Case management Conferences. They cannot sit idly by, allow judicial officers to make orders and than turn around and attack the order. I will award the sum of $6,000.00 to the Claimant on the counterclaims."

[25] There is nothing exceptionable in what the trial judge says in the above quotation up to the penultimate sentence in paragraph 49. Unfortunately, the final sentence departs in logic from the rest of the paragraph. The learned Master made an order in the case management conference that costs would be prescribed costs. There was no appeal. That is the end of the matter. The respondent's counter notice is allowed. The order for costs in

the court below is varied to be prescribed costs to be paid by the appellants to the respondent based on the counterclaim value of $321,615.00. For the avoidance of doubt the costs here awarded to the respondent on the counterclaim are additional to the costs awarded to the respondent at paragraph 47 of the judgment of the trial judge which reads as follows:

> "The Claimant's claim falls under the rubric for which no specific value is claimed. Part 65.5 is the applicable rule. Since the claim is not for a monetary sum, the amount of $50,000.00 is used. The Claimant is therefore entitled to the prescribed costs of $14,000.00"

[26] Costs in this appeal are awarded to the respondent at two-thirds of the total costs now ordered to be paid to the respondent in the court below.

Michael Gordon, QC
Justice Appeal [Ag]

Brian Alleyne, SC
Chief Justice [Ag.]

Hugh Rawlins
Justice of Appeal