THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CIVIL SUIT NO. SVGHCV 2007/0392

BETWEEN:

JACINTH MITCHELL
(By Her Attorney on Record CONRAD LEWIS)

Claimant

AND

WINSTON DELPHINUS ALLICK

Defendant

Appearances:

Mr. Cecil Blazer Williams for the Claimant
Ms. Nicole Sylvester in association with Ms. Patina Knights for the Defendant

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2009: September 29
November 24

JUDGMENT

INTRODUCTION

[1] REMY J.: The Claimant and the Defendant are the owners of Lot 48 and Lot 47 respectively, two parcels of land situate at Canouan, and purchased from the Crown. It is the Claimant's case that the Defendant trespassed on her land, Lot 48, and constructed a dwelling house thereon, as a result of which she has been deprived of its use and enjoyment and has suffered loss and damage.

PLEADINGS

[2] By way of a Fixed Date Claim filed on the 12th November 2007, the Claimant claimed the following:-

(a) That she acquired ownership of Lot No. 48 in 1999 by virtue of Crown Grant Number 91 of 1999. This followed receipt by her of a letter dated 30th August 1994 informing her that Cabinet had approved the sale to her of a parcel of land namely Lot No.48.

(b) That sometime after 2000 the Defendant began to construct a dwelling house on her parcel of land.

(c) That in 2004 she spoke to the Defendant about his trespass on her land and the Defendant told her that he would pay her for the land.

(d) That by letter dated 26th October 2006, she wrote to the Defendant "expressing her dissatisfaction with his (the Defendant's) failure to deal with the matter amicably" and giving him 30 days to "correct his blatant violation of her property rights."

(e) That by letter dated 19th December 2006, the Defendant responded to the above letter, indicating that he was in occupation of the parcel of land since 1993.

(f) That by a further letter dated 20th March 2007, her lawyer wrote to the Defendant on her behalf requesting that he demolish the building constructed on the parcel of land within 14 days. The Defendant's lawyer replied to this letter indicating that the Defendant was in "unmolested occupation of the said parcel of land since 1993."

[3] The Claimant further pleaded that she has been deprived of the use and enjoyment of the parcel of land and has suffered loss and damage and claimed:

(1) An order that the Defendant demolish the dwelling house built on the Claimant's land situate at Canouan and to remove all building materials, personal effects and equipment therefrom.

(2) An order that the Defendant either by himself, his agents or servants be restrained from trespassing on the Claimant's said land.

(3) An order that the said land is owned by the Claimant by virtue of Crown Grant Number 91 of 1999 and dated the 18th day of August 1999.

(4) Damages.

(5) Costs.

(6) Further or other relief.

(4) By his Defence filed on the 21st April 2008, the Defendant pleaded that he had been in occupation of the Land since 1993 and that he was never informed by the Claimant or anyone else that he was building on the Claimant's land. He pleaded further that he had a mortgage on the property registered in 1995 and also a further charge registered in 1996. The Defendant denied having any conversation with the Claimant in 2004 about the Land or that he agreed to the purchase of the Land from the Claimant. He stated that the Claimant first contacted him by letter dated 26th October 2006 by which time he had been in occupation of the Land for approximately 11 years.

[5] The Defendant pleaded that he built on Lot No 48 believing that this was his land as this was the land pointed out to him by the Surveyor. He further contended that the Claimant was now seeking to be unjustly enriched by the improvements done to Lot 48 by the Defendant.

[6] It was the Defendant's case that he began construction of his dwelling on the Land in 1993 and has lived in the dwelling since November 1994. Further he contended, the Claimant

bought the land in 1999 at which date he the Defendant was already in occupation of the Land and therefore, the Claimant would have had actual and/or constructive notice of his occupation of the Land, and is therefore not a bona fide purchaser for value without notice. The Defendant further pleaded that he will rely on the acquiescence laches and delay of the Claimant.

EVIDENCE

[7] Evidence was by Witness Statements and cross-examination. There was one witness for the Claimant, namely the Claimant herself and four for the Defendant.

For the Claimant

[8] In her Witness Statement, the Claimant states that she resides in the U.S.A. That by letter dated 30th August 1994, she was informed that Cabinet had advised approval for the sale to her of the Land. In 1999, having paid for the Land, she was given ownership of the Land by virtue of Crown Grant # 91 of 1999.

[9] She stated that "sometime in 2000", she visited the property with Jarvis Frederick, the Defendant's brother, but "the area was impenetrable with thick bushes and there were no roads."

[10] Sometime in 2004, she said, she was informed that the Defendant was building his house on the Land. She saw the Defendant walking in the street outside her mother's shop and called him into the shop and asked him whether he was building on the Land. He admitted that he was, but that one John Lewis had identified the wrong plot of land to him. He agreed to stop any further construction immediately, until the matter was resolved. He also agreed to "swap" his Lot 47 with her Lot 48 .They then spoke about how they would go about the exchange of the lands, namely that they would have to contact surveyors and

lawyers. She says that she told the Defendant that the view on Lot 48 was better and that she preferred her own land to his which was "unsatisfactory".

[11] She says that she asked her mother to hire a Surveyor to identify the boundaries of the Land," to ensure that the Government did not sell herself and the Defendant the same plot of land" and to be certain whether the house was "on the boundary or entirely on her lot". She went on to say that it took a long time before a Surveyor came to Canouan. Upon receiving the report of the Surveyor, she adds, she wrote to the Defendant by letter dated 26th October 2006. The Defendant, she added, by letter dated 19th December 2006, replied saying that he was in occupation of the Land since 1993, and further denied knowing he was building on the Claimant's land. Further, that he had mortgaged the Land.

[12] She states that the Defendant continued to complete the house. She wrote another letter to him dated 12th March 2007, requesting him to stop trespassing on her lot and also that she had her lawyer write to him requesting him to demolish the building.

[13] According to the Claimant, the Defendant "knew he was trespassing and building on her land, Lot No.48, and did so because his (the Defendant's) land , Lot No.47 is "very rocky" and "steeper" than hers and "more difficult and costly to build on." Further, that the view from her land is "much better than that from Lot 47."

[14] Under cross-examination, the Claimant admitted that she was not present when the lands were being pointed out by the Chief Surveyor in 1993; that in 1993 she resided in America where she had migrated from Canouan in 1979, but that she came to St. Vincent in 1994, 1996, 1998, and in 2000. She did not come in 2002 but came in 2004 and 2006.

[15] She got her Deed in 1999 but did not inspect the land when she bought it. She stated that although her mother told her of the construction of the house by the Defendant in 2004, she was waiting for the Surveyor's report before she did anything about it. However, she "was sure where her land is." She stated that the survey of the land was done in 2006, but that it "was not when she received the survey that she realized that the defendant had built on the wrong piece of land."

[16] The Claimant also agreed that the Defendant was the first one to clear the land and that she was aware that he was the first person to build on the lands.

For the Defendant

[17] In his Witness Statement the Defendant states that in 1993, lands being distributed to residents of Canoun were pointed out by the then Chief Surveyor. His lot was pointed out to him. He states that by letter dated 30th August 1994, he received a letter from the Lands and Survey Department confirming approval for sale of Lot No. 47 as well as details concerning the cost of the land and payment, but that he never saw a survey plan. Soon after the distribution, he went into possession of the land, clearing it by cutting and burning trees on the land. In that same year, he erected a plywood structure, part of which he used as a store room and he lived in the other section.

[18] He hired Gerald Frederick to construct a two-storey concrete dwelling house on the land. The construction of the ground floor of this house commenced in 1994. It was completed in the same year and he started living in that building by November 1994. In order to complete the second phase of the construction, he received a mortgage from the National Commercial Bank in 1995 and in 1996 to assist in completing construction of the first floor. The construction was completed in 2002. He states that he was the first person to build and live up on the hill in that area for a number of years. No one ever approached him stating he was building on the wrong site. He states that the first communication which he had from the Claimant was on October 26th 2006 when he received a letter from her stating that he was occupying her plot of land , Lot No.48.

[19] Under cross-examination, the Defendant admitted that the Chief Surveyor had a Plan when he was pointing out the land during the distribution in 1993. He stated that there were no names on the Plan during the distribution. He averred that, in 1993, he cleared the land and erected a plywood house on it; that he paid for the land in 1994, took a loan in

1995 and again in 1996; that he built on the land that was pointed out to him and that he started building before obtaining Planning permission to do so. The building, he added, was completed in 2002.

[20] The Defendant continued in cross-examination that he took another loan in 2001 to complete the house and that in 2003, a development company, namely CCA, rented the upper floor of the building from him. He vehemently denied that the top floor "was not completed till after 2004."

[21] The next witness to give evidence for the Defendant was Gerard Frederick, a brother of the Defendant. His evidence as contained in his Witness Statement was that in 1994, the Defendant asked him to build a house for him on the piece of land that was pointed out to him. Concrete construction began that same year, he says. He added that the construction was done in two phases, the first being the construction of the ground floor which commenced in 1994 and was completed the same year. He stated that, prior to the construction, there was a plywood structure on the property which had been placed there since 1993, and which had been occupied by the Defendant. He stated that he started the first floor and took it up to ring beam. Construction, he added, was halted for a period of time but the first floor was completed in 2002. He stated that the Defendant's house was the first and only house standing as a "landmark" on the hill for a number of years.

[22] Under cross-examination, he confirmed that the Defendant had a plywood house erected on the back of the land in 1993. He said that the land was cleared by the Defendant and there were no trees; he stated that although he constructed the house for the Defendant, he never checked to see if there was any plan; he further said that it is not every house that he builds that he has a plan for. He stated, however, that the house was built in two stages and that it was completed in 2002. Upon close questioning, he said that lots 47 and 48 have the same incline, the same slope and the same elevation.

[23] The other two witnesses also gave evidence that the Defendant occupied the land from 1993, erected a plywood house on the land and built a dwelling house thereon. Further, that the dwelling house was completed in 2002.

SUBMISSIONS

For the Claimant

[24] Learned Counsel for the Claimant suggested that the issues arising for consideration are as contained in Paragraph 21 of his Submissions. Paragraph 21 reads as follows:-

> "The facts indicate that the Defendant is a trespasser; that he cannot claim adverse possession since Lot No. 48 was Crown Land up to 1999; that the Claimant never acquiesced or surrendered possession to the Defendant; that the defendant purchased Lot. No 47; that the defendant mortgaged Lot No.47; and that the Claimant has suffered loss and damage and should be granted the reliefs sought in her Statement of Claim."

[25] Counsel submitted that "facts of the case indicate" that the Claimant is the bona fide owner of Lot No. 48, the subject of Crown Grant Number 91 of 1999. He further submitted that "had the Defendant not been negligent and reckless, he would have seen that Lot No. 48 is the property of the Claimant." He argued that if the Defendant "did start construction", it could not have been before 30th August, 1995, "since he had not paid for the land which he thought to be his own."

[26] Learned Counsel further submitted that the Defendant cannot claim adverse possession, since, he argued, Lot No. 48 was Crown Land up to 1999, at which date it was sold to the Claimant. Counsel quoted Section 17 (1) of the Limitation Act., Cap 90 of the Revised Laws of SVG 1990 which states:-

> " No action shall be brought by any person to recover land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."

Part 11 Paragraph 10 of the Schedule to the Act provides:

> "Subject to paragraph 11, Section 17(1) shall apply to the bringing of an action to recover any land by Crown with the substitution for reference to twelve years of a reference to thirty years

Paragraph 12 provides:

"Notwithstanding Section 17(1) , where in the case of any action brought by a person other than the Crown the right of action first accrued to the Crown, the action may be brought at any time before the expiration of :-

(a) the period during which the action could have been brought by the Crown; or

(b) twelve years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires."

[27] Accordingly, Counsel argued, time can only begin to run against the Claimant after 1999 in keeping with the Limitation Act.

[28] Although Counsel has accurately stated the law regarding the above, the Court is of the view that the issue of adverse possession is not an issue in the case at bar.

[29[Counsel contends that the letters sent to the residents of Canouan indicate clearly that the lots were for building purposes. He further contends that the Defendant knew this fact, that he was allocated Lot No. 47 and that he "recklessly" built on Lot No. 48", knowing that the Claimant was going to build on Lot No.48." As a result,, he argued, the Claimant is entitled to recover damages for trespass. One remarks in passing that trespass is actionable per se and recklessness adds nothing. He states, relying on the Antigua and Barbuda case of ***Clarabell Investments Limited v Antigua Isle Company Limited***, that this is so "even though she (the Claimant) has sustained no actual loss. "Further relying on the case of ***Joseph W. Horsford v Lester B. Bird and others***, Privy Council Appeal No.43 of 2004, the Claimant is entitled to be awarded "substantial damages"

[30] The Court is also of the view that the issue of trespass is not an issue for determination in this case.

[31] Learned Counsel for the Defendant in their Submissions identified the issues to be determined in this case as follows:-

1. Was the Claimant a Bona fide purchaser for value without notice?
2. What is the effect in law of someone who has delayed or taken no action in relation to property?

[32] Counsel for the Defendant submitted that, based on her own evidence that she was not present when the lands were being distributed in 1993, the Claimant cannot state with certainty that the land the Defendant has built on, namely Lot 48, was not the land that was pointed out to him. They submit that, on a balance of probabilities, the Defendant's evidence ought to be believed. They asked the Court to accept the evidence of the Defendant, who they describe as "a simple man." The evidence of the Defendant is that he built on Lot 48 because that was the parcel of land which was pointed out to him in 1993 by the Chief Surveyor. That in that same year, he began clearing the land and erected a plywood structure thereon. He later began constructing his dwelling house on the land and in 1994 had completed the ground floor.

[33] Counsel submitted that the doctrine of a bona fide purchaser for value without notice commonly referred to as "equity's darling" "is a cardinal principle of Land Law which is often applied in our Courts where the issue of third parties rights abounds in relation to land." They relied on Halsbury's Laws of England Fourth Edition Vol. 16 at paragraph 1319 which provides:-

> "If the later purchaser obtains a conveyance of the Estate at the time of his purchase and can support the plea of purchase for valuable consideration without notice, then the legal estate affords him an absolute protection."

and also on the case of ***Pilcher v Rawlins*** (1872) L.R. Ch. App at Page 268.

[34] Counsel submitted that the Claimant was not a bona fide purchaser without notice. That she acquired title to Lot No. 48 through Crown Grant No.91 of 1999; that the Defendant had been in occupation of that property since 1993 and that it was not until 2006 that the Defendant was contacted by the Claimant who indicated that the Defendant was in occupation of her lot of land.

[35] Counsel further submitted that if at the time the Claimant purchased the land from the Crown she did not have actual notice of the Defendant's occupation, she would have had constructive notice through inquiries and inspection of the land. They rely on the doctrine of "caveat emptor" in that the Claimant bought the property at her own risk. They contend that the Claimant had a duty to investigate the title of the land and to inspect the land itself

and make such inquiries as a reasonable purchaser would make. This she failed to do, as she admitted under cross-examination.

[36] Counsel referred to the COMMONWEALTH CARIBBEAN PROPERTY LAW, 2nd Edition by Gilbert Kodilinye at page 282 where the case of ***Cowie v Moses*** (1990) 1 TTLR 371 was discussed in relation to constructive notice.

[37] Counsel further submitted that the Defendant is entitled to rely on the acquiescence and delay of the Claimant as a defence.

[38] Counsel quote from Snell's Equity, 31st Edition by Sweet & Maxwell at paragraph 5-16 at page 99:-

> "In the words of Lord Camden L.C. (Smith v Clay) (1767) 3 Bro. C.C. 639n at 640n), a court of equity "has always refused its aid to stale demands, where a party has slept upon his rights and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence; where these are wanting, the Court is passive, and does nothing."

Delay which is sufficient to prevent a party from obtaining an equitable remedy is called" laches."

[39] Counsel also quote paragraph 5-19, page 101 of Snell's Equity which states "Laches essentially consists of a substantial lapse of time coupled with the existence of circumstances which makes it inequitable to enforce the claim" and rely on the case of ***The Lindsay Petroleum Company v Prosper Armstrong Hurd et al***.

[40] Counsel quoted from Halsbury's Laws of England, Fourth Edition Vol. 16 at paragraph 1473 which provides as follows:-

> "The term" acquiescence" is used where a person refrains from seeking redress when there is brought to his notice a violation of his rights of which he did not know at the time, and in that sense acquiescence is an element in laches."

[41[Counsel submit that paragraph 1474 sets out circumstances which as a general rule must be present in order that the estoppel may be raised against the claimant. These are:-

1. The Defendant must be mistaken as to his own legal rights.

2. Defendant must expend money, or do some act, on the faith of his mistaken belief.

3. The Claimant must know his own rights as acquiescence is founded on conduct with a knowledge of one's legal rights.

4. Claimant must know of the Defendant's mistaken belief.

5. The Claimant must encourage the Defendant in his expenditure of money or other act, either directly or by abstaining from asserting her legal right.

[42] Counsel submit that the Defendant has treated the property as his own and that under that belief he expended monies to construct a dwelling house, completion of which was in 2002. Further that the Claimant is aware of her legal right as she is asserting ownership through her Crown Grant. Further, the Claimant knew that the Defendant thought he was building on his property. Finally that the Claimant would have had notice actual or constructive of the Defendant's occupation of Lot 48 and by her inaction allowed him to continue his occupation of Lot 48. In the circumstances, Counsel submit, the reliefs sought by the Claimant would "create an injustice" to the Defendant.

[43] In the view of the Court, the true issue to be determined is: Whether there was an equity namely a proprietary estoppel in favour of the Defendant.

THE LAW

[44] Megarry & Wade in his book The Law of Real Property 7th Edition at Page 697, states as follows:-

> "Proprietary estoppel, which was once also referred to as "estoppel by acquiescence" or "estoppel by encouragement', is a means by which property rights may be effected or created. The term describes the equitable jurisdiction by which a court may interfere in cases where the assertion of strict legal rights is found to be unconscionable."

[45] In the case of ***Village Cay Marina Limited v. John Acland et al*** reported in the Eastern Caribbean Law Reports at page 161 Sir Vincent Floissac Chief Justice provides :-

> "According to the authorities, the typical prerequisites to the success of the plea or defence by acquiescence (silence or other passive conduct) are:

(1) a representor's representation by acquiescence that the representor has no legal right or has abandoned or waived his legal right against a representee
(2) the representee's belief or assumption that he has the legal rights or the representee's expectation of some right, benefit or protection
(3) the representor's knowledge of the representee's belief, assumption or expectation
(4) the fact that the acquiescence created or encouraged the representee's belief, assumption or expectation
(5) the fact that on the faith of or in reliance on the mistaken belief, assumption or expectation, the representee expended money or performed some other act to his detriment and
(6) the conclusion that it would be unconscionable to allow the representor to defeat or disappoint the representee's belief, assumption or expectation."

[46] Floissac CJ goes on to say that:

> " However, in ***Taylor Fashions v. Liverpool Victoria Trustees Co***. (1981) 1 All ER 897 at 915 and 916, Oliver J. said:
>
> > "Furthermore, the more recent cases indicate, in my judgment, that the application of the ***Ramsden v Dyson*** principle (whether you call it proprietary estoppel, estoppel by acquiescence or estoppel by encouragement is really immaterial) requires a very much broader approach which is directed to ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment rather than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour."

[47] This dictum, continues Floissac CJ, was confirmed by the Privy Council in ***Lim v Ang*** (1992) 1 WLR 1 13. There Lord Browne-Wilkinson said (at page 117):-

> "The decision in Taylors Fashions Ltd. V Liverpool showed that, in order to found a proprietary estoppel it is not essential that the representor should have been guilty of unconscionable conduct in permitting the representee to assume that he could act as he did: it is enough if, in all the circumstances, it is unconscionable for the representor to go back on the assumption which he permitted the represented to make."

[48] In ***Randolph M. Howard v Aubrey Monroe***, Civil Appeal No. 4 of 2006, Saint Vincent and the Grenadines, Denys Barrow J.A. stated that:

> "Whether it would be unconscionable to allow the title holder to go back on her word" was the "correct question in determining where there was an equity in favour of the respondent."

[49] Sampson Owusu states in his book Commonwealth Caribbean Land Law at page 198 "When the "equity" of proprietary estoppel is established, the court identifies the "maximum extent of the equity", followed by an analysis of the "minimum equity to do justice" and then finally "look at the circumstances in each to decide in what way the equity can be satisfied." The expectation induced by the representation or promise is the maximum equity. The minimum equity takes the form of the detriment suffered by relying on the representation."

[50] As stated in the case of ***Randolph Howard v Aubrey Monroe*** above, "it is unnecessary to ascribe a dollar value to the detriment, or compare advantage with the detriment, as one does not buy the equity."

FINDINGS

[51] Having had the benefit of observing the witnesses, I found the evidence as adduced by the Defendant and his witnesses to be decidedly more credible than that of the Claimant.

[52] The uncontroverted evidence of the Defendant and his witnesses is that the dwelling house, which was built in stages, was completed in 2002.

[53] I accept the evidence of the Defendant that he built on Lot 48 believing that this was the lot that he purchased and not because as the Claimant contends, that Lot 47 was "very rocky and steeper and more costly to build on", and that the view from Lot No.48 is better than that from Lot No. 47. The valuation report of Franklyn Browne describes both Lot 47 and Lot 48 in the same terms:-

> "This parcel of land lies above the road. It slopes moderately which allows for the free flow of surface water."

All the witnesses, with the exception of the Claimant described the view from both lots as being the same. Additionally, Lot # 48, on which the Defendant built, is smaller than Lot # 47 and therefore less valuable.

[54] Although the witnesses for the Defendant said they did not or could not remember when the Defendant started the construction of the first floor of the building, I found their evidence on the whole to be credible.

[55] There is evidence before the Court that the Claimant was well aware that the Defendant was building on her land and took no action until October 2006 when she wrote him a letter giving him 30 days to correct his "blatant violation of her property rights" , and took no legal action until 2007. In her Statement of Claim she pleaded that "sometime after 2000 the Defendant began to construct a dwelling house on the said parcel of land." At the very latest, therefore, she knew well before the dwelling house was completed but did nothing and allowed the Defendant to complete his dwelling house.

[56] The law is well established that silence and inaction can constitute conduct which will amount to acquiescence. As stated by Sampson Owusu in the text COMMONWEALTH CARIBBEAN LAND LAW at page 197, "Where the owner of the property refrains from alerting the developer to his mistaken belief and by his silence suffers the developer to make improvements to the property, the owner will be estopped from denying the impression created by his silence. For the circumstances of looking on is in many cases as strong as using terms of encouragement." Per Lord Eldon in ***Dann v Spurrier*** (1802) 32 E.R. 94, 95.

[57] In his submission, Counsel for the Claimant stated that, having had a conversation with the Defendant in 2004 informing him that he was trespassing on her land, the Claimant "did not pursue the path of self-help because of possible adverse effect on Civil Society but decided to pursue the matter in an orderly and Civil way." I find his argument totally without merit. I do not accept the Claimant's evidence with respect to the conversation which she claims took place between herself and the Defendant in 2004. She claims in her Witness Statement that she saw the Defendant walking in the street outside her mother's shop at Canouan and called him into the shop and asked him if it were true that he was building his house on her land and he said it was true. Surely, the Claimant would not wait for a chance encounter with the Defendant to discuss an issue of such importance!

[58] Even if the Claimant's version of events were to be believed, her evidence is that the dwelling house was being built in 2004; under cross-examination, she says "I asked him to stop construction until we resolved it." However, she does not take any legal action, allows him to complete the building and then files a case in Court asking that he demolish the building.

[59] It is also significant that the Claimant's letter to the Defendant dated the 26th October 2006 makes absolutely no mention of the alleged conversation of 2004. However, on receipt of the Defendant's letter dated 19th December 2006, the Claimant sends a further letter to the Defendant in which she "reminds" him of her "discussion" with him.

[60] Having regard to the above legal principles and their application to the facts in this case, I am of the view that the Claimant knew that she was the legal owner of Lot No.48, that she knew at the very latest in 2000 (Claimant's own evidence that she visited the land in 2000), that the Defendant had commenced building and was continuing to build on Lot 48 and had of necessity to spend money to do so, and that she sat back and did nothing until 2006 when she first wrote to the Defendant. She took no legal action until November 2007 when she filed suit against the Defendant. The Defendant, on the other hand, by virtue of the silence and inaction of the Claimant, continued to occupy Lot 48 thinking it to be his own. It would therefore be unconscionable to allow the Claimant to assert her ownership and legal rights over Lot 48.

[61] There is therefore a proprietory estoppel in favour of the Defendant. There is a wide range of relief within which the court can exercise its discretion in order to satisfy the equity. In this case, it is the view of the Court that the Defendant, having constructed a dwelling house on Lot No. 48 is entitled to ownership and occupation of Lot No. 48.

ORDER

[62] In view of the foregoing, I hold that the Claimant's case has not satisfied me on a balance of probabilities and I hereby dismiss it.

[63] Judgment is entered for the Defendant as follows:-

1. A declaration that the Defendant is entitled to the legal and beneficial ownership of Lot No.48

2. That the Claimant do have the option, which option is exercisable in writing, within the next 60 days of either :
   (a) accepting Lot 47 in exchange for the loss of Lot 48, or alternatively,
   (b) receiving from the defendant the dollar amount paid by the claimant to the Government of Saint Vincent and the Grenadines for lot 48.

3. That in the event the Claimant fails to exercise a choice of either one option or the other within the above stated period it shall be deemed that the Claimant has chosen to accept option (a), that is taking lot 47 in compensation for the loss of lot 48.

4. That in the event that the Claimant chooses or is deemed to choose option (a) as above, then the Registrar is hereby authorized to sign all necessary deeds or instruments and to rectify and make all the necessary amendments to the said deeds or instruments in accordance with the Registration of Documents Act Chapter 93 of the Laws of Saint Vincent and the Grenadines in order to reflect the exchange.

5. That any mortgages outstanding charging Lot 47 as security shall be transferred to Lot 48 unless within 30 days from the exchange set forth in paragraph 2 above the mortgagee (s) shall show cause by applying to this court as Ancillary Defendants.

6. That if any mortgage is subsisting on Lot #47, a copy of this order must be served on the mortgagee.

7. Prescribed Costs to the Defendant in accordance with CPR 2000 Part 65.

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Jennifer Remy
HIGH COURT JUDGE