

COMMONWEALTH OF DOMINICA

DOMHCV2010/0241

BETWEEN:

EDISON LEWIS

Claimant

And

DAVINA DANGLEBEN

Defendants

CHRISTOPHER DANGLEBEN

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Bernard McDonald Christopher for Claimant

Mr. David Bruney for Defendants

[2011: January 27<sup>th</sup>, February 2<sup>nd</sup>, March 28<sup>th</sup>]

[2011: May 4<sup>th</sup>]

## JUDGMENT

[1] **COTTLE J:** The claimant is the registered proprietor of a parcel of land at Fond Cole with a building thereon. The defendants currently occupy that building. They have never paid any rent but have been permitted to occupy gratis. The claimant says he permitted the defendant's occupation for several years but has since terminated their license. The defendants continue in occupation. They say they were initially placed in occupation by the mother of the claimant who owned the property. The claimant now owns the property as

the personal representative of his late mother. The defendants say they were permitted to reside in the house for as long as they wished.

- [2] Both parties agreed that during the time the defendants lived at the lower portion of the house, there was a fire that seriously damaged the building. It became uninhabitable as a result. The defendants did substantial repairs. They not only repaired the lower part of the building, they extended it to make it larger. They say the claimant encouraged them to expend money to rebuild the house or at least the lower part of it. They say that as a consequence of the money they spent at the behest of the claimant they are now entitled to equity in the house so that it would be unfair to permit the claimant to evict them.
- [3] The claimant's pleaded position is different. He denies inducing or encouraging the defendants to expend money to repair the building. He denies ever telling the defendants that they could reside at the house for as long as they wished. He was content with their occupation but when he saw that they were not only repairing to make the building habitable, but actually extending the living area he became upset. He viewed this action by the defendants as an effort to usurp his property. He at once gave them notice to leave. He determined their license.
- [4] The question which now confronts the court is simply whether the defendants have acquired any rights or interest in the property and should the claimant be estopped from enforcing his strict legal rights.

### The Evidence

- [5] The claimant says that he intends to give the parcel of land in issue to another relative in return for the care shown to the claimant's mother in her declining years. The defendants accept that this intention had been known to them all along. In these circumstances I find it unlikely that the claimant would encourage the defendants to expend funds on the promise that they could reside rent free as long as they wished.
- [6] Rather, I believe the claimant's immediate action of giving the defendants notice to vacate on discovering that they were enlarging the building rather

than merely making it habitable, is more consistent with the claimant's pleaded position. He was content to have them reside there but did not indicate that such residence would be for an undetermined period. There was a license terminable at will. Of course the parties must have contemplated a reasonable period of notice to have the defendants leave.

- [7] This finding of fact leads inexorably to the result that judgment must be given for the claimant. All of the authorities cited by counsel for the defendants indicate that for an equity to arise there must have been some conduct, explicit or implicit, on the part of the claimant that could have led the defendants to believe they had acquired an interest in the property. The defendants must have relied on that conduct to their detriment.

As the claimant here has done nothing to lead the defendants to harbour any belief of entitlement, their actions could not be said to have been founded on such a belief.

- [8] Other bits of evidence fortify me in my view. The construction was done without planning permission. Had the claimant approved it would have been a simple matter to get permission with the co-operation of the claimant as the registered proprietor. The claimant has also said that should his wife predecease him, he intends to bequeath his present home at Jimmit, more valuable than the Fond Cole property, to the defendants. This is not the mark of a man who would renege on an undertaking to permit the defendants to remain as long as they like in the property in dispute.

- [9] I therefore dismiss the counterclaim and give judgment for the claimant. The defendants will give up possession forthwith. I also award the claimant mesne profits in the sum of \$200.00 per month from the date of filing of the claim until possession is given up. The defendants will pay to the claimant prescribed costs in accordance with CPR 2000 part 65.5 (2) (iii) in the sum of \$14,000

Justice Brian Cottle

High Court Judge