

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO SLUHCV 2008/0026

BETWEEN:

PATRICK SMITH

Claimant

and

**(1) Willy Vasson
(2) James Pelius
(3) William Ferdinand**

Defendants

Appearances:

Mr. Dexter Theodore for the Claimant
Mrs Veronica Barnard for the Defendants

2010: 8th December
2011: 28th September

JUDGMENT

- [1] **BELLE, J** : The dispute in this case arose in relation to two parcels of land described as parcels 1829B 13 and 14 Situate at La Pointe in the Quarter of Praslin. These two parcels of land were owned by Vasson Pelius (deceased) who died on 6th July 1964. Vasson Pelius left a number of heirs including the First and Second Named Defendants. Rose Alexander obtained a grant of Letters of Administration on 29th May, 2006 and on 21st February, 2007 sold the parcels of land to the Claimant.
- [2] The evidence discloses that James Pelius never consented to the sale of the two parcels to the Claimant, although he was a lawful heir of Vasson Pelius. Both the Second Named Defendant and the Third Named Defendant William Ferdinand have been in occupation of the land from 1976, and William Ferdinand has cultivated the land with crops and a commercial latanier farm which also contains a shed. The Second Named Defendant James Pelius also constructed a water tank and

commenced construction of a concrete structure on the land. These are fixed and attached to the land.

[3] In his Statement of Claim the Claimant claimed:

1. *The Claimant is and was at all material times the owner and entitled to possession of the parcels of land situate at La Pointe in the Quarter of Praslin and entered in the Registry of Lands as Parcels No, 1829B 13 and 1829B 14 in the name of the Claimant with absolute title.*
2. *The Claimant purchased the said parcels of land from the Administratrix of the Succession of the late Vasson Pelius by Deed of Sale executed on 21st February 2007.*
3. *The First and Second Defendants are the uncles of the Claimant and the Second (Third?) Defendant is his cousin. All of the parties are descendants of Vasson Pelius*
- 4....
- 5.....
- 6....
- 7...
8. *By Claim No.SLUHCV2007 the First Defendant challenged the Claimant's Deed of Sale which claim was dismissed with costs to the Claimant.*
9. *The Claimant has repeatedly demanded that the Defendants vacate the said land but they have refused to do so claiming that the land belongs to the family and the Defendants have wrongfully remained in possession of the said land as aforesaid.*

[4] Counsel for the Defendants emphasised the facts that (1) when the Claimant purchased the land in 2007 he knew that the said two Defendants occupied and possessed the land. (2) The Second Defendant William Ferdinand also constructed an access road on the land, an improvement. (3) To this date the Claimant has never served the Defendants with a Notice to Quit the land. (4) The Claimant filed this claim against the Defendants for possession. (5) The Second and Third Named Defendants counterclaimed for the cost of improvements to the land as persons in occupation.

[5] Counsel for the Defendants asserts that there are 4 issues in the dispute:

- (1) Are the second and third named defendants in occupation and possession in good faith?
- (2) If yes they are entitled to compensation.
- (3) The second and third named defendants have an overriding interest in the land protected by law.

- (4) Have the second and third named defendants wrongfully remained in possession of the land as alleged by paragraph 9 of the Claimant's Statement of Claim?
- [6] The Claimant argues that the Defendants are not entitled to anything because they had no overriding interest in the land which they occupy. The Defendants claim that they do have an overriding interest which is recognised by statute in the form of The Land Registration Act and The Civil Code and the relevant legal authorities.
- [7] Quite apart from the issues identified by the Defendants then, it is necessary to define the alleged overriding interest referred to by the Defendants. Counsel for the Defendants referred to sections 23, 27 and 28 of the Land Registration Act Cap 5.01 of the Laws of Saint Lucia, Revised Edition 2001.
- [8] Section 23 states: *Subject to the provisions of sections 27 and 28 the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of the parcel together with all rights and privileges belonging and appurtenant thereto, free from all other interest and claims whatsoever, but subject –*
- (a) *to the leases , hypothecs and other encumbrances and to the conditions and restrictions , if any , shown in the register, and*
 - (b) *unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register...*
- [9] Section 28 states :
- Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may from time to time being subsist and affect the same, without their being noted on the register-*
- (e) *Servitudes subsisting at the time of first registration under this Act;*
 - (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] Counsel for the Defendants quoted extensively from David Hayton, on Registered Land published by Sweet and Maxwell, 1981. But none of the quotations provide a

clear picture of the essence of an overriding interest. For example quoting from page 22 the author states:

"The Characteristic feature of the interests is that they are often neither shown in title deeds nor mentioned in abstracts of title in unregistered conveyancing, and they are usually easily discoverable by the inspections and inquiries which are already carried out in traditional unregistered conveyancing."

- [11] By way of contrast the decided cases provide more assistance as to the definition of the overriding interest referred to in the statute. In **Williams & Glyn's Bank v Boland** (1979) 3 W.L.R.148 Lord Scarman stated:

"It is our duty to give the provision a meaning which will work for, rather than against the, rights conferred by Parliament, or recognised by judicial decision, as being necessary for the achievement of social justice. The courts may not put aside as irrelevant the fact that if the rights of the wives succeed the protection of the beneficial interest which English law now recognises that a married woman has in the home will be strengthened, whereas if they lose this interest can be weakened and even destroyed by an unscrupulous husband. Nor must the courts flinch when assailed by arguments that the protection of her interests will create difficulties in banking or conveyancing practice. Bankers and solicitors exist to provide the service the public needs. They can adjust their practice if it be socially required."

- [12] It should be noted that the overriding interest described in the paragraph above is one recognised by law based on the relationship of marriage where it is known that that relationship may confer certain beneficial interests on the wife. However in this case the argument is that the relationship of father and son conferred a similar beneficial interest, also in the case of the Third Defendant, grandson. Counsel also argues that the beneficial interest arises based on the First and Second Defendants status as heirs at law.

- [13] Counsel for the Defendant cited the case of **Calixtus Henry v Theresa Henry et al** HCAP2007/027 in which the Court of Appeal held that the Respondent having acknowledged that she knew the Appellant occupied the land founded a proprietary estoppel in his favour and granted him an overriding interest although the Respondent had the paper title on the land. However a perusal of the head note points to the true legal basis for the decision. The head note reads in part, as follows:

"The dispute concerns an undivided half interest in a piece of land ("the land") held by Geraldine Pierre, now deceased. During her lifetime, Geraldine Pierre granted the appellant's grandmother permission to build on the land, where she lived with the appellant for some 30 or 40 years until her death. The

*appellant has continued to live on the land. **Geraldine Pierre promised to leave the Land to the appellant on her death on the condition that he continue to work the land.** The appellant continued, not only to work the land, but to look after Gerladine Pierre. Shortly before her death in 1999, Gerladine Pierre sold her undivided half interest in the Land to the first respondent. The appellant claimed to be the rightful owner and/ or to have an overriding interest in the land and sought, among other things, a declaration to that effect. The Claim was dismissed, against which decision the appellant appealed."*

- [14] It therefore can be gleaned from the head note that the appellant in the **Calixtus Henry** case had been promised the deceased's half share interest in the land. Pursuant to that promise he had acted to his detriment. It would therefore have been unconscionable to allow Gerladine Pierre to act contrary to her promise on faith of which the appellant had acted to his detriment. Thereafter the decision made to declare that the appellant had an overriding interest was based on the proprietary estoppel and his occupation pursuant to section 28 of the Land Registration Act.
- [15] It is instructive that the Defendant's counsel cited **Spiricor of Saint Lucia Ltd v The Attorney General of St. Lucia et al** Civil Appeal No. 3 of 1996. She submits that the court of Appeal held at page 10 "... a careful perusal of the words of section 28 (g) would indicate that the "actual occupation" is not the protected interest. The word rights is not limited to any definition. In my view although the section does not refer to the equitable interest of a purchaser whose title has not been registered as an overriding interest, it could and should be included among those equitable rights which are treated as overriding if the purchaser is in actual occupation."
- [16] I construe this to mean that section 28 of the Land Registration Act confers an overriding interest on a person who has established a beneficial interest of the nature of an equitable interest as long as that person is in occupation of the disputed land.
- [17] Nowhere in the evidence is there any fact alleged which would give rise to an equitable interest being held by the Defendants. They had used the land to their benefit even though it was not solely theirs. There is no promise of future ownership, but an alleged promise to pass on the land.
- [18] An example of the quality of evidence from the Defendants can be found in the witness statement of William Ferdinand who states:

"My father as far as I know with the knowledge and consent of his father (deceased) occupied a portion of the aforesaid land and constructed a water tank and foundation thereon, intending to build his home thereon. However my father did not continue the construction and the foundation is unfinished and valued at \$13,000.00.

My father then emigrated to the United Kingdom where he still resides but many years prior to his departure to the United Kingdom, he gave me permission to occupy that portion of the land he had been let into by the deceased."

[19] Counsel for the Claimant was of the view that the Defendants had no overriding interest because their father could not confer more than he had and he had no deed for the land.

[19] Counsel for the Claimant was of the view that the sole issue left for determination therefore was whether the Defendants are entitled to be compensated for, as they claimed in their Counterclaim:

- (1) the water tank;
- (2) the latanier crops;
- (3) the access road.

[20] On the assumption that the Defendants are entitled to be compensated, the matter of quantification of the compensation arises. The Defendants have the onus of proving this claim for compensation.

[21] The relevant Article of the Civil Code in relation to the compensation to be paid by a purchaser to a possessor in "good faith " on the acquisition of the land is Article 372.

The Article 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.

If they were necessary, the owner of the land cannot have them taken way. He must , in all cases, pay what they cost, even when they no longer exist ; except, in the case of bad faith, the compensation of rents issue and profits. If they were not necessary, and were made by a possessor in good faith, the owner is obliged to keep them, if they still exist, and to pay either the amount they cost or that to the extent of which the value of the land has been augmented.

If, on the contrary, the possessor were in bad faith, the owner has the option either of keeping them, upon paying what they cost or their

actual value, or of permitting such possessor, if the latter can do so with advantage to himself without deteriorating the land, to remove them at his own expense. Otherwise, in each case, the improvements belong to the owner, without indemnification. The owner may, in every case, compel the possessor in bad faith to remove them."

[22] In support of his submissions counsel cited the case of **Gagnon v Loubier** [1925] 4 D.L.R.289 in which the Supreme Court of Canada had to construe Article 417 of the Code of Quebec which I find, as submitted by counsel, corresponds with Article 372 of the Civil Code and Article 412 which corresponds with Saint Lucia's Article 367. He argued that the case establishes that the Defendant cannot claim an interest in the land since his father did not have a deed for the land and was in no position to grant him any interest in the land. All he could grant was a licence to stay there during his life time.

[23] Counsel quoted from the decision in which the court declared that "*... in defining title in this manner the law always requires a transferable title of ownership without which there is no basis for good faith.*"

[24] Pursuant to Article 1980 of the Civil Code unless title is registered it is not transferable.

[25] Counsel concludes that based on the law the Defendants are possessors in "bad faith" since they have no legal right to be on the property based on the authorities cited. The Claimant can therefore either keep the property or pay the Defendant the costs of the improvements.

[26] I pause to note that the court in **Gagnon v Loubier** was at pains to point out that the question is one of legal good faith, that is to say, good faith as defined by law. That court followed other authorities with the words: "*.. we must put aside the ordinary idea of good faith which varies widely according to feelings and ideas, and stick to the definition of the code.*"

[27] The Court later returned to this issue and made the following statement:

"But in defining title in this manner the law always requires a transferable title of ownership, without which there is no basis for good faith..... It is exactly what the authors call this legal title which seems

to be absent here. The trial judge and two judges of the Court of Appeal considered that the respondent was not a possessor in good faith and we agree with them.

A transferable title of ownership means a title acquired by purchase, by bequest, by gift, etc."

- [28] Counsel also submitted that Defendant has not proved the costs of the improvement to the property to the satisfaction of the court. Consequently the Claimant is entitled to exercise the options available pursuant to Article 372 of the Civil Code.
- [29] I have to agree with the Claimant in this case and find that the Claimant has proved that the Defendants have no overriding interest in the land in dispute. They have been dwelling on and working the land as licensees. Their occupation is not in good faith as defined by the Civil Code.
- [30] I therefore order that the Defendants do deliver possession to the Claimant in six months or on or before March 31st 2012. I also order that based on the circumstances of the value of the crops and physical development of the land the Claimant has not been more than nominally deprived of mesne profits and indeed is now in a position to negotiate the extent of the value of these developments he would wish to keep, pursuant to Article 372 of the Civil Code.
- [32] The Claimant is therefore awarded the nominal sum of \$1000 as mesne profits for the period during which he has lost the use of the said land. The sum of \$1000 is awarded with interest at 6% per annum from the date of the judgment until the date of payment.
- [33] Prescribed Costs of the Claim are awarded to the Claimant pursuant to Part 65 of the CPR 2000.
- [34] The Defendants' counterclaim is also dismissed with prescribed costs awarded to the Claimant /Defendant to counterclaim pursuant to part 65 of the CPR 2000.


Francis H V Belle
High Court Judge