

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO SLUHCV 2008/0894

BETWEEN:

**(1) NORINA COOPER
(2) LANTHORN COOPER**

Claimants

And

BONIFACE SON

Defendant/ Ancillary Claimant

And

**(1) THE ATTORNEY GENERAL
(2) OFFICE OF THE COMMISSIONER OF CROWN LANDS**

Ancillary Defendants

Appearances:

Ms. Maureen John for the Claimants

Ms. Carol Gideon-Clovis for the Defendant/Ancillary Claimant

Ms. Brenda Portland-Reynolds and Ms. Cagina Foster Lubrin for the Ancillary Defendants

2010: September 20th, 27th,
October 11th

2012: February 14th

JUDGMENT

[1] **WILKINSON J.:** Mr. and Mrs. Cooper by their claim form and statement of Claim sought the following relief:

1. Possession of the lands registered at the Land Registry of Saint Lucia as Block and Parcel No. 0421B 328;
2. Damages for trespass,
3. Mesne profits for the use and occupation of the land until possession;
4. Further or other relief;
5. Costs.

Mr. Son in his counterclaim sought the following relief:

1. The value of improvements made to Block 0241B 329 being pigpens and crops;
2. Costs.

Mr. Son in his Ancillary Claim sought from the Government the following relief:

1. A declaration that he is entitled to compensation for the works done for farming;
2. Compensation in the sum of \$83,127.00 for the pigpens and crops;
3. An indemnity in respect of any and all sums which he might be required to pay Mr. and Mrs. Cooper;
4. Interest as the Court sees fit;
5. Costs.

Issue

- [2] The single issue is whether Mr. Son is entitled to compensation for improvements made to the land occupied by him but now owned by Mr. and Mrs. Cooper, and if he is, from whom.

The Evidence

- [3] Mr. Son, a man in his 50s, said that he farmed on his parent's estate, Warrick Estate in the vicinity of Grace in the Quarter of Vieux Fort before moving to Piaye. In or about 1988, his parents' estate was acquired by the Government and designated a water catchment area. Mr. Son was no longer permitted to farm on the land to protect the water-table from pollution. Mr. Son's family was not paid for the land at acquisition and Mr. Son was relocated by the Government to land in the Piaye/Belembouche vicinity where he continued his farming of growing crops and rearing pigs.
- [4] Mr. Son established his farm on land now delineated as 2 parcels. One (1) parcel measuring approximately 15,000 square feet and the other parcel measuring approximately 2 acres. On the smaller of the 2 parcels Mr. Son constructed his piggens and planted crops.
- [5] Mr. Son planted his crops and reared his pigs on the land with the consent of the Government and indeed the Government through the Ministry of Agriculture, provided materials and other necessities to ensure that Mr. Son was raising his pigs and crops at a satisfactory level for consumption. Mr. Son never paid rent or any other kind of stipend for use of the land to the Government and none was ever demanded of him.
- [6] Approximately 10 years after Mr. Son went into occupation, in 1999, there was a Cabinet Conclusion which called for the Government to designate certain lands in the area of Piaye/Belambouche as residential land and for it to be offered for sale to residents of that area. The land to be designated includes the two (2) parcels of land occupied by Mr. Son. The Piaye/Belambouche Residents Committee acted as agents for the Government in determining who would qualify to purchase the land.

- [7] Subsequent to Mr. Son's occupation of the 2 parcels of land, Mr. and Mrs. Cooper who formerly resided at La Croix Road in the Quarter of Laborie moved in with Mrs. Cooper's brother, Mr. Cyril Thomas on land adjacent to that occupied by Mr. Son. Mrs. Cooper said she had to move from her previous home for health reasons. She has lived with her brother for approximately 14 years. The Coopers were aware of Mr. Son's occupation of the adjacent parcel of land from the time they moved to the Piaye/Belembouche area and knew when his pigpens were smaller and saw him enlarge them over time.
- [8] At March 5th, 2002, Mr. and Mrs. Cooper applied for and were successful in being permitted to buy a parcel of land. Notwithstanding Mr. Son's occupation evidenced by his pigpens and crops they choose a portion of the smaller lot occupied by Mr. Son. Mr. and Mrs. Cooper paid for the parcel of land at March 20th 2006, and by their deed of sale registered at October 22nd 2007, they became owners of 11,166 square feet of the approximate 15,000 square feet. The parcel carved out and sold to the Coopers is where Mr. Son's pigpens are located as well as some of his crops.
- [9] The Coopers issued two (2) notices to quit to Mr. Son, the first at May 7th 2007, and the second at February 4th 2008. There was much conflict and disquiet between the Coopers and Mr. Son with some of it escalating to the level of violence and so causing both the police and Magistrate's Court to become involved. Mrs. Cooper said that she had been assured by the Piaye/Balembouche Residents Committee that Mr. Son was occupying the lands unlawfully and that a notice to quit had been served on him to vacate the land.
- [10] Mr. Son said that he had always expressed an interest in purchasing the land from the Government but it was never offered to him for purchase. He said that it was not until sometime in 2006 when he attended a public meeting that he became aware that the Government was offering the land for sale at \$1.00 per square foot for all persons in occupation in excess of 10 years. By this time however, the

Coopers were in the process of purchasing a part of the parcel occupied by him, their survey having been completed by Mr. Stanislas Auguste on or about July 21st, 2005.

[11] Mr. Son has accepted that Mr. and Mrs. Cooper own a portion of the smaller parcel of land occupied by him and seeks only compensation from either the Coopers or the Government or both for his pigpens and crops so that he can re-establish himself elsewhere. In his letter addressed to the Chairman of the Piaye Lands Committee dated April 20th, 2006, he said:

“Given the obvious disruption to my livelihood, I would be grateful if you could agree to the following:

- (a) That formal note of the situation be presented to me, since I have not been formally apprised of these developments.
- (b) That given my long years of cultivation on the land in the interest of natural justice, that adequate compensation be provided to me for the cost of the tree(s) and food crops, the loss of earnings, the burden of relocation and the cost of physical assets on the property.
- (c) That a suitable alternative location be identified which will allow me to continue to pursue the means of earning a livelihood and a place of residence. I am willing to pay a reasonable cost for any suitable location that you have identified.”

[12] Mr. Son had a valuation done by Mr. Emmanuel Clery, Regional Head – Region 5¹ of his crops at July 10th 2006, and they were valued at \$3127.00. A valuation of the pigpens was done at around the same time by Mr. Francis Itan and they were valued at \$80,000.00.

[13] The Government's evidence from Mr. Peter Felix, Commissioner of Crown Lands was that the Government couldn't say exactly when Mr. Son was authorized to

¹ This is an agriculture extension division of the Ministry of Agriculture.

occupy the land and in what capacity, but in 2000 there was a record when the first survey of the land was being conducted to carry out Cabinet's decision that Mr. Son was in occupation. It was also admitted that the Government knew what use Mr. Son was making of the land and that the Government provided him over the years with materials to improve his pig rearing and crops on the 2 parcels. At August 11th 2005, the Government issued Mr. Son a notice to quit. The notice to quit asked Mr. Son to give vacate possession of the parcel of land and remove all provision and cultivated crops thereon before a specified date (which was not discernible to the Court). He was threatened with action if he failed to comply.

[14] Mr. Felix said that the Coopers were well aware of Mr. Son's occupation of the land and of his pigpens and crops on the land from as far back as December 8th 2004, when there was an altercation between the Coopers and Mr. Son on the land.

[15] The Court appointed expert, Mr. Francis Stanislas conducted his survey of the pigpens at March 25th 2009, and he said that replacement would be \$71,000.00, and the depreciated cost would be \$42,720.00.

Law:

[16] The Government has submitted that at all material times Mr. and Mrs. Cooper had knowledge of Mr. Son's occupation of the land, and yet chose to purchase it, and having done so, purchase of the land was subject to Mr. Son's overriding interest pursuant to section 28(g) of the Land Registration Act². Section 28(g) provides:

"28. OVERRIDING INTEREST

² Cap. 5.01

Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interest as may subsist and affect the same without there being noted on the register-

(a) ...

(g) the rights of a person in actual occupation of land or ...save where inquiry is made of such person and the rights are not disclosed;...”

[17] In **Calixtus Henry v. Theresa Henry and Marie Ann Mitchel**³ Gordon J.A noted that the High Court Judge had failed to consider Section 28. The Court of Appeal found that in the circumstances the appellant had an overriding interest pursuant to Section 28 in the land he being the person in actual possession.

[18] Further, in **Marie Adrural v. Veronique Geead et al**⁴ Byron C.J. said:

“[14] The regime of the Registered Land Act is based upon the concept that the registration of any person with title shall vest in that person the absolute ownership of the parcel of land. This is clearly expressed in the provisions of Sections 23 and 24 of the Act. However, the Act expressly creates certain exceptions to that rule. Section 28 refers to a number of those exceptions, which it describes as overriding interests. It prescribes that all registered land shall be subject to certain overriding interests. Paragraphs (f) and (g) of section 28 identify two of those overriding interest as:

(f) ...

(g) the rights of a person in actual occupation of the land.”

[19] Mrs. and Mrs. Cooper have alleged that the Mr. Son acted in bad faith as he was not entitled under any circumstances to occupy the land and secondly, he failed to comply with the notices to quit and give up possession.

[20] The Civil Code provides that there is a presumption of parties acting in good faith as article 2066 provides:

³ HCVAP2007/027. There was appeal of the Court of Appeal decision to the Privy Council on other issues - see *Theresa Henry & Anr. v. Calixtus Henry* [2010]UKPC 3.

⁴ Civil Appeal No. 22 of 2001.

“2066. Good faith is always presumed.
He who alleges bad faith must prove it.”

Therefore, the burden rest on Mr. and Mrs. Cooper to displace the presumed good faith of Mr. Son’s actions and prove his bad faith.

[21] Should the Court find that Mr. Son acted in good faith in relation to his improvements⁵ on the parcel of land then the provisions of the Civil Code provide:

372.. 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 away. 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 issues and profits.

...
374. 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.

Findings

[22] This type case is all too typical of cases before the Court year over year where there seems to be a poor record of data and secondly a failure of parties to take definitive steps to bring matters to conclusion one way or the other before starting a new series of events.

[23] The Court accepts the evidence of Mr. Son that he had to cease farming on his family’s land at Warrick Estate because it was acquired by the Government and

⁵ Saint Lucia Civil Appeal No. 13 of 1967 George St. Ville v. Editon Francis, Lewis C.J. at page 4 stated that crops were included in the meaning of the word “improvements”.

that as an alternative the Government relocated him to the land at Piaye/Belembouche. This land was not classified as residential until post 1999 and there were no conditions imposed for his occupation.

[24] To the Court's mind, if Mr. Son was farming on his family land and the Government found it necessary to relocate him, then the only expectation of what he would be doing at Piaye/Belembouche would be farming. The rearing of animals and raising of crops are all part of farming. The pigs were reared on the land with the knowledge and 'blessing' of the Government which through one of its Ministries assisted Mr. Son with products to ensure that he reared healthy pigs and raised good crops. It seems to the Court that it would be a natural consequence of rearing pigs that there would be established pigpens to secure them.

[25] Mr. Son it could be said until 2005, acted in reliance of the Government's representations, its acquiescence and encouragement and so he expended a considerable amount of money building his pigpens and raising his crops.

[26] It is the Court's view that up until the Government sent its notice to quit dated August 11th 2005, to Mr. Son, some 17 years after he went into occupation, he was acting in good faith and this being the case, Mr. Son pursuant to Article 372 was entitled to be paid for the improvements of crops and the pigpens that he had established on the parcel of land with the Government's 'blessing'.

[27] It is also the Court's view that Mr. Son's failure to move off the land when sent the notice to quit by the Government does not necessarily removed the entitlement which accrued to him to have payment for the improvements made to the land. What he is not entitled to is payment for any improvements made after the Government's notice to quit was received by him.

- [28] There is no evidence before the Court that the Government at any time either before it issued the notice to quit at August 11th 2005, or after it issued the notice to quit made any offer to pay him for the improvements made to the land.
- [29] This brings us to Article 374 of the Civil Code which clearly provides that in the case where a party in possession is forced to give up the immovable upon which he made improvements for which he is entitled to be reimbursed, he has a right to retain possession of the property until reimbursement is made without prejudice to his personal recourse to obtain repayment.
- [30] His right the Court dare says would not only be a right against the Government but also a right against Mr. and Mrs. Cooper as well, who bought the land after his right to remain in possession accrued.
- [31] As to Mr. and Mrs. Cooper, they were aware of Mr. Son's occupation of the land from the time they went to live at Piaye with Mrs. Cooper's brother and so put on inquiry as to what rights Mr. Son had in the land. They, without matters being concluded between the Government and Mr. Son and which ought to have seen him vacating the land, chose instead to purchase the land, and then try to get him to give up possession by notices to quit and this suit. On the Court's reading of Section 28 and in particular section 28(g) of the Land Registration Act and according to Byron C.J. in **Marie Adrural v. Veronique Geead et al**⁶ once Mr. Son was in occupation, he acquired an overriding interest against Mr. and Mrs. Cooper's absolute title.
- [32] Having regard to the evidence and the law the Court finds that firstly, Mr. Son acted in good faith and so did not have to give up possession until the Government paid him for the improvements which he made to the land, and

⁶ Ibid.

secondly, pursuant to Section 28 of the Land Registration Act, Mr. Son has an overriding interest against the absolute title of Mr. and Mrs. Cooper.

[33] This Court is of the view that Mr. and Mrs. Cooper and the Government have both drawn out this matter unnecessarily. From his defence, Mr. Son said that all he wanted was to be paid compensation for his improvements, indeed this was his position as far back as his letter of April 20th 2006 to the Chairman of the Piaye/ Belebouche Residents Committee. When the matter came on before the Court, the Court did urge the Parties to reconsider their positions and attempt settlement but it was to no avail.

[34] The Court awards to Mr. Son compensation for his crops and pigpens pursuant to the valuation and estimation prepared at 2006, \$3,127.00 for crops, and \$80,000.00 for pigpens and this sum is to be paid in equal shares. Mr. and Mrs. Cooper are to pay 50% and the Government to pay the other 50%.

[35] The Court awards Mr. Son costs in the sum of \$12,469.06 and it is to be paid in equal shares. Mr. and Mrs. Cooper are to pay 50 percent, and the Government is to pay the other 50 percent.

[36] The Court is also of the view that until Mr. Son is paid the compensation and costs awarded to him so as to enable him to relocate that he is to remain in possession pursuant to Article 374 of the Civil Code. He is however, not permitted to make any additions to the pigpens and if he chooses to refurbish that cost will be for his own account.

[37] The Court orders that:

1. Mr. and Mrs. Cooper's claim is struck out.
2. Mr. Son is awarded compensation in the sum of \$83,127.00. Mr. and Mrs. Cooper are to pay 50 percent and the Government the other 50 percent.
3. Mr. Son is awarded costs in the sum of \$12,469.06. Mr. and Mrs. Cooper are to pay 50 percent and the Government the other 50 percent.
4. Mr. Son is to remain on the land and continue his pig rearing and raising of crops until he is paid all the money due to him. He is permitted to refurbish the pigpens at his own expense but he is not permitted to enlarge the present pigpens.
5. That upon payment of all sums due to him Mr. Son is to vacate the land within 48 hours.


Rosalyn E. Wilkinson
High Court Judge