

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SLUHCV 2008/0898

BETWEEN

VERONICA AUGUSTIN
PATRICK CHARLES

Claimants

AND

STEPHEN DUPLESSIS
RUFINUS BAPTISTE

Defendants

Appearances:

Mr. Horace Fraser for the Claimants
Mr. Vern Gill for the Defendants.

2013: September 4th.

JUDGMENT

[1] **WILKINSON J.:** Mrs. Veronica Augustin, widow and Executrix of the estate of Simeon Augustin who died on April 11th 2008, and Mr. Patrick Charles filed their claim form and statement of claim on September 4th 2008, and therein they sought the following relief:

- (1) damages for trespass;
- (2) a perpetual injunction restraining the Defendants from interfering with the boundary lines of the access road;
- (3) costs;
- (4) such further or other relief.

[2] The pleadings after setting out the Parties' acquisition and ownership of the various parcels of land alleged that at 1995 a survey was done for the purpose of partitioning a parcel of land inherited from Mr. Michael Theodore Augustin and Theresa Augustin between the siblings, Mr. Simeon Augustin and Ms. Francisca Jean and at the time of survey a request was made to relocate the access road to Mr. Patrick Charles' parcel of land. There is also alleged that Mr. Stephen Duplessis had his parcel of land re-surveyed at August 2001, and his survey incorporated the access road to Mr. Patrick Charles' parcel of land and a strip of land found on the survey for partition. The Chief Surveyor intervened and failing compliance with his recommendation there followed a court order in suit **SLUHCV 2003/0321 Simeon Augustin, Patrick Charles v. Stephen Duplessis, Rufinus Baptiste** which ordered on consent the restoration of the access road to Mr. Patrick Charles' parcel of land but Mr. Duplessis has failed to comply.

[3] Mr. Stephen Duplessis and Mr. Rufinus Baptiste filed separate defences on November 14th 2008.

The evidence

[4] The primary facts are largely undisputed. Mr. Michael Theodore Augustin, father-in-law of Mrs. Veronica Augustin owned a parcel of land of which he sold a number of lots.

[5] At April 22nd 1969, Mr. Michael Theodore Augustin sold a parcel of land to Mr. Stephen Duplessis for the sum of \$950.00. The title deed described Mr. Duplessis' land as:

"ALL that lot of land part of a larger portion of the "Jeannette Claire" Lands No.27 Black in the Quarter of Castries aforesaid consisting of two Carres more or less the said lot measuring Sixty-six feet on all sides or one Chain square and bounded on one side by the Marc road and on all other sides by the remainder of the vendor's said larger

portion or howsoever otherwise the same may be bounded. Together with the appurtenances and dependencies thereof."

[6] At August 14th 1972, surveyor Mr. Earl Cenac conducted a survey at the request of Mr. Duplessis of his parcel of land and prepared a plan dated August 16th 1972. The plan shows the land as a parallelogram and measuring 3984.71 square feet. The plan is identified as drawing No.C4176 and recorded as No. 203/72 in the Survey Office. The boundaries of the land show no footpaths or other access road along any of the boundary lines. On along two (2) boundaries it is recorded as being the land of Mr. Doxily Alexander, on the third boundary is Mr. E. Alexis and on the fourth boundary is the public road.

[7] Pursuant to the Land Registration Act, Mr. Duplessis' land was first registered and a land register opened for it on July 14th 1987, and the land was therein described as Block 1242B Parcel 103.

[8] Neither in Mr. Duplessis' original deed nor on the land register is there recorded any incumbrances.

[9] At July 5th 1974, Mr. Michael Theodore Augustin sold a parcel of land to Mr. Patrick Edward George for the sum of four hundred dollars (\$400.00). The title deed describes the Lot as:

"ALL that lot of land consisting of ONE CHAIN SQUARE of dismembered from the Vendor's portion of the "Jeannette Clair" lands No. 27 in the Quarter of Castries and is bounded on the North by Marc Road, on the South and West by the remainder of the sold lands and on the East by the lands of Whiliana Jn Baptiste – or howsoever otherwise the land may be bounded together with all the appurtenances and dependences thereof."

[10] Pursuant to the Land Registration Act, Mr. George's land was first registered and a land register opened for it on July 14th 1987, and the land was therein described as Block 1242B Parcel 104. The only noted incumbrances on the register pertained to a bank hypothec.

[11] Mr. Patrick Charles purchased his parcel of land from Ms. Marcella Alladwa Warner. There was no title deed disclosed but there was disclosed the land register and his land was first registered at July 14th 1987, and the land was therein described at Block 1242B Parcel 105. The land was stated to be of an approximate area of 0.08 hectares, the appurtenance recorded was stated to be:

“Private Pedestrian Right of Way as shown on Registry Map. (A. Record).”

The only noted incumbrance on the register pertained to a finance company hypothec.

[12] While there was no prior title deed disclosed for Mr. Patrick Charles' parcel of land there appears to be some historical context for the land recorded on the Adjudicator's Record as thereon it is stated that there was a deed of sale by Ms. Marcella A. Warner to Mr. Patrick Charles, and a deed of sale by Mr. Elfridge Alexis to Ms. Marcella A. Warner.

[13] At March 25th 1979, Surveyor, Mr. Donald Pierre conducted a survey of Mr. Patrick Charles' parcel of land for his predecessor in title, Ms. Marcella Alladwa Warner and prepared a plan dated May 6th 1979. The plan shows the land as a parallelogram and measuring 8,069 square feet. The plan is identified as drawing No. C5556 and recorded as No. 217/79 in the Survey Office. The boundaries of land show no footpath or other access in boundary. On one boundary is Anthony Jn Baptiste, on another it is shared between Patrick E. George and the description of "Remainder" and on the two remaining sides again there is the description of 'Remainder'.

[14] On the death of Mr. Michael Theodore Augustin his children, Mr. Simeon Augustin and Ms. Francisca Jean inherited the remaining undivided parcel of land identified as Block 1242B Parcel 102 and at July 13th 1995, they executed a deed of partition. Under the deed of Partition, there was vested in Ms. Francisca Jean Block 1242B Parcel 151 and in Mr. Simeon Augustin Block 1242 B Parcel 152. Mr. Augustin's Lot is described as:

"Block 1252B Parcel 152

All that piece or parcel of land comprising 10,854.0 square metres or 2.68 acres situate at Marc in the Quarter of Castries and bounded as follows:- NORTH by Lot A; South by Parcel No. 1242B 119 said to belong to Willianna Jn Baptiste; WEST by Parcel No. 1042B 221 said to belong to Aristide Sylvian et al and EAST partly by Parcel No. 1242B 105 said to belong to Patrick Charles and Partly by the Marc Public Road or however otherwise the same may be bounded.

The whole is shown as Lot B and is more particularly delineated on a Plan of Survey thereof by Oran Monplaisir, Licenced Land Surveyor dated 6th April, 1995 and lodged with the Chief Surveyor on 25th May, 1995 as Drawing No. C878OR Record No. 249/95. Together with all the appurtenances and dependencies thereof."

- [15] According to Mr. Monsplaisir's plan to which Mr. Simeon Augustin's deed refers there is a notation of Memo and thereunder is stated:

"MEMO:

Notices of intention to survey were served on PATRICK WILLIE, ARISTRIDE SYLVIAN, EASTERN CARIBBEAN CONFERENCE SEVENTH DAY ADVENTISTS (ST. LUCIA), PATRICK CHARLES, STEPHEN DUPLESSIS and WILLIAM JN BAPTISTE.

Present during the survey were stated to be EGBERT JEAN, STEPHEN DUPLESSIS, PATRICK CHARLES, W.JN BAPTISTE and FRANCIS JOHN rep. E.C.C.S.D Adventists.

Reference was made to Land Register Title 1242 B 102, Plan C 5556 and C8141. Lines were run accordingly and partitioned as stipulated in D.C.A approval No. 174/95.

Survey was executed between 8th February 1995 and 2nd March 1995.

There were no objections..."

- [16] Following the survey, the surveyor, Mr. Orma Monplaisir informed Mr. Simeon Augustin that there was a small strip of land between the parcel of land owned by Mr. Patrick Charles and Mr. Stephen Duplessis. Chief Surveyor, Mr. Christopher De Myers states on his diagram (referred to later) that the strip of land measures 339 square feet. Mr. Patrick Charles says that he purchased

this strip of land from Mr. Simeon Augustin for eight hundred dollars (\$800.00) but the plan and deed of sale are yet to be prepared. There was not disclosed to the Court a receipt for the eight hundred dollars (\$800.00).

[17] All of the lands referred save for Mr. Patrick Charles', have a boundary on the Marc public road.

[18] During the conduct of the survey for Mr. Simeon Augustin and Ms. Francisca Jean, Mr. Simeon Augustin asked the surveyor, Mr. Monplaisir to remove the existing access road being used by Mr. Patrick Charles. The access road was removed and pegs planted as a boundary.

[19] At August 2001, Mr. Simeon Augustin received a notice of re-survey in respect of Mr. Stephen Duplessis' parcel of land. The re-survey was carried out by Mr. Rufinus Baptiste. After the re-survey was completed, it was discovered that (a) the strip of land sold to Mr. Patrick Charles, and (b) the area of land whereupon the access road was located were both incorporated as belonging to Mr. Stephen Duplessis for a total of 5008 square feet. Mr. Baptiste admitted under cross-examination the he had not referred to the original plan for Mr. Duplessis' land which was prepared by surveyor, Mr. Earl Cenac. He sought to throw doubt on the validity of Mr. Cenac's plan but then retracted somewhat.

[20] There followed a second re-survey by Mr. Rufinus Baptise and on this second re-survey he gave (a) the strip of land and (b) one-half of the access road to Mr. Stephen Duplessis and found the land to measure 4441 square feet.

[21] Following the second re-survey, Mr. Stephen Duplessis dug a large drain in the half of the access road which was designated as belonging to him. This action made the access road inaccessible by motor vehicle.

[22] Mr. Simeon Augustin and Mr. Patrick Charles visited with the Chief Surveyor about the outcome of the re-survey of Mr. Stephen Duplessis' parcel of land. The Court at this juncture finds it useful to cite the report of the then Chief Surveyor, Mr. J. Foche Modeste in its entirety. All Parties agreed to this report being disclosed.

[23] At December 31st 2002, Mr. J. Foche Modeste, Chief Surveyor prepared a report which he copied to Mr. Simeon Augustin, Mr. Patrick Charles and Mr. Stephen Duplessis. In his report, Mr. Modest said:

"1. During the first quarter of this year 2002, Mr. Patrick Charles and Mr. Simeon Augustin complained to the Chief Surveyor about a survey which was carried out by the surveyor Rufinus Baptiste on behalf of his client Stephen Duplesis of Marc.

2. At that time it was impossible to give an opinion before such plan was submitted for authentication. The plan was subsequently submitted to the Survey and Mapping Section for checking when it was found that the area quoted on the plan was much more than that intended on the Deed of Sale namely sixty six (66) feet on all sides or one (1) chain square which if taken to be squared figure would amount to 4356 square feet. The plan submitted by Surveyor Baptiste was over five thousand (5000) square feet.

3. Having listened to their complain(t), Mr. Baptiste was advised to re-survey the said portion of land accordingly, The parcel of land was re-surveyed and was lodged as Plan C10145B in the Survey and Mapping Section on March 12, 2002 with an area quoted as 4441 square feet some eighty five (85) square feet more than what was expected. The plan was lodged during my absence from office due to long illness.

4. Some two weeks ago, the complain(t) pertaining to the said survey began once more when all the stakes players approached the Chief Surveyor again. The complaint was that Mr. Duplesis had constructed a drain along the existing road which made the said road impassable. Mr. Duplesis claimed that the drain was constructed on his portion of land as shown to him by the surveyor.

5. During the argument, Roseline Duplesis, wife of Stephen Duplesis presented the Chief Surveyor with a plan of survey by Earl Cenac, who had surveyed the referenced parcel of land and lodged in the Survey and Mapping Section as Plan No. 4176 dated August 16, 1972 and recorded as 203/72.

6. I was taken aback as the surveyor made no mention of the existence of that plan as he only referred to the plans Nos.C5556B and C8780R on his plan No. C10145B. This changed my whole attitude and concept of the survey carried out by Mr. Baptiste as it was not within his ambit to change any of those boundaries already surveyed but simply to reproduce same as per plan C4176 which was surveyed at the instance of Mr. Stephen Duplesis.

7. My instruction to Mr. Duplessis then was that he desist from tampering with the existing road and his surveyor will be required to re-survey his parcel according to the 1972 plan which he held for almost thirty years without raising any objection to his own survey at that time.

8. Mr. Rufinus Baptiste was approached by the Chief Surveyor to inquire whether he was aware of the existence of the survey plan by

Surveyor Earl Cenac which survey was incidentally in the shape of a parallelogram with side 66 feet all around yielding an area of 3,984.71 square feet. No clear response was given at that point by Mr. Baptiste. The parties on the opposite side claimed that Mr. Baptiste was aware of such a plan but disregarded same in order to obtain more land for his client.

9. In conclusion, the land will have to be surveyed in accordance to plan C4176 dated August 16, 1972 which plan when lodged will supersede plan C1014B.

Signed: J Foche Modeste
CHIEF SURVEYOR
JFM/cv

cc: Mr. Simeon Augustin
Mr. Patrick Charles
Mr. Stephen Duplessis."

[24] Mr. Simeon Agustin and Mr. Patrick Charles filed the Suit **SLUHCV 2003/0321 Simeon Augustin, Patrick Charles v. Stephen Duplessis, Rufinus Baptiste** claiming the half of the access road on which the drain was built and the strip of land allocated to Mr. Stephen Duplessis. At December 11th 2006, the Parties entered a consent order. The Court will revert to this later.

[25] At August 2008, the Claimants caused to be commenced works on the access road to Mr. Patrick Charles. On August 28th 2008, Mr. Stephen Duplessis and Mr. Rufinus Baptiste went onto the access road and planted two (2) iron pegs thereon on the centre line of the said access road making it impassable for motor vehicles. Mr. Baptiste said that neither peg was visible, and he found the peg showing the north eastern bound under the soil and he could not locate the north western boundary and that he replaced.

[26] Mr. Duplessis says that he was aware of when his first cousin, Mr. Patrick Charles bought the land from Ms. Marcella Alladwa Warner and that Ms.

Warner used a footpath from her mother's land "down the road" to get to the land.

[27] Mr. Duplessis also said that he was away from Saint Lucia at the time when Ms. Alladwa Warner started to build her house but he came to understand that she started using a footpath alongside his northern boundary to carry materials to her land.

[28] Mr. Duplessis denied any knowledge about the strip of land found on survey for partition of the land between Mr. Simeon Augustin and Ms. Francisca Jean and said that he had yet to see any deed of sale for the said strip of land.

[29] Also disclosed to the Court without objection from any of the Parties was a report prepared by Mr. Christopher De Myers, the Chief Surveyor at 2005. He was appointed under order of the Court in suit **SLUHCV 2003/0321 Simeon Augustin, Patrick Charles v. Stephen Duplessis, Rufinus Baptiste** to prepare the report.

[30] Mr. De Myers report supports the position of Mr. J Foche Modeste, the former Chief Surveyor in that it too concludes that the plan applicable to Mr. Stephen Duplessis' land is that prepared by Mr. Earl Cenac at 1972, that is a parcel of land laid out in the form of a parallelogram and measuring 3,984.71 square feet. Attached to Mr. Myer's report was a diagram which he described as "CS-13" in his list of documents description. The Court has found the diagram most instructive. The Court's cites Mr. Myer's conclusion:

"Conclusion

1. The results of a field check undertaken by technical staff of the Survey Department indicates beacons 2,3, and 4 shown on diagrams marked CS-8 exist in their original positions as place by surveyor Earl Cenac in 1971. (Reference is to Mr. Stephen Duplessis' land).
2. Beacon 1 was not found because a concrete footpath was constructed in the vicinity of where it was initially placed.
3. The area enclosed by beacons 1,2,3 and 8 on diagram marked CS-13, is three hundred and thirty-nine square feet. Originally this strip of land did not fall within the boundaries delineated for Stephen Duplessis. The demarcation certificate marked CS-10,

however shows a sketch which appear(s) to incorporate this strip of land into the geographical survey carried out by the land demarcators.

4. The distance of lines joining beacons 9 and 5 on diagram marked CS-13 compares favourable with the distance of the line joining beacons 3 and 4 on diagram marked CS-8.
5. A resurvey in accordance with diagram marked CS-8 would defined the area originally surveyed for Stephen Duplessis. It would also increase the width of the access along the northern boundary from 10 feet to 15 feet by redefining the northern boundary of diagram marked CS-9 (Baptiste 2nd plan) as a line joining beacon 9-5 instead of a line joining beacon 9A -5A.

Consequently, I am able to conclude by confirming the survey done by surveyor Earl Cenac for Stephen Duplessis and which boundaries has not been disputed for thirty-five (35) years defines the boundaries on Block and Parcel 1242B 103.

The ownership of the additional area surveyed and reflected on survey diagram marked CS-13 should be determine in such manner as the court may direct".

Signed: Christopher De Myers
Chief Surveyor

Res judicata

[31] It appears to this Court that the present dispute has come on before the Court before and in particular the Court of Justice Ola Mae Edwards (as she then was) in **Suit SLUHCV2003/321 (1) Simeon Augustin (2) Patrick Charles v. (1) Stephen Duplessis (2) Rufinus Baptiste**. Therein the relief sought was:

- i. A declaration that survey plan dated 30th August 2001, drawing number C10145B is null and void and without effect and that the survey plan dated 16th August 1972 by Neville Cenac (should read Earl Cenac), Licenced Land Surveyor takes precedence.
- ii. An order of injunction restraining the First Named Defendant his servants or agents from digging the drain along the existing foot path.
- iii. An order of injunction restraining the First Named Defendant his servants or agents from entering and/or trespassing upon the Petitioner's land

- iv. A mandatory order that the First Named Defendant, his servants or agents block the drain and replace the footpath.
- v. A mandatory order that the Second Named Defendant rectify the boundaries or the property and have the property re-surveyed in accordance with survey plan dated 16th August 1972 by Neville Cenac (should read Earl Cenac), Licenced Land Surveyor.
- vi. Damages
- vii. Interest
- viii. Costs.

[32] The matters alleged in the pleadings are on all fours with the matters before the Court and so there is no need for the Court to repeat them here.

[33] Before Justice Ola Mae Edwards on December 11th 2006, the parties entered a consent order in the following terms:

“ IT IS ORDERED BY CONSENT

- (1) That the access along the south eastern boundary of Block 1242B 152 and the northern boundary of Block 1242B 103 be restored to its original position.
- (2) That each party shall bear their own costs.”

Findings and analysis

[34] In observing the pleadings before the Court, it is observed that Mrs. Veronica Augustin and Mr. Patrick Charles did not set out any pleadings in relation to the strip of land measuring according to Mr. De Myers 339 square feet and so the Court will discuss the strip of land no further.

[35] As the Court understands these matters, every vendor of land ought to provide some means of access to the land be it by defined footpath or access road. Bearing that in mind, the question is what was the access provided to Mr. Elfridge Alexis, the predecessor in title to Mr. Patrick Charles’ vendor, Ms. Marcella Alladwa Warner? The Court was told that Ms. Warner used a track

through her own mother's property further along the main road, but that doesn't answer what was the access of her predecessor in title, Mr. Alexis. The Court as stated prior observed that the land register pertaining to Mr. Patrick Charles' parcel of land and which was prepared at 1987, before the survey of Mr. Monplaisir for partition and Mr. Baptiste re-survey of Mr. Duplessis' parcel of land that there is recorded thereon an appurtenance of a private pedestrian right of way. That being so, the Court is unclear as to whether Mr. Duplessis' complaint is that there was no access road along the boundary or if he was insinuating but not saying outright that the access road was encroaching on his land. To the Court's mind once the footpath or access road was not encroaching on Mr. Duplessis' land then it ought not to be a concern of his. Control of what was created on Mr. Simeon Augustin's land was a matter between him and the Development Control Authority.

[36] In these matters of land disputes, the Court often times depends on the expertise of the surveyors to assist it in settling land disputes and this suit is no different. The Court finds itself greatly assisted by the reports of both Chief Surveyors, Mr. J Foche Modeste and Mr. Christopher De Myers. In short both say that the operative plan for Mr. Duplessis' parcel of land is not Mr. Baptiste's re-survey but rather the plan prepared by Mr. Earl Cenac at 1972 at Mr. Duplessis' request and to which he had not objected for in excess of thirty (30) years.

[37] This brings the Court to suit **SLUHCV2003/321 (1) Simeon Augustin (2) Patrick Charles v. (1) Stephen Duplessis (2) Rufinus Baptiste** and although the Court deliberated and considered the evidence before it, it appears to this Court that since the issue before this Court is identical to that raised before Justice Ola Mae Edwards and of which consent order there has been no appeal, then the matter is concluded and res judicata.

[38] No reason was tendered to the Court by Mrs. Veronica Augustin why neither she as Executrix for Mr. Simeon Augustin or Mr. Simeon Augustin himself while he was alive and Mr. Patrick Charles as the Claimants in suit **SLUHCV2003/321 (1) Simeon Augustin (2) Patrick Charles v. (1) Stephen**

Duplessis (2) Rufinus Baptiste had not sought enforcement of the consent order made before Justice Ola Mae Edwards.

[39] The matter being res judicata, the Court makes no further orders other than an order for costs.

[40] This Court orders that each Party bear their own costs.

[41] Court's order:

That each Party bear their own costs.

Rosalyn E. Wilkinson
High Court Judge