SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2008/0277

BETWEEN:

ST. LUCIA ESTATES LIMITED (IN LIQUIDATION)

Claimant

and

VINCENT FRANCIS
ANTONIUS LAMONTAGNE

Defendant

Appearances:

Diana Thomas and Cleopatra McDonald for the Claimant
Cyprian Lansiquot for the Defendants

2017 : 16th January;

2017 : 16th February.

JUDGMENT

The Background

[1] **SMITH J.:** Vincent Francis, the First Defendant, a.k.a. "the general", is the self-styled, last defender of the family land of the heirs of Marie Common. He is dogged in his determination not to be evicted by the Claimant, St. Lucia Estates Limited (In Liquidation), as a trespasser from a parcel of land at Anse Galet in the Quarter of Anse La Raye ('the property") to which he claims to be entitled as a lawful heir of the Common family.

Antonius Lamontagne stands with him, as Second Defendant, in resisting the claim to the property they say their ascendants have peacefully occupied and worked for many years.

[2] The Claimant by Fixed Date Claim Form dated 1st July 2011 seeks: (1) an order of this Court that the Defendants deliver up vacant possession of the property registered in the Land Registry as Parcel number 0239B 22; (2) a permanent injunction restraining the Defendants from entering, occupying or remaining on the property; (3) an order restraining the First Defendant from harassing, threatening or assaulting the Claimant, its agents lessees or licensees; and (4) damages for use and occupation. In relation to the First Defendant, the Claimant states that he has been exercising acts of ownership over the property, roaming the land and passing and re-passing by vehicle on the Claimant's private road to the Anse Galet beach. In relation to the Second Defendant, the allegation is that he has been farming on the Claimant's property and occupying a hut at the bottom of the valley on the property that belongs to the Claimant.

[3] The First Defendant filed an affidavit in reply to the Fixed Date Claim on 20th April 2012 but, by order of the Court dated 11th October 2012, he was given leave to amend his affidavit. On the 23rd October 2012, he filed his amended affidavit and this, along with another affidavit filed on 17th April 2014 comprised his defence to the claim. The Second Defendant also relied on two affidavits filed on 20th April 2012 and 17th April 2014, respectively. A review of the Defendants' affidavits reveals a three-pronged defence. Firstly, they say that the Claimant has failed to identify any specific location where it alleges that they, the Defendants, have trespassed upon its land. Their second line of defence is that the land registered as Block and Parcel number 0239B 22 erroneously extends across the Common family land in Anse Galet and, accordingly, the Defendants as lawful heirs are not trespassing on the Claimants' land as alleged. Thirdly, they contend that their occupation of the land amounts to an overriding interest by virtue of section 28 (g) of The Land Registration Act 1984.

The Evidence at Trial

[4] In support of its claim at trial, the Claimant relied on the affidavit evidence of one witness, namely, Walter Downes, the liquidator. This stood as his evidence in chief. The Claimant had also filed affidavits from Evan Hermiston and Michael Seely, neither of whom appeared at the hearing and therefore were not cross-examined. Ms. Thomas, Counsel for the Claimant, in her written closing submissions, said she would not be relying on those affidavits. Mr. Downes tendered into evidence, firstly, the Deed of Sale dated 10th March 1962 by which the Claimant acquired title to the property and, secondly, the land register showing that the Claimant is the registered proprietor of the land registered as block and parcel number 0239B 22. In his amended affidavit filed on 23rd October 2012, the First Defendant stated at paragraph 4:

> "That I admit paragraph 1 of the Affidavit MS1 and paragraphs 1 and 2 of the Affidavit EH1 insofar as it is admitted that the Claimant is the current registered proprietor of the land but I make no admission as to the Claimant's entitlement to possession."

[5] Mr. Lansiquot, Counsel for the Defendants, appeared late at the trial while Mr. Downes was being cross-examined by the First Defendant. Mr. Lansiquot was given the opportunity to assume the cross-examination but declined to do so and deferred to his clients, both of whom conducted their own cross-examination of Mr. Downes. Not surprisingly, the Defendants' cross-examination of Mr. Downes was ineffectual in refuting his evidence that the Claimant owns parcel 0239B 22 by virtue of the Deed of Sale and the Land Register. Both Defendants therefore trained their sights, in turn, on attempting to show that Mr. Downes was not familiar with the extent of the property. He was asked how many houses he saw when he visited the property. When he replied that he saw one hut it was suggested to him that others lived on the land and therefore he could not be familiar with the boundaries of the claimed property. Their questions were directed to showing that if he did not know the boundaries of the Claimant's property he could not demonstrate that the Defendants were in fact trespassing. To resolve the question of where precisely the Defendants where traversing and farming/occupying, in relation to the Claimant's property, a visit to the *locus in quo* was made on 17th January 2017. This will be returned to later in the judgment.

[6] In support of his defence at the trial, the First Defendant relied on his two affidavits which were his evidence in chief. Two other affidavits in support of his defence had also been filed on 20th April, 2012, respectively, by Josephine Common and Hermenguilde Louis. Neither Ms. Common nor Ms. Louis appeared at the trial; both were above the age of eighty years at the time of the filing of their affidavits in 2012. No explanation was given for their non-appearance. EC CPR 29.8 provides that if a party has served a witness statement and wishes to rely on the evidence of that witness, that party must call the witness unless the court orders otherwise. The trial bundle contained no order of the Court dispensing with the need for any witness to appear at the trial. I am therefore unable to take into consideration the contents of those two affidavits.

[7] Be that as it may, I am obliged to point out that the Defendants' Counsel, Mr. Lansiquot, having declined to cross-examine Mr. Downes at the trial, also failed to submit written closing arguments on 31st January 2017 as directed by the Court. Because the Defendants did not have the benefit of full representation at the trial, I feel constrained to make the following observations on the affidavits of Ms. Common and Ms. Louis, even though, as I have already ruled, I cannot take their content into consideration. The affidavit of Ms. Common would not have been of much assistance to the First Defendant. She deposed that she was a member of the Common family, that the land claimed by the Claimant she knew as belonging to her family and that her family had never sold the land to the Claimant as far as she was aware. She provided no documentary evidence of either her connection to the Common family or that family's legal entitlement to the land. She stated "*that the Second Defendant and his family before him*" had lived on the land "*for well over thirty years*" but made no attempt to connect the First Defendant to the Common family or to claim that he had been living on the land. The Affidavit of Ms. Louis was to very similar effect. They both deposed that attempts had been made in the past to survey the family land but it was never successfully completed.

[8] The First Defendant's own evidence was essentially anecdotal. The leitmotif of his affidavits was that the Defendants' family had lived on the land for a very long time: "*I know*

this land to be our family land" and "*this is the land that my family has always known to be ours*". Beyond the anecdotal, he relied on the historical, exhibiting to his affidavit two Deeds of Sale, one dated 20th February 1839 and the other dated 16th June 1838. He did not exhibit or rely upon any other document that established any kind of connection between himself and the said deeds. He did exhibit an extract from the book "**From Slavery to Freedom – Some aspects of the Impact of Slavery on Saint Lucia**" by Margot Thomas, a plan showing the Roseau Valley from Lefort de Latour's Map of Saint Lucia dated 1787, and other historical documents. While these were of some historical interest, they did not assist the Defendants in making out their defence of being entitled to remain on the land.

[9] The Second Defendant, Antonius Lamontagne, similarly claimed to be entitled to remain on the land by virtue of being "*a descendant of the Common family*" that "*has been in occupation on the Anse Galet Estate for at least 200 years*". Like the First Defendant, his evidence was anecdotal and contained nothing that demonstrated the Common family's entitlement to the property today, or corroborating evidence of his personal connection to the Common family. The Second Defendant admitted that his father, Mr. Kenneth Lamontagne, was at one time the manager of the Claimant's estate.

[10] In a piece of irony that forms the historical backdrop to this case, Kenneth Lamontagne represented the Claimant in a dispute with some other parties that was adjudicated upon. He again represented the Claimant when the property was awarded to the Claimant by Adjudication Record dated 25th June 1987. Upon his retirement, the Claimant gave Mr. Kenneth Lamontagne about three acres of land which the Second Defendant admitted under cross-examination that he knew about. Ms. Thomas, in her written closing arguments, submitted that the Second Defendant was born on the property and grew up on the property but that he occupied it through his father who was then managing the estate. The Second Defendant countered this by stating in his affidavit filed 20th April 2012 that he was claiming through his mother who had lived on the property for many years before he was born; and even before his father – who was not from the area – met his mother.

[11] The common theme of both Defendants' evidence was therefore to say that the property belonged to the family of Marie Common and then to seek to establish their kinship or heirship – anecdotally – to the Common family to justify their right to remain on the property. In the response the Claimant's land register their evidence is that they have been in long occupation of the property which enables them to claim prescriptive title.

The Site Visit: the Trespass Issue

[12] A site visit took place on the 17th January 2017. The First Defendant showed the Court the areas where he claimed he was entitled to traverse and confirmed that he gave a particular person permission to extract boulders on the south of the Anse Galet River. It had been a part of the First Defendant's affidavit evidence that "*as far as I know we have always marked our boundaries by stones and rivers*." The First Defendant showed the Court one of these large stones at the boundary of the river with an inscription marked on it. In fine, he did not deny claiming to be entitled to use and occupy the property for which the Claimant is the registered proprietor, the boundaries of which were in evidence via the map sheet and the survey plan exhibited to the affidavit of Walter Downes. I am therefore left in no doubt that the First Defendant, by his own admissions during the site visit, exercised acts of ownership and traversed an area of land which falls within the boundaries of the property for which the Claimant has produced a deed of sale and a land register, respectively, to evidence its ownership. I am equally left in no doubt that the Second Defendant occupies an area that also falls within the boundaries of the property for which the Claimant has evidenced ownership. This therefore settles the first issue arising from the Defendants' defence, namely, that the Claimant failed to identify any specific location where it alleged that the Defendants had trespassed.

The Error in Mapping Issue

[13] The second limb of their defence was that the land registered as block and parcel number 0239B 22 erroneously extended across the Common family land in Anse Galet and,

accordingly, the Defendants were not trespassing on the Claimants' property as alleged. The First Defendant made a number of allegations in his affidavit dated 17th April 2014. At paragraph 14 of that affidavit he states that the "*Claimants have usurped the land that belongs to my family and heirs*". At paragraph 16 he further states that "*by virtue of the Land Titling Project the Claimants claimed land far in excess of what they alleged to have purchased and this was made possible because the boundaries and extent of their alleged lands were erroneously pointed out manually by Kenneth Lamontagne on the Claimants behalf*". And at paragraph 23: "*much of our family lands were simply taken by the Claimants without properly executed Deeds of Sale*."

[14] This argument cannot avail the Defendants for the following reasons. Firstly, as has already been observed, they have signally failed to provide any credible and reliable evidence that the heirs of Common are entitled to the property today or that they, the Defendants, can claim as legitimate heirs of the Common family. Secondly, as stated by the First Defendant at paragraph 22 of his affidavit filed on 17th April 2014: "*The lands which I know belong to my family have never been fully surveyed*". Any assertion concerning the boundaries of such family lands could only, at best, be speculative. The Defendants cannot attempt to establish such boundaries *ipse dixit*, which is what they attempted to do during the site visit.

[15] Thirdly, any error in mapping or demarcating the boundaries of the Claimant's property would have to have been addressed during the Land Registration Titling Project (LRTP) which ushered in the **Land Adjudication Act** and the **Land Registration Act**, both of 1984. The effect of the Anguillan version of these two laws was well summarized by Byron JA in **Webster v Fleming**[1], and applies with equal force to their St. Lucian equivalents:

> "All land in Anguilla came subject to these Ordinances which together prevailed over all other laws relating to land adjudication and registration. The end product of this judicial adjudication process was the compulsory creation by the Registrar of Lands of a first registration of land with absolute or provisional title on the Land Register …by virtue of the final adjudication record emanating from the judicial process under the Land Adjudication Ordinance. Such a first or subsequent

[1] **(1995) Anguilla Civil Appeal No. 6 of 1993 at page 5.**

registration can be defeated and rectified only on proof of mistake or fraud under the Registered Land Ordinance."

[16] The Defendants, notwithstanding their claim of long occupation of the property did not participate in the adjudication process by asserting a competing claim to the property. Neither did they appeal against the findings of the adjudicator or seek to rectify the register on the ground of mistake. This limb of their defence therefore also fails.

The Prescription Issue

[17] The Defendants assert that they have prescribed title to the property. The Court must therefore determine whether the Claimant is prevented by prescription from taking action against the Defendants. The Claimant's case is that, by producing the land register for Parcel 0239B 22, it has demonstrated that it has absolute and indefeasible title to the property. Section 23 of the **Land Registration Act Cap 5.01 of the Revised Edition of the Laws of Saint Lucia** provides as follows:

> 23. Effect of registration with absolute title
>
> Subject to the provisions of sections 27 and 28 registration the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests 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.
>
> However—
>
> (i) this section shall not be taken to relieve a proprietor from any duty or obligation to which he or she is subject as a trustee,
>
> (ii) the registration of any person under this Act shall not confer on him or her any right to any minerals or to any mineral oils unless the same are expressly referred to in the register.

[18] The Defendants raise section 28 of the **Land Registration Act** as a shield against section 23. Section 28 provides as follows:

> 28. Overriding interests
>
> Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may subsist and affect the same, without their being noted on the register—
>
> (a) servitudes subsisting at the time of first registration under this Act;
>
> (b) servitudes which arise from the situation of the property or which have been established by law;
>
> (c) rights of compulsory acquisition, user or limitation of user conferred by any other law;
>
> (d) leases or agreements for leases for a term not exceeding 2 years;
>
> (e) any unpaid money which, without reference to registration under this Act, are expressly declared by any law to be a charge upon land;
>
> (f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;
>
> (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;
>
> (h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, wires and dams erected, constructed or laid under any power conferred by any law;
>
> (i) community property as described in article 1188 et seq. of the Civil Code;
>
> However, the Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he or she thinks fit.

[19] Under **Article 2103** of the **Civil Code of St. Lucia** read with the **Supreme Court – Prescription by 30 Years (Declaration of Title) Rules** Cap 2.01 Revised Laws of Saint Lucia 2008, title to land is prescribed by thirty years. The **Civil Code** allows for positive prescription as well as negative prescription. At **Article 2047** it provides that:

> "Prescription is a means of acquiring property or of being discharged from an obligation by lapse of time, and subject to the conditions fixed by law.

> In positive prescription title is presumed or confirmed and ownership is transferred to a possessor by the continuance of his possession.
>
> Extinctive or negative prescription is a bar to…any action for the …acknowledgement of a right when the creditor has not preferred his claim within the time fixed by law"

[20] And at **Article 2057** it provides that:

> "For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor"

[21] Accordingly, since the Defendants have both raised the defence of prescription, their respective evidence must be examined to see if it satisfies **Article 2057** of the **Civil Code** in order to defeat the Claimant's claim to be the registered proprietor.

[22] In the case of the First Defendant, Ms. Thomas submitted that he admitted to traversing the property and to giving an individual permission to extract material on the property, but did not provide any evidence that would amount to possession under **Article 2057** of the **Civil Code**. I agree with that submission. Specifically, the First Defendant has not put any evidence before the Court that he has enjoyed continuous, uninterrupted, unequivocal possession of the property for thirty years. He deposed to "*walking this estate since I was a little boy*"[2] but beyond that relies on his assertion that his family has been in occupation of the property for a long time – about 200 years. Long occupation alone cannot rise to the level of satisfying the requirements of **Article 2057** of the **Civil Code**.

[23] The Second Defendant, in addition to adopting the contents of the First Defendant's affidavit "for the avoidance of repetition"[3], deposed that he "*was born in the cottage at the bottom of the valley in 1960 … I have been working this land since I was a little boy …I have remained on the land peacefully and openly with no problems to anyone. The Claimants have never requested me to vacate the cottage as they are fully aware that I have lived there peacefully since my birth and my family long before me.*"[4] His evidence

---

[2] Affidavit in Reply of Vincent Francis filed on 23rd October 2012 at paragraph 13.
[3] Affidavit in Reply of Antonius Lamontagne filed 20th April 2012 at paragraph 3.
[4] Affidavit in Reply of Antonius Lamontagne filed 20th April 2012 at paragraphs 6, 8.

certainly goes some way in meeting the requirements of **Article 2057** of the **Civil Code**. The Second Defendant, however, conceded under cross-examination that he had moved out from his family home on the property when he was about twenty years old and went to work for the Durhams for about twelve years, returning to farm the property thereafter. This, on a straightforward calculation, would have to have been sometime in 1992.

[23] In her written closing submissions, Ms. Thomas made two points in relation to the Second Defendant's evidence of prescription. Firstly, she contends that his possession, having been sanctioned by the Claimant at its commencement, through his father's occupation as manager of the estate, cannot form the basis of a defence of prescription. At best, she submitted, the Second Defendant's occupation was at the sufferance of the Claimant after his father left the property in 1990. There is prevailing force in this argument. In any event, the Second Defendant, having left the property in 1980 when he was twenty years old and not having returned until twelve years after (around 1992), would not have met the requirement of being in continuous, uninterrupted possession for thirty years.

[24] But there is another point that is fatal to the Defendants' claim of prescriptive title. The Court of Appeal, St. Lucia, in **Joseph and Others v Francois** and **Matty and Others v Francois** (consolidated appeals no. 0025 of 2011 and 0037 of 2012) held that the relevant period for the purposes of prescription operating as a bar to a claim must be reckoned, not from some time prior to the Land Registration Titling Project, but as commencing from the time the owner became registered proprietor:

> "In our view the learned judge was right to recognize the intervention of the LRTP which by the conjoint effect of the LAA and the LRA, provided an entirely new all-embracing and comprehensive scheme designed to adjudicate upon and provide registered title to all lands in St. Lucia. It provided for a process for hearing disputed claims or claims to the same land by different parties; for the conduct of investigations to ascertain ownership, and finally for appeals from the decisions of the adjudicator as to ownership and other rights claimed. It was a holistic scheme implemented for the purpose of bringing certainty to the ownership and identification of lands in Saint Lucia. It provided for a system of land registration (the "Torrens system") similar to that undertaken and implemented in the 1970s in a number of Commonwealth Caribbean States and United Kingdom Overseas Territories

> In having regard to the entire scheme of the LRTP it is inconceivable that the learned judge should reckon the prescription period for the purpose of defeating the claim of Jacob Fanus as commencing from some period prior to when Jacob Fanus made his claim during the LRTP from which his registered title then flowed. To argue that Jacob Fanus' title which he himself only obtained by long possession in 1987 pursuant to the adjudication process was by that time extinguished by the appellants having prescribed against him would be nonsensical and an utter disregard for the land adjudication process where registered title could be obtained not only based on documentary title but also by possessory title. "

[25] The Claimant obtained first registration in 1987. The Adjudication Record in evidence shows that the Claimant's made its claim and that the Defendants made none. Dame Janice Pereira in, **Joseph and Others v Francois** and **Matty and Others v Francois** (supra), observed that the Defendants "*could have themselves filed a claim during the LRTP based on their long possession as alleged. This they have acknowledged not doing. There is no hesitation in concluding that the arguments advanced in support of the prescription defence are unsustainable*". That observation and finding is equally applicable to the facts of this case. This third limb of the Defendants' defence also fails.

[26] The Claimant had sought an order restraining the First Defendant from harassing, threatening or assaulting the Claimant, its agents lessees or licensees. The First Defendant denied making any such threats and was not seriously tested on this score in cross-examination. I was therefore not satisfied, on a balance of probabilities, that the evidence before me made out a case that justified the making of this order.

[27] I therefore make the following orders:

(1) That the Defendants forthwith deliver up vacant possession of the property registered in the Land Registry as Parcel number 0239B 22;

(2) That a permanent injunction is granted restraining the First and Second Defendants from entering, occupying or remaining on the property registered in the Land Registry as Parcel Number 0239B 22;

(4) That costs are awarded to the Claimant pursuant to Part 65 of the CPR 2000.

JUSTICE GODFREY SMITH, SC
HIGH COURT JUDGE