

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2004/0159

BETWEEN

MINERVA SAMUEL

CLAIMANT

and

ARLENE SAMUEL

DEFENDANT



Appearances:

Ms. Danielle France holding papers for Mr. Richard Williams for the claimant.
Mr. Sylvester Raymond Cadette for the defendant.

2017: Apr. 4

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** Minerva Samuel and Arlene Samuel are sisters. They are embroiled in a conflict regarding ownership of a concrete building at Questelles, Saint Vincent and the Grenadines ('the disputed property'). It houses a shop and rests on land owned their uncle. Minerva Samuel claimed that while living in Canada, she gave Arlene permission to occupy and manage the shop until her return to the country. She alleged that Arlene has refused to deliver vacant possession to her. She brought this claim for recovery of possession, mesne profits and costs.
- [2] Arlene Samuel denied being put into possession by her sister. She maintained that she and her common law husband ('boyfriend') expended significant sums of money without assistance from

Minerva. She alleged that Minerva trespassed on it and damaged a door, lock and bolt. She filed a counterclaim seeking: a declaration that she is in possession of the disputed property; a declaration that Minerva is not entitled to enter it; and an injunction to restrain Minerva from trespassing on it and from assaulting, molesting or interfering with her or her servants and agents. I have found Arlene liable.

ISSUES

[3] The issues are:

- (1) Whether Arlene Samuel or Minerva Samuel is trespassing on the disputed property?
- (2) To what remedy is Minerva Samuel or Arlene Samuel entitled?

Issue 1 - Whether Arlene Samuel or Minerva Samuel is trespassing on the disputed property?

[4] Minerva Samuel testified and called one witness - her brother Ronald Samuel¹. Arlene Samuel's testimony was corroborated by her boyfriend's, who works in construction. The parties and their witnesses accept that the shop belonged to one John Samuel², who happened to be Minerva's and Arlene's uncle. He lives in Canada having moved there many years ago. The Samuels and Mr. Cambridge described the land on which the building stands as family land. They testified that John Samuel financed the building's construction. Arlene Samuel added that the entire family provided manual labour to complete it. John Samuel rented the building to a Ms. Ashton.

[5] Meanwhile, Minerva migrated to Canada. She claimed that she left Saint Vincent in 1990. She explained that her uncle terminated the rental agreement with Ms. Ashton. He later gave her the shop verbally. Ronald Samuel indicated that he became aware of this in 1996 when John Samuel visited Saint Vincent and the Grenadines. He explained that his uncle confirmed that he had given the building to Minerva to assist the family.

¹Also known as 'Ronald'.

²Also referred to as 'John Edwards'.

- [6] Ronald alleged that Minerva subsequently put him in control of the shop in 1996 and sent goods for him to operate it. That arrangement fell through when Minerva learnt that Ronald was not being diligent. Ronald testified that Arlene and his father entered the shop and removed the remaining items after which they reported him to Minerva. He explained that Minerva later put Arlene in charge of the shop and sent items for her to sell.
- [7] Minerva testified that sometime in 1999, Arlene reported to her that Ronald had the shop locked up, was running women and that the goods in it were being spoilt. She recalled that Arlene asked her permission to occupy and manage the shop to which she agreed. She alleged that she sent barrels of goods to stock the shop as she had done with Ronald, and transmitted monies to Arlene several times for the purpose of repairing the building. She estimated that she sent roughly \$8,000.00. Arlene denied this.
- [8] Minerva returned to Saint Vincent and the Grenadines to live in January 2003, Soon after, Arlene presented her with receipts for the materials used in the repairs to the building. However, she refused to vacate the building. Shortly after her return, Minerva caused her lawyer to issue a notice to quit to Arlene, by letter dated 16th January 2003. Arlene ignored it and remained in the building.
- [9] Minerva claimed that as a precondition to leaving, Arlene requested that she pay her boyfriend for all the work that he did on the shop. Arlene refuted this. Minerva claimed that she refused to pay simply because Arlene and her boyfriend have enjoyed the property rent free over the years. She has claimed \$600.00 per month as mesne profits, for the duration of Arlene's *and her boyfriend's* occupation of the disputed property.
- [10] Arlene Samuel is adamant that she has been occupying the premises from 1999 without her sister's permission. She claimed that when her uncle John Samuel migrated to Canada, the building was rented but after the tenant left it remained unoccupied for about two years and became a derelict. She acknowledged that her brother Ronald Samuel had occupied it for a while before she did. She alleged that he had damaged it extensively and left it in total disrepair.
- [11] Arlene testified that she entered the shop with her boyfriend Elroy Cambridge and carried out substantial repairs at her expense. She insisted that Minerva did not send her any monies. Elroy

Cambridge described the building as a family shop which he and Arlene repaired. He explained that they re-stocked it as a business. He recalled that it was previously rented by Ms. Ashton, was later taken over by Ronald Samuel who closed it after some time. He said that by that time, the roof had fallen in. He denied knowledge that Minerva Samuel sent any money to carry out repairs. He accepted that he spent none of his money doing so and was simply assisting his girlfriend in this regard. He testified that he also got materials from the neighbouring Jehovah Witness' church where he had helped with some construction work.

[12] Arlene Samuel claimed that Minerva lived in Canada in excess of 14 years. She alleged that on her sister's return, she went to her home which was adjacent to her own, described to her the repairs she had carried out and showed her all of the related receipts. Under cross-examination, Arlene said that she gave the receipts to Minerva because they were sisters 'living good' and she wanted her to know how much money she spent on the shop. Arlene insisted that the receipts belong to her since they were issued in her and her boyfriend's name. She testified that she left the receipts with Minerva and did not go back for them until she realized that she was claiming an interest in the property.

[13] Arlene changed her earlier account and said that she and Minerva were living in a family home at that time and further that she did not give her the receipts, but rather that Minerva had removed them from a drawer in her bedroom and refused to hand them over. Arlene's explanation that she presented the receipts to Minerva just to inform her about the work she and her boyfriend carried out on the building is just not credible. It is not reflective of how ordinary people conduct their affairs. There was no need for her to show her sister the receipts if she merely wanted to bring her up to speed with what transpired in her absence. Moreover, even if she chose to show her the receipts, why leave them with her if Minerva had not commissioned her to do the repairs as alleged. Arlene's story just does not compute. I reject that account.

[14] I also find it quite convenient and astonishing that on the trial date Arlene Samuel changed her tale as to material details, some 12 years after giving her witness statement³. Her revised narrative about the shared living arrangements further discredited her. More fundamentally, Arlene Samuel claimed for the first time at trial that her uncle had given the shop to her and not to Minerva. This was not

³ Which was signed on ... 2005 and filed on ... 2005.

foreshadowed in her defence and counterclaim or her witness statement. It contradicts her other versions, is just not credible and is rejected as being a recent fabrication.

[15] As further proof of her claim to possession of the building, she indicated that she has maintained an electricity account with VINLEC in respect of the building and has traded under a trader's license in her name. Neither act establishes ownership or exclusive possession without more.

[16] Minerva Samuel argued that Arlene may not attack her title by asserting that the property belongs to someone else. She submitted that Arlene attempted to do this in her defence when she pleaded that she puts Minerva to strict proof regarding ownership of the building and asserted that the land belongs to family and not to Minerva. Minerva contended that this amounts to a defence of *jus tertii* which is not available to Arlene. She argued that Arlene Samuel does not have a better title than hers and therefore her reliance on the defence of *jus tertii* cannot succeed. She contended that once the court finds that she was in possession of the property, gave her brother and then Arlene permission to occupy it, she does not have to prove her title to the land.

[17] Citing the legal text **Law of Real Property**⁴, Minerva Samuel submitted that 'Possession ... gives a good title against all the world, except someone having a better legal right to possession.'⁴ She contended that the fact that she had possession of the disputed property, was able to give her brother permission to occupy it and then evict him is enough to establish that she had good title to land. She submitted further that she had constructive possession of the shop from the time she received it from her uncle.

[18] Minerva Samuel quoted further from the learned authors:

'If the occupier's possession is disturbed, for example by trespass or nuisance, he can sue on the strength of his possession and does not have to prove his title. It follows that the person disturbing the occupier's possession, cannot attack his title, if he admits his possession; in the language of pleading, a defendant, sued for trespass in such a case cannot plead *just tertii* (that the land belongs to some third party, not the

⁴ The Law of Real Property by R.E. Megarry, Q.C. and H.W.R. Wade, 3rd. Edition, pg. 997 at para. 2.

plaintiff.⁵

[19] Arlene Samuel contended that in order for Minerva to succeed in a claim of trespass, she must be the owner of the subject property. She argued that in accordance with the Statute of Frauds 1677, a gift of real property is invalid unless it is made in writing. In this regard, she contended that Minerva did not produce a deed or other writing to evidence her ownership of the shop. She concluded that her sister has failed to establish that she owns the shop.

[20] She reasoned that because the shop is made of concrete; it is affixed to and has become a part of the land, and is therefore owned by the person who has title to the land. She argued that Minerva is not the owner and cannot bring an action in trespass. Curiously, Arlene endorsed Ronald's averment that John Samuel had given Minerva the shop to help the family. This concession supports Minerva's claim that she owned the shop or at the very least a beneficial interest in it.

[21] The central question to be determined is whether Minerva Samuel was in possession of the subject property as owner, immediately before Arlene Samuel began occupying it. Resolution of that factual dispute will answer if either sister is a trespasser. Trespass has been described as: '... an injury to a possessory right,'⁶ and '... the interference of one's possession'⁷ of land.

[22] Minerva Samuel and her brother gave compelling and credible testimony of the history of occupation and possession of the subject property from around 1999. Aspects were endorsed by Arlene and her boyfriend. For example, they placed Ronald in the building as an occupant just before they started conducting business in it. They both indicated that the building needed repairs before they could put it to use.

[23] The main divergence in Minerva's and Arlene's cases had to do with who funded the repairs and whether Minerva owned the building. Arlene did not dispute that the building originally belonged to John Samuel. I accept that it did. Although Arlene claimed that John Samuel had given her the

⁵ Ibid. at pg. 997, para. 2 of The Law of Real Property.

⁶ Halsbury's Laws of England, Vol. 97 2015 ed. at para. 576.

⁷ Lorenza A.O. Williams et al v Hestina Edwards SVGHC VAP2000/0020, at para. 7, per Byron, CJ.

property, this assertion was made for the first time on the trial date. In view of the several belated changes and contradictions to Arlene's story I prefer Minerva's version which has remained consistent on material aspects of the case. I therefore accept Minerva's and Ronald's testimony on this score and find that the shop was gifted to Minerva and that Ronald and Arlene occupied it as Minerva's agents.

[24] Arlene Samuel's submission that the UK Statute of Frauds renders any unwritten transfer of property invalid must be examined against the factual backdrop. Section 3 of that statute specifically provides:

'3...No leases, estates or interest either of freehold or terms of years or any uncertain interest not being copyhold or customary interest of in to or out of any messuages manours lands tenements or hereditaments shall at any time ... be assigned, granted or surrendered unless it be by deed or note in writing signed by the party so assigning granting or surrendering the same or their agents thereunto lawfully authorized by writing or by act and operation of law.' (Underlining mine).

[25] This provision is applicable in Saint Vincent and the Grenadines pursuant to the Application of English Law Act⁸. It prohibits the transfer of title to land unless it is effected in writing. It expressly extends to conveyances of fee simple or leasehold interests. However, it does not preclude a person from having an unwritten beneficial or equitable interest in land. It is therefore not applicable to the instant case where both Minerva and Arlene Samuel have conceded that the legal title in the shop is vested in a third party. Minerva Samuel's beneficial interest in the shop is not inconsistent with the legal owner's title, right and interest in the land on which it is built.

[26] Although Minerva Samuel has produced no title deed or any other documentary evidence of ownership, I am satisfied that she has demonstrated not only that she obtained a beneficial interest in the property from John Samuel, but also that she enjoyed exclusive possession from that time, up to the date that Arlene went into occupation. In this regard, I find that Ronald and Arlene were each put into possession of the shop by Minerva Samuel. They thereby became her licensees. It was not

⁸Cap. 12 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

necessary for her to be physically present in Saint Vincent in order to maintain factual possession of the shop. She could and did achieve this through her agents.

[27] For Arlene Samuel to defeat her sister's claim in trespass, she must establish that she was put into possession of the shop by someone who had a legal or equitable interest in the land which was superior to Minerva's (such as the owner or his duly authorized servant or agent).⁹ She has not done so and has therefore failed to establish that she had a better 'title' or 'interest' than Minerva Samuel. Her defence therefore fails.

[28] I find that Minerva was given the property by her uncle John and that she put her brother and then Arlene into possession. By doing so, Ronald and Arlene thereby became her agents. Minerva retained possession of the building through her agents Ronald and Arlene. When she caused the notice to quit to be served on Arlene, Minerva terminated the agency arrangement between them and Arlene's licence to occupy the building. Arlene became a trespasser from that date and Minerva was entitled to bring an action against her for possession of the subject property. I find that Arlene is a trespasser in Minerva's building. Minerva is not a trespasser. Arlene Samuel's action in trespass against Minerva Samuel is dismissed.

Issue 2 To what remedy is Minerva Samuel or Arlene Samuel entitled?

[29] Having found that Arlene is a trespasser, it follows that Minerva is entitled to recover possession of the subject property from her. Arlene Samuel is directed to quit and deliver vacant possession of the disputed property at Questelles to Minerva Samuel by 12.00 noon on or before April 14th, 2017.

Mesne profits

[30] Arlene Samuel, her servants and agents have had exclusive enjoyment of the subject property from the end of the licence from Minerva Samuel up to present. Minerva Samuel has been deprived of its use during that time. She is entitled to be compensated in a sum commensurate with her reasonable

⁹ Nichols v Ely Beet Sugar Factory [1931] All E.R. 154 at pg. 155 E and F.

loss in this regard. No evidence of this was presented during this part of the case. The amount may be determined during assessment proceedings. Minerva is also entitled to prescribed costs pursuant to CPR 65.5 (2) (a), based on the value of the claim ascribed during assessment. Minerva Samuel is required to file on or before 26th April, 2017, an application for assessment of her loss and costs.

[31] Arlene Samuel alleged in her defence that Minerva had antagonized her by threatening her with a cutlass and stones, thereby causing her to suffer trauma, stress and fear for her life. She alleged that Minerva had trespassed onto the property and damaged it by breaking off the lock, damaging the lock and bolt and door. She provided no specifics of any such trespass in her witness statement. Neither did her witness Elroy Cambridge. Her claim fails and she is not entitled to any relief. Her claim for declarations and injunctions are therefore dismissed.

ORDER

[32] It is accordingly ordered and declared:

1. Judgment is entered for Minerva Samuel.
2. Arlene's Samuel's counterclaim is dismissed.
3. Arlene Samuel is directed to quit and deliver up vacant possession of the disputed property to Minerva Samuel by 12.00 noon on or before April 14th, 2017.
4. Arlene Samuel shall pay to Minerva Samuel mesne profits to be assessed on application to be filed and served on or before 26th April, 2017.
5. Arlene Samuel shall pay to Minerva Samuel costs under the prescribed costs regime based on the value of the claim ascribed during the assessment proceedings.

[33] I am grateful to counsel for their written submissions.


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Esco L. Henty
HIGH COURT JUDGE