

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHCV2019/0330

BETWEEN:

PETER JANVIER

Claimant

and

TAMIKA COLE

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Tiris Frederick for the Claimant

Ms. Natalie Da Breo for the Defendant

2021: May 13; (Hearing)
June 30; (Claimant's submissions)
July 16; (Defendant's submissions)
2025: June 24. (Decision)

JUDGMENT

- [1] **CENAC PHULGENCE J.:** The claimant, Mr. Peter Janvier ("Peter") filed a claim against the defendant, Ms. Tamika Cole ("Ms. Cole") seeking the following relief: (a) possession of a parcel of land registered as Block and Parcel Numbers 1046B 346 and 347 ("together referred to as "the Property" or "Parcel 346" and "Parcel 347" as necessary); (b) demolition of the chattel house belonging to Ms. Cole; (c) damages for trespass; (d) costs. In this judgment I will refer to some of the parties and witnesses by their first names simply to avoid any confusion as many of them bear the same last name, Janvier and is not meant as any disrespect to the parties.

The Claim

- [2] Peter is the owner of the Property which is situate at Trois Piton, Castries, of which he became the proprietor by virtue of an order following a partition dated 28th September 2017. Ms. Cole's late mother, Verne had erected a small chattel house on the Property. Peter's claim is that Verne being deceased, Ms. Cole has now taken possession of the house and the Property by extension without his permission.
- [3] Peter sent two lawyer's letters demanding that Ms. Cole vacate the Property and demolish the house, but she did not comply. Peter alleges that Ms. Cole still has the house on the Property, visits at odd hours despite living elsewhere, has threatened and insulted him, and has even excavated a large hole on the Property despite knowing it belongs to him solely.

The Defence and Reply

- [4] Ms. Cole acknowledges that Peter is the registered owner of the Property but disputes his ownership over the specific plot where Verne's house stands. Verne is the daughter of Alexandra Janvier, the legitimate daughter of Frankie also called Frankey and Mary Janvier and sister of Peter. Peter is therefore Ms. Cole's grand uncle. Alexandra is Ms Cole's grandmother.
- [5] Ms. Cole admits to being in occupation of the land but denies that she is there with the leave or licence of Peter. That land as I understand Ms. Cole in her defence to be saying, comprises the land on which the house sits and the property surrounding the house but does not extend to the entire Property.
- [6] It is Ms. Cole's pleaded case that sometime in the year 1990, Frankie and Mary Janvier took Verne, their granddaughter and 'pointed out a plot of land which they gave her as she was pregnant'.
- [7] In his reply Peter asserts that Alexandra was a party to Claim Number SLUHCV2007/0188 ("the Partition Claim") and the Court approved the partition of the lands which were the subject matter of that claim and she did not object to the proposed partition nor did she state that her share should be excised

where Verne's chattel house was erected. In that partition, which was approved, Alexandra was named as the owner of Lot No. 1 on the proposed partition plan and is the only person from whom Ms. Cole can claim.

- [8] Peter avers that Ms. Cole is not an heir but a great grand heir of the estate of Frankie and knew or ought to have known of the partition. Peter alleges that at the time of the partition he and Ms. Cole were on good terms and he had always made it clear that he was allowing her to keep the chattel house on the Property. That changed when Ms. Cole opted to be rude and disrespectful to him. He says it had been more than a year since Ms. Cole had left the house which at one time was occupied by Verne.
- [9] Ms. Cole avers that Verne cleared the plot and indicated her intention to occupy it. According to Ms. Cole, Frankie and Mary Janvier made it clear that their property was family property and their intention was for all of their heirs to have a place to live.
- [10] Verne married Mr. Allister Cole ("Allister") and in about 1994, they constructed a concrete foundation on which they placed a wooden house which was their matrimonial home. At the time this house was built, Peter was nowhere around and only came to live on the opposite side of where the house is located in about 2001 and as soon as he came, he had a problem when he discovered that Allister Cole was taking steps to build downstairs the house. At that time, Peter was not the sole proprietor of the Property and only became owner in 2017 when the Land Register was rectified to facilitate registration of the Property in his name.
- [11] Peter does not deny that Verne was given permission by his father Frankie to erect the chattel house on the Property. He says that it was only after the death of Frankie that Allister tried building a concrete foundation on the land and both he and his mother, Mary Janvier were vehemently opposed to this. Further he says that Alexandra was living with Verne when she got permission to build a chattel house on the Property from Frankie Janvier. Peter in his reply admits

that he became the registered proprietor of the Property in 2017, but he says he was in occupation long before that period.

- [12] Ms. Cole alleges that Peter never objected to the house being on the Property and had agreed that the house remain there and actually surveyed to give ownership to her. She alleges that the survey plan done by Surveyor, Mr. Tennyson Gajadhar actually designated 704.4 square metres as the dimension of the house spot on which the house is located and Peter had no problems with the survey and was willing to give up the portion of land to facilitate Ms. Cole's continued occupation.

- [13] Peter denies this and says that Alexandra, Ms. Cole's grandmother who was a party to the Partition Claim made no objection to the area allotted to him. Peter in his reply says that Mr. Tennyson Gajadhar, the surveyor who did the partition would have informed both Ms. Cole and Alexandra that as Alexandra had already received her share of the Estate, Ms. Cole would have to give up vacant possession of his Property.

- [14] Ms. Cole acknowledges that she received the letters from Mr Janvier's lawyers and claims that she did not ignore them but simply found it strange that Peter knowing of the interest which she acquired in the Property by virtue of her mother could simply call upon her to abandon it.

- [15] Ms. Cole denies that she insults or threatens her granduncle, Peter and alleges that it is he who does this. Ms. Cole denies that there is any hole being dug as alleged by Peter.

- [16] Peter on the contrary reiterates that on several occasions Ms. Cole has sought to ridicule and embarrass him and has even intimated that she will cause her boys to deal with him.

- [17] Ms. Cole avers that she is not a trespasser and is lawfully entitled to occupy the Property which was given to Verne who acquired an equitable interest until Peter passes the legal title to her. Peter, Ms. Cole alleges surveyed the Property in

order to transfer it to her upon completion of the subdivision which had already been completed. Peter, she says is reneging on his promise.

[18] Peter says Ms. Cole continues to trespass on the Property and would dig the downstairs of the house at night and had brought blocks and steel presumably to build the downstairs although she knows that the Property belongs to him.

[19] Ms. Cole claims that she has an overriding interest pursuant to section 28 of the **Land Registration Act¹** (“LRA”) as she has occupied the house and the land from 1994. Ms. Cole alleges that the overriding interest acquired by her and the beneficial interest acquired by Verne which she inherited by succession were known to Peter which he acquiesced in and condoned by making allowance for it in the Survey Plan and as such this gives rise to an estoppel.

Counterclaim

[20] Ms. Cole filed a counterclaim against Peter seeking the following relief: (a) a declaration that the overriding interest which Ms. Cole acquired as a result of her actual occupation of the Property operates to prevent Peter from interfering with her rights; (b) a declaration that Verne has a beneficial interest in the Property acquired and which is held in trust to be transferred by Peter; (c) an order that Peter transfer to Ms. Cole the portion of land measuring 704.4 square metres as shown in the Survey Plan of Mr; Tennyson Gajadhar; (d) an order that the Registrar of Lands rectify the Proprietorship Section of the Land Register to reflect the Proprietorship of Ms. Cole; (e) an injunction prohibiting Peter, his servants or agents from interfering with the right to peaceful enjoyment of the Ms. Cole to the Property.

[21] In her counterclaim, Ms. Cole alleges in similar vein to that which is averred in her defence that she is in occupation of a wooden house on a concrete foundation on a parcel of land which is now registered to Peter. She avers that when she commenced living in the house with her mother and father, Verne and Allister, Peter was not the owner of the Property. She repeats the circumstances

¹Cap. 5.01, Revised Laws for Saint Lucia, 2020.

of how Verne came to build her house on the Property, a plot of land having been pointed out to her by her grandparents, Frankie and Mary Janvier who were the owners of the Property at the time. Ms. Cole avers that as a result, and though the Property was not transferred to Verne by Deed of Sale an equitable interest was created.

Summary of the Parties' cases:

- [22] In summary, Peter's case is that Ms. Cole occupies the Property and continues to have the chattel house belonging to her mother on the said Property with his permission which he would have given following the partition of the Property. He chose to withdraw that permission due to Ms. Cole's behaviour and asked that Ms. Cole demolish the structure and vacate the property which she has refused to do despite written requests. Ms. Cole continues to occupy the Property and to trespass on his Property. Peter acknowledges that the chattel house was originally built on the Property with the permission of his father Frankie but that Frankie did not give Ms. Cole's mother, Verne any land as Ms. Cole alleges.
- [23] In summary, Ms. Cole's case on her pleadings is that her mother Verne was given permission by her father, Frankie, to erect a chattel house on the Property. Verne was therefore entitled to a beneficial interest in the Property. Ms. Cole claims to be entitled to assert an overriding interest given her occupation of the Property prior to Peter being registered as proprietor of the Property.
- [24] The following facts are admitted or undisputed:
- (a) That as per the Land Registers, the claimant, Peter is the registered proprietor of the Property;
 - (b) That following the partition action in SLUHCV2007/0188, the claimant, Peter was allocated Block and Parcel Nos. 1046B 346 and 347;
 - (c) That Frankie Janvier, Ms. Cole's grandfather never had any documents done to formally give or donate any land to Verne.
- [25] Evidence for the claimant came from the claimant himself, Peter, his brother, Mr. Vincent Janvier ("Vincent") and Mr. Tennyson Gajadhar ("Mr. Gajadhar"),

licensed land surveyor. The defendant's evidence was given by the defendant herself, Ms. Cole, her grandmother Alexandra Janvier and her father, Allister Cole.

Issues

- [26] The issues to be determined based on the pleadings are:
- (i) Whether the defendant has a beneficial interest in the Property?
 - Whether the defendant's mother was given or received a gift of the Property?
 - (ii) Whether the defendant has an overriding interest in the Property?
 - (iii) Whether the defendant has established proprietary estoppel?
 - (iv) Whether the defendant is trespassing on the Property?
 - (v) Whether the claimant is entitled to vacant possession?

Issue 1: Whether the defendant has a beneficial interest in the Property? Whether the defendant's mother was given or received a gift of the Property?

Analysis of Evidence and Discussion

- [27] Peter's evidence is that when his father Frankie died, he did not leave a will. Letters of Administration was granted to his mother, Mary, his brother Vincent and himself in 1998 and he and Vincent bore the associated expenses. In 2001, a vesting Deed was executed and Frankie's estate was vested in the heirs being his siblings, his mother, and himself.
- [28] According to Peter for years they all lived on the property which comprised Frankie's estate in undivided ownership and they considered it as 'family land', a very well-known phenomena in Saint Lucia. Vincent and himself after a while did not want to continue living like this and in 2007 they would have filed the Partition Claim which resulted in a Consent Order in 2008 allocating specific lots to each of the undivided owners.
- [29] In 1993 or 1994 Pater says he would have demolished his house and moved it to lands belonging to Frankie and that Ms. Cole's mother, Verne also had a wooden structure on the land at that time.

- [30] Regarding Verne's house, Peter's evidence is that Frankie gave permission to Ms. Cole's father, Allister to build a wooden structure measuring 16 feet by 20 feet on his land, albeit Allister built a bigger structure. As Frankie had given Vincent charge over all matters pertaining to his lands, Allister also had to seek Vincent's permission and blessing.
- [31] His evidence is that Frankie was opposed to a permanent structure being erected on the land and therefore when Allister attempted to put a concrete foundation and build downstairs the wooden house, both he and Vincent strongly opposed. In fact, he says that it was always made clear to Allister that the land belonged to the heirs of Frankie, his children.
- [32] According to Peter, when Verne died, Allister remarried and the house was abandoned for a while until Ms. Cole suddenly showed up at the Property. At that point, the utilities had all been disconnected.
- [33] In terms of his relationship with Ms. Cole, he says they were on good terms and that is the only reason he allowed her to remain on the land even while the partition survey was being done. He says he would have never allowed her to remain there had he known this is how she would have behaved and gives examples of her behaviour saying that she brought a truck of blocks and started building downstairs the chattel house even though she knew that the land belonged to him and she also started planting marijuana on the land and started to threaten and insult him.
- [34] Peter says permission was given to Allister to build a chattel house on the land and makes the point that this permission was not given to Ms. Cole. He says that Ms. Cole can only lay claim to the part of the Estate lands now allotted to her grandmother Alexandra.
- [35] Vincent, Peter's older brother gave evidence that Allister had approached his father Frankie about getting a house spot to put a small plywood house. He too says that it was made clear to Allister that the structure had to be a temporary

one. Vincent says Frankie was very disappointed and expressed this to Allister because although Allister had said he would build a 16x20 feet structure, he instead built one that was 29x20 feet. He says Frankie had always said that the lands at Trois Piton really belonged to his children.

[36] After Frankie died, Vincent says Allister attempted to build downstairs the house. His mother Mary had also informed Allister that he should stop all works on the land and that the land belonged to her children. According to Vincent's evidence he too had informed Allister that he should not continue with the construction and that the children of Frankie were the owners of the land. He says Verne had also been told that the land belonged to Frankie's children and that she should stop her husband Allister from building on the land.

[37] Verne and Allister were subsequently divorced and Allister left the land. After some time Verne died. Ms. Cole left and was living with her grandfather at Entrepot. After Verne died the house remained closed for some time and the utilities were disconnected.

[38] According to Vincent it was never the intention that Allister, Verne or Ms. Cole would be given permanent house spots on the land.

[39] Ms. Cole gave evidence that she has always known as a fact and this was confirmed by her mother Verne, her grandmother Alexandra and one Mr. Earl Dupre ("Mr. Dupre") that somewhere in 1990, Verne had a relationship with this Mr. Dupre and got pregnant. As a result, Frankie and Mary, her grandparents took Verne and Mr. Dupre and showed them a piece of land which she says was 'given' to her mother as hers permanently.

[40] Verne lost the pregnancy and then started a relationship with Allister who continued clearing the land and erected the house with a concrete foundation and retaining walls where Ms. Cole says she lived all her life. Ms. Cole states that the house is not a removable chattel house.

- [41] She states that no attempts were made to remove the house while Verne was alive or afterwards until Peter filed this claim. Ms. Cole's evidence is that she knew the property had to be partitioned but she believed the property on which the house stood would always be acknowledged as Verne's. Contrary to Peter's evidence, Ms. Cole says she had a cordial relationship with Peter although in cross-examination she admitted that this is no longer the case.
- [42] Ms. Cole's case is that the property was lawfully given to her mother Verne and that her mother showed that it belonged to her and that she had no intention of moving by fixing permanent concrete pillars and foundation to the land.
- [43] Ms. Cole says she operated with the expectation that Peter accepted and agreed to the house remaining on the land to the extent that when the surveyor surveyed the spot and allocated specific measurements to it, she was convinced that Peter had acknowledged her interest in the land.
- [44] Ms. Cole asserts that she has an overriding interest in the property under section 28 of the LRA, as she was living there when Peter was registered as the proprietor in 2017 and this is strengthened by the donation and equitable interest given to Verne by Frankie. She contends that Peter acknowledged her interest by allowing the house to remain on the land.
- [45] Alexandra, Ms. Cole's grandmother confirms what Peter said in his evidence that he was not initially living on lands belonging to Frankie. Alexandra says that sometime in 1990, Verne was pregnant for one Mr. Dupre and Frankie took them to an area of the land and 'gave' it to Verne to build her house. She admits that she was not there when this took place, but her mother and father told the siblings this and they all accepted this. She says even Peter was aware of this as he was living not too far and knew everything that went on between family members as the land was regarded as family land.
- [46] According to Alexandra, when Verne started clearing the land Peter was not living on the Property and he only went there after Verne and Allister built a concrete and wooden house. She speaks of being aware that when the gift of

the land was made to Verne there was no condition that it was only to be used for the building of a chattel house.²

[47] Allister, she says built retaining walls and a concrete foundation which is still present on the land and she is aware that Peter did not object to this construction. Alexandra admits that there was a Partition Claim and they agreed to Peter having two parcels of land but they never agreed that Ms. Cole's house would be demolished.

[48] Allister, Ms. Cole's father met Verne in 1991 and they started a relationship. At first, they were living at Sunbuilt. In 1995 Verne became pregnant with her second child and whilst visiting family at Trois Piton, Allister says Frankie told them that he had already given Verne a piece of his land and that they should build there to be closer to family. According to Allister, Frankie showed them the boundaries of the land he gave to Verne. Peter's house was not there at that time. They were shown a piece of land which Frankie said was Peter's but they were told that Peter was not ready to build.

[49] Allister says he is aware that Frankie never intended to give Verne permission to build a chattel house as he 'gave' her the land. Allister says in 1996, he and Verne constructed their family home and moved in. They continued to develop the house and constructed two retaining walls to prevent the soil from falling.

[50] Allister says they constructed the entire foundation of the house in concrete as they intended to construct a wall house since they knew the land belonged to Verne. The top of the house was built in wood until they were able to convert to concrete.

Discussion

[51] Peter and Vincent's evidence is clear. They have been adamant that Frankie never gave Verne the land but allowed her to build her house on a spot he had

² A chattel house is a small moveable wooden house.

identified to her just as all their siblings had built on spots 'given' to them. The land all witnesses agree was regarded as family land.

[52] The terminology used by the witnesses and their responses in cross-examination is quite revealing. Ms. Cole said "the piece of land was 'given' to Verne as hers permanently"; the property was lawfully given to Verne; and she also referred to the donation and equitable interest given to Verne by Frankie. The concepts of equitable interest and donation are incongruous and cannot operate at the same time.

[53] Alexandra said that Frankie took Allister and Verne to the land and 'gave' it to Verne. She also said at some point in her evidence that the gift of the land was made. Allister referred in his evidence to Verne having been 'given' a piece of Frankie's land. In fact, Allister says that Frankie told him he had already 'given' Verne the land.

[54] In cross-examination, the witnesses for the defendant all acknowledged that Frankie never had any documents done to formally give Verne the land. In cross-examination, Ms. Cole admitted that the land was always in Frankie's name although she went on to say that Frankie wanted to give it to Verne permanently as hers, in other words to gift it to her. Ms. Cole acknowledged that Frankie could have gone to a lawyer if he wanted to give Verne the land permanently but according to Ms. Cole, he did not do that with any of his children. This bit of evidence supports Peter's case that Verne was not given the land but that she was allowed to build on a particular spot by Frankie.

[55] Ms. Cole in cross-examination admitted to knowing about the survey done by Mr. Gajadhar and when asked whether she had indicated to the surveyor that one of the houses shown on Lot 8A belonged to her mother Verne, Ms. Cole said she had not, but the rest of the family had. She says her aunts and uncles were in a dispute and she chose not to get involved. She admitted that she never tried to stop the survey and said that she was fifteen or sixteen years at the time but it turns out that she was twenty years at the time of the survey which was in 2014.

- [56] If indeed Verne had been given the land as the defendant and her witnesses claim, it is quite curious that Ms. Cole never sought to assert that right which she says her mother had.
- [56] Alexandra, in cross-examination, like the others admitted that the land was always in Frankie's name and that whilst he could have, he did not give land to any of his grandchildren. Alexandra basically admits that while there are other grandchildren living on the land, none of them own the land.
- [57] Alexandra went on to say in cross-examination that Frankie gave Verne the land for herself but admits that he did not go to a lawyer and that she thought that if he really wanted to, he could have surveyed the land and given Verne a piece but he did not do that.
- [58] In cross-examination, Allister was asked what he meant when he said that the parcel of land was donated to Verne to which he replied that it was given to Verne and that is what he was told. He said it was not a purchase. Asked why he did not encourage Frankie to put the land he gave to Verne in her name, Allister says he was younger but now that he is older, he thinks he should have. Interestingly, whilst in retrospect Allister admitted that he should have encouraged Frankie to put the land in Verne's name, he also said that it was a bit unfair to ask Frankie to divide up lands when everyone was living on the land. That is in keeping with the evidence of other witnesses who said that Frankie's intention was always that the land would be family land. Allister also said that he was aware that Frankie told everyone where their spot of land was but there were never any 'papers' drawn up.
- [59] Counsel for the defendant, Ms. Natalie Da Breo ("Ms. Da Breo") spent a lot of time seeking to challenge the proposed partition report which had been submitted in the Partition Claim and why Peter was allotted so much more land but the reality is that this report was accepted by the Court in the Partition Claim. Therefore, the report cannot be tangentially challenged in this claim. Mr. Gajadhar pointed out which of the wooden structures shown on his proposed

plan belonged to Verne. More importantly, in Alexandra's evidence she clearly says that 'they agreed to Peter having two parcels of land.' Counsel asked Mr. Gajadhar how he had treated Verne's house and he responded that she was not one of the parties who had a share and it was her mother Alexandra who had a share. Mr. Gajadhar stressed that no objections were made to the proposed partition. He said he was under no obligation to make enquiries about the house and he had showed the house on the proposed plan.

[60] There was a suggestion by Ms. Cole that the land was surveyed to give her the lot where the house exists and she refers to 704.4 square meters but that is incorrect. As can be seen from the partition plan,³ the 704 square meters relates to the whole area where the two wooden structures belonging to Peter and Verne are shown. That assertion cannot be entertained and cannot be used to suggest that Peter is therefore estopped from asserting his rights against Ms. Cole. There is no evidence that Peter was to have transferred any land to Ms. Cole.

[61] The evidence reveals that Verne was never formally given any piece of land. Frankie allowed her to build a house on a spot which he identified to her as he seemed to have done with many of his children and even other grandchildren. Whilst Ms. Cole wishes the Court to accept that her mother was entitled to the land and therefore she has a beneficial interest, the evidence does not support this.

[62] On a balance of probabilities, the evidence shows that Verne was given permission by Frankie to build a chattel house on the part of the land identified by him when he pointed out the land to her and the extent to which she could occupy same.

[63] As submitted by Counsel for the claimant, Mr. Tiris Frederick ("Mr. Frederick") and with which I agree, Verne was granted a licence to occupy the land and build her house on it, which licence/permission ended with the death of Frankie

³ Tab 10 of the Trial Bundle.

in 1996. Mr. Frederick referred to the case of **Zarb and anor v Parry and anor**,⁴ in which the English Court of Appeal approved a summary of the law as set out in **Megarry & Wade, The Law of Real Property**, 7th ed (2008), p 1417 as follows:

“If a person is in possession of land with the permission of the true owner, his possession cannot be adverse. That permission may be expressly given or it may be implied. It will be implied [where] there has been some overt act by the landowner or some demonstrable circumstance from which it can be inferred that permission was given.
...”

- [64] There is no evidence to suggest that Verne’s licence from Frankie extended to permission for Ms. Cole to remain on the land permanently.
- [65] After 1996, the house remained on the Property and even after it was registered in Peter’s name in 2017 following the partition. That is clear from Peter’s evidence when he said that he would not have allowed Ms. Cole to remain if he had known that she would have behaved in the manner she did. Peter clearly allowed Ms. Cole to remain on the Property in the house which was initially Verne’s from 2017 to 2020. There was no express licence but an implied licence granted to Ms. Cole who continued to occupy the house on the Property after Peter was registered as proprietor of the Property. Peter’s averment in the statement of claim that he did not give Ms. Cole permission to be on the Property is certainly contradicted by his actions and his evidence in his witness statement and in cross-examination. I accept that Peter allowed Ms. Cole to remain on the Property.
- [66] The implied licence terminated when Peter sent the second lawyer’s letter demanding that Ms. Cole give up vacant possession, that is the letter dated 20th May 2019. Ms. Cole admitted to receiving the letters but said she would not break down her house as she had nowhere to go.
- [67] The evidence of Ms. Cole and her witnesses that Verne was ‘given’ the land or that it was donated to her cannot be sustained. There is no evidence to support

⁴ [2012] 1 WLR 1240 at 1250, para 26.

such a finding. In addition, the **Civil Code of Saint Lucia**⁵ is very clear as to gifts inter vivos. Article 717 requires that deeds of gift must be executed in notarial form and the acceptance of the gift must be effected in the same manner which is absent in this case.

[68] Further, article 718 provides that it is essential to gifts inter vivos that the donor actually divest himself of his ownership of the thing being given, in this case, it would have been the land. Again, this requirement is absent. Frankie remained the owner of the land even after he showed Verne the plot of land and allowed her to build her house there. Article 735 states that a gift cannot be accepted after the death of the owner by his heirs or representatives.

[69] Having reviewed all the evidence, I find that Frankie did not have any documents done to give Verne the land on which she built her house nor did he donate it to her. In fact, Frankie did not donate or transfer any land to any of his children during his lifetime as it would appear that he was content for them to continue to live as a big happy family. I also find that Ms. Cole does not have a beneficial interest in the Property. As was pointed out by Mr. Frederick, and by Peter in his evidence, Ms. Cole could only be beneficially entitled to Alexandra's parcel of land when she passes and not to Peter's parcels.

Issue 2- Whether the defendant has an overriding interest in the Property?

[70] Ms. Cole seeks a declaration that she has an overriding interest in the Property. The basis for this claim is that she was in actual occupation of the land and as someone whose mother had an equitable interest in the Property, she has an overriding interest pursuant to section 28(g) of the LRA to which Peter's title is subject.

[71] Section 28(g) of the LRA was discussed in the Court of Appeal case of **Zinna Zimbanni (As Personal Representative of the Estate of Adelaide Joseph,**

⁵ Cap. 4.01, Revised Laws for Saint Lucia, 2020.

deceased) v Computron Limited⁶ where the court relied on **Spiricor of St Lucia Ltd v Attorney General of Saint Lucia and Anor.**⁷

[72] The Court of Appeal held that section 28(g) of the LRA protects the rights of a person in actual occupation. It does not however protect the actual occupation of the land itself, as it is not the actual occupation which gives rise to the right or determines its existence. Actual occupation merely operates as the trigger, for the treatment of the right as an overriding interest.

[73] The trigger is actual occupation. In cross-examination, Ms. Cole admitted that she did not live at Trois Piton and that she did not live there all her life. She admitted that she lived by her paternal grandparents in Entrepot for two years during which time she would visit family at Trois Piton every now and then and she would pass by the house. She lived in England for five years from 2005-2008. It is clear that Ms. Cole was not in actual occupation of the house at the time of the trial, however, it is arguable that she was in occupation of the Property when Peter was registered as proprietor of the Property in 2017.

[74] In her defence and in her counterclaim, Ms. Cole seems to be depending solely on her occupation of the Property from 1994 as the basis for claiming an overriding interest. In her witness statement, this also seems to be the basis for her claim. She added that her overriding interest was strengthened by the donation and equitable interest given by Frankie to Verne. As discussed above, the evidence does not establish that Verne had any beneficial interest in the Property and there was no donation of any land to her which may have formed the basis for Ms. Cole's beneficial interest by way of succession.

[75] The **Zinna Zimbanni** case is clear that actual occupation while necessary will not result in an overriding interest if the party cannot show what rights he/she is claiming. Ms. Cole has not asserted what rights she is claiming under section 28(g) of the LRA in her defence or counterclaim. She has therefore failed to establish that she has an overriding interest under section 28(g) of the LRA.

⁶ SLUHCVP2019/0017, (delivered 10th January 2022, unreported) at para 121.

⁷ (1997) 55 W.I.R 123.

Issue 3-Whether the defendant has established proprietary estoppel?

- [76] In the case of **Mathilda Nelson v Alexis Alcide**,⁸ the Court of Appeal in discussing proprietary estoppel held that the level of specificity or particulars required of a litigant when seeking to make out a case based upon proprietary estoppel, is that the detriment suffered by the litigant in reliance on an assurance made by the property owner, must be specifically alleged, pleaded and proved. Where no particular detriment is pleaded or alleged, any claim based upon proprietary estoppel will fail. A court will not presume detriment which has not been pleaded by the party seeking to claim in equity.
- [77] In order to found a claim to property on proprietary estoppel, three elements or ingredients must be proved, namely: (i) there must be an assurance or representation, whether express or implied, that the claimant has or would have an interest in the land of the defendant or his or her estate; (ii) reliance by the claimant on that assurance or representation; and (iii) the claimant must act to his or her detriment in reliance upon the assurance or representation. These three elements in combination must lead the court to conclude that it would be unconscionable or inequitable for the person who made or gave the assurance relied on, to resile from it.
- [78] In her defence, Ms. Cole alleges that her overriding interest and Verne's beneficial interest were known to Peter which he acquiesced in and condoned by making allowance for it in the Survey Plan. This she alleges gives rise to an estoppel. It has already been found at paragraph 60 that there was no allowance made by Peter in the survey to allocate the land where the house is to Ms. Cole.
- [79] Then in submissions, the basis for the proprietary estoppel seems to have evolved and Ms. Da Breo submits that based on a promise made by Frankie, the Cole's invested \$65,000.00 in the Property. This was not pleaded at all.

⁸ SLUHCVP2018/0002, (delivered 8th April 2020, unreported).

[80] There are no particulars pleaded to address the elements of proprietary estoppel. Further, Ms. Cole's case was that the land was given to Verne by Frankie and she built a house on it, not that she relied on any assurance made by Frankie. It is a well-known principle that submissions are not a substitute for pleadings and cannot expand pleadings where the pleadings are deficient and fail to plead particulars necessary to establish a particular claim. Ms. Cole cannot seek relief based on proprietary estoppel.

Issue 4-Whether the defendant is trespassing on the Property?

[81] Peter's evidence is that he sent two lawyers' letters to Ms. Cole and she ignored them both. Ms. Cole admits that she ignored the letters citing that she would not break down her house as she did not have somewhere to go to. The first letter dated 13th February 2019 served on Ms. Cole required her to demolish and remove the house and to deliver possession of the lot upon which the house was erected. By a letter dated 25th April 2019 also served on Ms. Cole, she was again required to demolish and remove the house on Peter's land. In both instances she was given twenty-one (21) days to comply which she failed to do.

[82] I find that when Ms. Cole continued to have the house on the Property even after she had been asked to vacate and remove the house, she trespassed on Peter's Property and continues to do so. Once Ms. Cole's implied permission ceased, she now was an unauthorised user of the Property and a trespasser. She continued to occupy Peter's Property being fully aware that the land was his and that he was no longer permitting her to remain there.

[83] Peter claims damages for trespass. These damages for trespass to land generally aim to compensate the property owner for the harm caused by the unauthorized entry and are aimed at restoring the property owner to the position he would have been in had the trespass not occurred. Peter however does not provide any evidence that would assist the Court in determining the measure of damages.

[84] The law is that even if no actual damage occurs, a trespasser may be liable for nominal damages, a small sum of money, to recognize the violation of the

property owner's rights. In light of the circumstances of this case, I award the sum of \$1,000.00 to the claimant, Peter as damages for trespass.

Issue 5: Whether the claimant is entitled to vacant possession?

[85] In order to determine whether the claimant is entitled to vacant possession, the Court must consider the evidence and determine the nature of the house which Ms. Cole has on the Property. Ms. Cole in her evidence describes the house as 'a house with a concrete foundation and retaining walls' and she says it is not a removable chattel house. Alexandra said it was a concrete and wooden house.

[86] Allister said the entire foundation of the house was in concrete as the intention was to construct a concrete house. He admits that the top of the house was built in wood.

[87] In the proposed partition, the surveyor shows two wooden structures on the Property allocated to Peter. From all the evidence, it is clear that the nature of the structure on the Property is a chattel house with a concrete base. Ms. Cole whilst she says the house is incapable of being moved, did not provide any evidence to support this contention.

[88] The Court therefore finds that the claimant is entitled to vacant possession of his Property and that Ms. Cole will have to remove the house from the Property.

Costs

[89] CPR 64.6(1) sets out the general rule that costs follow the event. Following this rule, in this case, the claimant has been successful on his claim and is entitled to his costs. The defendant has not been successful on her counterclaim and therefore the claimant is entitled to his costs.

[90] The Court is of the view given the fact that the claimant and defendant are relatives and did enjoy a good relationship for some time, and taking into account all the circumstances of this case, that the defendant ought to be ordered to pay costs of \$7,500.00 on account of both the claim and

counterclaim. I have determined that the costs ought to be \$7,500.00 as these were the applicable costs at the time the trial took place.

Disposition and Order

[91] In light of the foregoing discussion, I make the following Orders:

On the Claim:

1. Judgment is entered for the claimant on the claim.
2. The defendant shall give up vacant possession of the Property, being Block and Parcel Nos. 1046B 346 and 347 on or before 31st July 2025.
3. The defendant shall remove the chattel house and all other material/s associated with the said chattel house occupied or now owned by her from the Property on or before 31st July 2025.
4. The defendant shall pay the sum of \$1,000.00 to the claimant being damages for trespass.

On the Counterclaim:

5. The counterclaim is dismissed

Costs

6. The defendant shall pay costs to the claimant in relation to both the claim and counterclaim in the sum of \$7,500.00.

[92] I close with a note of regret that this judgment has taken considerably longer than I would have desired to be delivered. I offer my sincere apologies to Counsel and the parties for any inconvenience caused.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar