

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

Case Number: SLUHCV2022/0124

BETWEEN:

[1] **MEDWIN HUNTE-BAPTISTE**
[2] **ANGELA WILLIAM**

Claimants

-and-

CAMILLUS ROBERT

Defendant

Before the Honourable Mr. Justice Alvin Pariagsingh

Appearances: Mrs. Lydia Faisal for the Claimants;
Mrs. E. Petra Jeffrey-Nelson for the Defendant.

2024: April 08, 09
July 08

JUDGMENT

INTRODUCTION:

[1] **PARIAGSINGH, J:** This is claim of ownership and consequent entitlement to possession by the First Claimant. The Second Defendant claims entitlement to the contents of the house as bequeathed to her under the last Will of Mr. Albert Faucher, deceased. The claim is defended. The Defendant contends that he is the owner of the house on the basis that he built it. Accordingly, he contends that Mr. Faucher could not sell, transfer or donate that which he did not own. This is contended in respect of both the house and the garage in dispute.

DISPOSITION:

[2] Following the trial of this matter, having considered the pleadings, the evidence and the submissions of both parties, having also observed the demeanor and way which the witnesses gave their evidence, I accept the Claimants as witnesses of the truth. I do not accept the Defendant as a witness of the truth. Accordingly, judgment is entered for the Claimants against the Defendants on their amended claim filed on March 18, 2022. I make the orders at paragraph 91 of this judgment. The Defendant must also pay the Claimants costs of this claim.

THE PLEADINGS:

The Amended Claim:

[3] By their amended statement of claim filed on March 18, 2022, the Claimants seek:

1. A declaration that the First Claimant is the beneficial owner of the house erected upon Parcel 1837B 373 situate at Dennerly and the Second Claimant is the beneficial owner of the contents of the said house;
2. An order that upon payment by the First Claimant to the Defendant the sum of \$31,395.00, the First Claimant is entitled to be registered as proprietor of Parcel 1837B 373;
3. Alternatively, an order that the Defendant pays to the First Claimant;
4. Special Damages in the sum of \$190,000.00, being the price of the house erected upon Parcel 1837B 373, paid by the First Claimant in March 2017;
5. The value of the garage erected upon Parcel 1837B 373 which garage was donated to the First Claimant by Mr. Albert Faucher;
6. Mesne profit at the rate of \$1,000.00 per month to the First Claimant from the 7th day of April 2021 to the date of trial; in respect of the house and the garage upon Parcel 1837B 373;
7. An order that the Defendant pays the value of the contents of the house being the sum of \$17,225.00 to the Second Claimant;

8. Mesne profit to the second claimant at a rate of \$200.00 per month in respect of the contents of the said house from the date of the death of Mr. Faucher until payment of the value of the said household contents;
9. General damages;
10. Interest;
11. Costs; and
12. Any further or other relief as the Court deems fit, and as is apparent on the statement of claim.

[4] The First Claimant and the Defendant reside between England and Saint Lucia. On 27th October 2020, the Defendant purchased Parcel 18378 373 for \$31,395.00 as evidenced by a Deed of Sale. However, this Deed did not mention the dwelling house on the property. The First Claimant asserts ownership of this house, having purchased it from Mr. Albert Faucher on 24th March 2017 for \$190,000.00 paid through a \$93,000.00 deposit and \$2,000.00 monthly installments. The house belonged to the First Claimant, with Theobalds and Associates providing its valuation.

[5] The Defendant was aware of this arrangement as the First Claimant had informed him prior to the land purchase. Despite this knowledge, the Defendant did not acquire the house since it was not included in the land sale. Additionally, near the house was a concrete garage donated to the First Claimant by Mr. Faucher, as per a Deed of Agreement dated 14th September 2020. Nevertheless, after purchasing the land, the Defendant changed the locks on the house and excluded the First Claimant, with police intervention proving futile.

[6] The background reveals that Mr. Faucher, who married the defendant's mother in 1986, had lived between England and Saint Lucia. After his wife's death in 2015, he resided alone with daily assistance from a housekeeper and occasional help from the First Claimant's relatives. In 2015-2016, the Defendant and his partner moved into Mr. Faucher's residence, leading to protection and occupation orders against them due to

their behaviour. Mr. Faucher built two houses: one for his wife's children and the other, completed around 2005, sold to the First Claimant.

- [7] Following the land purchase, the Defendant sought to transfer utility connections to his name. Despite warnings from Mr. Faucher, the Defendant aimed to claim the house as his own by purchasing the land. After Mr. Faucher's death on 7th April 2021, the Defendant and his partner unlawfully occupied the second house and took all contents meant for the second claimant, valued at \$17,225.00. These items included a television, stove, beds, leather sofas, dining set, gas tanks, and other household goods.
- [8] The First Claimant contends that the Defendant holds the house and garage in trust for him and seeks compensation or the value of the land excluding the house. The Second Claimant argues that the Defendant holds the household items in trust for her as per Mr. Faucher's will. Allegations of bad faith against the Defendant include secretly purchasing the land, locking out the First Claimant, taking Mr. Faucher's documents, transferring utilities, and ignoring court orders.
- [9] The First Claimant has suffered the loss of use and occupation of the house, while the Second Claimant has lost the household contents. The Defendant's actions, driven by an intent to dispossess the Claimants, have led to significant personal and financial losses for both parties.

The Defence:

- [10] The Defendant admits that both the Claimants and Defendant are originally from Dennery, Saint Lucia. He states that he is aware the First Claimant resides in England, as did he until a few years ago, but clarifies that the Second Claimant resides in Dennery. The Defendant acknowledges being the registered proprietor with an indefeasible title of Block 1837B Parcel 373, as evidenced by his Deed of Sale executed on 27th October 2020 before Carol Gedeon Clovis, Notary Royal.

[11] The Defendant categorically denies that the First Claimant is the owner of the house on the said land, asserting his ownership of the house. He states that Albert Faucher never owned the house and, therefore, could not have sold it. Mr. Faucher, he claims, was merely a licensee living in the house at the Defendant's sufferance. The Defendant explains that he built the house around 1999 with the help of his uncle Joseph Robert and brother John Robert, using materials purchased by him and some friends by coup de mere.

[12] The Defendant further states that the house was built with no contribution from Mr. Faucher and that he has receipts dating back to 2001 to support this claim. He adds that his mother Lucille and stepfather Albert Faucher lived in England when he built the house.

[13] He emphasizes that at the time of the alleged purchase by the First Claimant, Mr. Faucher was elderly and diminished in capacity. The Defendant recounts that the original house was built for his maternal aunt Uraynia, who lived there while caring for the Defendant's grandmother until she returned to Barbados in 2004. Upon her departure, the Defendant extended the house with the help of builder Uranus Hippolyte and materials from Capital Management.

[14] In 2006, the Defendant imported a 20ft container of household effects from the United Kingdom to furnish the house. His mother and stepfather, who were living in England at the time, moved into the house in 2009 after construction was completed. The Defendant claims the house was always known to be his property, even though the land sellers, the Belmar sisters, did not own the house.

[15] The Defendant denies the First Claimant's allegations of ownership and asserts that the garage, a concrete structure built around 1999, was used by him for storage. He insists that Mr. Faucher could not have donated the garage as he did not own it. The Defendant admits changing the house's entrance door after Mr. Faucher's death, as he had been ousted from his own home by court order. He denies taking any documents or

belongings not rightfully his and contends that he took possession of his house after Mr. Faucher's death.

[16] The Defendant states that the household items in question were brought in by him from the UK in 2006, and therefore, they belong to him. He challenges the Second Claimant's entitlement to these items, suggesting that Mr. Faucher could not bequeath what he did not own.

[17] Throughout, the Defendant reiterates his ownership of the house and garage, denying any trust for the First Claimant. He asserts that the Claimants have no rightful claim to the property or its contents. He contends that claim is misconceived, as the Claimants cannot receive what was not due to them.

The Reply:

[18] The Claimants assert that the primary dispute revolves around the ownership of the house on Block 1837B Parcel 373, which they maintain was built and owned by Mr. Albert Faucher, not the Defendant. The Claimants acknowledge that the Defendant purchased the land where the house is situated, but they argue that the house already existed when the Defendant acquired the land. They refute the Defendant's claims that he financed or constructed the house, emphasizing that any assistance the Defendant provided was at Mr. Faucher's request, and the construction was financed by Mr. Faucher's own funds.

[19] The Claimants detail a history of manipulation and abuse by the Defendant, who stayed at the house following the death of his mother (Mr. Faucher's wife) in 2015. They describe the Defendant's refusal to leave the house, his physical and verbal abuse of Mr. Faucher, and the subsequent legal actions taken by Mr. Faucher to remove him. The Claimants argue that the Defendant's ownership of the land does not confer ownership of the house, which Mr. Faucher sold to the First Claimant for valuable

consideration. They also point out that Mr. Faucher was capable and not diminished in any way when he sold the house.

[20] Furthermore, the Claimants refute the Defendant's allegations about their relationship with Mr. Faucher and the house's construction, dismissing them as false and misleading. They highlight the support of Mr. Faucher's other children for their claims. They argue that the Defendant's actions, including the purchase of the land and attempts to create a rift between Mr. Faucher and the First Claimant, were intended to undermine their rightful ownership of the house. The Claimants conclude by reiterating their entitlement to the house based on the sale and the bequest under Mr. Faucher's will.

FACTUAL ISSUES:

[21] The issues of fact to be determined are:

1. Whether Mr. Faucher or Mr. Roberts built the second house?
 - i. Did Mr. Faucher, deceased build the second house or did the Defendant, Mr. Roberts build the second house in 1999 and financed its construction and furnishing?
 - ii. Did the First Claimant pay Mr. Faucher \$190,000 for the second house in 2017?
2. Whether Mr. Faucher own the garage, and therefore could have donated it to the First Claimant in 2020?
3. Were the household items, valued at \$17,225, rightfully intended for the Second Claimant under Mr. Faucher's will, or do they belong to the Defendant who brought them from the UK in 2006?

EVIDENTIAL OBJECTIONS:

[22] On the morning of the trial, Counsel for the Defendant took issue with certain paragraphs in the witness statement of the Claimants witnesses' statement. The Court took note of the objections and invited counsel to address this issue in this closing arguments.

[23] Having had the benefit of pursuing the entire file again, I am not permitting the Defendant to make these objections now for the following reasons:

1. On July 06, 2023 directions were given by the Master when the matter was referred for Pre-Trial Review for;

[2] The parties are to file and serve all applications to be dealt with at the pre-trial review, including any notice(s) of evidential objections, on or before September 28, 2023 in default of which neither party shall file any such application without permission of the judge'

2. The Defendant did not comply with that order in that no evidential objections were made.
3. The Defendant did not seek relief from sanctions, the sanction imposed in the order having bitten.
4. The purpose of such an order at case management is to focus counsel's attention on dealing with evidential objections early and in a fair manner.
5. Evidential objections are not to be taken by a letter to counsel a few days before a trial.

[24] Further, in any event, the objections are misconceived. **Section 50 of the Evidence Act, Cap 4:15 (the EA)** provides as an exception to the hearsay rule, that hearsay statements are admissible in civil proceedings ' where the person who made a previous

representation is not available to give evidence about an asserted fact, the hearsay rule does not apply in relation to – (a) oral evidence of the representation that is given by a person who say, heard, or otherwise perceived the making of the representation; or”

[25] It is undisputed that Mr. Albert Faucher has passed away. Most of the statements objected to relate to his conversations and statements. Statements made by him fall into the exception provide for in Section 50 EA.

[26] The requirement of giving notice under Section 54 EA can be dispensed with despite the failure of the party leading the hearsay evidence to serve a notice. This is one such case that I would be prepared and would exercise my discretion and permit all hearsay statements made by Mr. Albert Faucher to form part of the evidence on the basis of Section 50 given the time when these objections were taken. Insisting on given 14 days’ notice would have meant the trial dates potentially being vacated.

[27] I hold the same view as it relates to the objections to opinions. The objections are simply too late and in breach of the Court’s order. Even if I was minded to permit it I would allow the evidence pursuant to Section 65 EA.

[28] Given that the Defendant had the full opportunity and a date by which to make these objections and did not, it would not be in furtherance of the overriding objective to permit the belated objections.

[29] In this regard, all the evidence is admitted *de bene esse* subject to it being weighted according to the Court’s acceptance of the witness’s testimony and having regard to contemporaneous and other documents tendered.

[30] For the avoidance of any doubt, the following objections are dismissed and the evidence is *admitted de bene esse*:

1. Paragraphs 22, 27 and 28 of the witness statement of Medwin Hunte Baptiste;

2. Paragraphs 5,6,11,12,16,17,18,19,24,25,26 (A-D), 32,33,42,43 and 44 of the witness statement of Angela William;
3. Paragraphs 4,5,6,7,8,9,10,11,12,13,14,15 and 16 of the witness statement of Carol Faucher;
4. Paragraphs 13 and 14 of the witness statement of Mathew Sealy.

THE EVIDENCE:

[31] At the trial the Claimants and the Defendant gave evidence. Both sides also called witnesses to corroborate their version of the events.

The First Claimant, Mr. Medwin Hunte:

[32] Mr. Hunte acknowledged that he did not receive any documents from Mr. Faucher proving ownership of the house. At the time of purchase, he knew that Mr. Faucher did not own the land on which the house was situated. During cross-examination, when presented with a valuation report stating the combined value of the house and land was \$190,000, and the actual value of the house alone was \$160,000, he could not explain why he paid the combined value for the house. He stated that he did not conduct the valuation himself and became involved only towards the end of the transaction. He claimed that most of the work related to the purchase was done before he arrived in Saint Lucia, and he relied on the advice of people assisting him, including Mr. Matthew, a good friend of his mother.

[33] His evidence was consistent with his witness statement regarding the payment of the purchase price. He paid a \$90,000.00 deposit to Sealy, a friend of Mr. Faucher, and the remaining balance through monthly installments of \$2,000.00 the last of which was paid to the Second Claimant after Mr. Faucher's death, as instructed. During cross-examination, he admitted that he did not provide his lawyer with his Bank of Saint Lucia statement to show these payments and could not specify the amounts paid to the Second Claimant or produce receipts, although he claimed receipts were given but not directly to him.

[34] Mr. Hunte acknowledged that he did not personally see the money being handed to Mr. Faucher but mentioned that he met with Mr. Faucher in Saint Lucia, and there were no complaints about receiving the money. He knew that Mr. Faucher, then in his 90s, was receiving both a pension and the monthly payments from him. He also admitted that the recital in the transfer of interest incorrectly stated the land was family land, although he grew up believing it was. He accepted that the land was owned by the Belmar sisters.

[35] Mr. Hunte stated that although the Defendant was evicted from the property in 2015, issues between them persisted in 2020. He mentioned that Mr. Faucher wanted the Defendant to remove a wooden attachment to the house. Mr. Hunte denied approaching the Defendant to share possession of the house and advised him to seek legal advice if he claimed ownership. He described the Defendant's partner as rude and refused to deal with the Defendant's sister. He asserted that the Defendant claimed ownership of the house because he had helped Mr. Faucher. Mr. Hunte agreed that he never saw Mr. Faucher buy furniture.

[36] Regarding the garage, Mr. Hunte stated that he did not see Mr. Faucher build it or have any documents for it but believed Mr. Faucher owned it. After Mr. Faucher's death, when the Defendant took possession, Mr. Hunte placed a friend in possession of the house. He maintained that he painted and cleaned the house but did not have receipts, as none were given by the labourers. He denied that his purchase of the house was part of a plan orchestrated by the family to remove the Defendant.

[37] I found the Claimant to be an honest witness, whose testimony I accept. He was not evasive and provided direct answers, even when they did not necessarily support his case. I conclude that Mr. Hunte did enter into an agreement with Mr. Faucher to purchase the house in question and paid the full price of \$190,000.00. Regarding the valuation report and the purchase price, I do not consider this a material issue in the case. Mr. Hunte was clear in his evidence that his agreement was to purchase the house for \$190,000.00 and he was aware that Mr. Faucher did not own the land.

[38] I also find that up to the time of Mr. Hunte's visit to Mr. Faucher in 2020, there were ongoing issues between Mr. Faucher and the Defendant, as Mr. Faucher wanted the Defendant to remove the annex he had constructed. Mr. Hunte was aware that the recital in the transfer of interest was incorrect regarding the ownership of the land on which the house stands. This is consistent with his evidence that at the time of the purchase, he knew Mr. Faucher did not own the land.

[39] I find that Mr. Hunte did not approach the Defendant to share the property. Instead, I accept Mr. Hunte's evidence that the Defendant took possession of the house immediately after Mr. Faucher's death and claimed ownership on the basis that he had helped Mr. Faucher and believed he deserved it for his assistance.

Evidence of Mr. Matthew Sealy:

[40] At the commencement of his testimony, Mr. Sealy mentioned a statement that the deceased, Mr. Faucher, wished to be part of his evidence: "Mr. Faucher did tell me that Camilus came to his house and disrespected him with a male lover, so he had to kick him out." Having observed Mr. Sealy give his evidence, I find him to be an honest witness and accept that Mr. Faucher did, in fact, make that statement to him. According to Mr. Sealy, the reason Mr. Faucher expelled the Defendant from his house was due to the Defendant bringing a male lover there.

[41] Mr. Sealy was truthful in his answers during cross-examination, admitting that he had no knowledge of who built the house. He also stated that he did not know the details of Mr. Faucher's affairs and could not speak to the amount of his pension. Mr. Sealy indicated that he was the person who handed the money to Mr. Faucher during the latter part of the payment process by the First Claimant. He mentioned that he misplaced the receipts he had but noted that the payments were always made in the presence of Angela, the Second Claimant. He confirmed that Mr. Faucher instructed him to give the last payment of \$3,000.00 to Angela.

Evidence of Ms. Audrey Faucher:

[42] Ms. Faucher testified that Mr. Faucher first visited in 1986 for two weeks, and thereafter, he visited intermittently. She stated that after his wife's death, he stayed in Saint Lucia. Ms. Faucher mentioned that she knew Mr. Faucher was building the house. She added that she and Dennis Faucher were involved in a court case with Mr. Faucher, and during a hearing in the Magistrates' Court, Mr. Faucher presented his documents for the house, while the Defendant produced none.

[43] I find Ms. Faucher to be a credible witness. However, her evidence does not carry much weight in my view, as she was unable to address the material aspects of the case.

Evidence of Ms. Carole Faucher:

[44] Ms. Faucher's testimony centered around an allegation that the Defendant caused Mr. Faucher's pension to be reduced in the United Kingdom and even falsely reported his death before he died. During cross-examination, it became evident that her information was based on hearsay from an unknown source. She had no personal knowledge of the complaint or who made it, merely relaying Mr. Faucher's theory. This highlighted the caustic relationship between Mr. Faucher and the Defendant.

[45] I accept her evidence that Mr. Faucher worked for several years with the Railway Company in the United Kingdom. Upon retirement, he became entitled to three pensions, initially totaling about £800 before being reduced to £700.

Evidence of the Second Claimant, Ms. Angela William:

[46] Ms. William provided testimony asserting her close relationship with Mr. Faucher, claiming to be a confidant and having access to his bank accounts. She also stated co-ownership of a vehicle he purchased. Ms. William recounted working alongside Mr. Faucher before his wife's passing. According to her, Mr. Faucher and the Defendant alternated staying with Mrs. Faucher in England in 2015, and both were present in England at the time of her death. However, she admitted not witnessing Mr. Faucher's

construction activities nor confirming his savings. She mentioned Mr. Faucher informing her that his wife worked in England and was married when their house was built.

[47] She acknowledged Mr. Faucher's role in removing the Defendant from the house in November 2015, which resulted in changing utility bills to the Defendant's name, previously under Mrs. Faucher's. Ms. William disputed the FLOW bill ever being in the Defendant's name, asserting she accompanied Mr. Faucher for reconnection, not connection. She claimed Mr. Faucher informed her of his ownership of the garage and staying in the first house upon returning to Saint Lucia until the completion of the second house between 2005 and 2007. Ms. William also recounted Mr. Faucher's account that during construction, Mrs. Faucher and the Defendant purchased materials due to Mr. Faucher's post-surgery condition.

Evidence of the Defendant, Mr. Camilus Roberts:

[48] During cross-examination, Camillus Roberts, the Defendant, stated that he paid \$31,395.00 for the land where the second house stands. He claimed the money came from his savings but failed to produce any documentation supporting this claim. He acknowledged that the house's value far exceeded that of the land and that the house had existed on the land for several years before he purchased it in 2020. Importantly, he admitted he was not residing in the house at the time of purchase due to ongoing Family Court proceedings that had led to his eviction.

[49] Roberts conceded that he did not challenge the court order for his eviction from the house at the High Court level. He also acknowledged that Mr. Faucher, the deceased owner, did not approve of his lifestyle and eventually evicted him from the house. Despite expressing doubts about whether the First Claimant had paid for the house, Roberts provided no evidence to support this doubt. He further claimed that the First Claimant had "stolen" the house in 2017, when the transaction occurred, but took no action upon learning of Mr. Faucher's sale of the property or the subsequent donation of the garage to the First Claimant.

[50] Regarding the construction timeline of the house, Roberts asserted that it began in 1999, although he later admitted to the absence of evidence for the original structure and initially denied renovating another house in 2012, later admitting to some renovations conducted by Randy Alphonse. He also admitted that several receipts he presented during the proceedings did not specify the materials' usage or ownership, including those without his name. Despite presenting receipts, he acknowledged that their total did not account for the entire construction cost of the house.

[51] Roberts acknowledged his relationship with Mr. Faucher, whom he met when he was 16 years old and moved with to England when Mr. Faucher married his mother in 1986. However, he failed to produce receipts for furniture items he claimed to have brought from England, attributing this to the items being bought in England. He also denied importing a container on behalf of Mr. Faucher.

[52] I find Roberts' claim that he asserted ownership of the house in a 2020 conversation with the first claimant to lack credibility, noting inconsistencies with his witness statement. I also do not accept Roberts' claim that a container remained in rented premises in Saint Lucia for three years, instead I accept the Second Claimant's testimony that it arrived the same year Mr. Faucher moved into the second house, as she was told by Mr. Faucher.

[53] Ultimately, I rejected Roberts' testimony as wholly unreliable, finding that he did not prove his alleged role in building the house or owning its contents.

Evidence from Uranius Hippolyte:

[54] Mr. Hippolyte is the brother of the Defendant's partner. He stated that he was not concerned with the outcome favouring his brother-in-law, but only with telling the truth. He acknowledged that he extended the structure of the second house on three sides. He clarified that the money paid to him came from Mr. Roberts, not Mr. Faucher, although he admitted he was not present when Mr. Roberts obtained the money to pay

him, so he could not confirm its source. According to his testimony, to the best of his knowledge, the house is owned by Mr. Roberts.

[55] I find this witness to be honest and truthful. However, his evidence does not support the Defendant's case further.

RESOLUTION OF FACTUAL ISSUES:

[56] I find it completely unbelievable that Mr. Faucher could have worked in England for over 30 years and yet, according to the Defendant's evidence, owned nothing. I do not accept Mr. Robert's evidence that he (1) constructed the second house, and (2) owns both the furniture and the garage. I consider the Defendant to be an entirely unreliable witness, and I completely reject his testimony.

[57] As a matter of fact, I find that the Defendant has not proven that he built the second house as claimed, nor has he proven ownership of the furniture shipped from England in the container. Based on all the evidence, I find, on the balance of probabilities, that the Claimant's case is more credible.

[58] Specifically, Mr. Faucher, who worked in England for over 30 years, built the second house and the garage. Mr. Faucher owned both the second house and its contents, which were shipped from England while he still lived there. Although the Defendant assisted Mr. Faucher in building the house and importing the container, both the house and its contents belonged solely to Mr. Faucher and I so find.

[59] My view is strengthened by the lack of evidence regarding the Defendant's financial records and capabilities, which are notably absent from this case despite claims of building an entire house and purchasing an entire container of furniture from England to Saint Lucia.

RESOLUTION OF LEGAL ISSUES:

[60] The following are the legal issues which arise for resolution in this claim:

1. Is the house or garage presumed to be owned by the Defendant as he holds title?
2. Is the Defendant's title indefeasible?
3. Does the First Claimant have an overriding interest under section 28(g) of the **Land Registration Act (LRA)**?
4. Can anyone other than the registered owner of the land transfer an interest in a concrete structure erected on the land when the structure is affixed to the land?
5. Could the First Claimant have purchased a concrete house from someone who was not the registered owner of the land upon which it was erected? Could Mr. Faucher have donated the garage?

Is the house or garage presumed to be owned by the Defendant as he holds title?

[61] The evidence indicates that at the time the Defendant purchased the land, he was aware of the First Claimant's ownership of the second house. Furthermore, he was not in possession of the second house due to a Family Court order. The Claimants have alleged that the title to the land was acquired in bad faith.

[62] **Article 370 of the Civil Code** stipulates that:

"all buildings, plantations and works on any land or underground, are presumed to have been made by the owner at his own cost, and to belong to him, unless the contrary is proved."

[63] This presumption that structures on the land were constructed by the owner at their expense and belong to them can be rebutted. The timeline in this case is crucial to this issue. The second house was constructed, according to the evidence from either party, before the Defendant acquired title. The Defendant acknowledges that the house's value was significantly higher than the amount he paid for the land.

[64] When the Defendant obtained title in October 2020, there was a presumption that he owned the building on it. However, this presumption has been convincingly rebutted by the evidence presented in this case. As previously determined, the house was built by and belonged to Mr. Faucher, not the Defendant.

[65] The Defendant acquiring title, with prior knowledge of Mr. Faucher's sale, must work against his own interests. It cannot be that he benefits from his own covert purchase of the land, knowing full well that the house had already been sold to the First Claimant. Additionally, he was not in possession of the house and was legally restricted from accessing it by a court order.

Is the Defendant's title indefeasible?

[66] **Section 23(i) of the LRA** stipulates that:

“23. Subject to the provisions of sections 27 and 28, 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 to:

(a) 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) (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.”

[67] **Section 27 LRA**, which deals with voluntary transfers, does not apply in this case.

Section 28 LRA, which provides for overriding interests, is contended by the Claimants to be relevant, specifically Section 28(g). This will be discussed further.

[68] The only restriction on the absoluteness of the Defendant's title is the provision that the section vesting absolute title does not relieve the Defendant from any duty or obligation to which he is subject as a trustee.

[69] The Claimants argue that the Defendant holds the house and its contents in trust for their benefit, as stated in paragraphs 17 and 18 of their amended statement of claim. In response, the Defendant, in paragraphs 35(1) and 36 of his defence, denies holding the dwelling house and garage in trust for the First Claimant or the contents of the house in trust for the Second Claimant. He claims to be the bona fide owner of the house and garage, which he asserts he constructed with his personal funds. Although he did not specifically state in his defence that he purchased the house's contents, he testified to this effect at the trial.

[70] The court has already rejected the Defendant's evidence, finding that he did not construct the house or the garage, nor did he purchase or own the furniture items shipped to Saint Lucia. Furthermore, it has been established that at the time of purchasing the land, the Defendant knew that Mr. Faucher had sold the house to the First Claimant. Thus, the Defendant did not act in good faith, being fully aware that he did not own the house, its contents, or the garage on the land. There is also no evidence of any improvements to the land post-purchase, nor has the Defendant pleaded any common intention regarding ownership of the house based on contributions. His claim to own everything has been rejected.

[71] The court finds that the Defendant's purchase of the land was made in bad faith, as pleaded by the Claimants in paragraph 19 of their amended statement of case. The principles of **St. Rose v La Fitte, SLUHCVP 1B of 1990**, apply. The Claimants have

proven bad faith, which can be objectively established based on the circumstances surrounding the purchase.

[72] Moreover, **Article 372 of the Civil Code** mitigates against the Defendant obtaining the benefit of the house, its contents, and the garage by purchasing the land. The court has found that Mr. Faucher owned the house, its contents, and the garage, which he constructed and purchased. The Defendant's right to the improvements depends on their nature and the good or bad faith of the possessor. The nature of the improvements is such that they are structures attached to the land and not easily removable. There is no pleading or allegation that Mr. Faucher acted in bad faith, so good faith must be presumed. Therefore, the Defendant is not entitled to the improvements made to the land by Mr. Faucher.

[73] There is no evidence that the improvements were necessary, but **Article 372** also provides that if they were made by a possessor in good faith, the owner is obliged to keep them if they still exist and to pay either the amount they cost or the extent to which the value of the land has been augmented.

[74] The effect of not being the owner of the house, its contents, and the garage at the time of a purchase made in bad faith, as the Claimants have pleaded, gives rise to a trust in their favour. The purchase of the land by the Defendant was subject to the Claimants' interests.

[75] Accordingly, the court finds that the Defendant's title is subject to a trust in favour of the Claimants for the house, its contents, and the garage. His title is not indefeasible or absolute as he contends, especially as it was acquired in bad faith.

Does the First Claimant have an overriding interest under section 28(g) LRA?

[76] The Court has found that Mr. Faucher owned the house and garage, and there is no dispute that he was in possession of these properties until his death. It has been determined that the items owned by Mr. Faucher are held in trust by the Defendant.

[77] The transfer of interest executed by Mr. Faucher before a Notary Royal was sufficient to transfer his interest inter vivos to the First Claimant. The Defendant's argument that the First Claimant is pursuing a third-party right is rejected. The First Claimant is the beneficial owner and is entitled to possession of the house and the garage.

[78] The First Claimant acquired his right to the house through the Transfer of Interest and his right to the garage by the Donation. While Mr. Faucher retained a life interest in the house upon transferring it to the First Claimant, this does not alter the First Claimant's interest as a remainderman during Mr. Faucher's life and as the owner upon his death.

[79] Therefore, the Court finds that the First Claimant has an overriding interest under **Section 28(g) of the LRA** in both the house and the garage, which again challenges the indefeasibility of the Defendant's title.

Can anyone other than the registered owner of the land transfer an interest in a concrete structure erected on the land when the structure is affixed to the land?

[80] The Defendant raised the issue of whether anyone other than the registered owner of the land can transfer an interest in a concrete structure erected on the land when the structure is affixed to it. The Defendant contends that, because the house and garage are affixed to the land, they belong to the person who holds the title to the land. The Defendant relies on **Articles 369 and 370 of the Civil Code** to support this contention.

[81] **Article 369** states that the owner of land also owns what is above and below it, although this right is not absolute. It allows the owner to build on or excavate the land. However, the Defendant's interpretation of **Article 369** is considered too restrictive. **Article 369**

must be read in conjunction with **Articles 369 to 379**. **Article 370** provides a rebuttable presumption that the owner of the land owns what is on it, which applies in this case, where Mr. Faucher acquired a right to the house and garage by owning them.

[82] **Article 372**, as previously discussed, gives a right of compensation to a possessor in good faith. **Article 373** allows the possessor to keep the property and pay its estimated value. **Article 374** states that a possessor forced to give up possession of an immovable property with improvements is entitled to reimbursement and can retain the property until reimbursed.

[83] The Defendant argues that the form of the transfers did not conform to **Section 56 of the LRA** and thus could not transfer any legal or beneficial interest in the house and garage. However, this defence was never raised in the Defendant's initial defence, making it inappropriate to raise it for the first time in closing submissions.

[84] The Defendant should have advanced this defence earlier to allow the Claimants to respond to the effect of the transfers. The arguments regarding **Articles 1980 and 1908 of the Code** and the effect of **Section 56 of the LRA** should not be raised solely in closing submissions. Even if they were raised earlier, the Court would likely consider that equity should treat that which ought to be done as being done. The defence provided in the Code and the registration process in the LRA must be viewed in the context that Mr. Faucher owned the house and garage, sold them, received money for the house, and that the First Claimant was a bona fide purchaser for value.

[85] Therefore, the argument about the effect of the transfer not being registered should not be pursued at this stage. Given the circumstances, equity would mitigate the harshness of the registration requirement, especially since the Defendant had actual notice of the sale before purchasing the land. The purchase by the First Claimant was in good faith, whereas the Defendant's purchase was in bad faith.

Could the First Claimant have purchased a concrete house from someone who was not the registered owner of the land upon which it was erected? Could Mr. Faucher have donated the garage?

[86] The Defendant contends that these issues should have been addressed in the defence.

The Court has found that Mr. Faucher owned both the house and the garage, but not the land on which they were built. In my view, Mr. Faucher could have sold the house and the garage without being the owner of the land. The First Claimant acquired Mr. Faucher's ownership and interest in the house through purchase and received the garage by donation. The presumption of ownership by annexation, as discussed earlier, is rebuttable and has been rebutted in this case.

[87] I disagree with the notion that Mr. Faucher was merely a habitant of the house or garage.

He was the owner of both. As the owner, he had the right to transfer his interest in the house and garage to the First Claimant, who purchased them in good faith.

[88] Regarding the donation of the garage, the same principles apply. Mr. Faucher, as the owner of the garage, had the authority to donate it. His ownership of the structures, despite not owning the land, allowed him to transfer these interests to the First Claimant. This transfer was conducted in good faith and valid under the circumstances.

CONCLUSION:

[89] The second house, its contents and the garage were all owned by Mr. Faucher, deceased. The Defendant did not build the second house or the garage nor did he purchase the contents of the house. The transfer of interest to the First Claimant of the second house by Mr. Faucher was done in good faith for valuable consideration. Equity will treat this transfer as being effectual. So too will equity treat the donation of the garage. The contents of the house being owned by Mr. Faucher is beneficially owned by the Second Claimant upon his testate death.

[90] In determining the remedies to be granted, I am mindful of **Articles 372 and 373 of the Civil Code**. I am also mindful that there was no substantial challenge by the Defendant of the Claimant in respect of the sums claimed for mesne profits or the value of the household items.

ORDERS:

[91] I make the following orders:

1. Judgment is entered for the Claimants against the Defendant on their amended claim filed on March 18, 2022;
2. A declaration is granted that the First Claimant is the beneficial owner of the house erected upon Parcel 1837B 373 situate at Dennerly and the Second Claimant is the beneficial owner of the contents of the said house;
3. A declaration is granted that the Defendant's title is subject to a trust in favour of the First Claimant of the house and garage erected upon Parcel 1837B 373;
4. A declaration is granted that the First Claimant has an overriding interest pursuant to Section 28(g) of the Land Registration Act, on the Defendant title to the extent of the value of the house and garage standing on Parcel 1837B 373;
5. An order for immediate possession of the house and garage standing on Parcel 1837B 373, paid by the Claimant in March 2017 is granted in favour of the First Claimant who is entitled to remain in possession until such time as the Defendant pays him the sum of \$190,000.00 together with interest at the rate of 6% from the date of the death of Mr. Albert Faucher to the date of payment;
6. Upon payment of the sum specified in (5) by the Defendant to the Claimant, all charges, interest and cautions on the Defendant's title shall be discharged;

7. The Defendant shall pay the First Claimant mesne profits at the rate of \$1,000.00 per month from the 7th day of April 2021 to the date of delivery of possession of the house and the garage to him;
8. The Defendant shall pay to the Second Claimant the value of the contents of the house being the sum of \$17,225.00 upon receipt and presentation of a grant of probate of the Will of the deceased. Upon payment of the said sum, the Defendant shall be entitled to retain whatever remains of the contents of the house;
9. The Registrar of the High Court is directed to forward a copy of this order to the Registrar of Lands who is directed to make the necessary entries on the Defendant's title to reflect this order; and
10. The Defendant shall pay the Claimants costs of this claim on the prescribed scale on the total value of the claims made (\$190,000.00+\$17,225.00) in the sum of \$30,903.13.



Alvin Pariagsingh
Judge

By the Court,

Registrar