

THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: SLUHCV2020/0288

BETWEEN:

CHARLES JOSEPH

Claimant

And

TRYPHONIA ST VILLE

Defendant

BEFORE: His Lordship, the Honourable Justice Rohan A Phillip
(Judge via Zoom)

APPEARANCES: Mrs Andra Gokool-Foster of Counsel for the Claimant
Ms Alberta Richelieu of Counsel for the Defendant

PRESENT: Both parties

2021: July 22;
2023: August 24.

DECISION

Background/Nature of Proceedings

[1] On 23rd November 2020, the claimant applied to strike out and dismiss the defence as an abuse of the process of the court in that it seeks to raise as a defence that the claimant is indebted to the defendant, which the claimant has acknowledged and is willing to pay for all that the defendant is entitled to. The defendant, on the other hand, applied on 24th November 2020 for an inhibition order according to section 83 of the Land Registration Act¹ (“the LRA”) of all proceedings concerning the property (the object of the claim) unless and until all matters relating to this claim are determined.

¹ Cap 5.01 of the Revised Laws of Saint Lucia

- [2] The court heard both applications together but proposed first dealing with the claimant's application to strike out the defence. It was filed first in time, and if this application is successful, it will not be necessary to consider the defendant's application for the inhibition order.
- [3] By a fixed-date claim form and statement of claim filed on 10th July 2020, the claimant claimed, among other things, (1) a declaration that the defendant be deemed a trespasser, currently trespassing on the claimant's land registered in the Land Registry as Block 1247B Parcel 903 situate at Cabishe, Babonneau in the Quarter of Castries ("the disputed land"); (2) an order that the defendant do remove the wooden dwelling house on the claimant's land; (3) an order that the defendant do forthwith vacate the disputed land and deliver vacant possession thereof; (4) interim injunctions restraining the defendant whether by herself, her servants or agents howsoever and whenever or otherwise from trespassing and continuing to trespass onto the disputed land, prohibiting the defendant from erecting and continuing to erect a concrete or any structure on the disputed land, and preventing the defendant from engaging in any further construction works on the disputed land until the hearing and determination of these proceedings; (5) a permanent injunction restraining the defendant whether by herself, her servants or agents howsoever and whenever or otherwise, from trespassing and continuing to trespass onto the disputed land; (6) general damages for loss and damage suffered due to the inhibition of the natural use and enjoyment of the disputed land; and (7) interest, costs of and occasioned by this action, and further or other relief.
- [4] The statement of claim so far as relevant to these applications alleges that:
1. By Deed of Transfer executed on 16th October 2019 and registered in the Land Registry as Instrument No. 4520/2019, the claimant became the sole lawful registered proprietor with the absolute title of the disputed land, which he inherited from his paternal grandfather and has had sole entitlement and right of use, enjoyment, control and possession of it from on or about 1982 from which time he maintained a garden on the property.
 2. In or about early 2007, whilst in a relationship, the claimant and the defendant jointly built a plywood dwelling house on the disputed land. The defendant holds a one-third share in the dwelling house by her contribution of \$5,000.00, and the claimant the remaining two-thirds share by ploughing his income, earnings, savings and labour into the construction. The

claimant terminated his relationship with the defendant in or about late 2007, left the dwelling house and never resumed cohabitation with the defendant.

3. On numerous occasions, the claimant gave the defendant verbal notice of relinquishing all his rights, title, interest and claims to the dwelling house so that it shall become her sole property. However, he wanted the defendant to remove the dwelling house immediately from the disputed land as he required the disputed land urgently for his purposes.
4. The defendant has defiantly failed and refused to remove the dwelling house to give up vacant possession of the disputed land. Approximately three years ago, without the claimant's knowledge and consent, the defendant unlawfully constructed nine concrete pillars as part of an ongoing construction project to convert the dwelling house on the disputed land to concrete without developmental approval from the Development Control Authority and the knowledge, consent and approval of its lawful registered owner the claimant.
5. Immediately on being informed of her construction on the disputed land, the claimant went to the disputed land, reprimanded the defendant and demanded that she cease any further construction on the disputed land since her living arrangement there was never permanent and had expired, as he has repeatedly made the demand that she vacates the disputed land. Still, the defendant's continuous responses to the claimant justified his conclusion that the defendant's actions are in keeping with her theme that if she cannot get him to resume a live-in relationship with her and particularly since she has children with him, she will fight him for the disputed land and that the defendant will not remove herself from the disputed land unless compelled to do so by the court.
6. On 6th December 2019, the claimant served a formal notice to quit dated 5th December 2019 on the defendant, which formally demanded that the defendant quit and deliver up vacant possession of the disputed land on or before 6th March 2020. On 24th December 2019, the defendant's Attorney-at-Law served a response to the notice to quit dated 18th December 2019 on the claimant's Attorney-at-Law, wherein the defendant made a demand under Article 374 of the Civil Code of Saint Lucia² for compensation for improvements made, being the nine pillars which she unlawfully placed on the disputed land.

² Cap 4.01 of the Revised Laws of Saint Lucia

7. By letter of 29th January 2020 and served on 31st January 2020, the claimant's Attorney-at-Law disputed that Article 374 of the Civil Code applies to the circumstances of this matter since the claimant did not permit the defendant to construct the pillars. Still, the claimant, to bring an expeditious and amicable determination of the matter without court proceedings, proposed, among other things, the mutual appointment of a Quantity Surveyor to view and value the pillars on the disputed land and prepare a valuation report for which the parties bear the cost equally; the claimant pays the defendant the monetary value of the pillars (which she would leave on the disputed land) on or before the end of February 2020; and the defendant removes the entire dwelling house only and gives up vacant possession of the disputed land by 6th March 2020 following the notice to quit.
8. The claimant's Attorney-at-Law has received no response to the proposal for settlement, and the defendant, in defiance, remains in use, enjoyment and occupation of the disputed land to the claimant's detriment.
9. The defendant has been in unlawful occupation of the disputed land for the past 13 years, trespassing and illegally constructing on the disputed land. She has used threatening, intimidatory and insulting remarks to the claimant, declaring that he cannot remove her from the disputed land. From her general conduct, the defendant will certainly continue with her belligerent, pugnacious and unlawful manner if not prevented from doing so by the High Court. The claimant cannot use the property to his benefit and continues to suffer grave financial hardship, inconvenience and other losses, stress, anxiety and trepidation.

[5] Suffice it to say that the defendant filed a defence and amended defence on 10th August 2020 and 24th November 2020, respectively, to which the claimant filed a reply on 28th August 2020 and an amended reply on 4th December 2020. In her amended defence, the defendant pleaded as follows:

1. The claimant was the sole lawful registered proprietor with the absolute title of the disputed land. Still, he could not have sole entitlement and right of use if he became the sole legal registered proprietor with absolute title via a Deed of Transfer, No. 4520/2019, executed on 16th October 2019 and registered on 14th November 2020.
2. She contributed \$5,000.00 to the dwelling house and was in a common-law union with the claimant, producing four children. They agreed that the house would be the family home for the claimant, the defendant and their children.

3. The claimant had left the house, but he often returned for conjugal visits and assured her that the house belonged to her and the children to provide shelter over their heads.
4. She denied receiving any verbal notice to vacate the disputed land and avers that she recalls speaking to the claimant in the presence of Mr Marcus Joseph (at the disputed land), where she informed him that she wished to construct a concrete structure for further privacy and commenced the construction after the claimant consented. She relied on the claimant's assurance and consent.
5. She received the claimant's notice to quit and confirmed the exchange of correspondence between the Attorneys-at-Law as alleged. Still, she reiterated that she could not be deemed a trespasser because she entered the disputed land with the claimant in 2003. The claimant could not give permission to construct the pillars at the material time as he was not the absolute owner of the disputed land in 2017, and insisted that Article 374 of the Civil Code is applicable, as the claimant, when he obtained absolute title in 2019, was fully aware of her occupation, to which he consented by the assurance given to her.
6. Further, she specifically requested in her response dated 18th December 2019 that she be paid for improvements to the disputed land and be provided with an extension until 30th September 2020 to consider an amicable settlement; however, the claimant totally disregarded this and insisted by letter dated 29th January 2020 that she give up possession.
7. The defendant denied the claimant's allegation (para 9 above) as untrue and stated she acted in good faith. The claimant suffered no grave financial hardship, inconvenience or otherwise, as he knew she was occupying the disputed land.
8. In the premises, the defendant contends she was a possessor in good faith who made improvements to the disputed land and is entitled to be reimbursed her share of improvements and a right to retain the disputed land until such reimbursement is made. In the alternative, the defendant avers that she is more than able and willing to purchase the disputed land at a reasonable sum to bring this dispute to an end.
9. Further, the defendant contends that she is in actual occupation of the disputed land and has an overriding interest under section 28 (g) of the LRA.
10. She denied that the claimant was entitled to the remedies claimed and prayed that this court grants her the relief it deems just in the circumstances.

Application to strike out and dismiss the defence

The claimant's case

- [7] The claimant's counsel submitted that the defendant's statement that she is not a trespasser is not a defence but a vacuous statement without material facts to substantiate the baseless assertion, as she pleaded nothing that would or could amount to an interest in the disputed land. The only defence to an allegation of trespass is that the defendant has legal, beneficial or equitable title to the subject property or has a claim of right because they were a bona fide purchaser for valuable consideration.
- [8] A perusal of the defence reveals that there are no factual assertions that controvert in any material particular the claim that the claimant is the sole and absolute proprietor of the subject parcel of land, and as such, there can be no triable issues which require a trial. The absence of any pleaded and particularized facts in the defence capable of demonstrating that the defendant has an interest in the disputed land contrary to that asserted by the claimant renders the defence one without a reasonable ground for defending the claim.
- [9] There are no issues of fact, disputed or grey areas of law or contentious matters of mixed fact and law raised in the defence which require resolution. Therefore, it will serve no useful purpose in a trial as the defendant has not pleaded and particularized any interest she holds in the disputed land, so no evidence can now be led to introduce matters never pleaded.
- [10] The defendant never acquired legal title to the disputed land through purchase or contribution to the disputed land purchase price. During her occupation of the disputed land, the defendant had never acquired a beneficial or equitable interest over the disputed land to entitle her to have a tenancy-in-common with the claimant, nor had she registered any lis pendent, hypothec, judicial hypothec, caution, or any other encumbrance over the disputed land.
- [11] The defendant is excluded from being the beneficiary of a statutory overriding interest under section 28 of the LRA as she has no proprietary rights capable of amounting to an interest in the disputed land to make her the recipient of a statutory overriding interest. Section 28 of the LRA is conjunctive in its application and precludes a person from asserting that mere occupation of property is sufficient to enable him or her to assert a statutory overriding interest. It is the 'rights of a person in

actual occupation' and not the mere actual occupation of the property that amounts to the overriding interest.

- [12] The Physical Planning and Development Act³ makes no provision for a person to make a unilateral decision to develop land without the lawful authorization of the Development Control Authority. Any development of land in whatever way that may take place is unlawful without the permission of the Development Control Authority. As such, the illegal development of land cannot give rise to a proprietary interest in land capable of creating a legal, equitable or overruling interest. By asserting her illegal erection of concrete pillars without planning permission, the defendant is pleading guilty to her unlawful development of the disputed land without the approval of the Development Control Authority.
- [13] The doctrine of *ex turpi causa non oritur actio* looms large on the defence as the defendant claims a beneficial interest in the disputed land because of her illegal development. It is common ground that a defendant cannot seek to avail herself of a defence founded upon an illegal act. The illegality of the action cancels out any interest of the defendant, as were the court to honour the claim. It will be tantamount to rewarding acts of illegality.
- [14] The wooden dwelling house on the disputed land cannot amount to a beneficial interest in the disputed land to enable the defendant to claim a tenancy-in-common with the claimant. The uncontroverted photographic evidence confirms that the defendant has perjured herself on oath. Contrary to her representations, the entire house is in plywood and has no concrete parts to render the structure as having any measure of permanence.
- [15] Article 374 of the Civil Code, which the defendant prayed in aid, is of no material relevance as it is not a defence as it cannot amount to an interest in the land that operates to encumber the disputed land as the claimant intends (as pleaded in his claim form and statement of claim) to ensure that the defendant is afforded full ownership of the wooden structure and adequately compensate or reimburse the defendant even though she erected the pillars illegally and without lawful authority and consent.

³ Cap 5.12 of the Revised Laws of Saint Lucia

The defendant's case

- [16] The defendant objected to the striking out of the defence as granting the application would be gravely unjust. Counsel submitted that the defence presents live triable issues that can only be dealt with through trial.
- [17] The defendant's case was that she was in actual occupation of the disputed land, specifically a part wooden-part concrete structure where the claimant initially cohabited with her and their four children, and another concrete structure on the said land. She holds an equitable interest in the property and is not a trespasser, as the claimant asserts. The defendant states that the claimant gave her express permission to construct a concrete structure on the disputed land and that she was actually occupying the disputed land, so she had an overriding interest according to section 28 (g) of the LRA.
- [18] Further, the claimant's willingness to pay the defendant for her alleged unlawful construction acknowledges her interest in the disputed land. From all indications, it is clear that the claimant's claim is vexatious and untruthful.
- [19] The defendant acknowledged that she was not disputing the claimant's title but urged that while there may not be a claim of right, title or interest in or to her, this does not mean that she does not have an equitable interest. Indeed, the defendant emphasised that she had an equitable interest, which she would like the court to determine.
- [20] The defendant's counsel citing several cases and some of the authorities they quoted⁴, argued that striking out a defence is a draconian measure that should only be used in clear, obvious cases when a claim is unsustainable, cannot succeed, or in some other way is an abuse of the process of the court. A court may strike out a statement of the case only when it does not amount to a viable claim or defence or is beyond cure. It is unsuitable for striking out if it raises a live issue of fact that can only be determined at trial by hearing oral evidence.

⁴ Levi Maximea v The Dominica Agricultural Industrial and Development Bank, DOMHCV2016/0160; Robert Conrich v Ann Van Der Elst, AXAHCV2001/002; Ian Peters v Robert George Spence, ANUHCVAP2009/016; Swain v Hillman, [2001] All ER 91; Barbados Rediffusion Services Ltd. v Asha Mercliandani et al. CCJ Appeal No. CVJ of 2008; Dion Friedland v Charles Hickox, AXAHCV2012/0039

[21] The defendant's counsel contends that the defence presents a live issue premised on whether the defendant is a trespasser. It is a matter that can only be determined with oral evidence through a trial. Therefore, striking out the defence will deny the defendant a hearing on the merits of the case she has put forward, and she will suffer grave loss, damage and injustice.

[22] It was not an abuse of the court's process, as an abuse of process is an unreasonable or unjustified use of legal proceedings or processes. There has been a failure by the claimant to acknowledge that the defendant is not a trespasser, and this is a live triable issue, irrespective of the claimant's position. Further, the defendant is not unreasonable but justified as the claimant avers that the defendant was a trespasser, which is untrue and should the matter not be settled, it will necessitate a trial to determine whether or not she was a trespasser and other relief.

[23] Thus, the defendant requested the court to resist the application for strike out with costs to her and allow the matter to proceed to trial for determination on its merits unless the parties decide to settle otherwise.

Discussion

[24] At the outset, it is prudent to state that I accept the now well-settled principles the court must apply in determining whether it should exercise its powers to strike out a statement of case as submitted by the defendant's counsel (para [22]) following the relevant applicable provisions of the Civil Procedure Rules 2000 (as amended) ("CPR") 26.3 that :

- "(1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –
 - (a) ...
 - (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
 - (c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or
 - (d)"

[25] The claimant framed his case in trespass. The defendant denied that she was a trespasser and stated the claimant gave her assurances that the home constructed on the disputed land would be a place to provide shelter for her and their children and that he consented to her erecting the concrete pillars thereon. The defendant's case at its highest may be a claim of proprietary estoppel,

which she argues amounts to an overriding interest in the disputed land according to section 28 (g) of the LRA.

[26] Notwithstanding, the defence did not particularise in detail the facts to establish the assertions of the defendant's case. I am satisfied that there are live issues of whether the defendant was a trespasser and the claimant was entitled to immediate possession of the disputed land. These issues would indeed require a determination on proven facts of the nature of the claimant's alleged assurance if indeed made – was it substantial that it would be unjust, inequitable or unconscionable not to allow the defendant to acquire a positive interest or right in the disputed land, considering the detriment the defendant suffered on her reliance on the alleged assurance. This was the position held in the Privy Council in the landmark case of **(1) Theresa Henry (2) Marie Ann Mitchell v Calixtus Henry**⁵.

[27] Even the claimant's argument of the effect of *ex tunc causa non oritur actio* on the defendant's claims of a beneficial interest in the disputed land because of her illegal development would require adducing evidence at a trial to confirm its illegality and or if it was an improvement in good or bad faith.

[28] However, I believe in the circumstance of the pleaded case, it would be an abuse of the court's process and not in furtherance of the overriding objectives of dealing with the case justly (CPR 1.1) to allow this matter to proceed to a trial. The common position of the parties from their pleadings and submissions is that:

1. The claimant was the sole lawful registered proprietor with the absolute title of the disputed land by Deed of Transfer executed on 16th October 2019 and registered on 14th November 2020 in the Land Registry as Instrument No. 4520/2019.
2. The defendant contributed \$5,000.00 to the dwelling house on the disputed land, where the parties initially cohabited with their four children until the claimant left the house in 2007. The defendant constructed nine concrete pillars on the disputed land approximately three years ago.

⁵ [2010] UK.PC 3; Privy Council Appeal No 2009 of 0024

3. On 6th December 2019, the claimant served a formal notice to quit dated 5th December 2019 on the defendant, demanding that she quit and deliver up vacant possession of the disputed land on or before 6th March 2020.
4. On 24th December 2019, the defendant's Attorney-at-Law served a response to the notice to quit dated 18th December 2019 on the claimant's Attorney-at-Law, wherein the defendant made a demand under Article 374 of the Civil Code for compensation for improvements made on the disputed land and an extension until 30th September 2020 to deliver up vacant possession of the disputed land.
5. By letter of 29th January 2020 and served on 31st January 2020, the claimant's Attorney-at-Law denied that Article 374 of the Civil Code applies to the matter and proposed, among other things, the claimant's willingness to pay the defendant the monetary value of the pillars (which she would leave on the disputed land) by the end of February 2020 and the defendant removal of the entire dwelling house and give up vacant possession of the disputed land by 6th March 2020 following the notice to quit.

[29] The net effect of the defendant's case is that she has acquired an equitable interest in the disputed land as a possessor and should be compensated for the improvements she made to it. Generally, ownership of land and possession go together. The court will attribute possession to the registered landowner, whether in factual control or not. It will be for a party disputing that possession to establish that the landowner does not indeed have or is entitled to possession. However, the claimant has conceded his willingness to relinquish his rights and interest in the dwelling house and pay the defendant for the alleged improvements to the disputed land.

[30] The relevant provisions of the Civil Code, so far as it relates to the rights of an owner vis-s-vis that of a possessor regarding improvements to immovable property, states:

"Section I The right of accession in relation to immovable property

369.

372. When improvements have been made by a possessor with his own materials, the right of the owner to such improvements depends on their nature and the good or bad faith of such possessor.

If they were necessary, the owner of the land cannot have them taken away. He must, in all cases, pay what they cost, even when they no longer exist; except, in the case of bad faith, the compensation of rents issues and profits.

If they were not necessary, and 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 that to the extent of which the value of the land has been augmented.

If, on the contrary, the possessor were in bad faith, the owner has the option either of keeping them, upon paying what they cost on their actual value, or of permitting such possessor, if the latter can do so with advantage to himself without deteriorating the land, to remove them at his own expense. Otherwise, in each case, the improvements belong to the owner, without indemnification. The owner may, in every case, compel the possessor in bad faith to remove them.

373. In the case of the third paragraph of the preceding article, if the improvements made by the possessor be so extensive and costly that the owner of the land cannot pay for them, he may, according to the circumstances and the discretion of the court, compel the possessor to keep the property, and to pay the estimated value of it.

374. In case the party in possession is forced to give up the immovable upon which he has made improvements for which he is entitled to be reimbursed, he has a right to retain the property until such reimbursement is made, without prejudice to his personal recourse to obtain repayment; except in the case of surrender in any hypothecary action, as specially provided for in the Book respecting *Privileges and Hypothecs*."

[31] Consequently, considering the claimant's concessions and the defendant's admissions, the only real issue for resolution would be the value of the improvements and the schedule to pay the compensation and the delivery of vacant possession. In this regard, the claimant had, before filing this claim, made certain proposals to the defendant that appear not to have been pursued. Also, the defendant resisted the claimant's application, essentially seeking the same result as the claimant's proposal. I would therefore grant the claimant's application with costs to the claimant.

Application for an inhibition order

[32] This is the defendant's application of all proceedings concerning the disputed land (the object of the claim) unless and until all matters relating to this claim are determined. However, as intimated before (para [2]), and the reasoning and decision concerning the strike-out application, the court would not need to determine the application, which is dismissed with no order as to costs.

Conclusion

[33] In the circumstances, and for the reasons given above, IT IS ORDERED THAT:

1. The defendant is the sole owner of the wooden dwelling house on the disputed land.
2. The defendant shall remove the dwelling house and vacate the disputed land within 90 days of this order or such other period agreed by the parties.

3. The claimant shall pay the defendant the monetary value (as agreed or determined by a mutually appointed Licenced Quantity Surveyor, whose cost the parties shall bear equally) of the nine concrete pillars (improvements) on the disputed land within 90 days of this order or such other period agreed by the parties.
4. The defendant shall pay the claimant the costs of this application and the associated proceedings, as assessed if not agreed upon.
5. These proceedings are stayed except for giving effect to this order, for which the parties have the liberty to apply.
6. The defendant's application for inhibition is dismissed with no order as to costs.

**Justice Rohan A Phillip
High Court Judge**

By the Court



Dp. Registrar