

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2021/0168

BETWEEN:

HUGH PERINNON

Claimant

And

SYLVANNUS PERINNON

Defendant

Appearances:

Mr. Bapson Ambrose of Counsel for the Claimant

Mr. David Moyston of Counsel for the Defendant

2022: November 2; 8;

2023: February 1.

JUDGMENT

- [1] **INNOCENT, J.:** The parties in the present proceedings are father and son. The claimant is the proprietor of a substantially completed concrete residential structure (the 'house') which is erected on what has been described as "family land". The claimant has no title to the land upon which the house is erected. The defendant presently occupies the house together with the claimant. There is no dispute regarding the ownership of the house.
- [2] A dispute arose between the parties wherein the claimant has sought to exercise his right to the exclusive occupation of the house to the exclusion of the defendant consequent on what he alleged as mistreatment at the hands of the defendant.
- [3] The defendant has refused to vacate the house and claimed the right to occupy the same on the basis of contributions allegedly made by him towards the improvements to physical structure of the house. The defendant also claimed that he was entitled

to remain in occupation the house until such time as he was reimbursed by the claimant for such sums expended in making the improvements to the house which he claimed increased the value of the house.

- [4] It appeared from the evidence that the claimant did not dispute the fact that the defendant made improvements to the house but he denied that the improvements were to the extent described by the defendant and that he agreed to reimburse the defendant for the improvements made to the house.
- [5] The claimant however, alleged that any improvements made to the house by the defendant was done without his knowledge consent or approval. An allegation strenuously opposed by the defendant.
- [6] In the circumstances, the claimant brought the present claim by which he sought an order for possession of the house to the exclusion of the defendant and costs.
- [7] The defendant did not dispute that the claimant commenced construction of the house from his personal income derived from his employment while resident overseas. However, the defendant contended that when he commenced making improvements to the house it was substantially incomplete and uninhabitable; and therefore, the improvements were necessary.
- [8] It was the defendant's case that it was the claimant who requested his assistance in completing the house and making the necessary improvements thereto to make it habitable. The defendant also alleged that in consideration of the improvements made by him the claimant agreed to permit him to occupy the house. It appeared from the evidence that the defendant took up residence at the house prior to the claimant's return to Saint Lucia on or about the year 2018.
- [9] In the premises, the defendant counterclaimed for the improvements which he claimed to have made to the house. The defendant alleged that he expended the sum of approximately \$200,000.00 in making improvements to the house. The claimant filed no reply and defence to the defendant's defence and counterclaim.

- [10] Prior to filing the present claim, the claimant caused a notice to quit to be served on the defendant who in turn maintained that he was a tenant at sufferance and that the notice to quit was defective to the extent that it did not comply with the provisions of the law.
- [11] On 2nd August 2022, the claimant filed an application for certain interim relief. The interim relief sought was in the nature of the remedies provided for under the Domestic Violence (Summary Proceedings) Act and in any event sought to obtain the same relief or result sought in the substantive claim before the court. Therefore, the court declined to grant the interim relief sought. However, the court having recognised the urgency of the claim ordered an expedited trial and accordingly dispensed with the usual case management procedure.
- [12] In light of the pleadings and the evidence of the parties at the trial, the resolution of the following issues appear to be dispositive of the present claim: (1) whether the claimant was entitled to the exclusive possession of the house; (2) whether the defendant had acquired any or any equitable interest in the house which entitled him to remain in occupation; (3) whether the defendant was a tenant at sufferance; and (4) whether the defendant was entitled to compensation or reimbursement for the improvements made to the house.
- [13] Although the defendant did not rely on the doctrine of equitable estoppel it appears that this issue arose tangentially in the course of the trial as part of the defendant's case. Therefore, the court will consider the question of whether the defendant can rely on the doctrine of equitable estoppel to support his claim to an irrevocable license to occupy the house.
- [14] The court may, under the doctrine of equitable estoppel, grant an irrevocable license to an occupier of land which is owned by another. This principle was discussed in

Nicholas Lansiquot v Ignatius Leon and another¹ where Rawlins JA relied on Lord Denning MR in **Inwards v Baker**.² Lord Denning MR said:

“If the owner of the land requests another, or indeed allows another, to expend money on the land under an expectation created or encouraged by the (owner of the land) that he will be able to remain there, that raises an equity in the licence such as to entitle him to stay.”

[15] In **Lansiquot v Leon**, the Court of Appeal also adopted the broader approach to the doctrine of equitable estoppel promulgated by the English High Court in **Fashions Ltd v Liverpool Victoria Friendly Society**.³ This approach was to ascertain whether in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment.

[16] In **Lansiquot v Leon**, Rawlins JA also referred to the decision in **Cherry Cabral v Alice Robinson King**⁴ where it was held that four conditions must be satisfied for an occupier to establish a proprietary estoppel. These conditions were stated to be that the occupier must have incurred expenditure or otherwise prejudiced himself or acted to his or her detriment; the occupier must prove that he or she had some assurance from the owner that caused the occupier to believe that he or she already had or would have obtained sufficient interest in the land to justify the expenditure, so that if the occupier has no such belief and improves the land when he knows that he is merely a tenant, licensee or occupier under an incomplete or revocable contract, he has no equity as a result of his expenditure; the occupier must have been encouraged by the owner, his agent or predecessor in title; the occupier must have acted in reliance on the assurance or encouragement, therefore, mere expenditure with consent does not give rise to an estoppel, and one who voluntarily improves another's land without encouragement or promise of reward does so entirely at his own risk; proprietary estoppel will not arise where its enforcement

¹ [2007] ECSCJ No. 102

² [1965] 1 All ER 446

³ [1979] EWHC Ch 1

⁴ Belize Civil Appeal No. 4 of 1994 (8th September 1994); per Rawlins JA at para 21

would contravene a statute, prevent the exercise of a statutory discretion or excuse the performance of a statutory duty.

- [17] Applying these principles to the present case, the court is not prepared to accept that the defendant acquired any equitable interest in the claimant's property by any proprietary estoppel which conferred on him the right to occupy, ownership or any equitable interest in the claimant's premises. This is clearly the case as shown by the evidence presented at the trial.
- [18] Although the claimant denied having any conversation with the defendant while he was overseas regarding the improvements to the house, he appeared at time to contradict his initial testimony and instead qualified it with the assertion that he had difficulty remembering events because he suffered a brain tumour. In the course of the trial it became apparent to the court that the claimant's memory and ability to recall past events were severely challenged.
- [19] However, notwithstanding that the court is willing to accept that the defendant did in fact obtain the claimant's consent to effect the improvements to the house, the court declines to accept that the claimant agreed to permit the defendant to occupy the house indefinitely in consideration for his carrying out the improvements; and conferred on the defendant any right of occupation equivalent to the acquisition of a propriety or equitable interest in the house.
- [20] The defendant in the present case has failed to demonstrate that he acted to his detriment in the belief that he already owned or acquired a sufficient interest in the house or that he could obtain such an interest by virtue of any promise made by the claimant.
- [21] The court has considered as a whole the evidence presented by the parties at the trial and it does not appear that apart from conferring a right to live in the house, that the claimant had by his conduct, whether by anything said or done, encouraged any belief that the defendant could treat the house as belonging to him or he having acquired an interest in the house.

- [22] The doctrine of proprietary estoppel is based on the elements of a representation or assurance made to the occupier or possessor, reliance on it by the occupier or possessor, and detriment to the occupier or possessor in consequence of their reliance on such representation or assurance.⁵
- [23] In **Kirsten Richardson v Chandra Carr**⁶ where the claimant sought to establish an equitable interest in property The court, relying on the decision in **Re Bashan Deed**⁷ for the proposition that "...where one person A has acted to his detriment on the faith of a belief, which was known to and encouraged by another person, B, that he either has or is going to be given a right in or over B's property, B, cannot insist on his strict legal rights if to do so would be inconsistent with A's belief".⁸
- [24] The following principles can be distilled from the decision of Ellis J. That in order to make out a case for equitable estoppel a claimant must establish certain conduct of the claimant, certain conduct of the defendant and certain qualities of the subject matter. In respect of the conduct of a claimant, the claimant must have acted to his detriment upon an assumption or expectation that a particular legal relationship existed or would exist between the claimant and the defendant or that the claimant would acquire some interest in the defendant's property.
- [25] In respect of the conduct of a defendant, the claimant must have induced the defendant to adopt the assumption or expectation and encouraged the detriment of the claimant or at least failed to deny the assumption or expectation with knowledge that the claimant was relying on it to the claimant's detriment.
- [26] As regards the subject matter, it must be clear that the assumption or expectation in respect of it was one that defendant could lawfully satisfy. In addition to general proof of detriment, the claimant must also prove that in incurring this detriment, he

⁵ Tharn v Major

⁶ [2013] ECSCJ No. 55

⁷ (1986) 1 WLR 11 at 1503

⁸ Per Ellis J at para [22]

acted in the belief that he already owned a sufficient interest in the property to justify the detriment or that he would obtain such an interest.⁹

- [27] In the present case, the claimant has provided no evidence that he acted to his detriment in the belief that he already owned or acquired a sufficient interest in the house or that he could obtain such an interest based on any representation or promise by the claimant to that effect.
- [28] In the court's view, on the evidence presented, it seems only fair to accept that the claimant, through an act of benevolence simply agreed to allow the defendant to occupy the house rent free. To that extent the defendant was merely a gratuitous licensee.
- [29] In the case of **Kenyatta Allain v Trevor Allain**¹⁰ the defendant had entered and taken possession of certain premises with the permission of the deceased proprietor. He was given notice to quit the premises by the representative of the deceased's proprietor's estate. The defendant failed to comply with the notice to quit the premises. The defendant claimed to have expended money on improvements to the premises and refused to give up possession unless and until he was reimbursed for the value of the improvements made to the premises. The court in deciding the issues of the nature of the defendant's occupation of the premises and whether he was entitled to remain in possession until compensated by the improvements held that the defendant had been given permission by the deceased proprietor and that such license had been terminated at the death of the deceased proprietor or at the latest by the issuance of the notice to quit.
- [30] In the premises, the court in **Allain v Allain** held that the defendant had no basis for remaining in occupation of the premises. In that case the court also concluded, as does the court in the present case, that the defendant's right to occupy the premises was based on the agreement that the defendant could repair the premises and stay

⁹ Per Ellis J at paras 23-27

¹⁰ [2019] ECSCJ No. 20

in it, but there was no promise or agreement that he would be reimbursed for those repairs or improvements. Accordingly, the court found that in light of these conclusions the question of promissory estoppel did not arise.

[31] In **Lansiquot v Leon** the Court of Appeal found that the improvements were such that they could not be removed without causing deterioration to the land. In addition, they also found that the respondents had expended substantial sums on these improvements. Therefore, in keeping with Article 372 they found that it was only fair to order the appellant to keep the improvements made by the respondent but after first paying for them at their actual value as determined by an assessor appointed by agreement or by the court.¹¹

[32] The Court of Appeal also held applying Article 1515 of the Civil Code, that persons holding real property by sufferance of the owner, without lease, are held to be lessees who are bound to pay the annual value of the property.¹² It was on that basis that the Court of Appeal declared that the appellant was entitled to possession of the property, and accordingly, the respondents were to give up possession of the land to him by 1st May 2008 and ordered that the appellant was entitled to keep the improvements made by the respondents, the appellant, upon the day on which the respondents were ordered to give up possession pay to them the actual value of the improvements.

[33] In the case of **Harris Stephen and another v Agatha Sonson**¹³ the appellants held that they were entitled to remain on the disputed property until certain improvements which they alleged they carried out in good faith were paid for by the respondent. The trial judge had ordered that the appellants vacate the respondent's property forthwith and that they were not entitled to be compensated for the improvements made. The appellants appealed on the ground that the trial judge erred in failing to hold that the appellants were entitled to remain in possession of the land until payment of compensation. They also claimed as the defendant in the present case

¹¹ At para [31]

¹² At para [33]

¹³ [2008] ECSCJ No. 8

has claimed, that the trial judge ought to have dismissed the respondent's claim for possession since the appellants who were tenants at sufferance had not been given valid notice to quit.

- [34] Consistent with the Court of Appeal's findings in the above-cited case, this court finds that any right enjoyed by the defendant to occupy the house had not been elevated to the right of usufruct. Therefore, in the absence of usufructary rights, and in the face of grant of permission from the claimant, the rights enjoyed by the defendant was not that of a tenant at sufferance but that of a bare licensee.¹⁴
- [35] The court in **Stephen v Sonson** went on to consider the rights of a tenant at sufferance and adopted the reasoning and approach of Rawlins JA in **Lansiquot v Leon** by ordering that the appellants give up possession of the property on or before 1st May.
- [36] In the present case, the defendant claimed to be a tenant at sufferance. Assuming that this was in fact in the case, then the provisions of Article 1515 of the Civil Code would come into operation and the provisions of Article 1544 and not 372 would be applicable. In any event, the defendant's assertions with respect to his tenancy at sufferance is in direct conflict with any assertions made by him that relate to the acquisition of any right to occupy the house on equitable grounds. In addition, it did not appear from the evidence that there was any contractual agreement between the parties pursuant to which the defendant took possession of the house in his own right. Any such assertion made by the defendant would have ran contrary to his averment that he was a tenant at sufferance.
- [37] Therefore, assuming that the court found that the defendant was a tenant at sufferance as he claimed, then his position with respect to the improvements which he made could not be governed by the provisions of Article 372 but regulated by the provisions of Article 1544 of the Civil Code.

¹⁴ At para [15]

[38] In **Theresa Estephane and another v Edison Peter**¹⁵ the appellants claimed reimbursement for the costs of improvements to land owned by the respondent or alternatively conveyance of the property to them of the estimated value, possession and damages. The issue before the trial judge was whether Article 372 of the Civil Code applied. The trial judge held that the appellants were not claiming the land "*animus domini*" and in his judgment Article 372 was not available to them. He therefore dismissed their claim. The main ground of the appellants' appeal was that the trial Judge erred in holding that Article 372 was not available to the appellants. The contention was that having found as he did that the appellants were possessors in good faith and that the improvements made to the land were necessary improvements, the learned Judge ought to have found that paragraph 2 of the Article applied. The respondent did not question the Judge's finding that the appellants were possessors in good faith nor that the improvements made to the land were necessary improvements but submitted that Article 372 was not applicable in view of Article 367 of the Civil Code.

[39] In **Stanley Black's** case Peterkin J.A. quoted the following passage from the judgment of Lewis J in **Simeon v Beaubrun**¹⁶ "In the case of **Chenic Hardware Co. v Laurent**¹⁷ it was held that Article 417 of the civil Code of Quebec (our 372) applies in general, only to third parties who possess *animo domini* for themselves and on their own account, in good or bad faith, and does not apply to those who possess by virtue of a contract, such as farmers, lessees, usufructuaries, and the like. In those cases the rights and obligations of the parties are governed by the principles applicable to the contracts by virtue of which they possess. The position of lessees with respect to improvements made by them is regulated by Article 1544 of the Civil Code (corresponding to the Quebec Civil Code Article 1640)".

[40] The court found that the passage cited above made the distinction between those whose possession was not by virtue of a contract with the owner in which case

¹⁵ [1989] ECSCJ No. 8

¹⁶ High Court action No. 25 of 1965, Saint Lucia

¹⁷ I.R.J.278, noted in Beauchamp General Digest, vol. 11 Col 1358 No. 36a

Article 372 applies and those who possess by virtue of a contract which would govern the relationship between the possessor and the owner. The court held that the finding that the appellants did not fall within the category of non-contract possessors only to whom Article 372 applies was consistent with the position taken by all the parties that the appellants are tenants by sufferance.

- [41] The court also found on the basis of Article 1515 of the Civil Code that a contract is deemed to exist between the parties and the relationship between them governed by the law applicable to leases. Therefore, they upheld the decision of the learned Judge that Article 372 was not applicable and dismissed the appeal.
- [42] A similar approach to this issue was taken in the case of **Maura Desir v Mc Gregor Agdomer**.¹⁸ The court also relied on the decision of **Jerome Simeon v Clive Anthony Beaubrun**¹⁹ and confirmed in **Black v The Mayor and Citizens of Castries St Lucia**²⁰ for the proposition that the position of lessees with respect to improvements made by them is regulated not by Article 372 but by Article 1544 of the Civil Code.²¹
- [43] The court in **Desir v Agdomer** having found that Article 1544 which provided that the lessee has a right to remove, before the expiration of the lease, improvements and additions which he has made, provided he leaves the property in the state in which he receives it; nevertheless, if the improvements or additions he incorporated with the thing leased, with nails, lime, or cement, the lessor may retain them on paying the value found that the defendant in that case had acted in good faith was entitled to compensation for improvements.
- [44] The court does not readily or at all accept the defendant's assertion that he was a tenant at sufferance, particularly in light of the fact that the defendant did not overtly challenge the claimant's title to the house and asserted no right to the ownership,

¹⁸ [2000] ECSCJ No. 258

¹⁹ 17th January 1956

²⁰ No 4 of 1877

²¹ At para 19

occupation or possession thereof. In the circumstances, the court will now turn to consider whether the defendant can assert any rights as a tenant at sufferance in occupation of the disputed premises.

[45] Article 1515 of the Civil Code provides that persons holding real property by sufferance of the owner, without lease, are held to be lessees who are bound to pay the annual value of the property. Such holding is regarded as an annual lease or hire terminating on the first day of May of each year. It is subject to tacit renewal and to all the rules of law applicable to leases. Persons so holding are liable to ejectment for non-payment of rent for a period exceeding three months, and for any other causes for which a lease may be rescinded.

[46] The issue which now arises is whether the claimant could have terminated the tenancy at sufferance in the manner in which he did. The court has examined the notice to quit that was served on the defendant at the behest of the claimant and has found that it was not in compliance with the law.

[47] Therefore, the court agrees with the defendant's assertion that the notice to quit was indeed defective and hence not competent to terminate the tenancy in which case the defendant was not obliged to act in accordance with it. The notice to quit was by letter dated 2nd June 2022 which required the defendant to immediately quit and deliver up vacant possession of the house.

[48] Article 560 of the Civil Code provides that when the term of a lease is uncertain, or the lease is verbal, or presumed as provided in article 1515, neither of the parties can terminate it without giving notice to the other, with a delay of three months, if the rent be payable at terms of three months or more; if the rent be payable at terms of less than three months, the delay is determined according to article 1546. The whole nevertheless subject to that article and to articles 1515 and 1556.

[49] Article 1546 of the Civil Code provides that the lease or hire of a house or part of a house, when no time is specified for its duration, is held to be annual, terminating on the first day of May of each year, when the rent is at a rate for a year.

- [50] The court has already found that there was no tenancy created in favour of the defendant in respect of which he held over which accordingly gave rise to a tenancy at sufferance.²² Therefore, there being no tenancy at sufferance the defendant cannot rely on any defect in the notice given to him to vacate the claimant's premises.
- [51] The court has determined that the claimant is entitled to possession of the house. The defendant's occupation of the house as licensee was terminated upon the service of the notice to quit. Therefore, on the basis of the foregoing provisions of the Civil Code examined above, the court finds that the claimant is entitled to the immediate possession of the house to the exclusion of the defendant.
- [52] The defendant's assertion that he has no alternative place to live has not eluded the court in its consideration of the matter. In light of the evidence in that regard, the court is of the view that the defendant is entitled to a reasonable period of time within which to seek alternative accommodation. The defendant in this case was clearly not a trespasser.
- [53] However, the court is also cognisant of the fact that the defendant after having gratuitously made improvements to the house had occupied the same for a considerable length of time rent free. It cannot be the object of the law of equity to permit someone to gratuitously make improvements to a person's house which they are permitted to occupy rent free as a licensee and in the absence of any express contract or the existence of any promissory estoppel wherein he acted on some promise made by the owner that he would be reimbursed for his improvements, to set up equitable principles to deny the owner of the exclusive occupation of his home.
- [54] A lessee has a right to remove, before the expiration of the lease, improvements and additions which he has made, provided he leaves the property in the state in

²² *Heskeith Esprit v Anthony Meade* [2002] ECSCJ No. 185 per Rawlins J. at paras 24-29; *Errington v Errington and Another* [1952] 1 All ER 149

which he received it; nevertheless, if the improvements or additions be incorporated with the thing leased, with nails, lime, or cement, the lessor may retain them on paying the value.²³ However, in the present case, the court having found that there was no tenancy at sufferance, then the provisions of Article 372 of the Civil Code ought to apply in relation to the improvements made by the defendant.

[55] The court finds that the work performed by the defendant on the house amounted to improvements and that such improvements were of a nature that they became incorporated with the house and therefore cannot be removed without causing damage to the existing structure or rendering uninhabitable and incapable of use. However, in light of the findings which the court has made herein the claimant is entitled to retain the improvements without paying their value.

[56] Although the court finds that the improvements made to the house by the defendant were done in good faith and were necessary. However, the defendant is not entitled to recover the value of those improvements.

[57] In any event, the defendant was unable to prove the value of the improvements which he has made. Therefore, it would have become necessary to obtain the opinion of a quantity surveyor to value the improvements made by the defendant. In addition, it appears that there is conflicting evidence regarding who undertook the operation of the works resulting in the improvements and who made the financial outlay for some of the improvements.

[58] For the reasons set out in this judgment the court's order is as follows:

1. Judgment is entered for the claimant. The claimant is entitled to possession of the house to the exclusion of the defendant.
2. The defendant's counterclaim is dismissed.

²³ Civil Code Article 1544

3. The defendant shall give up vacant possession of the house to the claimant within 30 days of the date of this order.
4. Each party shall bear their own costs of the proceedings.

Shawn Innocent

High Court Judge

By the Court



Dp. Registrar