

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(Civil)**

CLAIM NO.: SLUHCV2016/0273

BETWEEN:

**ANNE MARTIAL
representative of the Estate of Bernard Williams
VERONICA WILLIAMS**

Claimants

and

JONAS MONLOUIS

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Ms. Diana Thomas for the Claimants

Ms. Alberta Richelieu for the Defendant

2020: January 22;
February 13; (Written submissions)
September 4.

JUDGMENT

[1] **CENAC-PHULGENCE, J:** The claimants, Mr. Bernard and Mrs. Veronica Williams (“together the claimants”) filed this claim against Jonas Monlouis (“Mr. Monlouis”) for trespass. Mr. Bernard Williams (“Mr. Williams”) having passed away, Ms. Anne Martial (“Ms. Martial”) executor of his estate, was substituted as the first claimant.¹ The claimants claim is essentially that they are the owners of Block and Parcel

¹ See Grant of Probate dated 18th July 2018 at page 55 of Trial Bundle B.

1020B 234 (“the Road”) and that Mr. Monlouis, the owner of Block and Parcel 1020B 230 (“Parcel 230”) has encroached on the Road by the construction of a fence thereon.

The Claim

- [2] The claimants bought a parcel of land, Block and Parcel 1020B 201 (“Parcel 201”) by virtue of a Deed of Sale executed on 23rd September 2003 and registered at the Registry of Lands on 1st October 2003 as Instrument Number 4236/2003 (“the 2003 Deed of Sale”).²

- [3] The claimants subdivided Parcel 201 into four lots (Parcels 230, 231, 232 and 233) with Parcel 234 (“the Road”), leading to Lots 2 and 3 as shown by Plan of Survey of Mr. Allan Hippolyte, Licensed Land Surveyor, dated 16th March 2005 and lodged at the Survey’s Office on 15th June 2005 as Drawing No, VF1756B, Record Number SM223/2005 (“the Hippolyte Survey”).³

- [4] By Deed of Sale executed on 26th September 2005 and registered at the Land Registry on 24th October 2005 as Instrument Number 5523/2005 (“the 2005 Monlouis Deed”), the claimants sold Lot 1 (Parcel 230) to Mr. Monlouis.

- [5] The claimants allege that Mr. Monlouis removed the pegs which defined the common boundary between the Road and Parcel 230 and erected a fence on a portion of the Road and has been in unlawful occupation thereof.

- [6] The claimants allege that they have asked Mr. Monlouis on several occasions to remove the fence and replace the iron pegs but he continues to remain in unlawful occupation of the Road. The claimants claim that they have not been able to construct a road leading to Lots 2 and 3 in accordance with the dimensions approved by the Development Control Authority (“DCA”) which affects their ability to sell the said lots.

² Pages 33-38 of Trial Bundle B.

³ Page 41 of Bundle B.

- [7] As a result, the claimants say they have suffered loss and damage. They claim the following relief: (a) a declaration that they are co-owners of and entitled to immediate possession of the Road and that Mr. Monlouis was never the owner of any portion of the Road; (b) that Mr. Monlouis deliver up possession of the Road to the claimants forthwith; (c) that Mr. Monlouis remove the structures which he has erected on the Road and replace the boundary pegs; (d) that Mr. Monlouis be restrained whether by himself, his servants or agents from entering or remaining on the Road except for the purpose of pulling down and removing the structures which he erected thereon, (e) damages for trespass; and costs.

The Defence

- [8] Mr. Monlouis denies any unlawful occupation of the Road and says even if that were the case, it would be as a result of representations made by the claimants to him as to the southern boundary of Parcel 230. He further avers that he acted to his detriment on the basis of the assurance that he was acquiring a right over the portion of the Road which it is said he occupies unlawfully. As a result, Mr. Monlouis says the claimants are estopped from pursuing any claim for unlawful occupation of the Road.

The Issues

- [9] The issues for trial are (a) whether Mr. Monlouis has trespassed on the Road and if so, the extent of the trespass (b) whether the claimants are estopped from bringing this claim and (c) if not, the amount of damages the claimants would be entitled to.

The Evidence

Mrs. Veronica Williams

- [10] Mrs. Williams gave evidence that she and her now deceased husband Mr. Williams ("together referred to as the Williams") purchased Parcel 201 in 2003, the said parcel being shown on a Plan of Survey of Mr. Rufus Henry and lodged at

the Surveys Department on 28th June 2000 as Drawing Number VF1350R, Record Number SM36/2000.

- [11] In 2005, the Williams' decided to subdivide Parcel 201 which was subdivided into four lots and a road. The survey to facilitate the subdivision was done by Mr. Hippolyte on 16th March 2005 and was lodged on 15th June 2005 ("the Hippolyte Survey"). Parcel 230 one of the resulting divided parcels measured 9,153 square feet on which there was a building used at the time as a retail MiniMart. Parcel 234 was the approved access road.
- [12] After obtaining approval from the DCA, the Williams' sought to sell the lots and sometime around the middle of 2005, Mr. Monlouis viewed the property and expressed interest in purchasing Lot 1 which is Parcel 230. Mrs. Williams says at that time he was given a copy of the Hippolyte Survey. Parcel 230 was sold to Mr. Monlouis and the Williams' continued to own Parcel 234 which is the Road.
- [13] Mrs. Williams' evidence is that Mr. Monlouis sometime in 2008 remodelled and converted the building on Parcel 230 into a residential dwelling including a balcony extension built very close to the boundary peg and main road. Sometime in December 2015, Mr. Monlouis' began construction of a fence after removing and relocating the survey pegs between Parcel 230 and the Road. She says he encroached about 6 feet into the Road and blocked the access to the back lots. Mrs. Williams says she approached Mr. Monlouis and requested that he stop the erection of the fence as it was encroaching and blocking the Road and return the pegs to their original position to which she says Mr. Monlouis responded, "I will fence you out."
- [14] Mrs. Williams says they complained to DCA and one of its building officers was sent to the property. That building officer informed the workers that they were committing an illegal act by building on the Road and instructed them to stop and requested that they ask Mr, Monlouis to contact the DCA. Mr. Monlouis did not stop the erection of the fence.

[15] Mrs. Williams says to determine whether Mr. Monlouis had encroached and if so the extent of the encroachment, the services of Licensed Land Surveyor, Mr. Stanislas Auguste ("Mr. Auguste") were engaged and he was paid \$1,000.00.⁴ Mr. Auguste submitted a survey plan dated 7th March 2016 which showed an encroachment on the Road of 612 square feet ("the Auguste Survey").⁵ However, Mr. Auguste could not be found and the services of another licensed land surveyor, Mr. Tennyson Gajadhar ("Mr. Gajadhar") were engaged. He submitted a survey plan dated 22nd March 2019⁶ which showed that Mr. Monlouis had encroached on the Road some 641 square feet ("the Gajadhar Survey"). Mr. Gajadhar also re-established the survey pegs and was paid \$2,400.00.⁷

[16] Mrs. Williams says they incurred mediation costs of \$400.00 however the mediation was unsuccessful. She therefore says they are entitled to be compensated in the sum of \$3,800.00 being the mediation costs and the costs of the Auguste and Gajadhar Surveys.

[17] Cross-examination of Mrs. Williams centered on the access road and whether it was still 6.1 metres as indicated on the survey given the encroachment. Mrs. Williams admitted that she did not see Mr. Monlouis move the boundary pegs. Nothing was asked of Mrs. Williams about she or her husband having shown Mr. Monlouis or his cousin, Gabinus Victor ("Gabinus") the southern boundary of Parcel 230.

Ms. Anne Martial

[18] Ms. Martial is the executrix of the estate of Mr. Williams. She gives evidence that when she found out about the encroachment by Mr. Monlouis, she arranged for their attorney to send a letter to Mr. Monlouis asking that he remove the structure

⁴ See page 44 of Bundle B.

⁵ See page 43 of Bundle B.

⁶ See page 45 of Bundle B.

⁷ See receipt dated 22nd March 2019 at page 46 of Bundle B.

he had constructed on the Road and to replace the survey pegs⁸ which was met with a letter from Mr. Monlouis' lawyer denying the encroachment and requesting that the Williams' prove the encroachment through an expert.⁹ A response was then sent by the claimants dated 29th March 2016 enclosing the Auguste Survey.¹⁰

[19] Ms. Martial says that she had a valuation of the property in the area to be carried out by Dominic Mathurin who produced a report dated 18th March 2018. That report showed that Parcels 231 and 233 are valued at \$8.00 and \$9.00 per square foot respectively. She says that Mr. Monlouis' encroachment has prevented them from selling these two parcels as the Road has become too small and reduced by 621 square feet as a result.

[20] Ms. Martial says that on 28th and 29th September 2019 at about 11:56 a.m. Mr. Monlouis came onto their property with workmen as a result of which a letter dated 30th September 2019 was written and personally served on Mr. Monlouis. She says they paid \$200.00 for service of this letter.

[21] In cross-examination, Ms. Martial explained that due to the fence being on the Road (Parcel 234), they are not allowed by law to sell the lots. She provided no basis for this statement. She was pressed again for a reason for this assertion and she responded that according to the Development Control Authority and Planning, there needs to be a certain width of the road and because of the fence of the Road, they are unable to construct the road. Ms. Martial admitted to not being present when her father showed Mr. Monlouis the boundary of Parcel 230 or when Mr. Monlouis bought it.

Mr. Tennyson Gajadhar

⁸ Letter dated 20th January 2016 at pages 60-61 of Bundle B.

⁹ Letter dated 25th January 2016 at pages 62-63 of Bundle B.

¹⁰ See page 64 of Bundle B.

- [22] Mr. Gajadhar, licensed land surveyor and court appointed expert¹¹ says he was engaged by the claimants on or about 1st March 2019 to carry out a survey of Parcel 234 (the Road) to determine whether there was any encroachment and to re-establish the survey pegs along the Road where the pegs were missing. Mr. Gajadhar says he served the requisite notices of intention to survey and attended the site on 21st March 2019.
- [23] Upon carrying out the survey, Mr. Gajadhar says he found that the occupier of Lot 1 (Parcel 230) on the Hippolyte Survey had extended his fence beyond his boundary and constructed a fence on the Road enclosing an area of approximately 59.5 square metres or 641 square feet. Mr. Gajadhar says he relied on his instruments and the Hippolyte Survey in the conduct of this survey and documented his findings and produced the Plan of Survey of the Road and the encroachment.
- [24] Mr. Gajadhar confirms by his evidence that he received instructions from the claimants and that he received no other instructions. He charged \$2,400.00 and was paid in full.
- [25] Mr. Gajadhar in cross-examination said that notice of intention to survey was given to Mr. Monlouis contrary to what he said, and he recalls Mr. Monlouis being there on the day and then he left. Mr. Gajadhar accepted that the width of the access road in both his and Mr. Hippolyte's survey is the same - 6.1 metres. Mr. Gajadhar confirmed in cross-examination that the minimum width of an access road for four to five lots is 6.1 metres or 20 feet. Counsel asked whether the road is still 6.1 metres to which he responded, 'Yes, but there is an encroachment.'

Mr. Jonas Monlouis

- [26] Mr. Monlouis' evidence is that about March 2004, in accordance with his deceased's mother's wishes that he return to Saint Lucia, he asked his cousin

¹¹ See Case Management Directions dated 8th July 2019.

Gabinus to find him a piece of property with an existing structure that he could purchase. He says about a month later Gabinus informed him that the Williams' had a property for sale.

- [27] In March 2005, Mr. Monlouis returned to Saint Lucia and went to see the property which is Parcel 230 and which the Williams' offered for sale at a price of \$135,000.00. He says since he had to return to the United States of America (USA) the following day, he had his son draw up an agreement for sale. He says on the day the contract was signed, Mr. Williams showed him the land and its boundaries which he accepted. He says Mr. Williams indicated that the property extended to a concrete retaining wall located on the southern part of the land. Mr. Monlouis said on that date, he asked Mr. Williams whether there was a need to survey the property and he indicated that the land had recently been surveyed by Mr. Hippolyte and that where he showed him was the area Mr. Hippolyte had surveyed and he showed him the boundaries. Mr. Monlouis says as a result he did not bother to have the land surveyed.
- [28] Mr. Monlouis says he obtained a loan from St. Lucia Mortgage Finance Company to purchase Parcel 230 which was approved in August 2005. He says the loan was approved on the basis of the area shown by Mr. Williams when the bank came to inspect the property.
- [29] Mr. Monlouis returned to Saint Lucia in September 2005 to finalise the loan and then he says he returned to the USA leaving Parcel 230 in the care of the claimants who were responsible for its care and maintenance. He says the claimants used the pre-existing structure on Parcel 230 for storage free of charge. Mr. Monlouis says he had a cordial relationship with the claimants and the keys to the building remained in their possession until he returned to Saint Lucia in August 2008.

- [30] Mr. Monlouis' evidence is that he entered into a contract with one Mr. Vincent Pierre who was recommended by Mr. Williams to undertake refurbishment of the existing structure on Parcel 230. Mr. Monlouis says that Mr. Williams made suggestions to him about the design and remodelling of the said structure and also supervised the work. By Mr. Monlouis' account, the parties had a cordial relationship and Mr. Williams even served as a witness to the contract with the contractor, Mr. Pierre.
- [31] In March 2009, Mr. Monlouis returned to Saint Lucia to check on the progress of the works and being unsatisfied with the work, dismissed Mr. Pierre, and along with some other workers whom he hired completed the structure. On completion of the structure, he then returned to the USA and the claimants continued to supervise the property for him. He says at that time in March 2009 there was no mention of an encroachment and Mr. Williams had suggested that he fence the property then and in several telephone conversations thereafter.
- [32] In September 2015, Mr. Monlouis says he returned to Saint Lucia to permanently reside and decided to take Mr. Williams' advice and fenced the entire property in accordance with the description Mr. Williams had provided him from inception. He says Mr. Williams in the presence of Mrs. Williams informed him that there may have been an encroachment after the fence was erected and asked for \$10,000.00 for the said encroachment.
- [33] He says at that point he obtained a copy of the Hippolyte Survey and it confirmed that Parcel 230 bounded with the wall that Mr. Williams had erected and had indicated to him. He says he brought the survey plan to the Williams' and was of the view that all was well so he returned to the USA at the end of October 2015 and returned in January 2016 whereupon he was served with the letter dated 20th January 2016 regarding the alleged encroachment. He says he was confused as he thought he had built within his boundary which he was entitled to. He says in relation to the Gajadhar Survey that he only had sight of it in this claim and makes

the point that it is un-lodged and unsigned by the surveyor. He says he relied on the description of Parcel 230 given to him and what was outlined in the Hippolyte Survey. Mr. Monlouis urges that the claimants' claim should be dismissed with costs.

[34] Mr. Monlouis' cross-examination could best be described as combative as he was uncooperative at times and not very direct with his responses.

[35] Mr. Monlouis said in cross-examination that he was aware of a survey plan for Parcel 230 and that he was familiar with it. He was asked about the date he came to Saint Lucia in 2005 in reference to the survey which is 16th March 2005 and he said it was about that time or earlier. He agreed that the survey was lodged on 15th June 2005 and would not have officially been available prior to that date.

[36] When asked whether his statement at paragraph 8 of his witness statement was correct that the loan for the purchase of Parcel 230 had been approved on the basis of the area shown by Mr. Williams, Mr. Monlouis replied that all he knew was that the bank gave him a loan of \$121,000.00. Asked further whether he recalled the bank going to inspect the property and relying on what Mr. Williams showed them, he said he was saying what the bank told him. When he was told that he could not say with certainty that the bank had inspected the property and Mr. Williams showed them the area of the property, he replied, "Well they must have lied to me."

[37] When it was pointed out to Mr. Monlouis that the property he bought was described in the 2005 Monlouis Deed and that it referred to a survey which was the Hippolyte Survey he agreed. However, when asked whether in March 2005 he could have said with certainty what he bought, he said yes based on what he was told. When he was told that he signed the 2005 Monlouis Deed without knowing what was in it, he said "basically yes" and "I relied on my lawyer". When he was

told that he could not blame Mr. Williams for what has happened, he answered very tersely, "For what? For showing me the wrong boundary?"

[38] When the Gajadhar Survey was put to Mr. Monlouis he said he did not understand anything it was saying and then he said there are other surveys something which is not addressed in his evidence in chief at all. Mr. Monlouis said the fence was a chain link fence about five feet high. It had no rebar; he had added no concrete and he did not know whether it had any other form of steel; he could not say whether the fence could be easily taken down or how long it would take. Mr. Monlouis in answer to a question as to whether when he built the fence on the 'retaining wall' there were any survey pegs on the wall, said he never saw a survey peg. He also said that he never saw any survey pegs at the southern end of Parcel 230 and he made no effort to establish the survey pegs. He admitted that he did not rely on the Hippolyte Survey. This despite the fact that he clearly knew it existed.

[39] It was put to Mr. Monlouis that he really did not know whether he was encroaching, and he said no he did not. He was then told that he did not care whether he was encroaching. He did not directly answer the question but simply said he had been in court for three years. He was asked the question again and this time he said, "I relied on his words. He was an older gentleman. Everything was done in my absence." He also said that Mr. Williams should have checked to make sure he gave him the right boundary. Mr. Monlouis insisted that Mr. Williams did show him the concrete wall as the southern boundary.

Mrs. Marjorie Monlouis ("Mrs. Monlouis")

[40] Mrs. Monlouis' evidence is that she was aware that her husband, Mr. Monlouis was in communication with Gabinus who referred the property to him. Mrs. Monlouis' evidence highlights nothing new and confirms Mr. Monlouis' evidence in large part. She does say that she visited Saint Lucia in 2009 to see the renovated property and that she was quite impressed with the work done on the property.

Mrs. Monlouis says as far as she knows, the boundary extended to the concrete wall that was erected by Mr. Williams. Mrs. Monlouis does not say when in 2009 she visited but it is curious to note that when Mr. Monlouis visited in March 2009, he was not at all pleased with the renovation/remodelling works which he saw.

- [41] In cross-examination, Mrs. Monlouis admitted that the evidence which she gave was based on what her husband had told her and she had no personal knowledge of any of it. No weight can therefore be placed on her evidence which adds nothing to the defendant's case.

Mr. Gabinus Victor ("Gabinus")

- [42] Gabinus is Mr. Monlouis' cousin and was the one who referred Mr. Monlouis to the Williams' for sale of Parcel 230 after he expressed his interest in purchasing property in Saint Lucia in March 2004. He says he was informed by Mrs. Williams that her husband, Mr. Williams had property for sale and he advised Mr. Monlouis accordingly. After speaking with Mr. Monlouis, he decided to view the property and noticed a pre-existing structure on the land as well as a retaining wall on the south side of the property. He says both Mr. and Mrs. Williams were present when he went to view the property and he recalls specifically asking Mr. Williams where the boundaries were and he indicating that the boundary ended at the retaining wall located on the south side of the property. He then called Mr. Monlouis to advise of the suitability of the property.
- [43] In March 2005, he says Mr. Monlouis visited Saint Lucia and visited the property and decided to purchase the lot. Gabinus expressed great surprise that the Williams' are alleging that Mr. Monlouis encroached on their property as he recalls Mr. and Mrs. Williams indicating from inception that the boundary ends at the retaining wall to the south of the property.

- [44] At first in his witness statement, he says it was Mr. Williams who confirmed the southern boundary ending at the retaining wall¹² and then he says later in the same witness statement that it was both Mr. and Mrs. Williams who did.¹³ In cross-examination, Gabinus seems to suggest that it was both Mr. and Mrs. Williams who showed him the boundary for Parcel 230.
- [45] Gabinus, in his witness statement, says that after he informed Mr. Monlouis about the prospective land for purchase, he went to view the property. But in cross-examination he said he went to see the property before he called Mr. Monlouis. When it was pointed out to him that he had earlier said that when he went to view the property he had already spoken to Mr. Monlouis, he said that he spoke to him before and after because they were in constant communication. In cross-examination, when the Hippolyte Survey was put to him, he said he was not aware of a survey then or now.
- [46] When it was put to Gabinus that given the fact that he did not know about the survey, he could not say for sure what Mr. Monlouis actually bought, he said he knew what he was going to buy but not what he eventually agreed to buy.

Preliminary Issue

Hearsay evidence

- [47] The claimants in their skeleton arguments submit that Mr. Monlouis provides inadmissible hearsay evidence to show that Mr. Williams gave him permission to put up the fence by saying that it was Mr. Williams who showed him the boundary. The defendant disagrees and says in any event the evidence is admissible pursuant to section 50 of the **Evidence Act**. I agree with the defendant's submissions. The evidence is Mr. Monlouis simply recounting what transpired. There is no direct evidence of what was said to him by Mr. Williams. In any event,

¹² Paragraph 7 of Witness statement (WS)- Page 32 of Bundle B.

¹³ Paragraph 11 of WS-Page 32 of Bundle B.

the claimants never raised any objections to this evidence being given by Mr. Monlouis at the trial and cannot now seek to do so in written submissions.

Trespass

[48] Trespass refers to a person's unlawful presence on land in the possession of another even where no actual damage is done. A person trespasses if he places or fixes anything on the land. In order to prove trespass, it must be shown that there is an intention to interfere with the right of possession. It is for the trespasser to justify the trespass to avoid the consequences, for example by showing that he had a licence to occupy the property or a legal right of way across the land. If the defendant intends to enter the land on to which he trespassed, it is no defence that he mistakenly thought that it was his own land or that he had authority to be there.¹⁴

[49] The claimants have proved by way of the Gajadhar Survey that there is an encroachment on the Road amounting to 641 square feet. No evidence to the contrary was adduced by Mr. Monlouis. Counsel for Mr. Monlouis, Ms. Alberta Richelieu ("Ms. Richelieu") suggests that the fact that Mr. Gajadhar in cross-examination agreed that the width of the road is still 6.1 feet shows that there is no encroachment, as if there was then the road ought to be smaller. However, this is flawed because the road remains as demarcated. As Mr. Gajadhar said, it is the same width but Mr. Monlouis has encroached to the extent of 641 square feet. I accept the Gajadhar Survey and the fact that it shows an encroachment of 641 square feet by Mr. Monlouis on the Road which is owned by the claimants.

[50] Mr. Monlouis' defence is that he relied to his detriment on representations made by Mr. Williams as to where the southern boundary was. He relies, it would appear, on the doctrine of proprietary estoppel to suggest that he acquired a right to the 641 square feet. Mr. Monlouis' claim is that he was given a description of Parcel 230 and shown its boundaries by Mr. Williams in March 2005 and then in

¹⁴ *Conway v George Wimpey & Co Ltd* [1951] 1 All ER 363 at 366–367, CA, per Asquith LJ.

March 2009, Mr. Williams suggested that he fence the property (meaning Parcel 230). He never said Mr. Williams told him to put his fence on the concrete wall, row of blocks or 'retaining wall' as it has been referred to. In 2015, Mr. Monlouis decided to fence in accordance with the description which Mr. Williams had given him.

Proprietary estoppel

[51] Proprietary estoppel usually arises when the representation consists of a representation about, or a promise of, an interest in land. In the Court of Appeal decision of **Mathilda Nelson v Alexis Alcide**,¹⁵ the court stated that proprietary estoppel is an equitable doctrine rooted in the fundamental principle of unconscionability. Speaking of the elements required to prove proprietary estoppel, Farara JA [Ag.] said:

“[48] ...the question of whether it would be unconscionable for a court to allow the promisor to resile from the assurance or representation made or given to a claimant, is to be approached in the round, as part of a broad inquiry. It is not to be approached in a compartmentalised way, whereby each element or ingredient of proprietary estoppel is considered as free-standing, leading to a court accepting or rejecting the claim where it finds that one element may not have been fully made out on the evidence.

[49] It is well-settled that to found a claim to property on proprietary estoppel, three elements or ingredients must be proved. These are: (i) there must be an assurance or representation, whether express or implied, that the claimant has or would have an interest in the land of the defendant or his or her estate; (ii) reliance by the claimant on that assurance or representation; and (iii) the claimant must act to his or her detriment in reliance upon the assurance or representation. These three elements, in combination, must lead the court to conclude that it would be unconscionable or inequitable for the person who has made or given the assurance relied on, to resile from it.”

Relying on the above, I now turn to consider whether Mr. Monlouis has on the evidence proven the elements to establish proprietary estoppel.

¹⁵SLUHC VAP2018/0002, delivered 8th April 2020, unreported.

Was there an assurance or representation, whether express or implied, that Mr. Monlouis has or would have an interest in the claimants' land?

- [52] Mr. Monlouis' case is that he relied on the representation of Mr. Williams as to the southern boundary being at the concrete wall, row of blocks or retaining wall as it has been referred to in this case. That representation was made to Mr. Monlouis prior to him purchasing the property and at a time when the survey done to subdivide the original parcel of land, Parcel 201 had just been concluded and was yet to be lodged. That is all the representation that Mr. Monlouis claimed was made to him. He does not speak of any assurance or representation made to him that he would have any interest in the Road. Whilst it is the case that Mr. Monlouis says Mr. Williams suggested to him that he should fence his property, no where does he say that Mr. Williams told him that he must build the fence on the existing row of blocks or 'retaining wall'. I accept that Mr. Williams may have shown Mr. Monlouis the general location of the part of the land he was buying but he could not have been taken to have pointed out any boundaries as the property had only recently been surveyed. Even if he may have pointed out boundaries, only the survey plan could confirm the boundaries. I therefore find that there was no assurance or representation made by the claimants that he would have an interest in the Road or any portion thereof.

Did Mr. Monlouis rely on the representation or assurance made?

- [53] I accept Mr. Monlouis' evidence which remained uncontroverted that he was shown the area of the land he was to purchase by Mr. Williams. There is however no evidence from him that he relied on that representation to make the decision to purchase the land. The one thing which he wanted was property with an existing structure on it and Parcel 230 had just that. The boundary did not seem to weigh heavily on his decision to purchase. I think a very relevant consideration in the circumstances of this case is whether it was reasonable for Mr. Monlouis to simply rely on Mr. Williams' representation in the circumstances of this case.

Analysis of the Evidence

- [54] Gabinus' evidence showed some inconsistencies which, while they may appear to be simple, I believe are indicative that his testimony cannot be relied on as being consistent and credible. What I think is clear is that it cannot be relied on to prove or support Mr. Monlouis' evidence that Mr. Williams or the Williams' led Mr. Monlouis to believe that the southern boundary of Parcel 230 ended at the row of blocks/retaining wall.
- [55] Mrs. Monlouis' evidence does not assist the defendant's case as she could only say what her husband told her about his conversations with Mr. Williams. She was not present for any of them.
- [56] Mr. Monlouis' evidence fails to indicate exactly when Mr. Williams pointed out the southern boundary as being the row of blocks or retaining wall. He says he came to Saint Lucia in March 2005. Then he talks about the day he signed a contract for sale being the same day Mr. Williams showed him the land and its respective boundaries but does not say when exactly that was. That is quite curious because the survey of the original parcel of land to subdivide it into the four lots was done in March 2005. However, the actual subdivision was only approved on 29th March 2005.
- [57] What is interesting is that it is well-known that boundaries of property are established by boundary pegs established during a survey. Therefore, the existence of a row of blocks even if it existed was not conclusive of where the actual boundary was. If the row of blocks was indeed the boundary then the survey pegs would have had to have been established on the 'retaining wall'. As Mr. Monlouis admitted in cross-examination he never saw any boundary pegs on the wall and he never sought to find the boundary pegs. It is only a survey plan which legally defines boundaries so Mr. Monlouis' reliance solely on Mr. Williams' representations cannot assist him to avoid the claimants' claim against him.

[58] It is also noteworthy that according to Mr. Monlouis, he was shown the land by Mr. Williams sometime in March 2005 at which time, admittedly, the Hippolyte Survey had not yet been lodged. However, by the time his deed of sale was registered, the lodged survey plan was available and referred to in the said deed. Yet Mr. Monlouis still did nothing to verify his boundaries. Further, the fence was built in 2015, some 10 years after the representations as to the boundaries were first made to Mr. Monlouis. Even if in 2015 Mr. Monlouis was still of the view that the southern boundary was demarcated by the row of blocks or 'retaining wall' when he began construction of the fence, his evidence is that Mr. Williams approached him about the possibility that he may be encroaching. Mr. Monlouis says he consulted the Hippolyte Survey and determined for himself that he was not encroaching. Mr. Monlouis never sought to obtain professional advice to make that determination. It is important to note that the row of blocks or concrete wall is not shown on the Hippolyte Survey, so it is not clear how Mr. Monlouis could have concluded that he was not encroaching. This is consistent though with the attitude which he displayed at trial, which showed that once he thought he had determined that he was not encroaching, there was no need to bother with the claimants. After all, if he had got the boundary wrong, it was solely Mr. Williams' fault.

[59] Ms. Richelieu in her submissions stated that even while Mr. Monlouis was building the fence, the claimants never did anything or even sought the intervention of the court or an injunction. However, that is contrary to the unchallenged evidence of Mrs. Williams that she had approached Mr. Monlouis about the construction of the fence and also Mr. Monlouis' evidence that Mr. Williams had approached him telling him of a possible encroachment. It is therefore not correct to say that the Williams' did nothing to register their concern. They cannot be said to have been silent or taken no action when they called in the DCA, wrote letters to Mr. Monlouis by their lawyers and undertook surveys to establish whether there was an encroachment.

[60] It is noteworthy that Mr. Monlouis has laid the blame at the feet of everyone but himself: Mr. Williams showed him the wrong boundary; the bank inspected the property and Mr. Williams pointed out the property to them and they approved the loan based on that; the lawyer prepared the deed of sale wherein the property was described and the Hippolyte Survey was referred to and he signed. He has accepted no responsibility whatsoever.

Did Mr. Louis act to his detriment based on the representations made by Mr. Williams as to the southern boundary?

[61] Ms. Richelieu argued that Mr. Monlouis acted to his detriment by expending considerable sums of money putting up the fence, renovating and beautifying the said property. The law is that in order to rely on proprietary estoppel, Mr. Monlouis must specifically plead the detriment which he has suffered in reliance on the assurance.

[62] In **Mathilda Nelson**, the Court relied on the cases of **Gillet v Holt**¹⁶ and **Henry v Henry**¹⁷ in looking at what was necessary to establish detriment. What is clear is that detriment must be specifically pleaded and proven. Where no particular detriment has been pleaded by the party seeking to claim in equity, the claim based on proprietary estoppel must fail. In his defence, Mr. Monlouis says simply that he acted to his detriment without pleading what that detriment was. Nowhere in his evidence does he specifically say what the detriment he suffered is. It cannot be that the Court is being asked to have regard to counsel's submissions for this evidence and the court cannot presume detriment which has not been pleaded. Even if the Court accepts what counsel has submitted to be the detriment suffered by Mr. Monlouis, it can hardly class as detriment.

[63] Mr. Monlouis erected a fence not only at the southern boundary but according to him he fenced the entire property. Even without the representation as to the southern boundary, it appears that he would have fenced his property, even if it

¹⁶ [2001] Ch 210.

¹⁷ [2010] UKPC 3.

was as a result of a suggestion from Mr. Williams. On the contrary, Mr. Monlouis stood to gain as he erected the fence at the southern boundary on an existing wall structure and by his own account he added no concrete and no rebar and he did not know about the steel. Therefore, he evidently saved money not having to construct a base for that part of the fence. I find that Mr. Monlouis has failed to establish any detriment and more importantly, he did not plead or prove same.

- [64] Taking into account all of the above, it is clear that proprietary estoppel cannot be relied on by Mr. Monlouis to stop the claimants from pursuing their claim against him as he has been unable to prove the required elements. The claimants are the owners of Parcel 234 (the Road) and Mr. Monlouis has no right to use or occupy any portion of the Road.

What remedies are the claimants entitled to?

- [65] The claimants having proved that Mr. Monlouis is encroaching on the Road having erected a fence thereon are entitled to damages. The claimants in their evidence referred to several sums expended for surveys and mediation totalling \$3,800.00.¹⁸
- [66] It is noted though that none of these costs which are special damages was pleaded. It is trite law that special damages must be specifically particularised, pleaded and proven.¹⁹ In the absence of such pleadings, the claimants cannot recover the sum of \$3,800.00.
- [67] As relates to general damages, the claimants have not led any evidence of any loss suffered as a result of the trespass by Mr. Monlouis. The quantum of damages to be awarded in such cases is stated in **Halsburys Laws of England** as follows:

¹⁸ Paragraph 13 of WS of Veronica Williams at page 17 of Trial Bundle 'B'.

¹⁹ Grant v Motilal Moonan Limited (1988) 43 WIR 372.

“In a claim of trespass, if the claimant proves the trespass he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the trespass has caused the claimant actual damage, he is entitled to receive such an amount as will compensate him for his loss. Where the defendant has made use of the claimant's land, the claimant is entitled to receive by way of damages such a sum as should reasonably be paid for that use.”²⁰

[68] In this case, the claimants have not pointed to any loss or damage which they have specifically suffered. Ms. Martial in her evidence mentioned that the encroachment prevented them from selling the two back lots- Lots 2 and 3. However, they have provided no such evidence- no evidence of potential sales which fell through because of the encroachment to the Road. It remains the case that once the fence is removed, the claimants can undertake construction of the road, but they have produced no evidence to show that they were stalled in the road construction because of the encroachment. In the circumstances, I therefore award the sum of \$1,500.00 as damages for trespass.

Other Issue

Overriding Interest

[69] For the sake of completeness, I address this issue. The defendant in skeleton arguments filed on 20th January 2020 argues that Mr. Monlouis has an overriding interest pursuant to section 28(g) of the **Land Registration Act**²¹(“LRA”) which recognises rights of persons in actual occupation. This was never pleaded by the defendant in his defence and cannot be introduced by way of submissions. This Court has on numerous occasions spoken of the new trend of introducing new claims/causes of actions in written submissions which have not been pleaded, a very unsavoury practice which the Court wishes to discourage.

[70] In the case of **Spiricor Saint Lucia Limited v The Attorney General and another**,²² Sir Vincent Floissac CJ was very clear that the interest which is protected under section 28(g) of the LRA is not the actual occupation but the rights

²⁰ Para. 591, Halsbury's Laws-LexisNexis, Copyright 2014 Reed Elsevier (UK) Limited and its affiliated companies.

²¹ Cap.5.01 of the Revised Laws of Saint Lucia.

²² Saint Lucia Civil Appeal No 3. of 1996 at para 38.

of persons. The defence speaks to a right acquired over the disputed area but there is no evidence of what this right is. I therefore decline to address this issue which firstly was not pleaded and secondly, I am of the opinion is not relevant in the circumstances of this case, in any event.

Observation

[71] As Mr. Monlouis himself says in his evidence, there was no need for this matter to have been brought to Court far less to have made its way to trial as the parties should have been able to reach an amicable settlement and allow good sense to prevail. I am certain that they have expended far more in legal fees than any damages that any of the parties, the claimants or defendant, would be entitled to. It is hoped that the claimants and Mr. Monlouis can continue to have a cordial relationship despite this unfortunate and unnecessary event.

Conclusion and Order

[72] In the circumstances of this case and in light of the foregoing discussion, I make the following order:

- (1) The defendant is to deliver vacant possession of the portion of the Road occupied by his fence to the claimants forthwith, i.e. the 641 square feet identified as the area of encroachment by the Gajadhar Survey dated 22nd March 2019.
- (2) The defendant is to pull down and remove any structures erected on Parcel 234, in particular the fence which he has erected on the retaining wall forthwith.
- (3) The defendant is to pay the claimants nominal damages for trespass in the sum of \$1,500.00.
- (4) The defendant is to pay prescribed costs to the claimants in accordance with CPR 65.5.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar