

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

SLUHCV2018/0054

BETWEEN:

**REYNOLD ACTIE
Also known as NATHANIEL ACTIE**

Claimant

and

EDICIA JOSEPH

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Lydia Faisal of Counsel for the Claimant

Mr. Michael St. Catherine of Counsel for the Defendant

2019: July 11;
September 2, 4; (Written submissions)
2020: April 1.

JUDGMENT

- [1] **CENAC-PHULGENCE, J:** This is a claim filed in 2018 against the defendant for an order for vacant possession of Block and Parcel No. 1450B 878 (“the Property”) and for removal of all personal belongings, chattels and possessions, including the house erected thereon belonging to the defendant.

Preliminary Issue

- [2] At the commencement of the trial, the Court granted an application by the claimant for amendment of the Block and Parcel No. to read 1450B 878 instead of 1450B 877. It had been noted that all the witness statements of the claimant referred to parcel 878. The ground of the application was that due to the number of mutations to which the original parcel of land had been subject, an error had been made in relation to what the correct parcel should have been. In any event, both parcels 877 and 878 belong to the claimant. The defendant did not object to the application.
- [3] The Court, having had regard to Part 20 of the **Civil Procedure Rules 2000** ("CPR"), granted the application, being satisfied that there would be no prejudice to the defendant given that her defence was that she occupies the claimant's property but with his permission. The administration of justice required that the amendment be allowed, and the trial date did not have to be vacated. The trial could have continued as scheduled.

The Claimant's case

- [4] The claimant, Mr. Reynolds Actie who is also called Nathaniel Actie ("Mr. Actie") is the father of the defendant, Ms. Edicia Joseph ("Edicia"). He was 90 years at the time of trial. Mr. Actie resided on Block and Parcel 1450B 65 which was the predecessor parcel to a series of mutations which resulted in Block and Parcel 1450B 878 among others. Mr. Actie's father, Emilien Actie ("Emilien") was the owner of the original parcel of land which was recorded as Block and Parcel No.1450B 65 after the Land Registration and Titling Project. By virtue of a Declaration of Succession executed in 1999, Mr. Actie and his seven siblings became entitled as owners to one-eighth share each of the said Block and Parcel 1450B 65.
- [5] Mr. Actie in 1999 and 2005 respectively along with his wife, Philomene Actie ("Mrs. Actie"), purchased the shares of two of his siblings increasing his interest in Block and Parcel 1450B 65 to two-eighths whilst Mrs. Actie had a one-eighth share.

- [6] By a Consent Order dated 3rd November 2016 consequent upon a partition claim, SLUHCV2016/0255, Block and Parcel No. 1450B 878 was among three parcels of land allocated to Mr. Actie.
- [7] Mr. Actie claims that Edicia, who is his eldest biological daughter, has constructed a concrete structure on the Property despite his protestations and without his permission. He claims that Edicia initially started to extend on the house in which she had resided with his mother, Angela Actie ("Angela") and that he had warned her that her modifications to the house should be restricted to timber owing to the then undivided status of the Property.
- [8] That led to a total breakdown in the relationship between Mr. Actie and Edicia, to the extent that sadly, they do not speak to each other. Even Edicia's husband and family do not speak to Mr. Actie.
- [9] In 2003, Mr. Actie got his solicitor to visit the Property and photographs were taken of the existing wooden structure, which had not yet been converted to concrete. However, there was evidence of Edicia's intention to undertake that conversion as there were blocks and other building materials on the Property. Mr. Actie was unable to exhibit those as his then solicitor suffered a fire at his Chambers and these documents were destroyed.
- [10] Mr. Actie wrote to Edicia from 2003 and issued several verbal warnings to her admonishing her not to undertake the concrete construction but she persisted, and eventually, after several years, completed converting the four sides of the wooden house to concrete.
- [11] Mr. Actie's position is that he never authorised, permitted or consented to any of the actions taken by Edicia and it is precisely because of his protestations about such actions that the relationship between Edicia and himself broke down.

- [12] Mr. Actie claims that Edicia's actions of converting the wooden house to a part wall and part wooden house were all done in bad faith in order to force his hand. By reason of Edicia's conduct and actions, Mr. Actie claims that he has been deprived of the benefit, use and enjoyment and vacant possession of the Property.

The Defendant's case

- [13] Edicia is the eldest daughter of Mr. Actie whom he had prior to his marriage. She lived with her grandmother, Angela on the Property from a tender age after her mother passed away. It is her case that after the passing of Angela in about 1974, she continued to reside in Angela's house and in 1976 she sought and obtained permission of the children of Emilien and Angela (her grandparents) including her father Mr. Actie to construct a wooden house near to her grandmother, Angela's house as that house was in a state of disrepair.
- [14] Edicia contends that sometime in 1987 she sought and obtained permission of the children of her grandparents including Mr. Actie to convert her wooden house to concrete. She contends that all the blocks for the construction were made by her husband, Anthony Jn. Baptiste ("Anthony") and that Mr. Actie raised no objections then. The construction she said was encouraged by Mr. Actie as he had indicated that he wanted that area to be allocated to him when the land was eventually subdivided.
- [15] Edicia avers that she left the Property in 2003 after the passage of a tropical wave caused damage to the house and that she never returned to the claimant's Property. She denies that she ever insulted or abused Mr. Actie and says instead that it was Mr. Actie who abused and insulted her sons and agents of hers who went to the house to effect repairs.
- [16] Edicia admits that the house on the Property is being rented. She contends that several of Mr. Actie's other children have concrete houses on the Property or have

houses which they rent. Edicia acknowledges receipt of warning letters from Mr. Actie and says that her lawyer responded to same. Edicia contends that when the house was built, Mr. Actie had no legal right to the Property as it was family land and that it was only in 2017 that he became entitled to the Property by which time her house had already been constructed. She therefore prays that the claim be dismissed. She has counterclaimed for (a) a declaration that her house remain on the Property since it was built since 1987; alternatively, (b) that Mr. Actie sells the Property to her at a reasonable sum to be determined by the Court or (c) that Mr. Actie be given the option of purchasing the house from her at a reasonable price to be determined by the Court.

The Reply

- [17] In his reply, Mr. Actie contends that the Property is not family land but is land to which he is entitled by virtue of his father's succession. Mr. Actie avers that Edicia only began to convert the house to concrete 2003, when he wrote to her to cease the construction. Yet, she persisted despite his warnings and in total disregard for him. Mr. Actie avers that when the house was damaged by the storm it was a fully wooden house, but he could not recall the actual year of the storm.
- [18] Mr. Actie avers that Edicia's contention that the presence of her house contributed or assisted him in obtaining the Property is ludicrous as it is he who was in charge of partitioning the original parcel 65 and there was never any contention between him and his siblings as to where his share would fall.
- [19] Mr. Actie avers that Edicia only responded to one of the letters that he sent contrary to what she tries to assert as part of her case. Mr. Actie prays that the defence be dismissed with costs. As to the counterclaim, Mr. Actie avers that he gave no permission to Edicia to erect a concrete structure on the Property and any permission given was limited to improvements in wood. Mr. Actie further avers that Edicia does not live in the house on the Property herself and rents it for profit and as such she is not in need of a place to stay. Further, Edicia does not claim to be

entitled to the Property in her own right. Mr. Actie avers that he cannot be made to sell the Property to Edicia when, from 2003, he had been warning her to cease the concrete construction. Further, he has no desire to purchase the said house from Edicia as he does not consider it to be an improvement, and even if it were it was not done in good faith.

Issues to be decided

[20] The issues to be decided by the Court are as follows:

- (a) Whether Mr. Actie was entitled to the Property at the date when Edicia constructed the concrete structure and he sent the various letters to her and has legal standing to maintain the claim?
- (b) Whether Edicia was given permission to construct a concrete on the property?
- (c) Whether Edicia's house is an improvement and was constructed in good faith?
- (d) Whether Edicia is entitled to compensation for the said structure?
- (e) Whether Mr. Actie is entitled to the relief he seeks?

Issue (a)-Whether Mr. Actie was entitled to the Property at the date when Edicia constructed the concrete structure and he sent the various letters to her and has legal standing to maintain the claim?

[21] Whilst Edicia, in her defence, avers that Mr. Actie and his siblings gave her permission to construct the concrete house, she contends that Mr. Actie was not entitled to the Property when she commenced construction in 1987. However, the evidence puts this to rest. The evidence shows that Emilien died in 1929, at which time Mr. Actie and his siblings would have become entitled, as his heirs, to the Property. Further, from 1999, Mr. Actie was a registered owner along with his other siblings of Block and Parcel 1450B 65 and all its subsequent mutations including Block and Parcel 1450B 878. Mr. Actie would have become the sole owner of the Property in 2016 by virtue of the partition of all the lands which had originally been Block and Parcel 1450B 65. Therefore, at the time the claim was filed in 2018, Mr. Actie was the sole proprietor of the Property.

- [22] Counsel for Mr. Actie, Mrs. Lydia Faisal (“Mrs. Faisal”) argued that by virtue of Mr Actie’s undivided interest in the Property, he had the right to control Edicia’s activities on the Property in so far as it affected his or the other co-proprietors’ future rights as a proprietor of the Property.
- [23] I agree with that submission and therefore find that Mr. Actie, by virtue of his entitlement to an undivided interest in the succession of his father from 1929, and then as a co-proprietor by virtue of the Declaration of Succession executed in 1999, has standing to bring this claim against Edicia. Even at the time when he would have sent the first letter to her in 2003, he was a co-proprietor with sufficient standing to have initiated proceedings against her. I reject the submission of counsel for Edicia, Mr. Michael St. Catherine (“Mr. St. Catherine”) that it is only in 2016 that Mr. Actie became owner of the Property, as the evidence clearly shows that Mr. Actie was one of the co-owners of the Property from 1999.
- [24] It is also worthy of note that despite saying that Mr. Actie did not own the Property until 2017 in her defence at paragraph 20, at paragraph 14 of the same defence, Edicia refers to never returning to the ‘claimant’s land’. That seems to be an absolute contradiction.
- [25] Based on the foregoing, I find that the claimant, Mr. Actie does have legal standing to maintain the claim against Edicia.

Issue (b)-Whether Edicia was given permission to construct a concrete structure on the Property?

The evidence

Mr. Reynolds Actie (“Mr. Actie”)

- [26] Mr. Actie’s evidence is that he brought Edicia to live with his mother, Angela from the age of four years. Edicia says in her evidence that she was told from seven months, but resolution of this is not critical to the case. It would appear from Mr. Actie’s evidence that Edicia did not have a very close relationship with his side of the family and kept away from her siblings who were children of his marriage.

- [27] Mr. Actie says that the house in which his mother and Edicia lived had been built by him. When his mother passed away, Edicia continued to live in the house for some time and then she asked for permission to build a house of her own. He says he gave Edicia permission to build a wooden house and he gave his mother's house to his son Gilbert Actie.
- [28] Mr. Actie says he fought hard to prevent Edicia from building any concrete structure and it would be unfair for him to have to pay her in such circumstances. He says that he always knew that where Edicia's wooden house was situate would eventually be his, as he was the only one who ever occupied that area as his siblings lived elsewhere. He indicates that the suggestion by Edicia that he needed her to build a concrete house on the land so that the land would be his is false as he needed no help from her to achieve this. He says he had to give his other children their mother's share of the land and he also wanted to give them land from his share and he therefore did not want Edicia to create problems by putting any concrete structure on the Property. In particular, he wanted to give the Property to his daughter, Stella Actie ("Stella") as she is the one who takes care of him every day.
- [29] A very emotional and exasperated Mr. Actie said Edicia never did anything for him. She and her children do not greet him, and they disrespect him. He says from the time Edicia started putting concrete on the land he had been warning her, but she completely ignored him and instead insulted and abused him.
- [30] Mr. Actie says none of his siblings ever gave Edicia permission to build any house of any kind on the Property that he was occupying. He says his house is about 100 feet from where Edicia built her house. In 2003 when he sent Edicia the first letter, Mr. Actie says she did not have a fully concrete house on the Property. He says from very early he tried to impress upon Edicia that she should not place concrete on the Property, but she found he was out of place to try to stop her and she was very rude to him.

- [31] Mr. Actie says Edicia does nothing for him. He says he gave his other children permission to put houses on the Property because he has good relations with them, and they are the ones who pay for his upkeep and maintenance. On the contrary, Edicia has only treated him with great disrespect and hatred.
- [32] Mr. Actie says when he first spoke to Edicia about the pillars, she was very rude and told him that he had no land and that he could not stop her. He says despite this he continued to warn her that all her extensions should be done in wood and that she should refrain from adding concrete to the land apart from the pillars. He says when she started bringing sand and other building materials on the Property, he sent her a lawyer's letter. He says there was no concrete house at that time, as Edicia has alleged.
- [33] Mr. Actie says the house was constructed 'bit by bit' and started with the walls being put around the wooden house in concrete. Edicia then placed a roof and added a wall balcony. Mr. Actie gives evidence that he has had to call the police on several occasions seeking to stop Edicia but she would tell the police to ask him for his land papers and he would explain that he is one of the owners and the police would refuse to intervene which only served to embolden Edicia. He says Edicia's daughter even cut down a cinnamon tree on the Property which he usually sold to people who made cinnamon sticks out of the bark. When he confronted Edicia's daughter, she waved a cutlass in his face. That incident Mr. Actie explained was very upsetting to him.
- [34] Mr. Actie says Edicia and her family treated him as if he was nothing which has caused him much hurt and sleepless nights. Mr. Actie says Edicia constructed the house in a piece meal fashion and in an untidy way. The septic tank he says gives off a bad smell and complaints have been made to the relevant authorities but Edicia has done nothing about it.

- [35] Mr. Actie is clear in his evidence that he did not authorise, permit or consent to Edicia's actions and it is precisely because of his constant resistance to what she wanted to do that the relationship is now an acrimonious one. He says Edicia and her husband asked him whether he ever saw the government break down anyone's concrete house and that he must pay them for the house or sell them the land.
- [36] In cross-examination, Mr. Actie was adamant that Edicia never asked him for permission to put her concrete house on the land and he never gave her such permission. He was asked why he did not ask her to leave when he realized she was putting wall on the house and he replied, 'is tell I tell her. I sent two lawyer's letters for her'.
- [37] When it was put to Mr. Actie that Edicia's husband Anthony had built the house with his permission, he responded, 'Would I give permission to build the house in wall and then send lawyer's letter for them?'
- [38] In the main Mr. Actie's testimony was consistent. Edicia initially resided in a wooden house on the Property and then started to make changes to it but in concrete. That is when things fell apart. That is the house which Mr. Actie says Edicia fixed after it was damaged with the passage of the storm and is now renting. The suggestion that it was Stella or his children making him pursue the claim against Edicia was met with swift rebuff from Mr. Actie who retorted, 'Stella making me do this - I am a little child?'

Ms. Stella Actie ("Stella")

- [39] Stella is one of Mr. Actie's daughters of his marriage to Philiomene. She has lived on the Property for more than 29 years. She lives about 60 feet from Edicia's concrete house. Stella confirms that Edicia lived with her father's mother and that it was her father Mr. Actie who had built the house in which they resided. She says she was a young girl when that house was built.

- [40] Stella says after her grandmother, Angela's death, Edicia lived in the house for some years and then she asked Mr. Actie for permission to build a wooden house of her own, which he gave her. Mr. Actie gave the house which had been occupied by his mother and Edicia to his son, Gilbert Actie who moved it to where he now lives.
- [41] Stella says she does not know of Edicia seeking permission from any of her aunts and uncles to build a concrete house. Stella says Edicia did not have a fully concrete house on the land in 2003, and as far as she knows and witnessed, Mr. Actie and Edicia had a quarrel when Edicia placed concrete pillars on the land to place her concrete house. At that point, Mr. Actie had warned her not to put any further concrete on the land. Stella confirms much of Mr. Actie's testimony as to Edicia's attitude towards him when she was told not to construct in concrete. Stella also testifies that Edicia's house is badly constructed and not safe as one of the pillars slipped from under the structure during hurricane Tomas in 2010.
- [42] Stella confirms that despite Mr. Actie's warning, in 2003 Edicia brought building materials onto the Property and at first hid it from view. She began working on the side of the house not visible to Mr. Actie or her. When Mr. Actie observed what was happening, he had a lawyer write to her.
- [43] Stella also testifies of Edicia's and her family's general lack of regard for Mr. Actie and whenever he tried to warn about the construction activity, he was met with insults. Edicia, Stella says, gradually completed the conversion of the house from wood to concrete. She went to live in her other house in November 2010 after Hurricane Tomas caused damage to the house on Mr. Actie's Property. Even after leaving, Edicia continued to work on the house which she rented to tenants.
- [44] In cross-examination, Stella confirmed that Mr Actie did give Edicia permission to build a house on the Property and that that house was not the same as her grandmother's house. When asked whether Mr. Actie had given her the land where Edicia's house is, Stella said yes. In re-examination, it was clarified that there are

two houses on the Property, Stella's and Edicia's. Stella confirmed though, that she did not yet have any papers to show that she owned the Property and as at the date of trial, she did not yet own the Property.

Ms. Edicia Joseph ("Edicia")

- [45] Edicia's evidence is that she sought and obtained permission from Mr. Actie in 1976 to occupy a plot of land and construct a wooden house. She says her house was damaged by Hurricane Allen in 1980 and she repaired it and moved into it with her now husband, Anthony Jn Baptiste ("Anthony") whom she married in 2000. Edicia says that when her house got damaged in 1980, her family found refuge at Mr. Actie's home for a while.

- [46] She says in 1987, she discovered the house was infested with termites, so she obtained permission from Mr. Actie to convert the house into concrete. That conversion she says took about two years with the work being done by Anthony who laid the blocks around the wooden structure in his spare time. She says all this time Mr. Actie never objected. Edicia says the house was converted to a concrete house with only the balcony flooring in wood.

- [47] In her evidence, Edicia says in 2003, there was a period of heavy rain and the house was damaged with cracks and it was Anthony, whom she refers to as her boyfriend despite the fact that they were by then married, who repaired the cracks and the damaged column.

- [48] Edicia says in 2001, she and Anthony purchased a piece of land and built a shop and later their matrimonial home upstairs the shop. No evidence of this purchase was provided. She says when the heavy rains came in 2003, they moved to reside in the house on their land. Then she says that Anthony lived at the house alone after it was repaired and thereafter rented the upstairs of the house. The downstairs portion of the house remained empty until her grandson moved in. Edicia provides no explanation as to why Anthony resided in the house for a whole year when by her account, they lived close by.

- [49] Edicia maintains that by the time she received the letter from Mr. Actie's lawyer in 2003, the house was already in concrete. She maintains that she constructed her house with Mr. Actie's permission and that the house has been in concrete from 1987 without objection.
- [50] Edicia says Mr. Actie does not want her to effect repairs to her house or come to the house and that this is unreasonable as his other children have concrete structures on the land.
- [51] In cross-examination, Edicia admitted that Mr. Actie gave her permission to continue to live in her grandmother's house after her passing and that he had given her permission to build a wooden house of her own on the Property in 1976.
- [53] When asked about her relationship with Mr. Actie, Edicia readily admitted that it is not good. Asked whether the breakdown in that relationship was due to the building of concrete on the land, she responded, 'it is something like that.' Again, Edicia readily admitted that when Mr. Actie called the police, it was to try to stop her from putting concrete on the land. Although in cross-examination Edicia did not seem to recall that Mr. Actie started writing letters to her through his lawyer from 2003, in her defence at paragraph 19 she acknowledges receipt of warning letters in 2003, 2010 and 2017. Despite not recalling receiving the letters from Mr. Actie, Edicia said in cross-examination that when she was sent the letter in 2012, her house was already in concrete. When asked about replies to the letters which Mr. Actie had written her, she offered no response then later on when asked why she did not reply to the 2003 letter, admitted that she did not answer the letter. She was adamant that when she received the 2003 letter, she was already in the house long before that. Edicia's evidence was very confusing to say the least.
- [54] It was put to Edicia that if Mr. Actie had given permission and she had built the house from 1987, why would he refuse to allow her to effect repairs in 2003. She

said that was the case. Nevertheless, Edicia in cross-examination said she started the concrete structure in 1995 or so. In her evidence in chief, she had said it was in or about 1987. When she was told that she did not start the concrete house in 1987 or 1995 as she was saying, she then said it was 'in between 1994 to 1995, something so'.

[55] Edicia agreed with counsel that according to Mr. Adrian Dolcy's report, the house is about 12 years old. Then she said no it is older because she got married in 2000 and she was already living there.

[56] Edicia admitted in cross-examination that she and Mr. Actie do not have any relationship, that she does not greet him, that her children and husband also do not greet him, that she is renting the house which is on his Property and that she gives her father nothing from that rent. She admitted that Mr. Actie is not bound to give her anything. She also admitted that it is her other siblings who care for Mr. Actie and that she does not assist in that regard.

[57] When asked about the period of heavy rainfall which she spoke of in her evidence in chief, Edicia said it was 'Tomas'. When told that Hurricane Tomas was in October 2010, and that this is when the pillar of the house fell, Edicia agreed. She did not respond when it was suggested to her that it was in 2010 that the house slipped and that she started the concrete house in 2003 when the first letter was written to her. She insisted though that the house was already completed before Hurricane Tomas. Counsel, Mrs. Faisal suggested to Edicia that despite all the warnings and total breakdown of the relationship with Mr. Actie, she did not stop, with the result that the house is completed, to which she said 'yes'.

[58] Edicia continued to maintain that she had already completed the house when she got the first letter in 2003. She said that Mr. Actie never tried to stop her but said that in 2003, Mr. Actie started to warn her. When she was told by counsel that at that point she could have left and built a house on her own land, she responded that

she was in the wall house she built when she bought that land. Edicia admitted in cross-examination that she cut the trees she claimed to have planted before she left the land and that Mr. Actie and her daughter had an altercation about a cinnamon tree. She said she was not looking for a share of the land.

Mr. Anthony Jn. Baptiste (“Anthony”)

- [59] Anthony is Edicia’s husband. He says he is a building contractor by profession. Anthony confirms that when he and Edicia started living together in 1976, they moved into the grandmother, Angela’s house. He says his daughter Barbara Jn Baptiste who was born in 1980, was born at the grandmother’s house. Whilst living there, Anthony says he and Edicia commenced the construction of a wooden house close to the grandmother’s house on the Property.
- [60] Anthony says when Hurricane Allen struck in 1980, it destroyed both the grandmother’s house and their wooden structure they had built. They repaired their house and moved into it instead of moving back into the grandmother’s house.
- [61] Anthony says about 1985, he began to purchase sand and cement and make concrete blocks as he noticed the wood on the new house was rotting. He says in his spare time he would lay the blocks around the house whilst they continued to live in it and there was no objection from anyone. He confirms that he converted the house into concrete with only the balcony flooring in wood.
- [62] Anthony’s evidence is that Mr. Actie gave him the final galvanize for the roofing. The house was plastered, and he and his family lived there until about 2003. Like Edicia, Anthony’s evidence is that in 2003 there were heavy rains and the house was damaged with cracks. Anthony says he repaired the cracks and a damaged column by himself and he said it was only when he was finished that Mr. Actie asked him not to do anything on the house since they did not live there.

- [63] After the heavy rains, they moved to reside on a piece of land which he and Edicia had acquired prior to 2003. After effecting the repairs on the house, Anthony says he lived there for one year and then rented to someone. Anthony says the house on the Property was converted into concrete between 1985 and 1987 and Mr. Actie never came to him and asked him to cease construction. Anthony says Mr. Actie and himself always maintained a good relationship.
- [64] In cross-examination, Anthony confirmed that his family and Mr. Actie do not speak and that the reason for the breakdown in the relationship was because of the concrete house erected on the Property. Anthony said he did not know that three warning letters had been issued to his wife, Edicia by Mr. Actie. Despite this, when asked whether he agreed that Mr. Actie could not stop them, Anthony said 'when he tried to stop us, the house was done'. Counsel, Mrs. Faisal suggested to Anthony that if he did not know letters were sent to Edicia, how could he say that when the letter was sent, the house was already finished and he responded and said he could not tell her about the letter but when it was sent the house was already finished.
- [65] When asked in cross-examination, what year he began construction of the concrete structure around the wooden house, he said in the 1990's; he could not remember exactly. Later in cross-examination, Anthony said it might have been in the 1980's. Then he was asked how many years did the conversion take, he initially said he could not remember but it took a while, and then he said it was more than 10 years but not less. Asked whether they continued to build and never stopped even amidst there being trouble, he responded affirmatively.
- [66] Interestingly, when it was suggested to Anthony that he could have gone on his land and built his house there, Anthony responded that they did not have the papers for that land yet. Counsel pointed out that neither did he have papers for Mr. Actie's land.

Analysis and Conclusion

- [67] There appeared to be some confusion on the evidence of Mr. Actie as to whether Edicia built a wooden house separate from her grandmother's house with the permission of Mr. Actie or whether it was her grandmother's house that she continued to live in and effected repairs and added concrete thereto. However, I must take into consideration Mr. Actie's age and also the fact that he only spoke creole which may have accounted for this seeming confusion. However, having assessed the evidence of all the witnesses, the evidence appears undisputed that Edicia obtained permission from Mr. Actie to construct a wooden structure on the Property. There was no problem there at all.
- [68] I completely reject the notion that Mr. Actie told Edicia to build the house in concrete so that it would be assigned to him later on. Why would Mr. Actie do that when the structure would not belong to him. I do not understand how that would assist him in any way.
- [69] One glaring inconsistency between the defendant's witnesses' evidence is that whilst Anthony said the construction of the wall structure took more than 10 years, Edicia said it took two years. Edicia said the concrete construction began in 1987 and then she said 1995, so by her evidence, the entire wall structure would have been completed by either 1989 or 1997. Anthony, on the other hand, put the start date for the concrete conversion at 1985, then in the 1990's and then he said it may have been in the 1980's. If it took ten years, as he said, to complete the conversion, then that would be sometime in 2005 or 2000's or 1990's depending on which start date one applies. What is clear is that the conversion was gradual and from the evidence was still ongoing at the time Mr. Actie sent the 2003 letter. That is also supported by the evidence of Mr. Adrian Dolcy, Structural Engineer who in his report dated 2nd May 2019 states that the age of Edicia's house is about twelve years which means that it would have been completed somewhere in 2006. This is in relation to the concrete structure, as on the evidence, I accept that Edicia would have been

living in the wooden structure from about 1976 or 1980 and she never stopped living in the house even during its conversion to concrete.

[70] These discrepancies in the evidence of the defendant's witnesses make it difficult to accept their evidence that when Mr. Actie warned them about construction in concrete, the house had already been completed. Further, Edicia's own evidence suggests that she accepts that the relationship between herself and Mr. Actie only broke down at the point when she started putting concrete to the then wooden house and that despite his warnings she continued. That is the foundation of all the ensuing troubles. It is also very evident from Edicia's testimony that she felt she had a right to convert her wooden house to concrete since her siblings were on the same land and had concrete structures there. That, however, does not mean that Mr. Actie gave her permission to convert the wooden house to concrete. In fact, his actions of sending her the lawyer's letters further support a finding that Mr. Actie did not give permission for anything but the construction of a wooden structure and that these letters were to register his objections to Edicia's attempts to convert the structure to concrete.

[71] Edicia's demeanour suggested to me that she did not care that Mr. Actie had expressed his objection to her concrete construction. She says she does not want any land so her only motivating factor for ignoring the pleas of Mr. Actie not to put the structure in concrete could only have been as he said to force his hand into paying her for the structure.

[72] I accept both parties' evidence that Edicia was given permission to construct a wooden house on the Property. I however do not accept the defendant's evidence that Mr. Actie gave Edicia any permission to convert the wooden structure to concrete and instead find that that is the very action Mr. Actie would have cautioned Edicia about undertaking on the Property. Edicia as much admits that her relationship with Mr. Actie fell apart over the fact that she was converting the structure to concrete.

Issue (c), (d) and (e)-Whether Edicia's house is an improvement and was constructed in good faith?

Whether Edicia is entitled to compensation for the said structure?

Whether Mr. Actie is entitled to the relief sought?

[73] I will deal with issues (c)-(e) together. Whilst not speaking to article 372 of the **Civil Code of Saint Lucia** ("the Code")¹ directly, Edicia in her counterclaim seeks an order that Mr. Actie purchase the house from her at a reasonable price to be determined by the Court. That strikes me as being a claim for compensation as contemplated by article 372. However, in his written submissions, counsel Mr. St. Catherine submits that the issue of bad faith does not apply since Mr. Actie had no clear title to the Property prior to 2016. I have already dealt with the issue of Mr. Actie's title to the Property and have found that from 1999 Mr. Actie was a co-proprietor of an undivided share of the Property which he subsequently became the sole owner of by way of partition.

[74] I set out below the relevant articles of the **Code**. Article 372 provides as follows:

"372. When improvements have been made by a possessor with his or her 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 or she 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 or herself without deteriorating the land, to remove them at his or her 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."

¹ Cap. 4.01, Revised Laws of Saint Lucia.

- [75] By virtue of article 2066 of the Code, good faith is always presumed and it is for he who alleges bad faith to so prove. Therefore, it is for the claimant, Mr. Actie to prove bad faith.
- [76] In the Quebec case of **Gagnon v Loubliere**,² the Court discussed article 412 (the equivalent of our article 372) of the Quebec Civil Code. What is clear from the case is that a defendant's right to compensation under this article is dependent on his good faith which consists in his belief that he is really the owner.
- [77] I have already found that Mr. Actie did not give Edicia permission to construct her house in concrete. The evidence clearly indicates that Edicia did not construct the concrete structure thinking that she was the owner of the Property. She clearly knew it to belong to Mr. Actie as her evidence is that she approached him for permission, albeit I did not accept that she was so given.
- [78] Edicia's conduct does not and cannot support a finding that she possessed in good faith. She was never promised nor did she believe that she had a right to the Property. Even when warned by Mr. Actie, the evidence shows that she ignored his admonitions. I find that Edicia acted in bad faith. She therefore cannot succeed on a claim to be compensated for her house. In any event, Edicia has produced no evidence of the value of the structure which she has asked on her counterclaim to be purchased by Mr. Actie. She has instead asked that the Court determine what is the reasonable price and provided no assistance to the Court.
- [79] Further, Edicia does not now occupy the house as she and her family live on other land which she and Anthony own. She is in fact renting the structure, which further shows bad faith, as she has done so even in the face of the knowledge that Mr. Actie has a problem with the manner in which she has behaved.

² [1925] SCR 334.

- [80] On the other hand, Mrs. Faisal has submitted that Edicia's house is not an improvement and has produced a report of Civil and Structural Engineer, Mr. Adrian Dolcy ("Mr. Dolcy"). Mr. Dolcy in his report dated 30th October 2018 indicated that the purpose of the report was to provide an assessment of the structural integrity of Edicia's house.
- [81] Mr. Dolcy's observations were that (a) the overall workmanship of the building was fair; (b) there seemed to have been some movement of the western section of the building evidenced by the columns which were leaning (out of plumb) and additional columns which had been placed to provide stability to the building; (c) heaving of the ground floor slab possibly due to poor construction or the presence of expansive soil below the slab where inadequate provisions were made for construction; (d) need for site drainage improvement. Mr. Dolcy concluded that there are structural issues with the building; the ground floor was not levelled and remedial action in the form of placement of additional columns beneath the building would be required. Mr. Dolcy's report did not offer a value for the structure.
- [82] Mrs. Faisal submitted that there was no evidence from the defendant to suggest that the house was indeed an improvement. Indeed, Edicia has not shown that her house was a necessary improvement to the Property or that its presence has augmented the value of the Property. There is evidence that the construction of the house in concrete was not necessary to preserve the Property or prevent its deterioration. Given the structural deficiencies identified by Mr. Dolcy, it would be difficult to see how the structure has augmented the value of the Property.
- [83] Article 372 at paragraph 4 provides that where the improvement is not necessary and is found to have been made in bad faith which is the case here, Mr. Actie has the option (a) of keeping it and paying what it costs or its value; (b) permitting the defendant if she can, without deteriorating the land, to remove the structure at her own expense; or (c) if he does not wish to exercise either (a) or (b), keeping the house without the need to indemnify the defendant. However, in every case, the

owner may compel the defendant who acted in bad faith to remove the house from the Property.

Conclusion

[84] I find that Mr. Actie did not give permission to Edicia to construct or convert her house to concrete. There is no evidence to allow the Court to conclude that Edicia's house was a necessary improvement to the Property. The Court has found that Edicia was not a possessor in good faith but acted in bad faith. She defied all admonitions of Mr. Actie; she had ample opportunity to cease the construction but persisted; ignored letters written to her; and continued to rent the house even after she had moved to her own property despite her evidence that she never went back to the house after she moved. Her actions smacked of sheer defiance.

[85] In light of the foregoing, Edicia cannot be entitled to any compensation for the structure as she has counterclaimed for, neither can Mr. Actie be compelled to purchase same or sell the Property to her.

Additional Issues on the Pleadings

[86] Nowhere in her defence does Edicia speak to having an interest in the Property by virtue of prescription. Her defence is that she was given permission to construct a concrete structure by Mr. Actie and his siblings. However, for the first time in written submissions and in the pre-trial memorandum, the defendant seeks to introduce long possession as a defence to the claim. In written submissions Mr. St. Catherine for the first time introduces estoppel. Again, that was not part of Edicia's pleadings on her defence. There was no suggestion anywhere on the pleadings that Mr. Actie encouraged Edicia by his words or conduct to convert her house to concrete and that this caused her to believe that she would enjoy rights or benefits to the Property. In fact, Edicia's position was clear that she did not want any land and she knew she was not entitled to any land.

[87] I remind counsel that the purpose of pleadings is to enable the other side to know the case that they have to answer. To introduce new issues in closing submissions does not afford the other side the benefit of responding to same. The dicta of Barrow JA in *Eastern Caribbean Flour Mills Limited v Ormiston Boyea et al*³ is well-known and instructive in this regard and does not bear repeating. In **Shankiel Myland v Commissioner of Police et al**⁴ Ellis J said the following which further illustrates the point:

“The Court cannot accept that in these circumstances it is appropriate for a claimant to ignore the requirements set out under the CPR and to seek to litigate an issue which has not been raised in his pleadings, thus taking the opposite party completely by surprise.”⁵

...

“Litigation proceeds on the basis that the court is a court of pleadings. They are critical in that they give fair notice of the case that has to be met, so that the opposing party may direct its evidence to the issues disclosed and they assist the court in adjudicating on the allegations made by the litigants.”⁶

Order

[88] In light of the foregoing, the Court’s Order is as follows:

- (1) The defendant, Edicia Joseph is to deliver up vacant possession of the Property known as Block and Parcel 1450B 878 within four months of the date of this judgment.
- (2) The defendant, Edicia Joseph is to remove the house erected on the said Block and Parcel 1450B 878 and all her personal belongings, chattels and possessions of whatever description thereon within four months of the date of this judgment.
- (3) The defendant is at liberty to file an application to extend the time for complying with this Order for the Court’s consideration before the expiration of the four month period, if necessary, given the current state of affairs in Saint Lucia due to the state of emergency imposed by the Governor General and any other measures implemented as a result of the Covid-19 virus.

³ SVGHCVP2006/0012, delivered 16th July 2007 at paragraphs 43 and 44.

⁴ GDAHCV2012/0045, delivered 9th May 2014, (unreported).

⁵ At paragraph 37.

⁶ At paragraph 41.

- (4) Should the defendant fail to comply with paragraph (1) and (2) of this Order by the period stipulated or any extended period or date granted by the Court, the claimant, Mr. Actie shall be at liberty to remove the said house and other belongings of the defendant and the defendant shall be responsible for the costs of such removal.
- (5) The defendant's counterclaim is dismissed.
- (6) Prescribed costs pursuant to CPR 65.5 on the claim to be paid by the defendant to the claimant in the sum of \$7,500.00.
- (7) Prescribed costs on the counterclaim pursuant to CPR 65.5 to be paid by the defendant to the claimant in the sum of \$7,500.00.

[89] I wish to state that the Court's order has taken into account the prevailing circumstances in Saint Lucia which may impact on the defendant's ability to fully comply with the said Order.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar