

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

SLUHCV2016/0568

BETWEEN:

KENYATTA ALLAIN
(as Administrator of the Estate of Joseph Anthony Earle Allain) Claimant

and

TREVOR ALLAIN Defendant

Before:
The Hon. Mde. Justice Kimberly Cenac-Phulgence High Court Judge

Appearances:
Ms. Natalie Augustin for the Claimant
Mr. Alberton Richelieu for the Defendant

2018: February 1;
2019: January 24.

JUDGMENT

[1] **CENAC-PHULGENCE J:** The claimant, Mr. Kenyatta Allain (“Kenyatta”) in his capacity as administrator of the estate of his deceased father, Joseph Anthony Earle Allain (“Earle”) brought this claim against the defendant, Mr. Trevor Allain (“Trevor”) claiming vacant possession of the land registered as Block and Parcel 1047C 300 and the house situate thereon located at Entrepot, Castries (“the Property”), mesne profits at the rate of \$1,200.00 per month from 15th October 2015 until delivery of possession, in the alternative damages, costs and interest.

Background Facts

- [2] Kenyatta was recorded as proprietor of the Property on the Land Register in 2016 by virtue of him having been appointed administrator of the estate of his late father Earle. Upon assuming the role of administrator, Kenyatta became aware that the Property had been occupied by the defendant, Trevor from about April 2015. It would appear that the Property had been reconfigured and altered to create a grocery shop. Notices to quit were served on Trevor personally and he was given express times to vacate the Property but he has failed to do so. Kenyatta claims that he has been deprived of the use and enjoyment of the Property and has suffered loss and damage and he is unable to undertake his duties as administrator and settle his father's estate nor is he able to rent, sell or otherwise use the Property due to Trevor's adverse possession.
- [3] The statement of claim avers that the Property is 2,448 square feet and is estimated at \$39,168.00. The current value of the house situate on the Property which measures 1,200 square feet is \$75,000.00 and the rental value \$1,200.00 per month.
- [4] Trevor filed a defence to the claim in which he says he does not know Kenyatta and never met him. His version of the story is that the Property was in a dilapidated condition and in an abandoned state from about 1999. In September 2008, a neighbour told him of certain activities in the house and suggested that someone should take control of the house. The activities of which he speaks are of course illegal activities. He said he contacted Earle through his brother Kerby Allain ("Kerby") and Earle gave him permission to take possession of the Property and renovate it, the arrangement being that the deceased would compensate him for the renovations. He alleges that all this time he did not know of Kenyatta and only recently learnt that Kenyatta was the son of Earle.

- [5] Trevor avers that he expended his own monies from November 2008 to put the dilapidated Property in the habitable condition it is in today. Trevor admits to having received the notices to quit but says that he would not give up possession unless and until he was reimbursed for the value of the improvements made to the Property, which is now valued at \$141,680.00 as a result of the renovations and improvements.
- [6] Trevor says he is not in adverse possession but was allowed on the Property by the deceased who always acknowledged this and always promised to pay him for the improvements to the Property. Trevor counterclaims against Kenyatta for \$141,680.00 being the value of the improvements made to the Property and costs.
- [7] Kenyatta filed a reply in which he avers that Trevor has known of his existence even if they had not met in person. Proceedings had been commenced in the District Court in 2015 on substantially the same grounds as this claim and so Trevor would have known of him. Kenyatta avers that the Property was occupied and had paying tenants up to the end of June 2004 and in or about 2013, Earle encouraged his cousin to move into the house with his mother, and promised to upgrade the Property. Kenyatta says this could only be done if the Property was vacant.
- [8] Kenyatta denies that the Property was abandoned from 1999 and relies on correspondence dated 9th July 1999 from Reliable Realtors as proof of the fact that in July 1999, Earle engaged a building contractor to undertake repairs and improvements to the Property.
- [9] Kenyatta states that he visited the Property after Trevor filed his defence and observed that no repairs have been undertaken to the Property and any expenditure undertaken by Trevor would only have been in respect of the grocery shop which he converted part of the Property to accommodate. Kenyatta says he doubts any promise was made to Trevor as he has averred.

- [10] Kenyatta's defence to Trevor's counterclaim is that if Earle had indeed given Trevor permission to occupy the Property as he says, it would not be that Earle would ask his cousin to move into it with his mother. He avers that renovations were effected to the Property but states that these were done by his father, Earle. Kenyatta denies that Trevor is entitled to any sum of money for improvements made to the Property or at all.

Issues

- [11] The issues identified for determination are as follows:
- (a) Whether Earle granted Trevor permission to occupy the Property and therefore Trevor was in lawful occupation?
 - (b) In what capacity does Trevor occupy the Property?
 - (c) Whether Trevor is entitled to reimbursements for any improvements made to the Property?
 - (d) Whether Trevor has an overriding interest in accordance with section 28 of the **Land Registration Act**.

Evidence

Claimant's evidence

Kenyatta Allain

- [12] Kenyatta's testimony was that he left Saint Lucia when he was 18 to reside with his father, Earle in the United States and lived with him until about 2001 when moved into his own place not far from his father. He says he visited Saint Lucia often.
- [13] He says he did not meet Trevor in person until October 2016 when he asked to inspect the Property. He says that he first became aware of Trevor in about April 2015 and that Trevor knew of him since he had caused a Notice to Quit to be issued to him on 29th September 2015 which Trevor acknowledged receipt of. Trevor acknowledged in his defence receiving the notices to quit.

- [14] Kenyatta says that he had never heard about Trevor in his inner family circle and certainly not from his father. During his visit in October 2016, the Property which Trevor says he had renovated and was living in since 2009 was in a deplorable state. He said when he asked Trevor about the repairs of which he spoke in his defence, Trevor told him that he had replaced a few broken and damaged vinyl floor tiles and done some painting. The balcony was now enclosed and was being used as a shop.
- [15] He says the yard was unkempt. The roof cornice and bathroom as well as the exterior roof and interior ceilings were in a poor condition. There was no sign of any recent repairs having taken place. Kenyatta says that on that same visit, Trevor told him he had never met Earle and all the negotiations took place between his brother Kerby and his father. He did not know how Kerby contacted his father. Kenyatta says it is strange that his father would have had someone living in his house for almost 6 years and he never made contact with the person or mentioned this to anyone.
- [16] Kenyatta says his father was a shrewd businessman and would never let someone live in his house rent free much less agree to reimburse them for repairs. He says when it came to money his father was frugal. He says his father had always intended to retire in Saint Lucia and the rent from his properties would have sustained him along with pension.
- [17] Kenyatta says he spent his early years in the Property. Sometime between 2010 and 2013, Kenyatta says he recalls his father having discussions with his cousin Charms Gaspard trying to convince her to move into the Property with his aging mother so as to save money and apply the savings from not having to pay rent to taking care of his mother and the house. At the time Earle's mother lived in the CDC buildings in the city center.

- [18] He says he told his father that he had heard that the Property was occupied but his father insisted that the Property was vacant though it needed a little work. About then his father's health started to deteriorate and he eventually passed on 27th March 2015.
- [19] After his father's death and while cleaning out his apartment in New York, Kenyatta says he discovered documents pertaining to the Property among them receipts from contractors engaged to effect repairs to the Property, statements from a real estate agent named Angela O'Shaughnessy speaking to rental payments from tenants at the Property. The documents found span June 1998 to June 2004.
- [20] The documents to which Kenyatta referred were:
- (a) Monthly statements of rent collected from tenant Pete Nival for June 1998, October 1998, November and December 1998, January and February 1999, August September, October, November and December 2000, January 2001, October to December 2002, January to April 2004.
 - (b) A letter dated 20th July 2002 from Earle complaining to Ms. Angela O'Shaughnessy about late payments being made to his loan at St. Lucia Mortgage and Finance and how this could impact his credit rating.
 - (c) Letter dated 9th July 1999 from Angela O'Shaughnessy to Earle enclosing an estimate from one Bernadin Louis dated 7th July 1999 for the re-building of the wall façade of the house situated on the Property. In that letter she tells the Earle that she has not seen his son as yet and asks whether he had arrived as yet.
 - (d) A letter dated 30th April 2004 from Ms. O'Shaughnessy to Earle concerning remittance of rents for January to April 2004 on which there is a handwritten note indicating that 'the tenants have given notice of their intention to vacate end of June 2004.

[21] Kenyatta says he came across nothing mentioning Trevor or Kerby which is strange seeing that his father was very keen to document his affairs and maintain records. In cross-examination, Kenyatta said that he did not know who occupied the Property between 2009 and 2015. He also said that during this period when he visited Saint Lucia that it seemed like the place might have been occupied but he made no attempts to go into the house or to verify his suspicions until 2016. When asked whether he had discussions with his father about the status of the house when he went back to the US, he said he told him that it appeared that someone might be living there. He said he returned to Saint Lucia after that conversation with his father and when asked whether on that occasion he tried to ascertain if there was really someone living there, he said the times he visited no one was there. He said he tried to visit probably sometime in the afternoon but did not believe he ever tried visiting in the morning.

[22] Kenyatta in cross-examination said he knew of Ina, his father's long time ago girlfriend. In cross-examination, Kenyatta confirmed that on his visit to the house while in Saint Lucia he did not make any attempts to speak to any neighbours around to ascertain what may have been going on in the house. Kenyatta admitted that what he knew of the Property related to the period for which he found documents and that he knew nothing of what transpired between 2005 and 2008. He also admitted that the house was supposed to be unoccupied but he could not verify that it really was not occupied during that time. He also could not say with certainty that Trevor had effected no repairs to the Property but insisted that when he visited the house in 2016, it was in bad shape.

Elizabeth Garnes

[23] Ms. Elizabeth Garnes ("Ms. Garnes") is the former girlfriend of Earle whom he dated for 13 years from about 1976 to 1989. She says she knows that Earle lived in a house at Entrepot which is the same one which is the subject of this claim. She says she knows Earle and his family well. She knows Trevor and his mother Rosa Allain and that side of the family with whom she still has cordial relations.

- [24] She says Earle left Saint Lucia in about 1984 and moved to the US and left her in charge of the house. There were two different tenants who rented the Property over a 5 year period from the time of Earle's departure in 1984 until 1989 when her relationship with him ended and she stopped looking after the Property. Ms. Garnes says she believes that Ms. Charms Gaspard ("Ms. Gaspard") took over after that date.
- [25] She says she believes that Ms. Gaspard passed on the responsibility of overseeing the house to Ms. O'Shaughnessy, a realtor who managed all affairs relating to the Property and its tenants for several years. She says she believes Ms. O'Shaughnessy has passed. She recalls that Pete Ninval and his family were tenants for many years. She says the Property was empty for a while and then there was a time when it appeared that someone was entering and staying in the house. When asked in cross-examination how long the house appeared to be vacant she said maybe four or five years but could not remember the exact period. When asked about her observations for the period, she said she did not see bush growing, the house was empty, there were vines around it but she did not have cause to go inside so she did not know its condition.
- [26] Ms. Garnes said on one of her visits to the US she met Earle and informed him of her observations and encouraged him to go and see or at least find out what was going on but his health was failing and she does not believe he did check.
- [27] Ms. Garnes said he seemed to be aware of what she was saying because he told her that he had no idea who could be in the house because he had given no one permission to enter or stay there but she could not recall in cross-examination what year Earle told her this. She says the Earle she knew would not let someone stay rent free in his Property let alone give them permission to make changes to it. She says that she finds it difficult to believe that Trevor would have had trouble contacting Earle as Trevor's mother Rosa Allain would have directed him to Ms. Gaspard for contact information for Earle.

Charms Gaspard

- [28] Ms. Charms Gaspard is the cousin of Earle. She says she knows the Property at Entrepot very well as she was given the task of looking after same about 1990 to 1991. At that time the Property was rented out. She says that arrangement ended because Earle thought she was spending too much money on the upkeep of the Property for things that he could fix himself. She says he questioned every item of expenditure, wanted to see all receipts and always wanted to see how whatever was being undertaken could be done cheaper. She says he had to approve everything. Ms. Gaspard says Earle engaged Ms. Angela O'Shaughnessy, a realtor to source tenants and maintain the Property.
- [29] She says sometime in 2010, Earle discussed with her the possibility of moving into the Property with his mother as she had intimated that it was becoming a financial strain for her to continue to care for his mother. She said she told him that the Property would first have to be repaired to which he said that could easily be done. She says he never mentioned anyone being in the Property.
- [30] Ms. Gaspard says that about 2007 a gentleman approached her at her work place and said he was visiting from the US and had noticed the abandoned Property and was told that the owner was related to her. He said he was interested in purchasing it and wanted to contact the owner. She said she did not give him Earle's details but only told the gentleman that the owner lived in New York. Ms. Gaspard says she communicated frequently with Earle and she believes he would have mentioned to her if he was considering letting someone occupy the Property, rent free or otherwise.
- [31] Ms. Gaspard says that Earle had told her that Ms. O'Shaughnessy had found a tenant and she later found out and met this tenant who was Pete Nival. She says she found it strange that Earle never told her of this arrangement with Trevor.

Defendant's evidence

Trevor Allain

- [32] Mr. Trevor Allain's evidence was that in November 2008 he was living in rented premises. He says he received information from his sister and as result he went to the Property at Entrepot. Rosa Allain his mother is the deceased's first cousin and so Earle was his second cousin. He says when he visited the Property, there was a house on it which appeared abandoned. The window louvres were broken. It appeared that unknown persons were burning stuff in the middle of the house. The cupboards were termite ridden. Vine and bush covered the house. There was grass growing inside. The galvanise was in a deteriorated state and required changing as it appeared to be leaking.
- [33] At paragraph 8 of his witness statement, Trevor says when he saw the condition of the house and realized that it was in a dilapidated state and Earle, the owner had been residing in the US and was not returning to Saint Lucia, he made enquiries. He did not say of whom he made those enquiries.
- [34] He says he spoke to his brother Kerby Allain and Kerby made efforts to contact Earle. They contacted Earle's ex-girlfriend Ina. Thereafter, he says he met with his brother who spoke with Earle and as a result of that conversation, he commenced renovations to the house.
- [35] He says he secured the house and then started renovations from late 2008 to 2009 to make the house habitable. He says at that point in time he heard of Kenyatta Allain but he says he can only recall when he left for the US at about 7 years old. He says he knew him to be the son of a common law union with Flora Nicklette. Trevor says when he started and completed the renovations, he never met Kenyatta.
- [36] Trevor says he had to fix the plumbing, as there were metal pipes that were rusty, he replaced all the louvres in the house, bought new doors, painted the inside and

outside of the house, changed tiling in the kitchen because the existing ones were dry rot, and added an extension in which he houses a grocery shop.

[37] After the renovations, he says he received notices to quit from Kenyatta. He says he responded by letter dated 14th June 2016 that he was a possessor in good faith, and he was entitled to be compensated for the value of his improvements he made to the Property. That letter was not exhibited.

[38] Trevor says Kenyatta was nowhere in Saint Lucia during the renovations and does not know the circumstances under which he took possession.

[39] He says that Earle's mother lived in the CDC until her death and so Kenyatta's evidence that Earle encouraged his cousin to move into the Entrepot Property with his mother is untrue. He admits that he is still in the house. He says he never met Kenyatta and does not know him to be the legitimate heir of Earle.

[40] Trevor says if he had not gotten the permission he would never have expended monies renovating the Property. He produces a valuation report from Coral Development Limited.

Kerby Allain

[41] Kerby Allain is the brother of Trevor. He says about 2008 he had a conversation with Trevor about the Property. He says he knew the condition of the Property because one Mr. Suraj had complained to him about the deteriorating condition of the house.

[42] He says he went to see the Property and observed that the Property appeared to be abandoned and in need of repair. He says he walked into the building and noticed that fire was being lit in the living room, grass growing inside the house, and that it was covered with vines. He says he also noticed that the galvanise was

rusting and all the louvres were broken, the tiles were peeling off the floor, electricity wires were hanging. He says the house appeared to be a hazard.

[43] He says he obtained a number for Earle's ex-girlfriend, Ina and got a contact number and called Earle via telephone and apprised him of the Property. He says Earle intimated that Trevor could repair the house and live in it as his own, as he did not intend to return to Saint Lucia. He says he told Trevor this and Trevor commenced renovations of the Property in late 2008 into 2009.

[44] He says he observed the renovations and transformation of the Property. He says he knows that Trevor expended a tremendous amount of money to renovate the house. He says Trevor also extended the house and now has a grocery shop attached to the house. He says he recalls that the last time the house was occupied was in 2004 when Mr. Pete Ninval gave up possession. Kenyatta was nowhere around when the repairs were taking place.

Analysis

Whether Earle granted Trevor permission to occupy the Property and therefore Trevor was in lawful occupation?

[45] The evidence of the claimant collectively shows that they can account for what transpired with the Property up until 2004 when the last tenant, Mr. Pete Ninval moved out. Ms. Gaspard's involvement with the house by her own account ended in 1991. It is clear from the evidence that Earle told Ms. Gaspard that the realtor had found a tenant which she later found out was Pete Ninval. She does not however speak of any further communication about the house except in 2010 when she says Earle asked her to move in with his mother. The relationship with Ms. Gaspard could not be as close as she would have the Court believe. It was Ms Gaspard's testimony that Earle thought she was spending too much money on the Property and so their relationship as regards the house ended. Why then would he have felt obligated to tell her everything regarding the Property? There seems to be no good reason.

- [46] Kenyatta's evidence does not assist with this issue either. He indicated that he did not know if the house was really occupied. He did not even make any concerted effort to find out who may possibly have been occupying the house even after he said his father had indicated to him that he did not know who could have been occupying the house as he had not given anyone permission. He did not try to ascertain from the neighbours what the possible happenings at the Property were.
- [47] Ms. Garnes' evidence also does not assist. Most of her testimony was what she believed was the position. She clearly was close to Earle but she could only account for up to 2004 when she knew that Mr. Ninval was renting the Property and thereafter according to her, the house was empty for four to five years. The evidence of Ms. Garnes was that at some point she observed that it appeared that someone was entering and staying in the house and she mentioned it to Earle on one of her many visits to the US but she did not believe he did anything because his health was failing. From the evidence that would have been sometime after 2004.
- [48] The claimant's evidence does not account for what transpired with the Property between 2004 and 2013. It would appear that no one was in charge of the Property. It is also clear that Kenyatta's information was gathered from the documentation which he was able to gather after Earle died. It did not appear that he had personal knowledge of the transactions with the Property as he said he did.
- [49] Whilst I had no reason to doubt the testimony of the claimant's witnesses, I find that their evidence does not displace the evidence of the defendant.
- [50] On the contrary, the evidence of Trevor and Kerby showed that contact was made with Earle. I find the evidence regarding the fact of Earle allowing Trevor to reside in the house to be credible. I find this for the following reasons: the evidence does not show any transactions regarding the Property on the part of anyone else between 2004 and 2015. It is clear that the Property was in an abandoned state

after 2004. Although the claimant's witnesses all testified that Earle was a shrewd man, he must have realized that he was not able, being ill, to continue to look after the Property. It therefore would not be surprising that he would consider it shrewd to allow his cousin to occupy the Property and upkeep it so that a presence could be maintained.

[51] The claimant submitted that Trevor never said he had trouble contacting Earle. On the contrary Trevor said he did not have need to contact Earle since he had discussed with his brother, Kerby who obtained the contact information and spoke to Earle. He said in cross-examination that he never thought of asking Earle's mother, which does not in any way displace the evidence given by Kerby and himself. However the contact details were obtained, I believe Kerby Allain when he said he made contact with Earle.

[52] On a close examination of the evidence, I find that Earle did give Trevor permission to live in the Property and repair it. Trevor was therefore in lawful occupation of the house having been granted permission by the owner Earle.

In what capacity does Trevor occupy the Property?

[53] Given my conclusions above, it is clear that Trevor could not be a trespasser. He is certainly not a tenant at sufferance as there was no evidence that there was ever a lease agreement between Earle and Trevor. The evidence shows that Trevor could only be a bare licensee having been given permission by the owner, Earle to enter and use the Property. That licence would have come to an end, having been revoked by the death of Earle in 2015, or at the latest, by the issue of the notices to quit which Trevor does not dispute he received. Trevor therefore has no basis for remaining in occupation of the Property. The claimant would therefore be entitled to vacant possession of the Property. On the basis that Earle would have given Trevor permission to occupy the Property, Trevor would have occupied the Property in good faith.

Whether Trevor is entitled to reimbursements for any improvements made to the Property?

[54] Trevor claims that he is entitled to \$141,680.00 being the value of the improvements to the Property. This claim is premised on the fact of a promise which he says Earle made to him and on which he acted to his detriment. The defendant relies on article 372 of the **Civil Code of Saint Lucia**.¹ Article 372 provides as follows:

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

If they were necessary, the owner of the land cannot have them taken away. He 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 or 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.”

[55] Trevor’s evidence as it relates to improvements made to the Property is contained in paragraph 14 of his witness statement as follows:

“When I renovated the house I had to fix the plumbing, as there were metal pipes that were rusty. I replaced all the louvres in the house. I bought new doors. I painted both the inside and the outside of the house. I changed the tiling in the kitchen, and replaced them with new tiles, as the tiles I found were no longer fit to be kept in the house, as some were dry rot and peeling away from the floor. I also added an extension to which I now house a small grocery shop.”

¹ Cap. 4.01, Revised Laws of Saint Lucia 2008.

[56] At paragraph 19 of his witness statement, Trevor says:

"I reiterate that when I saw the condition of THE PROPERTY, in 2008, I sought the express permission of THE DECEASED to renovate and remain in THE PROPERTY, and to make it my home. If I had not received that tacit permission I would have no reason to expend all my monies to improve THE PROPERTY to place [it] in the habitable condition it is today."

[57] Trevor produced a valuation report prepared by Coral Development Inc. in support of his claim for the \$141,680.00 which he says is the estimated market value of the building. There is no independent evidence from the maker of this valuation report. The report does not say by whom it is prepared and what are the qualifications of this person. Trevor's evidence although detailing the improvements he says he made does not even suggest how much he would have expended on these improvements. He produces not one single receipt in support of his claim for the cost of the improvements not even an estimated value of the improvements.

[58] In cross-examination, when questioned about the fact that he had produced not one single receipt, he indicated that these had been destroyed by Hurricane Tomas. That evidence though was not part of his evidence in chief. It is for Trevor to prove his claim for the improvements. In as much as the Court can appreciate counsel for the defendant, Mr. Alberton Richelieu's ("Mr. Richelieu") submission relying on the words of Matthew J in **George Joseph et al v Elizabeth Stephen**² that life would be intolerable if a person had to keep a record of every expense he made on his property and for his use in excess of \$48, it must also be remembered that it is the defendant who is seeking the cost of the improvements. With the knowledge that he was making such a claim and that his receipts or documents had been lost during Hurricane Tomas, then his evidence in chief should have at least provided the Court with evidence to support his claim. The Court cannot pull a figure out of a hat. Moreover, Trevor's evidence is very general. He does not say exactly what improvements were made.

² Saint Lucia High Court Civil Claim No. 21 of 1985.

- [59] Turning to the valuation report, it states that the assessment of the Property was done based on the verbal request on 16th June 2016, but the Property was inspected on 23rd February 2016; the report is dated 24th June 2016. It is quite curious that the property was inspected before the verbal request for the assessment was made. The report contains no pictures of the interior condition of the house which is where Trevor says he effected the majority of the repairs. The valuation does not assist and I do not attach any weight to this report. Trevor claims the net cost of the building when what article 372 entitles him to is the value of the improvements.
- [60] It is interesting to note that although in the defence, the allegation made is that Earle promised to reimburse Trevor for the repairs which he undertook on the Property, Trevor and Kerby's evidence in chief and in cross-examination does not suggest anything about being paid for the repairs which Trevor would do. In fact Kerby's evidence was that Earle had said that since he was not coming back to Saint Lucia, Trevor could repair the house and stay in it. There was no mention of Trevor being reimbursed for the repairs. I therefore do not find that there is any evidence to support a finding that Trevor was to be reimbursed for any repairs and that any such promise was made by Earle. In light of this, the issue of promissory estoppel does not arise.
- [61] I find that Trevor undertook the repairs to the Property to make the place habitable so that he could be comfortable. I also find that the extension which he built was to facilitate him operating his small shop from which he indicated he derived an extra income. The extension was not to improve the Property and was not necessary in order for Trevor to live in the Property. That was solely for his purposes. Kenyatta's evidence was that what was originally the balcony seemed to have been enclosed and was being used as a shop but he said he saw no evidence of an extension being added to the original structure. I agree with the submissions of counsel, Ms. Augustin when she submitted that Trevor went over and above the requirements of user by building a shop on the Property for his own

benefit and gain, such an addition not being a requirement. Counsel referred to article 446 of the **Civil Code** which provides that a right of habitation is confined to what is necessary for the habitation of the person to whom it was granted.

[62] I accept that Trevor would have had to have made some repairs to the Property given the condition which it appeared to be in, but he has not assisted the Court in any way to allow for a determination as to what the amount of these improvements were. In cross-examination, Ms. Natalie Augustin, counsel for the claimant asked Trevor how much he had spent on renovations from 2008 and he responded roughly between \$15,000-\$20,000 or more but produced no evidence to support this. There is also no evidence of when these improvements were made. Kerby in cross-examination, said he knew that Trevor spent a lot of money to renovate the house. That knowledge he said he got from Trevor who told him so, although he did not say how much he spent.

[63] The improvements to the house were necessary only to the extent that they would have allowed Trevor to live more comfortably in the Property. Trevor enjoyed at least 7 years rent free occupation of the Property and although I find that he entered into occupation in good faith, I do not see how he is entitled to the cost of any improvements to the Property when he would have enjoyed and still is enjoying rent free accommodation and moreover, he has not been able to provide any evidence to support the amount which he claims for these improvements. The position would have been different if it was found that Earle had indeed promised to reimburse Trevor for the repairs done.

Whether Trevor has an overriding interest in accordance with section 28 of the Land Registration Act.

[64] Having found that Trevor was a no more than a bare or gratuitous licensee, he cannot have any right that could possibly be protected as an overriding interest

under section 28(g) of the **Land Registration Act**.³ Edwards, JA [Ag.] in **Andre Winter et al v Charles Richardson**⁴ applying the dicta of Lord Hodgson in **National Provincial Bank Ltd. v Ainsworth**⁵ held that:

“The rights of a person in actual occupation under section 28(g) of the Registered Land Act Cap 374 (the Act) are not protected as an overriding interest where that person is a bare or gratuitous licensee. The respondent, who was inferred to have been a bare or gratuitous licensee, did not have a right which could be protected as an overriding interest. Further, a gratuitous or bare licensee is revoked by the death of the licensor/licensee or by an assignment of the land over which the license is granted.”

The clear conclusion to be drawn from this is that Trevor being a bare licensee has no “right” to be protected.

Conclusion

[65] Having concluded that Trevor was a bare licensee of the Property, he was not entitled to remain in the Property after the death of Earle; at the latest, he ought to have vacated on the date stated in the notices to quit. It is therefore the case that the claimant is entitled to vacant possession of the Property. The claimant has also claimed mesne profits of \$1,200.00 monthly from 15th October 2015 until possession is given up. The claimant has not shown any evidence to support a monthly rental of \$1,200.00. The Court considers that the last evidence of rental of the property was in 2004 and the Property was then rented for \$800.00. Given that there has been no significant renovation to the house and by the evidence of Kenyatta, the house when he visited in 2016 was in a deplorable state, I place the rental value at \$800.00. Trevor would therefore have to pay mesne profits from 15th October 2015, (the date by which he was to have given up possession) up to the date of delivery of possession.

³ Cap. 5.01, Revised Laws of Saint Lucia 2008.

⁴ SLUHCVAP 2006/025, delivered 22nd April 2008, unreported.

⁵ [1965] AC 1175.

Order

[66] In light of the foregoing, I make the following order:

1. The claimant is granted vacant possession of the Property registered at the Land Registry as Block and Parcel 1047C 300 together with the house thereon situate at Entrepot, Castries.
2. The defendant shall deliver up vacant possession of the Property to the claimant on or before 28th February 2019.
3. The defendant is to pay to the claimant mesne profits of \$800.00 monthly from 15th October 2015 to the date of delivery of possession plus interest on the said sum at the rate of 6% per annum.
4. Prescribed costs on the claim to the claimant in accordance with CPR 65.5.
5. The defendant's counterclaim is dismissed with prescribed costs to the claimant in the sum of \$20,210.00.

[67] I wish to sincerely apologize for the delay in the delivery of this judgment and thank counsel and the parties for their patience.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar