

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2012/0052

BETWEEN

**MC GREGOR SAMUEL
MARVA GEORGE
GWENDOLYN SAMUEL**

CLAIMANTS

AND

JEFFREY SAMUEL

DEFENDANT

Appearances:

Mrs. Zhinga Horne Edwards for the claimants.

Dr. Linton Lewis on record for the defendant, absent. Defendant absent.

2016: Apr. 14
Apr. 27

JUDGMENT

BACKGROUND

[1] **Henry, J.:** This case involves a dispute among family members over possession of land and house at Newton, Montrose Village, Kingstown, Saint Vincent and the Grenadines ('the property'). Siblings Mc Gregor Samuel and Marva George are registered as owners of the property, which their brother Jeffery Samuel has been occupying for several years. Their mother Gwendolyn Samuel has a life

interest in the property. Mc Gregor Samuel and Marva George allege that she transferred the property to them in 2009. They claim that Jeffrey Samuel took up residence in the property in 2011 and refuses to leave although they and their mother have asked him repeatedly to do so. They seek an order of possession of the property, an injunction restraining Jeffrey Samuel from trespassing on it and costs.

- [2] Jeffrey Samuel filed a defence in which he denied that his brother and sister are the owners of the property. He averred that his mother was senile at the time the purported transfer to his siblings took place. He alleged also that the signature on the deed is not his mother's. Further, he claimed that his mother made a will leaving the property to him. He asserted that she owns it and he occupies it with her permission. He has denied receiving any request from her to vacate the property. He also denied trespassing on it. He filed a counterclaim for an order revoking the deed which vests ownership to his brother and sister. He also applied for an injunction restraining Mc Gregor Samuel, Marva George and Gwendolyn Samuel from interfering with his peaceful enjoyment of the property, damages and costs. Although the court had given directions for filing and service of witness statements on or before April 26, 2013, Mr. Jeffrey Samuel had filed no witness statements or affidavits in support of his assertions. Jeffrey Samuel is found to be a trespasser on property owned by Mc Gregor Samuel, Marva George and Gwendolyn Samuel. He is to deliver vacant possession and pay to them, damages to be assessed.

Preliminary Matter

- [3] The matter was set down for trial on April 14, 2016. Notices of trial date were issued by the court office to legal practitioners of the respective parties. The notices were duly served by bailiff Marvin Mulcaire who attested to service at Dr. Linton Lewis's chambers, counsel on record for Jeffrey Lewis. On the trial date, Mr. Mulcaire testified that he went to Dr. Lewis' office on March 8, 2016 and served the notice on Mr. Dave Richards, an employee in that office. When the case was called at approximately 10.12am and again at roughly 12.10pm on the trial date, neither Dr. Lewis nor Mr. Jeffrey Samuel appeared. The court clerk, Kathy Peters, testified that she contacted Dr. Lewis by telephone and he informed her that he was unable to attend court because he had clients with him and he was not

dressed for court. The matter proceeded on the issue of liability in the absence of both Mr. Jeffery Samuel and his counsel, on a ruling to that effect.

ISSUES

[4] The issues which arise for consideration are whether:

- (1) Mc Gregor Samuel, Marva George and/or Gwendolyn Samuel are owners of the property?
- (2) Jeffery Samuel is a trespasser on the property?
- (3) If so, to what remedies are Mc Gregor Samuel, Marva George and/or Gwendolyn Samuel entitled?

ANALYSIS

Issue 1 – Are Mc Gregor Samuel, Marva George and/or Gwendolyn Samuel owners of the property?

[5] Mc Gregor Samuel was the sole witness in the case. His testimony on behalf of Marva George, Gwendolyn Samuel and himself was set out in his witness statement. He elaborated on certain aspects orally. His evidence was consistent with the statement of claim. He testified that he and his sister Marva George were given a parcel of land at Newton, Montrose Village by their mother Gwendolyn Samuel. He produced a copy of the Deed of Gift No. 4238 of 2009. It names Marva George and Mc Gregor Samuel as equal owners¹ of the subject property located at Newton, Montrose Village comprising 5,141 square feet. A life interest is expressly reserved to Gwendolyn Samuel. Mr. Samuel said that for the time being, she lives in England where most of her children reside. He explained that the property has a 2 storey dwelling house on it. He stated further that his siblings who live in England, have all stayed at the property from time to time when they visit the country. This is arrangement that is acceptable to his sister Marva and him.

¹ As tenants in common.

- [6] Mr. Samuel explained that difficulties arose when their brother Jeffery Samuel started behaving as if he owned the property and ordered their older brother Kenneth to remove some pigs he kept in a shed at the back of the property. This he said, was further exacerbated when his brother Jeffery threatened to burn down the property so that no one could get it. He testified that he consulted lawyer Douglas Williams and arranged for him to write a formal letter to Jeffery in 2011 giving him notice to leave the property. He explained that he personally took a copy of the letter to Jeffery and he is aware that Mr. Williams sent him another one by a bailiff.
- [7] Mr. Samuel explained that when he took the letter to Jeffery, he was told that even though they sent a bailiff to give him the letter no one was going to move him. He has continued to live there since that time, and refused to leave. The law provides deeds registered under the Registration of Documents Act² ('the Act') conveys to the named transferee(s), those that rights, title and interests which the transferor purports to transfer in it. The Act authorizes the court to cancel or rectify any such deed.³ It is stated in Deed of Gift No. 4238 of 2009 that Gwendolyn Samuel transferred ownership of the subject property to Marva George and Mc Gregor Samuel subject to her life interest. Although Mr. Jeffery Samuel has made an application for revocation of the deed, it is not supported by any cogent evidence on which the court can make such an order. I find therefore that Mc Gregor Samuel and Marva George are the owners of the subject property and that Gwendolyn Samuel holds a life interest in it.

Issue 2 - Is Jeffery Samuel a trespasser on the property?

- [8] It is trite law that a person trespasses on land belonging to another where he performs a physical act on it without the owner's consent, thereby interfering with the latter's possession.⁴ An entry on land which was originally lawful, becomes a trespass when the owner's permission is withdrawn. In order to prove that Jeffery Samuel trespassed on their property and occupies it as a trespasser, Mc Gregor

² Cap. 132 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 5.

³ Section 17 of the Act.

⁴ Southport Corporation v Esso Petroleum Co. [1954] 2 Q.B. 182.

Samuel, Marva George and Gwendolyn Samuel must show that he did not have their permission to be there. Mc Gregor Samuel indicated that when Jeffery Samuel first went into the house, he did so as a guest. However, he testified that subsequently he and Marva asked Jeffery Samuel to leave the property on many occasions including when he was sent a notice to quit as described before. Mc Gregor Samuel testified further that he and Marva have been deprived of the use and enjoyment of the property by Jeffery's conduct. He indicated that when he travels abroad Jeffery Samuel leaves someone in the property.

- [9] The notice to quit specifically identified Mc Gregor Samuel, Marva George and Gwendolyn Samuel as the persons on whose behalf it was issued. By order of court dated 5th December, 2012, Marva George was appointed Gwendolyn Samuel's next friend to continue these legal proceedings on her behalf. Clearly, Jeffery Samuel no longer has the permission of any of the owners to remain in the property. I harbor no doubt therefore that Jeffery Samuel is an unwelcome occupant of the subject dwelling house and property. I find that he is a trespasser and has been since December 2011 when he was served with the letter from Mr. Douglas Williams, barrister for Mr. Mc Gregor Samuel, Marva George and Gwendolyn Samuel.

Issue 3 - To what remedies are Mc Gregor Samuel, Marva George and Gwendolyn Samuel entitled?

- [10] Trespass gives rise to a continuing action for damages for as long as the trespass persists. An owner who successfully brings proceedings is entitled to recover possession of his property and damages from the trespasser. He may also be granted a permanent injunction restraining further trespass if he establishes that there is a strong likelihood that he will suffer grave damage in the future for which an award of damages will be an inadequate remedy. It is an equitable remedy which the court will grant if it appears just and equitable in the circumstances.⁵

⁵ Aslatt v Corporation of South Hampton (1881) 16 Ch. D. 143.

[11] I accept Mc Gregor Samuel's testimony that Jeffery Samuel has threatened to burn down the house if he is not permitted to occupy it. I also note that he has for the past few years been exercising rights of ownership over the property while largely disregarding and refuting his mother's and siblings' interests. This is therefore an appropriate case in which to make an order for delivery of possession, damages to be assessed and the grant of an injunction restraining Mr. Jeffery Samuel from trespassing on the said property. I so order.

ORDER

[12] It is declared and ordered:

- (1) Mc Gregor Samuel and Marva George are the legal owners of the subject property registered by Deed No. 4238 of 2009 and Gwendolyn Samuel has a life interest in it.
- (2) Jeffery Samuel is a trespasser on the subject property.
- (3) Jeffery Samuel shall deliver up vacant possession of the subject property to Mc Gregor Samuel, Marva George and Gwendolyn Samuel on or before May 14, 2016 by 12.00 noon.
- (4) Jeffery Samuel is liable to Mc Gregor Samuel, Marva George and Gwendolyn Samuel in damages to be assessed on application to be made on or before 31st May, 2016.
- (5) Jeffery Samuel is restrained as of 15th May, 2016, whether by himself, his servants and/or agents from trespassing on the subject property or from interfering, hindering, or obstructing in any way Mc Gregor Samuel's, Marva George's and Gwendolyn Samuel's and/or their servants' and/or agents' enjoyment of the subject property.
- (6) The court office shall serve a copy of this judgment on Jeffery Samuel's legal practitioner on or before 3.00 pm today's date (i.e. 27th April, 2016); and as soon as reasonably practicable on Jeffery Samuel personally with proof of service.

(7) Jeffrey Samuel shall pay to Mc Gregor Samuel, Marva George and Gwendolyn Samuel costs to be determined at the assessment of damages stage.

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Esco L. Henry
HIGH COURT JUDGE