

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

(CIVIL)

ST. LUCIA

Claim Nos. SLUHCV2008/0589, 0590, 0591 & 0592

BETWEEN:

SION ALEXIS MICHAUD

Claimant

And

- 1. MURIEL FINISTERRE**
- 2. GIRARD NELSON**
- 3. SAMUEL HEADLEY FELICIEN**
- 4. MARILYN VOLNEY**

Defendants

Appearances:

Mr. Vern Gill for the Claimant
Mr. Winston Hinkson for Nos. 1, 2 and 4 Defendants
No. 3 Defendant unrepresented

2010 July 23 August 30

JUDGMENT

- [1] **REDHEAD J (AG):** This is a claim brought by the claimant claiming possession against each and every one of the defendants and to give up parcels of land which they occupy and damages.
- [2] This action was brought by Owen Ambrose by Power of Attorney on behalf of the claimant.

- [3] Pursuant to a mediation agreement dated 30th June 2003 between Samuel Felicien and the claimant, Sion Alexis Michaud, it was agreed that a transfer of 1/3 share of parcel 1456B 690 to Samuel Felicien who was the claimant in the mediation matter.
- [4] Cletus Felicien was appointed surveyor to carry out the partition. It appears Samuel Felicien was in possession of the entire lot before the partition, because he rented house spots to the other three defendants in this action. Unfortunately, it seems that when the survey was carried out, the houses of the defendants were on the portion of land allocated to the claimant. In fact the houses of all four defendants stand on the portion of land allocated to the claimant.
- [5] The claimant has now brought this action to gain possession of his land which is in occupation of all the defendants.
- [6] I now refer to the witness statements filed on behalf of the three defendants. No witness statement was filed on behalf of the third named defendant.
- [7] Muriel Finisterre in her witness statement says that she lives at Beausejour Gros Islet, she has been living there for the past 16 years.
- [8] She was once tenant of Samuel Felicien. In the year 2001 she paid to Samuel Felicien \$15,000.00 for a piece or parcel of land to be dismembered from land known as 1455B Parcel 388.
- [9] The vendor Samuel Felicien derived his title from the Adjudication. The record is dated 19th November, 1986 and entry dated 17th October as instrument No. 4966 of 1989.
- [10] She says that she paid for 5,000 square feet of parcel 1455B 388 part of which was owned by Samuel Felicien long before he made a donation of his land to the claimant and also before the partition.

- [11] She says that despite the fact that she paid for the land and the licensed land surveyor Jerome Joseph \$1,600.00, she is still not registered as the proprietor of the 5000 square feet which she bought.
- [12] She had built a half concrete half wooden house on a portion and have been resident there for 16 years.
- [13] In the year 1998, before she paid Samuel Felicien fully, she entered into an Agreement for Sale with him for the purchase of the land (the agreement for sale is exhibited). She paid him then a deposit of \$10,000.00. She says that she is well settled at her residence and has planted a number of tree crops there.
- [14] She claims to have a legitimate expectation that having paid for 5,000 square feet of Samuel Felicien's land, she should have a lien on that part of the land and that a purchaser or donee who has an interest in the land would make an enquiry as to her presence there. No one in particular the claimant nor his agent asked her why she was on the land and by what legal authority or what was her interest in and upon the land.
- [15] This, in my opinion is not evidence but legal principles, although these are well founded legal principles. I am of the view that this claimant has a major huddle in that the land which was given to the claimant is not the land on which her house is built.
- [16] According to the plan the land on which the defendant's house stands is a separate parcel of land, the 5,000 square feet is separate from the plot on which her house stands. She paid for 5,000 square feet of land part of parcel 1455B 388. The claimant's interest is in parcel 1456B 690 and later 1456 parcel 924 different, distinct and separate from the parcel which she bought from Samuel Felicien.

- [17] So in my view the claimant is not affected in anyway. He has nothing to do with 1455B parcel 388.
- [18] Continuing in her witness statement, this defendant says that she has an unregistered interest in the land which the claimant is attempting to defeat. She says that her claim is in the nature of an unregistered interest and no one made any enquiry as to the nature or quality of that interest before the transfer of her interest to the claimant.
- [19] In her witness statement the claimant asserts that the claimant's attempt to correct his failure to enquire, by undertaking a partition of such a nature is wholly unfair as the partition places her house smack in the middle of the land which the claimant has chosen as his fair share of the land.
- [20] This defendant says it strikes her as strange that a partition which arises out of a gift, results in the donee acquiring that part of the land which is already occupied by tenants and persons who are about to purchase.
- [21] In her witness statement this defendant argues that she cannot in law be denied the interest in the land which she purchased. She had been resident there for 16 years and built her house on firm concrete foundation and she has above all paid for the land 8 years ago.
- [22] Finally this defendant contends that it is evident that the extent of the land, the claimant desires was no longer available to pass to him by Deed of gift. This was not a purchase of a specific area of land but a gift of the balance which then belonged to Samuel Felicien.
- [23] Samuel Felicien at the time of the gift of the land to the claimant did not own the 5,000 square feet that she bought.

[24] There are some real concerns thrown up as a result of the survey. The land was to be divided up between the claimant and Samuel Felicien. As I have said before, it seems patently obvious that Samuel Felicien was in possession of all the lands prior to the survey. He had rented to the other three defendants in this case, nos. 1, 2 and 4. Each of them built houses on the spot which was rented to them. The defendant Muriel Finisterre built a wooden structure on the spot and later added a concrete portion to the wooden structure. Owen Ambrose says that she did so after the survey which shows mala fides. She had purchased land from Samuel Felicien 5000 square feet. Obviously when she purchased the lot, it seems that, she thought that she was purchasing the lot on which her house stands. But it seems that that turned out not to be the case.

[25] To complicate the issue Samuel Felicien, I am told, later sold all of his portion that was allocated to him as a result of the survey.

[26] The court cannot revisit the partition at this stage. I wonder if it was at all possible to do the survey so that the plot rented by the three defendants fall on the parcel which was allocated to Samuel Felicien. It may be that was never thought of.

[27] What is surprising in my view is that this defendant was represented by learned counsel from 21st August 2008 and may be before and no application was made on her behalf for specific performance to compel Samuel Felicien to transfer her 5000 square feet of land which she purchased from him.

[28] Learned counsel Mr. Hinkson referred to authorities, among them are:-

Taylor v Stibbert¹

Hodgson v Marks and Another²

Smith v Jones³

Errington v Errington and Woods⁴

Bridges v Mees⁵

¹1794 2 VES 437 30 ER 713

²(1971) 2 ALL ER 684

³[1954] 1 LLR 1089

⁴(1952) 1 ALL ER 149

⁵(1957) 2 ALL ER 577

- [29] These authorities are cited by Learned Counsel for the defendant to bolster his arguments that Section 28(1) of the Land Registration Act makes provisions for those who have unregistered interest in land or whose interests have not yet been registered. He argues that the defendant by entering into an agreement for sale of 5000 square feet of land which she had already paid for in full has a legitimate expectation that she has a lien on the land and an overriding interest thereon. More so as the defendant has built a part concrete part wooden house on the land and has been in actual occupation for 16 years and paid for the land over 8 years now.
- [30] I must say at this stage that in relation to the other three it cannot be said that they have an interest in the land on which their houses stood.
- [31] I have no doubt in my mind that the above stated legal principles are well founded and accepted as fair. However, Learned Counsel for this defendant has a difficulty in that the application of those principles are not relevant to the case at bar. As I have said above the claimant is not occupying the plot and has not made any claim to the plot which this defendant had bought.
- [32] Later in this judgment I shall return to the issues which affect this defendant, I now consider the case of the other defendants. The second named defendant Girard Nelson says in his witness statement that he lives at Beausejour at the same address for 15 years. His house is built upon a concrete foundation and the balance is wood. He had been the tenant of Samuel Felicien during the entire period of his occupation of the land at Beausejour. He had entered the land before the claimant accepted a gift of the land from Samuel Felicien and even long before the partition between Samuel Felicien and the claimant. This defendant says that his house measures 20ft by 24ft erected on the land which has been donated by Samuel to the claimant.

- [33] The house was built from funds which he loaned from the NRDF (\$10,000.00). He has planted avocado, pears, coconuts, mangoes and other crops on the land. He harvests some of the fruits which he sells to increase his income and support for the past 15 years he has been a tenant of Mr. Samuel Felicien who had promised to sell a parcel measuring 5000 square feet to him.
- [34] Although the claimant was well aware of his occupation of the land he never enquired of him what was or is the nature of his interest in the land.
- [35] This witness says on oath under cross examination that he got permission from Finisterre to plant the crops on the land. He rented the land from Felicien for \$50 per month. He got notice to quit in 2007. He stopped paying rent since. He has not paid anyone any rent other than Felicien.
- [36] Samuel Headley Felicien has not put in a witness statement. He was represented, initially by Mr. Hinkson who told the court that because of the behaviour of this defendant, he could no longer represent him.
- [37] As stated above, before the partition, the defendant was in possession of all entire lot. In May 2001, 1 acre which was the subject of a Deed of Donation by Samuel Felicien aka Samuel Headley Felicien to Sion Alexis Michaud. Whereby Samuel Felicien transferred a parcel of land in Gros Islet registered as Block 1456B Parcel No. 690 to Sion Alexis Michaud.
- [38] In 2001 Samuel Felicien caused a claim to be filed against Sion Alexis Michaud attempting to revoke the Deed of Donation. This matter went to mediation. The result was that one third of the land would be transferred to Samuel Felicien.
- [39] A survey was ordered by the court and a mutation and partition was executed between the parties in August 2005. The lots occupied by Samuel Felicien and the other three defendants on which their houses stand, fell on the claimant's lot.

Samuel Felicien sold his one third share but maintains his wooden dwelling house on claimant's lot.

[40] The Deed of Partition was in August 2005. by December 2005, Samuel Felicien executed a deed of sale for his portion of 13,484 square feet for \$74,162.00.

[41] He was given notice to quit in 2007 and according to the witness statement of Owen Ambrose, although he does not live in the house which stands on the claimant's land, it is still there.

[42] Marilyn Volney in her witness statement says that she lives at Gros Islet with her seven children. She has been living at same address for 15 years. Her house is built of concrete and wood and supported by concrete pillars.

[43] She has been the tenant of Samuel Felicien for the entire period of her occupation.

[44] Her house measures 30 feet by 38 feet and is erected on the land which has been donated by Samuel Felicien to the claimant.

[45] She has also planted coconuts, goose berries, cherry and sugar apples on the land which she occupies. She harvests the fruits and sells them to increase her income to support her children.

[46] For the past 15 years she has been a tenant of Samuel Felicien the former owner of the land who had promise to sell her a parcel measuring 5000 square feet.

[47] The defence of Muriel Lena Finisterre to the claim is that she has an overriding interest which is protected under the law though not appearing on the Land Register.

- [48] In her counter claim this defendant pleads that on the 18th day of May 1998 she deposited with Samuel Headley Felicien, owner of parcel 1456B 924 and 925 the sum of \$12,600.00 being part payment for 4200 square feet of land to be taken from parcel 1455B 538. In my view parcel 1456 924 and 925 did not exist. 924 and 925 came into existence after the portion in 2005.
- [49] Subsequently on 21st August 2001, she again entered into a further written agreement with the said owner of parcel 1456B 388 and paid \$15,000.00 for 5000 square feet of land to be dismembered from the said parcel[1455B 538].
- [50] The defendant claims that having paid the full purchase price erected a part-wall part-wooden structure on the land and entered possession and occupation for a period of 15 years.
- [51] This defendant says though she had paid for a survey in order to facilitate conveyance of the 5000 square feet, the land was never surveyed and so it remained in undivided ownership of Parcels 1456B 924 and 925 of the Deed of Partition between Sion Michaud and Samuel Felicien.
- [52] The subsequent partition of block 1456B 690 into parcels 924 and 925 failed to take into account the presence of the defendant on the land.
- [53] I make the observation that the parcel sold by Samuel Felicien is 1456B parcel 925. As I understand the issues in this case, Registration Section 1456B 690 was sub divided into two parcels, as a result of the partition, block 1456B parcel 924 comprising 20,508 square feet going to the claimant Sion Alexis Michaud and block 1456B parcel 925 comprising 13,484 square feet going to Samuel Felicien. By paragraph 3 of the defence to counter claim:-

“The claimant has no knowledge of this agreement [agreement between Samuel Felicien and Muriel Finisterre] and if there was such an

agreement it refers to 1455b 388 and not the land known as block 1456B 924 formerly 1456B 878 formerly 1456B 690. At the time of the survey in March 2005 the defendant owned a wooden house to which she subsequently, in bad faith, added a concrete portion. It was incumbent on Samuel Felicien as defendant's landlord to inform the defendant of the outcome of the partition and to have her on to the portion of land owned by him"

- [54] There are three photographs exhibited by Owen Ambrose. These show the wooden structure of houses owned according to the affidavit evidence of Owen Ambrose, by Girard Nelson, Muriel Finisterre and Samuel Felicien.
- [55] Of all the defendants, Muriel Lena Finisterre seemed to have, on paper at least the strongest case but unfortunately having regard to the evidence, I find as a fact that the parcel of land referred to as block 1455B parcel 388 has no connection with block 1456B parcel 924 which is owned by the claimant. The parcel from which 1456B 924 (claimant's parcel) and 1456B parcel 925 (Samuel Felicien's parcel) were created was 1456B parcel 690. Nowhere is block 1455B parcel 388 is mentioned which parcel Muriel Finisterre bought from Samuel Felicien.
- [56] I have no doubt having regard to the evidence that in respect of the parcel 1455B parcel 388 the defendant would have an overriding interest. But the question is, where is this parcel? In whose possession is it?
- [57] This defendant, Muriel Finisterre says that the parcel was never surveyed. Obviously there was no plan drawn. Why was no action taken against the Surveyor, if what she says is correct, to have him survey the lost and produce a plan?
- [58] As for the other three defendants Marilyn Volney, she rented a spot from Samuel Felicien. Under cross-examination she said I can't remember the last time I paid

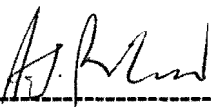
Felicien rent. Girard Nelson who, too rented from Samuel Felicien paying \$50 per month, he said he stopped paying rent in 2007. They have not paid any rent to the claimant neither before nor after the partition. Samuel Felicien remains on the claimant's lot after the partition. They are all trespassers as they are on the claimant's land without his permission.

[59] In the premise therefore the claimant is entitled to possession of the land in the occupation of Muriel Finisterre, Girard Nelson, Samuel Headley Felicien and Marilyn Volney. The defendants each and all of them are ordered to give up the premises which they occupy on or by 31st December 2010.

[60] In my opinion the three of the defendants, Muriel Finisterre, Girard Nelson and Marilyn Volney should approach the claimant with a view to negotiating with him to buy the individual lots which each defendant occupies. The defendant Samuel Felicien should refund the money to Muriel Finisterre which she paid to him for parcel 1455B 388.

[61] Having regard to the conduct of the defendant Samuel Felicien he is hereby ordered to pay the costs in this matter.

[62] Costs to the claimant on a prescribed costs basis to be borne by Samuel Felicien.



Albert Redhead
HIGH COURT JUDGE(AG)