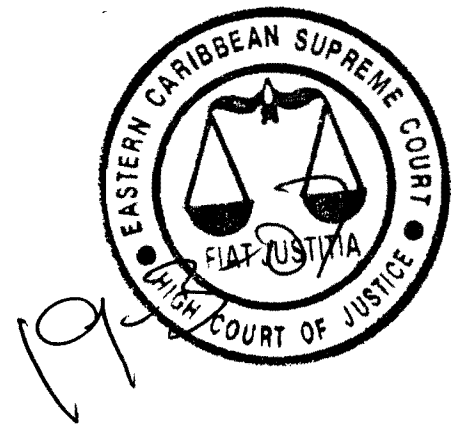


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CLAIM NO. 76 OF 2004



BETWEEN:

ANDRE McINNISS

Claimant

V

EMILY ROBERTS

Defendant

Appearances:

Mr. Stephen Williams for the Claimant

Mr. Sylvester Raymond-Cadette for the Defendant

2007: March 12 & 19

DECISION

- [1] **MATTHEW J (Ag.):** This is a dispute between the Parties concerning the ownership/possession of a portion of land situated at Redemption Sharpes being Lot No. 16 and measuring 2,626 square feet.

PLEADINGS

- [2] By a fixed date claim form filed on February 9, 2004 the Claimant alleged that he became the owner of the aforesaid portion of land by virtue of a deed of conveyance dated February 27, 2003 which was registered in the Registry of the High Court of Justice as Deed No. 713 of 2003.

- [3] The Claimant further alleged that the Defendant is in unlawful occupation of the said portion of land upon which the Claimant has a concrete dwelling house and the Defendant has failed to quit the land despite several requests by the Claimant to do so.
- [4] The Claimant asked for recovery of possession of the property, damages for trespass, a declaration that he is the owner, injunctive relief and costs.
- [5] In an amended defence filed on June 8, 2004 the Defendant denied that the Claimant is owner of the land and the dwelling house. The Defendant alleged that the property was owned by Sonny Jack who asked the Defendant to repair the building which was in a dilapidated state and to take care of it on his behalf.
- [6] The Defendant further alleged that she spent a total of \$10,000 on repairs including workmanship and materials with full knowledge of the Vendors who sold to the Claimant.
- [7] In a counterclaim incorporated in the defence the Defendant also asked for injunctive relief, such further and other relief and costs.
- [8] Emily Roberts died on June 6, 2006 and her daughter, Rosemarie Roberts, was appointed her personal representative and substituted as the Defendant.

EVIDENCE

- [9] Only two persons gave evidence. Andre McInniss adopted his witness statement filed on December 6, 2005. In that statement the Claimant stated that he purchased the property from Deborah Sam and Godwin Sam, the children of Sonny Jack; and that the Sams bought the property from the Housing and Land Development Corporation by virtue of Deed No. 5259 of 2002.
- [10] He said he borrowed a sum of \$50,000 from the National Commercial Bank to pay for the property and he exhibited a deed of mortgage, No. 714 of 2003 in favour of the bank.

- [11] The Claimant stated that by letter dated December 3, 2003 his solicitor, Ms. Maferne T. Mayers-Oliver, wrote to the Defendant requesting her to deliver possession of the property by December 31, 2003 but the Defendant failed to do so up to the time of her death. By parol evidence he stated that the Deceased's son is presently in occupation of the property.
- [12] He further stated that he has been servicing his mortgage loan but the Defendant or her son had not been paying any rent for the property.
- [13] Upon cross-examination by learned Counsel for the Defendant the Claimant was extremely aggressive and disrespectful and had to be restrained several times by his counsel. I had occasion to threaten him by bringing in Court the police officer who was on duty just outside the entrance to the Court.
- [14] Under cross-examination the Claimant said he bought the property for \$48,000 but when he was pointed to his witness statement which said the sum was \$40,000 he said he was confused with the price. He stated that at the time he purchased the house he was a sanitation worker. He said he inspected the house from the outside and understood people were living in it at the time he bought it.
- [15] He said he did not ask the Sams to give him vacant possession and did not know that before Emily Roberts occupied the house it was only a shell with four walls standing.
- [16] Rosemarie Roberts was the other person who gave evidence. By contrast to the Claimant she appeared to be truthfully innocent and polite. She adopted her witness statement which was filed on March 6, 2007. She said she was appointed by the Court as the personal representative to give evidence in this matter.
- [17] In her witness statement she said Sonny Jack was a friend of the family. She said her mother sold food on the sidewalk and would give Jack a daily meal when he was down

and out. Jack and her mother were acquainted when he worked as a stevedore on the Kingstown wharf close to where her mother operated.

[18] She stated her mother lived at Harbour Club over the cruise ship berth but the Government requested that all the persons in the area should remove from there in preparation for the construction of the berth. Her mother then made the decision to get new lodgings.

[19] She said her mother and herself had knowledge that Sonny Jack owned a house and land at Redemption Sharpes. Sonny told her mother to repair the house which was just a shell and live in it. Her mother repaired the house spending over \$10,000.

[20] She said that the Sams and the Claimant knew her mother was taking care of the house for Sonny who was not mentally well. She said the Sams and the Claimant would verbally harass her mother who was a sick person suffering from heart problems. Because of the harassment her mother asked them for a refund of \$6,000 for all her expenses on the repairs and she would give possession but they failed to meet the demand.

[21] Under cross-examination Rosemarie said she did not know if Sonny Jack had a deed for the land and did not know from where he got the property. She admitted that the property was owned by the Housing and Land Development Corporation as Sonny never fully paid for the property. She said she did not know if the Corporation sold the property to Sonny's children by deed executed on June 18, 2002, No. 5259 of 2002.

[22] Rosemarie said she heard Deborah and Godwin sold the property to the Claimant. She said her mother did not have a deed for the land but she started living in the house in 2001 roughly a year before the property was sold to the Sams on June 18, 2002.

[23] She admitted that her mother got letters from various lawyers to quit the property. When she was re-examined she stated that her mother was a tenant who got permission from Sonny Jack to be on the property.

ADDRESSES

- [24] Learned Counsel for the Defendant submitted that Emily Roberts was a tenant in occupation of the property before the Sams and the Claimant purchased. They therefore had constructive notice of her occupation. Counsel referred to Cheshire and Burns Law of Real Property 24th Edition, pages 58 et seq. and to the Rule in Hunt v Luck per Vaughan Williams L.J. 1902 1 Ch. 428 at page 433. Counsel further submitted that Defendant had a common law lien on the property until she was paid.
- [25] Learned Counsel for the Claimant submitted that the Claimant had a good title to the land and that the Claimant's solicitors made the necessary investigations about the title to the land before he purchased. As regards the lien Counsel submitted that if the Defendant has any claim it has to be against Sonny Jack and/or Deborah Sam and Godwin Sam and the Claimant cannot be responsible for any developments made by the Defendant to the property.

CONCLUSIONS

- [26] It is not disputed that neither Sonny Jack nor the Defendant had a deed to the property. Sonny Jack commenced a sale transaction with the Housing and Land Development Corporation but never completed it. Without more evidence on the matter it is not surprising that the Corporation retained full ownership of the piece of land which they later validly sold to Deborah and Godwin Sam on June 18, 2002 by virtue of deed No. 5259 of 2002.
- [27] Later the Sams validly sold to the Claimant by virtue of deed No. 713 of 2003 dated February 27, 2003 and the Claimant mortgaged the property to the National Commercial Bank on the same day by virtue of Deed No. 714 of 2003 to obtain the money to pay for the property.

[28] Defendant's claim, if any, must be an equitable one. According to the Rule in Hunt v Luck the most the Defendant can obtain, in the words of Vaugh-Williams L.J., is that the legal estate of the purchaser "be subject to the title or right of the tenant in possession."

[29] What then was the Defendant's right? The Defendant simply stated that she was a tenant. According to the evidence of Rosemarie Roberts her mother was told to repair the house and live in it. In my judgment the Defendant enjoyed a tenancy at will. See Halsbury's Laws of England, Fourth Edition, Volume 27, paragraphs 167 and 168.

[30] How is a tenancy at will determined?

"A tenancy at will is determinable by either party on his expressly or impliedly intimating to the other his wish that the tenancy should be at an end."

See Halsbury's Laws of England, Fourth Edition, Volume 27, paragraphs 171 and 172. Rosemarie Roberts admitted under cross-examination that her mother received letters from various lawyers asking her to leave the property and the Claimant in his witness statement at paragraph 6 testified to a specific letter written by his solicitor. But Defendant and her son continued in possession to this day.

[31] The Defendant in the final analysis does not deny the Claimant's right to possession. She claims a lien. Paragraph 12 of the witness statement of Rosemarie Roberts filed as late as March 6, 2007 puts the amount demanded at \$6,000.00.

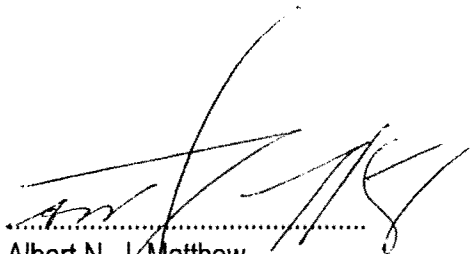
[32] Paragraphs 501 and 502 of Volume 28 of the Fourth Edition of Halsbury's Laws of England are found under the rubric "TYPES OF LIEN AND COMPARISONS." Paragraph 502 dealing with legal lien states:

"In its primary or legal sense 'lien' means a right at common law in one man to retain that which is rightfully and continuously in his possession belonging to another until the present and accrued claims of the person in possession are satisfied."

I do not think learned Counsel for the Claimant is correct to say to the Defendant to give him possession and if he has any claim go against Sonny Jack or against Deborah and Godwin Sam or against them all.

[33] According to Rosemarie Roberts her mother who was forced by the Government to leave her original abode was allowed to repair the property in issue and to live on it. Emily Roberts and her son have been enjoying the property free of rent from the middle of 2001 to date. In my judgment any amount as a lien in her favour must be discounted by her free occupation of the premises for almost six years. In my view she obtained the consideration for the money she expended on the house which gave her refuge. And her son is still enjoying the property free of rent. The Defendant is not entitled to any further sum.

[34] I order the Defendant to deliver possession to the Claimant not later than June 30, 2007. As regards costs I take into consideration the conduct of the Claimant in Court. I am also of the view that Emily might not have had any property so that proper application could be made to administer her estate. I would be hesitant to order costs to be paid by someone whom the Court appointed to continue a case, whether the person consented or not. In the circumstances I make no order as to costs.



Albert N. J. Matthew
HIGH COURT JUDGE (Ag.)