

SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

CLAIM NO. 181 OF 2005

BETWEEN:

MELVINA NANTON

Claimant

and

MICHAEL OSMENT

Defendant

Appearances:

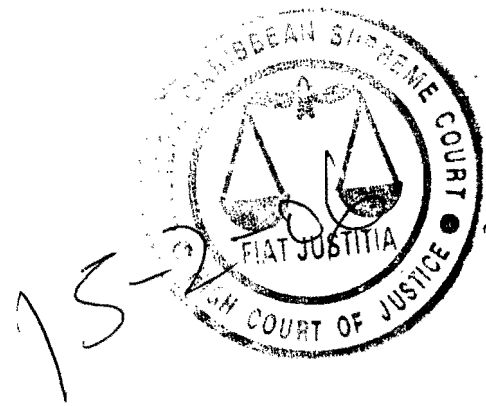
Mr. Emery Robertson Snr. and Mr. Emery Robertson Jnr. for the Claimant.
Mr. Arthur Williams for the Defendant

2006: January 18th
2006: February 15th

JUDGMENT

[1] **Bruce-Lyle, J:** The Claimant Melvina Nanton, being the wife of deceased Vergan Morgan, claims against the defendant Michael Osment for

- (1) An order for possession of all that lot piece and parcel of land together with the building thereon situate at Sandy Bay which she said was owned by herself and her deceased husband
- (2) An order for mesne profits from 17th March 2004 in the sum of \$200 per month until the trial
- (3) An order to remove forthwith any structure erected on the said lands
- (4) Such further and other order as the Court deemed fit and costs.



CLAIMANTS CASE

- [2] The Claimant case is simple. She currently resides at Calder in the state of Saint Vincent and the Grenadines and is the wife of Vergan Morgan (deceased) of Sandy Bay, the owner of the building and land in issue. This building was rented to the defendant Michael Osment. This building was a small building and initially was rented by the deceased to Michael Osment and one Thomas Duncan for use as a shop at \$40 per month, since 2003.
- [3] The Claimant stated that defendant Michael Osment obtained a liquor licence to sell liquor and sought to expand the building in order to accommodate his customers. As a result Osment built onto the existing building a Shed and on account of this the deceased raised the rent to \$100 per month at which stage Mr. Duncan left the Shop up to Osment.
- [4] According to the claimant since her husbands death Mr. Osment has paid her an amount of \$200 in two \$100 instalments and received a receipt from her. Since then Mr. Osment has gone further to add a concrete structure to the building without her permission. This was despite warnings to Mr. Osment to desist from so doing which he ignored. This warning she said was effected by Police Officer Carr. She therefore caused her Solicitor Mr. Emery Robertson to write to the defendant requesting him to vacate the premises but received a letter from the defendants Solicitor Mr. Arthur Williams claiming for compensation for the structure the defendant had erected. The claimant said she has at no time agreed

to pay the defendant and he in turn has wilfully refused to vacate the said premises.

[5] The claimant's evidence was basically supported by her witness Thomas Duncan who lives in Sandy Bay. He said he knew the defendant Osment who had four school going children and was unemployed. Osment asked him for help and he suggested asking the deceased Morgan to allow Osment to use his premises for business. This materialized and both himself and Osment opened a business in the 12' x 8' building. After three to four months Morgan charged Osment \$50.00 rent per month which was dropped on negotiations to \$40.00 per month.

[6] Osment had procured a licence to sell liquor. The premises became too small for the purposes of selling liquor and asked Duncan if he could put on an addition to the existing building. Duncan said he arranged with Morgan by telephone who gave permission for Osment to erect a Shed 10' x 8' with material given to him by deceased Morgan. As a consequence Morgan raised the rent to \$100 per month. Duncan said Osment at first was reluctant to pay the \$100 per month, but he advised him to pay Morgan his money. He said after the death of Morgan, Osment without permission started to erect blocks around the building. This occasioned a warning from the Police but he continued to erect the blocks despite the warnings.

DEFENDANTS CASE

- [7] The defendant by his witness statement stated that he was a Shopkeeper living at Sandy Bay. He admitted that deceased Vergan Morgan also known as Johnson was in occupation of a small parcel of government land on the river bank at Sandy Bay on which he had built a small building which he estimated at about 6' x 8'. He said Morgan was now deceased and that he died on the 3rd day of June 2003.
- [8] He said in the year 1999 he approached Vergan Morgan and asked him to allow him to operate a business in the said building. He said the agreement between Morgan and himself was that he could use the building and give him something. Thomas Duncan was in charge of the property since Morgan then lived in Calder. The defendant said he was in possession of the premises for six years and operated a Liquor and Provision Shop from which he would from time to time give Morgan \$20, sometimes \$40, or \$50 dollars depending on the vagaries of the business. But these payments were regular. He said on two occasions he gave Thomas Duncan money to give to Morgan.
- [9] Defendant Osment said he, during the time he was in possession of the building asked permission from Morgan to extend the building. He said Morgan gave him permission to extend as he had no intention of coming back to Sandy Bay. As a result he said he paid Morgan \$500 as a down payment as he was supposed to buy the property for \$1500. This down payment he said he made in the presence of Vibert Nanton. After this he said he enlarged the small 6' x 8' building to its

present size of 20' x 25' – this was of concrete blocks on a wall foundation and that he supplied all the materials for the extension.

[10] According to the defendant Morgan never objected to this extension and allowed him free reign to build. He said on the demise of Morgan the claimant demanded rent of \$100 per month. He refused to pay her as he has never paid her any money for rent. He values the building now at \$12,000 and requests compensation for the additions he made to the existing structure. He further says that the claimant is not entitled to the premises because it is built on state land and that neither the claimant nor anyone has title to the land and as such he cannot be evicted. He denied each and every aspect of the claimants claim.

ISSUES OF CREDIBILITY

[11] Looking at the evidence from the Defendant Osment, it would be prudent to examine his evidence as per his witness statement and that which was given viva voce under cross examination. Firstly Osment in his witness statement denied the involvement of Thomas Duncan in the negotiations for the building. This is totally different from the version put forward by both Melvina Nanton and Thomas Duncan. Osment went as far as denying that Duncan was a part of the business at its inception. Melvina Nanton said Duncan negotiated for and was a part of the business in the beginning and so also did Thomas Duncan.

[12] In fact Defendant Osment admitted giving money on two occasions to Duncan to pay to Morgan as rent. I find the defendants evidence on this score difficult to

believe. Looking at the evidence of Melvina Nanton and Thomas Duncan, I find their evidence more credible and reject that of the defendant on this issue.

[13] Secondly, right through the witness statement of Osment especially paragraphs 11, 12, 13, 14, 15, 16, he categorically rejects the notion of Melvina Nanton having any interest in the property and at Paragraph 11 goes as far as to state that neither the claimant nor anyone else has title to the said land and as such cannot evict him from the said premises. Yet right at the beginning of his viva voce evidence at the trial he states "The shop is built on Vergan Morgan's land. He got it from James Nanton. He told me so. I used to pay Morgan money when I made money from the business...." This categorically cuts across his assertions made in Paragraph 11 of his witness statement and the other, to my mind, erroneous claims he makes thereafter in the following paragraphs.

[14] Thirdly, there is some considerable divergence in the evidence put forward by the claimant and her witness Thomas Duncan and that of the defendant Osment as to the extent of additions made to the original existing structure. Whilst Melvina Nanton and Duncan speak of two separate additions, the Shed and then the Blocks on a foundation around the existing structure, Osment at Paragraph 6 of his witness statement speaks of only one addition which he says he paid for solely. Again on the preponderance of the evidence and on a balance of probabilities I cannot believe his version.

[15] Clearly the defendants defence seems very convoluted and unclear from the evidence. But at the end of his evidence under Re-examination he states "In my reply to their letter I told them I need compensation for the structure I added on. I will leave when they pay me." Then in his oral submissions to the court at the end of the trial Learned Counsel for the defendant put forward an argument based on the Administration of Estates Act Cap. 377 without stating the relevant section, where he stated that the claim should have been brought in the name of the deceased Vergan Morgan and not this Claimant Melvina Nanton. He further stated that the defendant never paid any rent to Melvina Nanton after the death of Vergan Morgan and that on his death Morgan's property was now vested in the Chief Justice and any other person may have to apply for Administration of the Estate if they had an interest in the property and that this claimant was therefore not properly before the court since there had been no Administration of the Estate.

[16] First of all let me say this – in view of the inconsistencies and discrepancies in the defendants evidence which raise serious issues of credibility which I have on a balance of probabilities resolved in favour of the claimant, I find it difficult to believe the defendant when he says he never paid any rent to Melvina Nanton after the death of the deceased. I will say with more certainty at this stage that the defendant's credibility leaves a lot to be desired.

[17] Pertaining to the area of Learned Counsel for the defendant's submission where he refers to the Administration of Estates Act Cap. 377 of the Laws of Saint

Vincent and the Grenadines I have this to say. Section 5(3)(d) of the said act states -

(3) "without prejudice to the rights and powers of a personal representative, the appointment of a personal representative in regard to real estate shall not, save as hereinafter provided, affect –

..... (d) the right of any person claiming to be interested in the real estate to take proceedings for the protection or recovery thereof against any person other than the personal representative".

[18] This Section clearly confers a right or entitlement on the claimant to pursue this claim as an interested party to the real estate to protect or recover it from the defendant who to my mind is intent on expropriating the property for himself having regard to Paragraph 11 of his witness statement.

[19] The defendant has given the value of the property as it presently stands at \$12,000. Where did this figure emanate from? There is nothing in evidence to support this figure except the say so of the defendant whose credibility lies in the gutter as far as I am concerned. I totally reject this Counterclaim from the defendant in view of the fact that I am inclined to believe that he put up the concrete additions without permission. He cannot now unjustly enrich himself from his own folly.

[20] The claimant on the other hand has satisfied me on a clear balance of probabilities, and from the facts gleaned from the evidence that her claim is clearly

made out. I say this especially in view of the defendants rather strange position as regards Paragraph 11 of his witness statement which I have referred to earlier in this judgment. Learned Counsel for the claimant referred the Court to the case of E.H. LEWIS AND SON, LTD. V. Morelli AND ANOTHER a Court of Appeal (England) case with Tucker, Asquith, L.JJ and Harman J presiding on November 9th, 10th, 11th and 23rd of 1948. In that case Harman J said "The doctrine that a tenant may not question his Landlords title is familiar law. This is sometimes said to rest on estoppel, and when a lease is under seal, no doubt this is so. The doctrine, however, has been extended by analogy to written, and even to oral tenancies it has been well described as arising by intendment of law from the relationship of landlord and tenant: see Kelly, CB in Morton v Woods (4) (L.R.4Q.B304), citing Lord Chelmsford in Jolly v Arbuthnot. We do not think it operates by estoppel strictly so called in cases where there is no writing. The belief of the tenant in his Landlord's ability to grant the term is not essential. He may know or have notice of a defect in his Landlords title and yet be precluded, once he has entered and paid rent, from denying it"....

- [21] For the reasons stated earlier in this judgment I endorse fully the learning enunciated in Harman J's judgment, which clearly cuts to shreds any defence the defendant Osment has posited.

ORDER

- [22] I therefore find for the claimant in this suit and make the following orders –

- (1) An order that the defendant forthwith quit and deliver up possession of all that lot piece or parcel of land together with the building thereon situated in Sandy Bay being butted on one side by the public road, a second side by a River, a third side by Lands of one Baptiste and on the 4th side by lands of Juliet Hoyte or howsoever otherwise the same may be abutted and abounded known, distinguished, or described.
 - (2) That the defendant pay mesne profits from 17th March 2004 in the sum of \$100 per month until date of Judgment the 15th day of February 2006
 - (3) That the defendant forthwith remove any structure erected on the said lands.
 - (4) The defendant will also pay the claimants costs in the sum of \$2,000.00
- As I have said earlier in this judgment the defendants defence and what appears to be counterclaim are hereby dismissed.


Frederick V. Bruce-Lyle
High Court Judge