

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2004/0611

BETWEEN:

**ALICIA FRANCOIS Administratrix of the Estate
of the late JACOB FANUS of Desruisseaux, Micoud**

Claimant

and

**[1] MOSES JOSEPH
[2] ST. LAWRENCE MATTY
[3] MATTHEW MATTY
[4] PATRICK LUBIN
[5] EARL BARNARD
[6] ANTOINE FANIS
All of Riche Bois, Micoud**

Defendants

Appearances:

Mr. Callistus Vern Gill for Claimant
Mr. Horace Fraser for Defendants

2011: August 15.

JUDGMENT

[1] **GEORGES, J. [AG.]:** On 10th August 2004, a claim was filed by Jacob Fanus (now deceased) in which he sought an order that the defendants pull down remove or destroy structures they had erected on his land situate at Riche Bois in Micoud and recorded as Block 1627B 391 and 136 in the Land Registry (hereinafter referred to as "the disputed land"). He also sought special damages in the amount of \$600.00, damages for trespass, mesne profits, and costs.

- [2] He later filed an amended claim form on 17th November 2004 in which he sought possession of his property (in particular Block 1627B parcel no. 391). In addition, to the relief sought in his original claim form, he claimed general damages, interests, and mesne profits from 1997.

Background

- [3] In light of the many events that followed the filing of the original claim it is important that a brief background be furnished. Just shy of two months after filing the amended claim, Jacob Fanus died on 18th December 2004. No doubt influenced by Fanus' passing the defendants filed a defence in which they disputed the claim on the grounds that: (1) the claimant was deceased and; (2) a notice to quit which had been served on them was defective.
- [4] On 9th of May 2005 an order was granted by Murray Shanks J. that Alicia Francois the daughter and Administratrix of the Estate of Jacob Fanus' estate be substituted as claimant in the action. An amended defence was filed soon after on 31st May 2005 in which the defendants put Alicia Francois acting in her capacity as Administratrix to strict proof that her late father was the owner of Block 1627B parcel 391. The defendants also did not admit being tenants at sufferance and averred in the alternative that if they were in fact tenants at sufferance the purported notice to quit was defective pursuant to Article 1515 of the **Civil Code**.
- [5] The defendants also relied on Article 2103A of the **Civil Code** in averring that by virtue of their possession of the land for 30 years they were owners by prescription which bars the claimant from making a claim for possession against them. On that premise the defendants counterclaimed for summary judgment or alternatively that the claim be struck out for want of reasonable prospect of success. Finally they sought a declaration that they are entitled to the land pursuant to Article 2103A of the **Civil Code**. In this connection the defendants sought consequential relief in general damages, interests and costs.

- [6] On 29th September 2005 the claimant complied with an order by the court for standard disclosure by making available copies of a series of notices allegedly served on the defendants from as early as 1st October 1987 and continuing up to 17th June 1996. A copy of the Grant of Probate to her as Administratrix of her late father's estate and a copy of the land certificate from the Land Registry certifying her late father as owner with absolute title of the disputed land were also exhibited.
- [7] Following numerous applications for extension of time to comply with the court's order for disclosure the defendants eventually disclosed a Deed of Depot by Louis Seraphin registered at Volume 50 Number 19309 (from whom they seemingly claim to have inherited the disputed land) and a Deed of Sale purportedly conveying 4 carres of land at Riche Bois to one Thirsy Seraphin. Both of these documents were reproduced and verified as copies of the original by the Saint Lucia National Archives.
- [8] I pause here to observe that the Deed of Depot and the Deed of Sale on close examination did not prove helpful. The Deed of Sale refers to the purchaser of land under the deed as being Thirsy Seraphin who paid just over £22.00 to one D. LaCorbiniere for 4 carres of land to be "taken from land called 'Riche Bois' located in the quarter of Micoud". None of the defendants have said who Thirsy Seraphin is or was or proved that the said Thirsy Seraphin is one and the same person as Louis Seraphin or whether Louis Seraphin is a lineal heir of the mysterious Thirsy Seraphin. The Deed of Depot is even more unreliable in this context because it states that Louis Seraphin deposited a receipt from Montrose Nicholas for the sum of £20.00 which was dated the 10th of March 1893. No mention is made in the Deed of Depot as to what the payment to Montrose Nicholas was for. Even more telling is the fact that both documents seem to have no factual or legal connection with each other and the land said to be taken from land known as "Riche Bois" has not been shown to be the same plot of land in dispute.

Issue to be determined

- [9] The sole issue which falls to be determined clearly is whether the defendants have obtained title by prescription having allegedly lived on the disputed land in excess of 30 years which would bar the claimant's claim for possession of it.

Co-relative to that issue is whether the notices to quit served on the defendants by Jacob Fanus are valid. This is important because the validity of the notices have direct bearing on the defendants' claim to title by prescription.

- [10] It is not disputed that during the **Land Registration and Titling Project (LRTP)** in the mid-eighties Jacob Fanus got provisional title on 12th August 1987 to the disputed land. Nor is it disputed that that provisional title was made absolute on 10th May 2005.

- [11] In order to secure registration of the land Jacob Fanus swore an affidavit under the Land Adjudication Act on 4th February 1986 which was a key requirement for acquiring title. All the defendants in their witness statements said that they were on the land in excess of 30 years, some claimed to have been occupying the land for even longer periods. The inference that I am inclined to draw from that, and in fact do draw, is that they could have, at the time that Jacob Fanus applied for title under the LRTP lodge an appeal pursuant to s. 20 of the **Land Adjudication Act (LAA)**. There was no appeal against the decision of the Adjudicating Officer within the 90 days' time limit for appealing. As a result the defendants cannot now be heard to challenge the title that was given to Jacob Fanus because they have delayed in seeking to pursue a right to which they lay claim. The time allowed for challenging the decision of the Adjudication Officer has long expired and the claim for possession by prescription is now statute barred.

- [12] Section 23 of the **Land Adjudication Act (LAA)** renders the decision of the Adjudication Officer final. If objection is taken to a person's ownership of land the disputing party may seek review of ownership from the Adjudication Officer. The authorities are replete with support for this view. Barrow J [Ag.] in Saint Lucia Suit

No. 680 of 1993 **Felicite Castang (nee Emilien) and Florus Joseph (commonly called Rufus)** stated the position clearly when he said:

“The whole scheme of the Land Adjudication Act 1984 was to provide for the final determination of the ownership of land. Where there were disputes as to ownership the Act provided for an adjudication, which was clearly a judicial process with a right of appeal.....”

The defendants did not take the opportunity to seek the redress built into the Act to protect them. They therefore should not be allowed 24 years after Jacob Fanus first got title to the land in 1987 to challenge the process by which he had acquired it.

[13] Jacob Fanus’ title was made absolute in 2005 and he thus acquired further statutory protection as the owner of the disputed land. This protection is conferred by section 23 of the **Land Registration Act (LRA)** which makes his title indefeasible. Registered title can only be defeated by proof of fraud or mistake pursuant to section 98 of the LRA. Section 28(g) of the LRA however subjects the registered owner’s title to overriding interests such as rights acquired by prescription.

[14] Title by prescription is governed by Article 2103A of the **Civil Code** and the **Supreme Court Prescription by 30 years (Declaration of Title) Rules** Cap 2.01 (hereinafter referred to as “the Prescription Rules”). Article 2103A read in conjunction with Article 2957 clearly abides by the common law principle that user of land to support a claim for title by prescription must be nec vi, nec clam, nec precario. That is to say the party claiming title by prescription cannot do so if his possession is by force, in secrecy or by permission of the person with greater title: **Solomon v Mystery of Vintners** (1859) 4 H. & N. 585 at 602.

[15] In the language of Article 2957, possession of land by a person claiming prescriptive title should be “continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor”. Some of the defendants claimed to have been on the land before the claimant but it is my considered view that when Jacob Fanus got registered title in 1987 their possession would have been interrupted. The

result of this interruption is that the relevant period of user that this court is bound to consider would be from 1987 to the present; which falls short of the 30 years required by law.

[16] Moreover, I am not convinced that the defendants' occupation of the land was peaceable. The authorities declare that occupation by force does not require any physical violence; mere objection by the owner to the use of his land will suffice. Notices to quit are examples of objection. The evidence shows that Jacob Fanus served notices on all the defendants more than once beginning from 1st October 1987 up to the 17th June 1996. The defendants argued that if they are tenants at sufferance as pleaded by the claimant then the provisions of Article 1515 of the **Civil Code** would invalidate the notices. I am unable to see how this provision invalidates the notices given. The provision deems tenants at sufferance to be annual lessees but makes it clear that such persons are deemed to be annual lessees and can be ejected for non-payment of rent exceeding three months. For this provision to apply all the defendants would have had to admit that they were paying the claimant rent and therefore their annual lease could only terminate on the first day of May each year. There is no evidence or pleading to that effect.

[17] I therefore find that the notices were valid and effectively operated as the claimant's protest to the defendants' use of his land. The very fact of disregarding the notices nullifies the defendants' claim to title by prescription as this would be tantamount to occupation of the land by force.

[18] The court now has authority to declare title by prescription which was once exercised by the Adjudication Officer under the LAA. Jacob Fanus applied for title on the basis of having occupied the land for numerous years back in 1986. Any challenge to that cannot be brought before this court as there was a judicial process available to the defendants through the LAA to challenge his claim to title. The matter for all intents and purposes is now *res judicata*.

Conclusion

[19] Taking all the circumstances into consideration I make the following orders: (1) that the defendants quit and deliver up possession of the disputed land to the claimant on or before 31st December 2011; (2) that the defendants jointly and severally pay mesne profits in the sum of \$1400 to the claimant by 31st December 2011; (3) that the defendants pay damages for trespass, jointly and severally, to the claimant in the sum of \$800 and; (4) that the defendants do jointly and severally pay the claimant's costs of \$1,000.00. I make no award of special damages.



Ephraim Georges
High Court Judge [Ag.]