

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2007/0619

BETWEEN:

[1] BERNARD PROSPERE

[2] JUSTIN PROSPERE

Claimants/Ancillary Defendants/Respondents

and

[1] ANTHEA LYNCH

[2] MARGARET MARY LYNCH

Defendants/Ancillary Claimants/ Applicants

Consolidated with

SLUHCV 2008/1223

BETWEEN:

MARGARET MARY LYNCH
in her capacity as Administratrix of the late
Joseph Lynch and Gloriana Lynch

Claimant/Applicant

and

[1] BERNARD PROSPERE

[2] JUSTIN PROSPERE

Defendants/Respondents

Appearances:

Ms. Leonne Theodore John with K. Gill Counsel for the Prosperes
Mr. Horace Fraser Counsel for the Lynches

2008: December 2, 9;

2009: January 23;

May 28;

2011: December 2.

JUDGMENT

[1] **GEORGES, J. [AG.]:** These are two consolidated actions the first of which was initiated by Fixed Date Claim Form filed 10th July 2007 in which the Prosperes claimed against the defendant Anthea Lynch:

- (i) Possession of a parcel of land registered in the Land Registry as Parcel 0643B 135 (hereinafter referred to as Parcel 135) in the Registration Quarter of Castries.
- (ii) Removal of a dwelling house erected thereon.
- (iii) Damages for use and occupation of the said Parcel 135 from 1st May 2007, to date of possession
- (iv) Any further order as to the Court may seem just.
- (v) Costs.

Annexed to their statement of claim is a copy of the Land Register relating to Parcel 135 (formerly Lot 28) which shows Justin Prospere and Bernard Prospere as the registered proprietors comprising approximately 0.25 hectares.

[2] In paragraph 3 of their statement of claim the claimants allege that the defendant Anthea Lynch had been occupying a wooden house for a number of years without paying rent which had been constructed on Parcel 135 by her parents (Joseph and Gloriana Lynch) before 1984 the year in which they (Joseph and Gloriana) sold Parcel 135 (then Lot 28) to them.

[3] By Notice to Quit dated 17th October 2000 and served on the defendant Anthea Lynch on 19th October 2000 the claimants requested that the defendant quit and deliver up possession of part of Parcel 135 and remove the said wooden dwelling house erected thereon but the defendant failed to do so.

[4] By Notice to Quit dated 17th October 2006 and served on the said defendant on 25th October 2006, the claimants demanded that the defendant quit and deliver up possession of Parcel 135 on which there is a chattel house in which she resided to the claimants and remove the said dwelling house on or before 1st May 2007 but

the defendant failed to do so and remained in occupation by reason whereof the claimants allege that they have suffered loss and damage in respect of the use and occupation of the portion of land occupied by her.

- [5] Wherefore the claimants claim against the defendant Anthea Lynch the remedies stated in paragraph 1 of this judgment.
- [6] For her part the defendant Anthea Lynch in her defence filed on 25th January 2008 whilst admitting being in occupation of a dwelling house (at Marigot) "situate on land more particularly described as Block 0643B Parcel 135" contended that her occupation of the dwelling house was as a tenant at sufferance of Margaret Mary Lynch the administratrix of the estate of Joseph and Gloriana Lynch. She further contended that she did not own the house nor was she responsible for its construction and was therefore wrongly named as defendant in this action. The claim she contended was vexatious and unmeritorious and therefore unsustainable and ought to be dismissed with costs.
- [7] An amended defence and counterclaim was filed on 16th May 2008 in which Margaret Mary Lynch was joined as second defendant. The gist of the amended defence as deposed by Margaret Mary Lynch administratrix of the estate of the late Joseph Lynch and Gloriana Lynch (the Lynches) is that during their lifetime Joseph and Gloriana bought Parcels 134 and 135 formerly Lots Nos. 27 and 28 from Geest Industries (Estate) Limited which measured approximately 0.12 hectares and 0.25 hectares respectively.
- [8] According to her, during their lifetime the Lynches physically occupied Parcel 135 and remained in occupation until 18th December 1984 when they sold a small portion of it measuring 10, 092.70 square feet or 0.12 hectares to the claimants. It is alleged that in error the Deed of Sale equated 10, 092.70 square feet to 0.25 hectares.
- [9] The second defendant further deposed that during the lifetime of the Lynches the claimants occupied Parcel 134 and erected a permanent structure (a concrete

house) thereon. They now sought possession of Parcel 135 but unlawfully continued to occupy Parcel 134 and refused to yield possession thereof to the Lynches thus compounding their wrongful occupation it is averred.

[10] Subsequently on 12th September 2007 the second defendant caused a lawyer's letter to be sent to the claimants to attend a meeting with a view to resolving what was perceived by her as an anomalous situation but the claimants did not respond. The second defendant consequently views the claimants' claim as vexatious and without merit and therefore unsustainable and ought to be dismissed with costs. Possession of Parcel 134 is consequently claimed by the defendants from the claimants and an order for removal of the dwelling house erected thereon as well as mesne profits from 1984 to date of giving up possession and costs.

[11] Alternatively the defendants seek an order that Parcel 134 be registered in the names of the claimants and Parcel 135 be registered in the names (sic) of the estate of Joseph and Gloria Lynch and that the land be re-surveyed to reflect the measurement of 10, 092.70 square feet or 0.12 hectares bought by the claimants. I pause to mention that on the basis of the amended defence as well as her own admission the defendant Anthea Lynch would clearly have no locus standi in these proceedings without herself having any beneficial or proprietary interest or prescriptive rights in either parcel of land.

[12] The matter came on for case management before Madame Justice Sandra Mason, QC on 24th June 2008 who gave appropriate orders and directions and fixed a one day trial for 22nd January 2009. Pre-trial review was set for 9th December 2008 with parties being at liberty to apply for further directions and/or orders prior thereto. Witness statements limited to three on each side were to be filed by 31st October 2008.

[13] Bernard Prospere filed a 32-paragraph witness statement on 31st October 2008 to which was appended no fewer than ten documentary exhibits including a copy of Land Register Number 0643B 135 (BPJ2) showing himself and his brother Justin

as the registered proprietors of Parcel 135. Also displayed is the Lynches' title consisting of Deed of Sale by Geest Industries (Estate) Limited to them executed before Cyril Landers, Notary Royal on 21st April 1983, (BPJ3).

- [14] Exhibit BPJ4 is a registered deed of sale for the land which Justin and Bernard Prospere had purchased from the Lynches comprising Lot 28 and containing 10,092.70 square feet.
- [15] In April 1986 during the **Land Registration and Titling Project** (LRTP) the Prosperes duly claimed Lot 28 as described in their title deed and the portion of land was given block and parcel 0643 B 134. A copy of the extract of the Registry Map showing Parcel 0643 B 135 is displayed as Exhibit BJP5.
- [16] At paragraph 18 of his witness statement Bernard Prospere reveals that since claiming the land (Parcel 135) in 1986 his brother and himself had mortgaged it several times and as at 27th October 2008 there existed a mortgage on the property in favour of Bank of St. Lucia Limited. He further asserts that since claiming the land he had acknowledged and accepted that Parcel 135 comprising 0.25 hectares belonged to Justin and himself albeit that Mr. Lynch had a chattel house on it to which there was no objection since their sister occupied lands belonging to Mr. Lynch.
- [17] Since claiming the land there had been no challenge made against their title and/or the register by Mr. Lynch or anyone else he deposed. Further Joseph and Gloriana Lynch were both alive during the LRTP and could have lodged an appeal pursuant to section 20 of the **Land Adjudication Act** (LAA) but there was none against the decision of the Adjudicating Officer within the 90 days' time limit for appealing.
- [18] A witness statement which substantially covers the same ground as that deposed to by Bernard Prospere was filed by Justin Prospere on 31st Octobr 2008.
- [19] Lo! On 6th November 2008 Anthea and Mary Margaret Lynch applied for further

leave to amend their defence and counterclaim and also to file their witness statements and for relief from sanctions for failing to do so in accordance with the case management order of 10th July 2008. They also sought to have over a dozen paragraphs of the witness statements of the claimants struck out on the grounds that they contained matters not pleaded by them and therefore not part of their case contrary to Part 8.7 of the **Civil Procedure Rules 2000 (CPR)**.

[20] The grounds of the application are that:-

- (a) There were a number of relevant documents to this case coming into the hands of the applicants for the first time after the case management conference was conducted in these proceedings. The said documents threw new light on the case at hand and had in effect substantially changed the applicant's case they said.
- (b) The applicants desired to further amend their defence and counterclaim and required an order of the Court to do so. It would have been impractical for them to file their witness statements in accordance with the case management order in this regard.
- (c) The application could not have been made in a timely manner because Counsel had difficulty in contacting the applicants.

[21] In her supporting affidavit Anthea Lynch stated:

2. "That the Case Management Order required us to file and serve our Witness Statements by 31st October 2008 but since it was prudent for us to make this application it would have been impractical to do so and we hereby seek leave of the Court to be relieved from sanctions for not filing our witness statements in accordance with the case management order.
3. That the Claimants in their witness statements in identical paragraphs viz 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 28 and 29 have raised issues which they never pleaded in their Statement of Claim and I am advised by counsel and verily believe that they have not complied with Part 8.7 of the Civil Procedure Rules 2000 and therefore cannot rely on those matters they now seek to raise.

4. That on 28th June 2008, case management directions were given by the Court. Subsequent to the conduct of the case management conference we came upon documents: Deeds of Sale and documents coming from Geest Industries (Estates) Ltd. which according to the advice of Counsel which I verily believe, seem to cast new light on the factual matters of this case.
5. That I am also advised by Counsel and verily believe that the said documents have altered our case in a material particular and therefore in the interest of justice there is a need arising for our defence and counterclaim to be amended to accommodate the new particulars.”

[22] The application was heard on 2nd December 2008 and for reasons that are clearly and cogently set out in a written decision dated 9th December 2008 leave was granted without sanctions (in hindsight perhaps erroneously in the light of **Kenton St. Bernard and AG Grenada et al**¹) for the witness statements to be filed and served by 16th December 2008 but the application to strike out certain paragraphs of the claimants'/respondents' witness statements as well as to further amend their amended defence and counterclaim was refused with costs to the claimants/respondents in the sum of \$500.00.

[23] Behold once again on 8th January 2009 the defendant/applicant Margaret Mary Lynch applied to the Court for the following orders:

1. that the trial of Claim No. SLUHCV2007/0619 scheduled (since 10th July 2008) for 22nd January 2009 be vacated; and
2. that Claim No. SLUHCV2008/1223 be consolidated with Claim No. SLUHCV2007/0619 for trial and disposal.

[24] The grounds of the application are that:

- (a) both claims involve the same parties and the same subject matter; and
- (b) it would save costs and time to have the issues involved in both

¹ Civil Case No. 0084 of 1994 Barrow J. (Ag.) unreported at paragraphs 14 and 15.

claims decided at one trial.

[25] In her supporting affidavit the applicant Margaret Mary Lynch says at paragraphs 3, 4 and 5:

3. That Claim Number SLUHCV2007/0619 was issued by the respondents/defendants in which they seek an order for possession of land more particularly described as Block 0463 B Parcel 135.

4. That in Claim Number SLUHCV2008/1223 in her capacity as administratrix of the estates of the late Joseph and Gloriana Lynch she seeks a number of declarations and orders impugning the legality of the respondents/defendants' right to title of the said parcel of land.

5. That accordingly the issues to be ventilated at the trial of Claim Number SLUHCV2008/1223 and that of Claim Number SLUHCV2007/0619 were intertwined and related and involved the same parties.

[26] The application was vigorously opposed but was granted and the consolidated action came on for hearing on 28th May 2009 following which Counsel were ordered to file written submissions on or before 12th June 2009.

[27] Ms. Theodore John helpfully provided the Court with skeleton arguments/written submissions of her arguments but no written submissions were filed by Mr. Fraser.

The evidence

[28] Bernard Prospere a fireman by occupation adopted his witness statement filed 31st October 2008 as his examination in chief together with an affidavit in response to the claim filed by Margaret Mary Lynch as administratrix of the estate of Joseph and Gloriana Lynch deceased. He did not personally speak to Mr. Lynch he said. Everything was done by his mother. He did not speak to Mr. Lynch to allow him to

remain on the land (Parcel 135). He authorized his sister Ann Charles to build a wooden house on Parcel 134 he said. It had a concrete toilet he added. He had no idea of the cost he disclosed. Both house and toilet were demolished in 2007 he said.

[29] On re-examination he confirmed that everything was done by his brother Justin as he himself did not reside in Marigot at the date of purchase. Justin he said spoke to Mr. Lynch and he acquiesced/agreed with what Justin said or did.

[30] Justin Prospere Bernard's brother affirmed that he lived at Fond Manager La Croix and was a farmer. He confirmed having subscribed to a witness statement regarding purchase of his property involving a claim against Margaret and Anthea Lynch.

[31] In cross-examination he said he had bought the land because it was offered to him. He bought it he said as an investment. He knew that Mr. Lynch had other property when his sister was getting ready to build sometime in 1985.

[32] Isidore Emilien also known as Ti Boy told the Court that Geest Industries had agreed to sell him land (at Marigot) but he could not recall what year that was or the lot number. All he remembered he said was the number 8. He was not given any deed he said. It was a number of years ago he pointed out and he had ceased working for Geest (as a general labourer). The evidence revealed that this witness was illiterate as well as hearing and speech impaired.

[33] Margaret Mary Lynch lived at Marigot and was the administratrix of the estate of her deceased parents Joseph and Gloriana Lynch. She disclosed that her father had only one house on his land in which he had always lived. The house which the Prosperes built on the other parcel of land (Parcel 134) was demolished and left on site she said.

[34] Cross-examined by Ms. Theodore-John the witness testified that her father Joseph was also known as Venta. She knew Ti Boy (Isidore Emilien) who she said lived

with them and was also a relative. He worked with Geest she said. Her father and Ti Boy had known each other for a very long time. She was 50 years old she declared and never knew her father to have any other alias besides Venta. She never knew him as Isidore Emilien. Nor did she ever know him to use any other name.

[35] Margaret Lynch told the Court in cross-examination that when her father was purchasing land Geest was not selling two lots to one person so her father used Ti Boy's name to purchase the other one. Ti Boy she said was living with them and it was her father who paid for the property with his own money and not with Ti Boy's she emphasized alleging that Ti Boy used to give his money to his mother and she bought a piece of property from Geest.

[36] When Ti Boy's mother died Benedicta Charles took him to live with her. Ti Boy she added had grown up with them and was close to her father Joseph Lynch. She went on to question that if Ti Boy had given money to her father to buy the land for him where was "the paper"? – where was the receipt? The Lynches she claimed always lived in one house on Lot Number 28 later Parcel 135. She always lived there in her father's house she reiterated but now lived at the Morne. There were never three houses on the land the witness declared – only one house. They all stayed at their father's house she concluded.

[37] Anthea Lynch a 27-year old pre-school teacher at St. Joseph's duly affirmed adopted her witness statement and an affidavit sworn on 15th December 2008 as her examination-in-chief. I pause to observe that the witness statements and affidavits of the Lynches are dated and filed some six weeks after the claimants' witness statements had been filed and served.

[38] Her grandfather Joseph Lynch she confirmed had sold land to Bernard and Justin Prospere in 1984 when she was two years old. She had heard Justin ask him for papers – deed of sale in 2001. Her grandfather died the same year she said. She has occupied her grandfather's house all her life she said.

- [39] In 2005 she caused a letter to be served on Justin and Bernard Prospere by Lawyer Cyril Landers who she believed had prepared the Deed of Sale for her grandfather. Her grandfather she alleged had made a mistake (she did not reveal its nature) and they (presumably Justin and Bernard) took advantage of him. He was illiterate she declared and did not go to school she added but he was very smart/intelligent.
- [40] She concluded by saying that she knew that the land where she lived was in dispute and that the Prosperes had been claiming it. She was also aware that in October 2005 the Prosperes had served notices to quit (NTQ) on her grandfather. A NTQ had been served on her as well in 2006 asking for possession.
- [41] She said she did not move when served because she did not own the house. When her grandfather died he left the house for her mother she claimed. She believed that her grandfather made a mistake because that is what Cyril Landers told her.
- [42] In her skeleton arguments/written submissions which were skillfully articulated Ms. Theodore-John learned counsel for the claimants/respondents expressed profound regret that counsel for the defendants/applicants should at this stage of the proceedings seek to vacate the scheduled trial date of 22nd January 2009 for Claim No. SLUHCV2007/0619 which had long been fixed at case management in June 2008 in what she deemed as “an apparent non-ending saga” and to consolidate with the new Claim No. 2008/1223 by the second-named defendant/applicant on grounds that they involved the same parties and the same subject matter and would save both costs and time.
- [43] Counsel’s view I venture to say is understandable since a great deal of time and costs had already been expended in the initial action and although the parties in both actions are the same the remedies/reliefs sought by the parties widely differ. For whilst the claimants/respondents seek an order for possession of Parcel 0643B 135 in the Registration Quarter of Castries and removal of a dwelling house erected thereon as well as consequential relief and costs from the

defendant/ancillary claimant Margaret Mary Lynch as Administratrix of the estate of the late Joseph and Gloriana Lynch in the new Claim No. 2008/1223 she claims against the Prosperes declaratory orders that the estates (sic) of the late Joseph Lynch and Gloriana Lynch are the beneficial absolute owners of Parcel 135 and that the defendants (the Lynches) have no claim right or interest in the said Parcel 135 and further that the said land more particularly described as Block 0643B Parcel 135 was registered in the Land Register in the names of the defendants Bernard and Justin Lynch through mistake and/or error which rendered the purported sale of Block 0643B Parcel 135 to them void. Other declaratory orders are claimed and an order for rectification is sought inter alia as well as damages and costs.

- [44] All of this (that is the new Claim No. 2008/1223 for declaratory judgments against the Prosperes) the Court notes comes on the heels of refusal by the court of an application for leave by the Lynches to further amend their already amended defence in Claim No. 2007/0619. Learned counsel for the claimants submitted quite correctly in my opinion that this was no more than a blatant attempt by the defendants to circumvent the process of the court “by coming through the back door in the guise of a new claim” and constituted an abuse of the process of the court and further waste of time.
- [45] Further in principle statute law as well as case authority it is settled that it is not competent for this court to adjudicate title which statute has by section 4 of the **Land Adjudications Act 1984 (LAA)** expressly conferred authority to a tribunal (the Land Adjudication Tribunal) to determine and adjudicate upon.
- [46] The whole process of land adjudication learned counsel (Ms. Theodore-John) submitted was completed twenty-two years ago when Bernard and Justin Prosperes were entered on the Land Register as the registered proprietors with title absolute of Block 0643B Parcel 135 on 22nd May 1987 on first registration. The LAA and the **Land Registration Act 1984 (LRA)** are the statutes which govern the registration process and by virtue of section 98 of the LRA the claimants’ title is

indefeasible except upon proof of mistake or fraud in the registration process. Mistake or fraud in the registration process of entry of the claimants on the Land Register has never been argued by the defendants learned counsel submitted for there never has been any.

- [47] Authority for that submission was enunciated learned counsel pointed out in the judgment of Dennis Bryon JA (as he then was) in **Webster v Fleming**² and followed in May 1995 in St. Lucia in **Jn. Francois v Bain**³.
- [48] As recently as 15th August 2011 in Alicia Francois Administratrix of the Estate of the late Jacob Fanus of Desruisseaux Micoud and Moses Joseph et al⁴ 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 at Riche Bois in Micoud and recorded as Block 1627B 391 and 136 in the Land Registry. Damages for trespass mesne profits and costs were also claimed.
- [49] It was 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.
- [50] 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 section 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

² Civil Appeal No. 6 of 1993 pages 10 and 11.

³ High Court Suit No. 290 of 1992 (unreported).

⁴ Suit No. SLUHCV 2004/0611.

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 had long expired and the claim for possession by prescription was now statute barred.

[51] 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 **Felicite Castang (nee Emilien) and Florus Joseph (commonly called Rufus)**⁵ 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 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.

[52] 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.

[53] 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

⁵ Suit No. SLUHCV 2004/0611

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**⁶.

[54] 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.

[55] In the result I am fully satisfied and find as a fact that on the totality of the evidence as well as the applicable law and the authorities cited that the claimants Bernard Prospere and Justin Prospere are the registered proprietors with title absolute of Parcel 0643B 135 in the Registration Quarter of Castries.

And it is ordered and directed that the defendants Anthea Lynch and Margaret Mary Lynch do remove the dwelling house erected on a portion of the said parcel of land if this has not yet been already done and pay to the claimants' damages to be assessed for use and occupation of the said portion of Parcel 135 from 1st May 2007 to date of possession.

[56] Claim No. SLUHCV 2008/1223 is struck off with costs to the defendants in the amount of \$3000.00 to be paid by the claimant.


Ephraim Georges
High Court Judge [Ag.]

⁶ St. Lucia Suit No. 680 of 1993 (unreported)