

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

**GRENADA
CLAIM NO. GDAHCV2022/0242**

**IN THE MATTER OF THE POSSESSORY TITLES ACT NO. 22 OF 2016 OF THE
CONTINUOUS REVISED LAWS OF GRENADA**

AND

**IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF
POSSESSORY TITLE TO LAND**

JENIFER MONTAGUE

APPLICANT

Before:

The Hon. Justice Raulston Glasgow

High Court Judge

Appearances:

Afi Ventour and Aloytha Thomas of counsel for the applicant

Chandelle Delzin Bartholomew for Jeffry Cyrus, the party providing information to the court pursuant to section 15 of the Possessory Titles Act ("the Act")

2025: June 18th
October 3rd

JUDGMENT

[1] **GLASGOW, J.:** On 30th June 2022, the applicant ("Ms. Montague") filed an application along with an affidavit seeking a declaration of possessory title to a parcel of land situate at Snug Corner in the parish of Saint George, Grenada, measuring Seven Thousand, Three Hundred and Fifty-Six Square Feet (7,356 Sq. Ft.) ("the land").

Ms. Montague's evidence in support of her possessory title's claim

[2] The affidavit in support of the application for the declaration sets out the basis for Ms. Montague's request for possessory title to the land. Ms. Montague's affidavit states that –

- (1) She grew up on the land with her grandfather Daniel "Boysie" Chateau (referred to as "Chasteau" by Mr. Jeffrey Cyrus) and her grandmother, Olive Baptiste, now both deceased. Her grandfather lived in a "Janet house";
- (2) She left the land in 1971, when her grandmother died but continued to reside there sporadically. In 1990, she moved back onto the land permanently. In that year her grandfather was injured in an accident, and she moved back into the house with him to take care of him;
- (3) The "Janet house" was damaged in 2004 by Hurricane Ivan and a new house was built on a different portion of the land;
- (4) She lived on the land with her grandfather, undisturbed, until 2008 when he died;
- (5) From 2008 when her grandfather died, she continued to reside on the land. From that time, she planted short-term crops such as chives, peppers and green peas. This, she claims, she has done to the exclusion of all others and with sole possession for more than 12 years;
- (6) Since being in possession, she has never accounted to anyone or recognised anyone as having a claim to or an interest in the property. No one has challenged her occupation;
- (7) The land is not currently mortgaged;

(8) She has enjoyed the harvests and profits of the land “*without adverse claims by anyone and acknowledgement being given to any other person and have been in quiet and peaceful enjoyment of the Land in excess of twelve (12) years.*”¹

(9) No one has approached her, made a claim to or written demand regarding any interest whatsoever in the land. To the best of her knowledge, no one claims or is capable of claiming title to the land. In that regard, she has not withheld any information from the court but has, to the best of her knowledge and belief, disclosed the truth regarding the title to the land and her claim for a declaration of possessory title.

[3] Ms. Montague filed two affidavits in support of her application; one from Mr. Andrew Thomas and another from Ernest Forrester. Both Mr. Thomas and Mr. Forrester state in their affidavit that they know Ms. Montague and her grandfather. Both affiants detail, in a manner similar to Ms. Montague, that Ms. Montague and her grandfather resided on the land for a considerable period. They outline the story of Mr. Chateau’s injuries and Ms. Montague’s occupation both prior to and subsequent to the passing of Mr. Chateau.

Mr. Cyrus’ concerns about Ms. Montague’s application

[4] On 11th August 2022, one Cecil McMillan (“Mr. McMillan”) entered an appearance to Ms. Montague’s application for the grant of a declaration of possessory title. The entry of appearance states it was filed pursuant to section 9 of the Act to oppose the grant of declaration of possessory title to Ms. Montague. Section 9 of the Act stipulates that the person who files an appearance “*not later than twenty-one days after the date of entry of the appearance, file in the Registry a written claim setting out the name of the person who has the title to the piece or parcel of land and a statement of the facts on which the claim is founded*”.

¹ Paragraph 14 of Jennifer Montague’s affidavit filed on 22nd June 2022

[5] No written claim was filed in these proceedings within twenty-one days of the appearance. However, on 26th October 2022, one Jeffrey Cyrus filed an affidavit in which he claims to be a person with relevant information to assist the court in its deliberation on Ms. Montague's application. His affidavit indicates that he provided the information further to section 15 of the Act. That section permits a person, whether they have an interest in the subject land or not, to provide information to the court regarding the subject lands. Mr. Cyrus provided a lengthy affidavit.

[6] In his affidavit, Mr. Cyrus outlines that –

- (1) He has personal knowledge of the land which is a portion of land owned by his cousin, Mr. McMillan. He also knows Ms. Montague since he is the caretaker of the whole of Mr. McMillan's land of which the land forms a part. In his capacity as caretaker, he has spoken to Ms. Montague about her *"regarding her temporary and permissive use of the portion of land which she now seeks to claim"*²;
- (2) In respect of Ms. Montague's claim to the 7, 356 sq. feet of land, he is of the view that Ms. Montague occupies a much smaller area of land;
- (3) Mr. McMillan is the paper owner of the whole of the land including the claimed land by way of a deed dated 22nd October 1984 and registered in the Deeds and Land Registry in Liber C9X – 97 at page 433. Mr. Cyrus pays taxes for the land on behalf of Mr. McMillan who resided overseas for many years. Mr. McMillan is now deceased;
- (4) The whole of the land has been owned by the Williams and McMillan family for many years. With respect to ownership of the larger lot, Mr. Cyrus states at paragraphs 8 and 9 of his affidavit that –

² Paragraph 3 of Jeffrey Cyrus' affidavit filed on 26th October 2022

“8. As far as I am aware, Cecil's late grandfather, Harold Edward Williams was the owner in possession of the larger lot for many years and died in possession thereof. Thereafter, his grandmother, Lillian and Lennard Williams became seised of the larger lot. By the Indenture above, Cecil purchased the larger lot from the said Lillian and Lennard Williams for value.

9. Before the conveyance of the larger lot to Cecil in 1984, his mother, Phyllis Williams was the person managing and controlling the larger lot. She did so for several years and had never abandoned possession of the same. In fact, she regularly visited the larger lot whenever she returned to Grenada (almost annually) and remained in contact with those to whom permission to temporarily occupy the same was given, including the Applicant...”

- (5) He has seen the survey plan produced by Ms. Montague in support of her claim. While he cannot confirm the boundaries, he can say that the claimed land forms part of the larger lot belonging to Mr. McMillan.
- (6) He is aware that several years ago, Mr. McMillan's grandfather permitted Mr. Chateau to construct a small chattel house on a small portion of the larger lot (the smaller portion of land is referred to by Mr. Cyrus as “the small house spot”) since Mr. Chateau had nowhere else to live. He reiterates that the small house spot is a much smaller area of land than the land claimed by Ms. Montague;
- (7) Mr. McMillan's grandfather did not employ Mr. Chateau but Mr. McMillan's grandfather did pay Mr. Chateau a small sum of money for gardening and maintenance services provided by Mr. Chateau;
- (8) It was well known that the arrangement between Mr. Millan's grandfather and Mr. Chateau was one of a licence that provided for Mr. Chateau to erect a small chattel house on the small house spot to live with his live in partner, Ms. Olive Baptiste. This licence, Mr. Cyrus claims, was granted to Mr. Chateau by Mr. McMillan's grandfather out of the kindness and affection that Mr. McMillan's grandfather had for Mr. Chateau. There was no gift of the small house spot to Mr. Chateau and Mr. Chateau never sought to assert any rights to ownership of the same as now claimed by Ms. Montague.

- (9) In fact, at all times, Mr. Chateau acknowledged the title of Mr. McMillan's grandfather, then his grandmother and thereafter Mr. McMillan. Mr. Chateau consulted with Mr. McMillan's grandparents with respect to anything that he wished to do on the small house spot. Even after the larger lot was conveyed to Mr. McMillan, his mother, Phyllis, acted as his agent regarding the larger lot. Mr. Chateau and Ms. Montague recognised that they had no interest in the claimed land or in the small house spot. This is the reason why Mr. Chateau did not plant permanent crops on the small house spot or the claimed land;
- (10) At no point was Mr. McMillan's grandparents out of possession of any of the land. Mr. McMillan's grandmother migrated to England over 60 years ago, but she returned annually and visited all of the land;
- (11) Mr. McMillan and his predecessors have allowed other persons to occupy portions of the larger lot with the same understanding regarding Mr. Chateau's occupation. None of those persons have claimed or attempted to lay claim to any part of the land;
- (12) Mr. Chateau was indeed injured in 1990, but it is untrue to say that Ms. Montague grew up on the claimed land. She was born in Willis and lived overseas in Trinidad for quite some time. It was from Willis that she visited Mr. Chateau as a child. Her residence with Mr. Chateau only commenced when he was injured in 1990 and she came to stay with him to care for him;
- (13) When Ms. Montague came to reside with Mr. Chateau, she did so with the permission of Mr. McMillan and his forebears. There was no quarrel with the arrangement which allowed her to stay with her grandfather, Mr. Chateau, as it was understood that Mr. Chateau was there with permission and that Ms. Montague was staying with him to care for him. It is therefore false for Ms. Montague to claim that she resided on the claimed land from 1990 to 2008 since she and Mr. Chateau knew and acknowledged Mr. McMillan and his forebears' title to the claimed land;
- (14) Since about 2005, Mr. McMillan engaged Mr. Cyrus to act as his agent on the larger lot of land. Ms. Montague knows Mr. Cyrus very well since he has always been in contact with her regarding her temporary occupation of the small house

spot. Ms. Montague's statement that she has not accounted to anyone for her occupation is therefore false. If Ms. Montague had honestly performed a search of the Deeds and Land Registry she would have discovered that Mr. McMillan had twice mortgaged the larger lot;

(15) Ms. Montague's statement that no one has approached or written to her about her occupation is also false, since she was served with a letter dated 9th June 2021 regarding her temporary occupation;

(16) Further, in 2019, Mr. McMillan's mother visited the small chattel house and knocked on the door, but Ms. Montague did not answer;

(17) Mr. Cyrus also denies that Mr. Thomas and Mr. Forrester provided any useful information, since they both could not provide information as to the basis on which Mr. Chateau and Ms. Montague occupied the land.

[7] In a further affidavit filed on the 2nd February 2025 following a failed attempt at mediation between the parties, Mr. Cyrus provided the following further information

–

(1) Mr. Chateau's permissive occupation of the small house spot is further evidenced by the fact that he occupied the same solely for residential purposes, he did not construct any permanent structure or plant any permanent crops thereon;

(2) Mr. McMillan did not abandon or give up possession to anyone including Mr. Chateau and/or Ms. Montague. Mr. McMillan's continued occupation is evidenced by the fact that his mother visited the larger lot annually and visited all the residents thereon to ensure that they were not "*acting contrary to the permission to occupy granted to them.*"³ Mr. Cyrus attended some of these walks with Mr. McMillan's mother. When Mr. Cyrus entered the fray in 2005, he also visited and walked the land and had conversations with the occupants including Ms. Montague about their permissive occupation. In those conversations, Ms. Montague has acknowledged Mr. McMillan and his family's

³ Supra, note 2 at paragraph 4

rights to the land. It was never acknowledged or contemplated that Ms. Montague would own the land. Mr. Cyrus indicates that he lives about 15 minutes away from the land; and

- (3) Ms. Montague has never sought to construct any permanent buildings on the land until 2021. The 9th June 2021 letter was then written to her to demand that she desist from so doing. It is therefore false for her to depose that no one has written to her about her occupation of the land.

Ms. Montague's reply to Mr. Cyrus' contentions

- [8] On 2nd February 2025, Ms. Montague responded to Mr. Cyrus' further affidavit. The sum total of that response is a denial of the claims made by Mr. Cyrus in his evidence. In her denial of Mr. Cyrus' replies, she maintains that she was occupying the land without permission from anyone. She denies any annual visits from Mr. McMillan's mother. Rather, she explains that the only contact with the paper title owners came in June 2021 when she received a demand letter. Of particular significance to this discourse also is Ms. Montague's contention that she had no contact with Mr. Cyrus or anyone on Mr. McMillan's behalf.

- [9] Regarding the issue of whether Ms. Montague conducted a search of the Deeds Registry to find out the names of the title owners of the land, Ms. Montague explains that a search was not carried out in Mr. McMillan's name because she honestly believed that the land belonged to one Ms. May Williams. Thus, Ms. Montague instructed her lawyers to conduct a search in Ms. Williams' name. With respect to the letter dated 9th June 2021, Ms. Montague acknowledges receipt of the same but claims that she omitted to mention it in her affidavit since she knows that its contents were untrue. At trial, she explained that she is not literate and could not understand the contents. She denies receiving a knock on her door from Mr. McMillan's mother. She further relies on her payments for the provision of utility services to the building on the land and planting of crops to support her claim to possessory title.

Findings and conclusion

[10] Before proceeding to answer the question whether Ms. Montague is entitled to an order for possessory title, I must address two issues raised by counsel for Mr. Cyrus –

- (1) Ms. Montague's failure to call one of the two persons supporting her claim as supporting witnesses; and
- (2) Ms. Montague's failure to disclose that she was served with the 9th June 2021 letter.

The failure to call one of the supporting affiants

[11] The trial of this matter was conducted on the 18th June, 2025. At the trial, Ms. Montague and Mr. Thomas testified about the matters recited above to support her case. Mr. Ernest Forrester died in 2023 and as such he was not available to testify. Counsel for Mr. Cyrus made some weather of this in her closing submissions when she observed that Ms. Montague was obliged by section 5 of the Act to present one affidavit each of two witnesses with knowledge of Ms. Montague's possession of the land. Counsel argues that Ms. Montague's application ought to fail for her failure to call a second witness in place of Mr. Forrester who had passed away. Counsel points out that the parties were afforded an opportunity to file further evidence after the failed mediation and Ms. Montague failed to do so.

[12] I believe that counsel for Mr. Cyrus is wrong for two reasons –

- (1) Section 5(5) of the Act reads "*Where an application for declaration of possessory title is not accompanied by two affidavits in accordance with subsections (1) and (2), notwithstanding subsection (1)– ... (b) the Court may hear the application and make an order or any decision as it sees fit.*" Counsel says that the section is not permissive, but I cannot see the clear words of section 5(5) as doing anything other than permitting the court to proceed to both

hear and determine an application for possessory title in the absence of either or both the affidavits of the supporting witnesses. This seems entirely logical to me since it is for the applicant to satisfy the court on sufficient material that he or she is entitled to the order for possessory title. It would be in the applicant's best interest to present more and not less corroborative material in aid of the claim. But the absence of the material does not inevitably indicate that the application is incapable of proof.

- (2) In any event, the affidavit evidence is admissible pursuant to section 36E(4) of the Evidence Act⁴ in which case the court will attach what weight it will to the evidence. That section reads –

“36E. Admissibility of first hand hearsay statements in civil proceedings

- (1) Subject to section 36G, in any civil proceedings, a statement made, whether orally or in a document or otherwise, by any person (whether called as a witness in those proceedings or not) shall, subject to this section, be admissible as evidence of any facts stated therein of which direct oral evidence by him or her would be admissible.
- (2) Subject to subsection (6), the party intending to tender such statement in evidence shall, at least twenty-one days before the hearing at which the statement is to be tendered, notify every other party to the proceedings as to the statement to be tendered, and as to the person who made the statement.
- (3) Subject to subsection (4), every party so notified shall have the right to require that the person who made the statement be called as a witness.
- (4) The party intending to tender the statement in evidence shall not be obliged to call as a witness, the person who made the statement if it is proved to the satisfaction of the Court that such person—
- (a) is dead;
 - (b) is unfit, by reason of his or her bodily or mental condition, to attend as a witness;
 - (c) is outside of Grenada and it is not reasonably practicable to secure his or her attendance;
 - (d) cannot be found after all reasonable steps have been taken to find him or her;
- or
- (e) is kept away from the proceedings by threats of bodily harm.

⁴ Chapter 92 of the laws of Grenada

(5) Where in any civil proceedings a statement which was made otherwise than in a manner and admissible by virtue of this section, by the person other than direct oral evidence by the person who made the statement or any person who heard or otherwise perceived it being made shall be admissible for the purpose of proving it.

(6) The Court may, where it thinks appropriate having regard to the circumstances of any particular case, dispense with the requirements for notification as specified in subsection (2).

(7) Where the party intending to tender a statement of evidence has called, as a witness in the proceedings, the person who made the statement, the statement shall be admissible only with the leave of the Court..”

- [13] In this case, it is not necessary to resort to section 36E, since Ms. Montague has not sought to avail herself of the provisions of that section and has instead rested her case on her own affidavit evidence and that of Mr. Thomas.

The non-disclosure issue.

- [14] Section 30(1) of the Act proscribes against making false statements or representations on an application for possessory title. Any declaration of possessory title made in such circumstances is null and void except against a bonafide purchaser for value without notice of the false statement or representation. The section also criminalises such conduct by making it an offence punishable by imprisonment for a term of up to two years and/or a fine of not more than ten thousand dollars.

- [15] Counsel for Mr. Cyrus submits that Ms. Montague’s failure to disclose the 9th June 2021 letter is fatal to her application. Counsel argues that it is false for Ms. Montague’s to claim that -

- (1) she held the land without challenge from anyone;
- (2) the land is not mortgaged;
- (3) she was in quiet enjoyment of the harvest and profits of the land without accounting to anyone or without acknowledging anyone;

- (4) no one has approached her or written to her about the land; and
- (5) she searched the relevant registries and departments and that the land is not registered in anyone's name.

[16] Counsel contends that despite being served with the letter, Ms Montague deliberately sought to mislead the court by withholding this fact from her affidavit. Counsel also suggests that, having been served with the letter, Ms. Montague ought to have ensured that a thorough search was carried out in Mr. McMillan's name. Had she done so, the search would have revealed Mr. Montague's title to the land and that he had twice mortgaged it. Counsel posits that Ms. Montague should not be credited with giving credible information to the court and that her case should fail as a result of the false representations. Section 4 of the Act stipulates that, the applicant, among other things, must present evidence on affidavit of –

- (1) “whether to the applicant's knowledge, any other person claims or is capable of claiming to be the owner of the land for which the declaration is being sought; and
- (2) the name, if any, of any person entitled to ownership of the land immediately before the period of adverse possession began to run, based on the records located at the Registry...”

[17] It is clear then that the applicant is required, by virtue of the section, to conduct the relevant and diligent research to ascertain all claims that may affect the lands for which the grant is sought and to present the results of such searches to the court. Ms. Montague was therefore obliged to conduct such a search exercise. The letter dated 9th June 2021 was served on Ms. Montague before these proceedings were filed by her. Therefore, I would agree with counsel for Mr. Cyrus that the letter ought to have prompted Ms. Montague to conduct the relevant searches about the person who was claiming title to the land. In her affidavit evidence she claims that she ignored the letter because she knew that its contents were not true. At trial she testified when cross examined that she did not understand the terms of the letter.

My own assessment of Ms. Montague during her testimony is that even though she seems quite competent and astute about her affairs, she does not appear to be particularly literate. While I do find that the statements in her affidavit that no one had written to her about the land were not true, I do not view the false statement as being fatal to her application since I am inclined to accept, based on my assessment of her, that she may have been quite correct in her misapprehension of the import of the letter. I am more inclined to the view that she may have only become aware of the significance of the letter after conversations with counsel in preparation for this case. For these reasons, I do not form the view that Ms. Montague set out deliberately to withhold this material from the court. In any event, for reasons to follow below, I do not find that this letter plays as integral a part to the outcome of this claim as counsel for Mr. Cyrus posits.

Did Ms. Montague adversely possess the land?

The law

[18] The answer to this query begins with section 3 of the Act which permits a person who claims to be in adverse possession of land to make an application for a declaration of possessory title to that land. “Adverse possession” is defined in section 2 of the Act as—

“...factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Grenada for a continuous period not less than twelve years immediately preceding the claim, accompanied by the requisite intention to possess the said land as owner thereof...”

[19] The section throws up 2 elements to be satisfied by the person seeking an order for possessory title, namely, one, factual possession of the land in question for a period of 12 years and two, the intention to possess the said land as owner thereof. In the case of **JA Pye v Graham**⁵, Lord Browne Wilkinson elucidated that the elements of

⁵ [2002] UKHL 30

factual possession and intention to possess are satisfied when the following is established –

- (1) “a sufficient degree of physical custody and control (“factual possession”);
- (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit (“intention to possess”).”⁶

[20] The court in **JA Pye v Graham** expressly approved the above approach as expounded by Slade J in the case of **Powell v McFarlane**⁷. In **Powell**, Slade J, after discussing the development of the law on adverse possession, offered his views on the questions –

“(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.

(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (“animus possidendi”).”⁸

[21] With respect to factual possession, Slade J explained that –

“Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same

⁶ [2002] UKHL 30 at paragraph 40

⁷ (1979) 38 P. & C.R. 452

⁸ (1979) 38 P. & C.R. 452 at page 17

time. **The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed.** In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. “What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants”: *West Bank Estates Ltd. v. Arthur*, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalize with any precision as to what acts will or will not suffice to evidence factual possession... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.”⁹(Bold emphasis mine)

[22] With respect to the intention to possess, Slade J opined that –

“The animus possidendi, which is also necessary to constitute possession, was defined by Lindley M.R., in *Littledale v. Liverpool College* (a case involving an alleged adverse possession) as “the intention of excluding the owner as well as other people.” This concept is to some extent an artificial one, because in the ordinary case the squatter on property such as agricultural land will realize that, at least until he acquires a statutory title by

⁹ (1979) 38 P. & C.R. 452 at page 18

long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. **What is really meant, in my judgment, is that, the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.**"

"An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess, unless the contrary is clearly proved. This, in my judgment, is why the slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance of possession. **The position, however, is quite different from a case where the question is whether trespasser has acquired possession. In such a situation the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner.**"¹⁰(Bold emphasis mine)

- [23] It may assist the discourse to highlight a few more pronouncements in the cases that have explicated the position. Although there is a curious requirement in section 2 of the Act that there must be "*an intention to possess the ... land as owner thereof*", the case law explains that with respect to intention, "*what is required for this purpose*

¹⁰ (1979) 38 P. & C.R. 452 at page 18

is not an intention to own or even an intention to acquire ownership but an intention to possess...”.¹¹

[24] In **Mayor & Burgesses of the London Borough of Lambeth v Blackburn**¹² the elements are explained thusly –

“...in order to be an adverse possessor a trespasser must have actual possession of the property throughout the twelve year period before the commencement of the proceedings and that throughout that period he must have a present manifested intention to possess the property to the exclusion of all others including the paper owner. As Slade LJ put ..., he must have that intention ‘for the time being’. The fact that at any particular moment he expects or intends to leave the property in the near future does not prevent his having that intention, but **in order to defeat the paper owner’s claim for possession he must in fact remain in possession for the full 12 years and he must have a present intention to remain in possession throughout that period.**” (bold emphasis mine).

The law as applied to this case

[25] There are three periods of occupation in which Ms. Montague’s application may be considered. The first period is identified at paragraph 6 of the 22nd June 2022 affidavit where Ms. Montague states –

“I grew up on the Land with my grandfather, Daniel "Boyie" Chateau, deceased and my Grandmother, Olive Baptiste, deceased. For as long as I can remember, my grandfather, resided on the Land in a Janet House.”

[26] The second period is identified at the same paragraph 6 where Ms. Montague’s states –

“I left the Land in or about 1971, when my grandmother died. I lived on the Land sporadically until the year 1990, when my grandfather met in an accident and I moved back to the Land permanently to take care of him.”

¹¹ JA Pye v Graham [2002] UKHL 30 at paragraph 42

¹² (2001) 82 P&CR 39 at paragraph 29

lived undisturbed on the Land with my grandfather from 1990 to 27th March, 2008, when he died.”

[27] The third period is identified at paragraph 9 where Montague pleads that –

“After the death of my grandfather, I continued in possession of the Land.”

The period before 1990

[28] The evidence in support of her contention that she is in occupation of the land indicates that in the period before Mr. Chateau’s death, he built a wooden house on the land. In addition, it would appear that Mr. Chateau planted crops on the land. This evidence is extracted from Mr. Cyrus’ 26th October 2022 affidavit at paragraph 16 where he states that –

“It was always because of the above understanding that “Boyie” never planted any permanent trees on the larger lot or on the small house spot, but only planted light and mostly seasonal crops thereon.”

[29] Prior to 1990, there is sparse evidence of Ms. Montague’s activities on the land. Her evidence as recited above indicates that she came onto to the land in the first period to live with Mr. Chateau and her grandmother. The evidence does not say at what age she came onto the land and other details of her occupation. It appears that she came to stay with her grandparents as a young child and probably as a young adult. She left in or around 1971 and visited sporadically until 1900 as recited in paragraph 4(o) of her further affidavit filed on 2nd January 2025. I would hardly think that any of this material demonstrates the sort of factual possession and/or the intention required to demonstrate to the title owner that Ms. Montague was present on his land with a view to dispossess him.

[30] Even if one were to accept that prior to 1990, Ms. Montague, who resided with Mr. Chateau is to be credited with his possession by virtue of living with him, it begs the

question on what basis did Mr. Chateau enter and remain on the land? Ms. Montague's position is that her grandfather entered the land without permission and continued so to do. But Ms. Montague was not there at the time of Mr. Chateau's entry on the land and has hardly presented any material beyond the fact that he built a wooden house thereon and put certain crops on the land to show he possessed the land exclusively and with the intention to possess it as occupier for the time being adverse to the interest of the title holder. While it may be argued that evidence of this sort may be indicative of the requisite possession and intention, the fact that Ms. Montague came on the land as a child then young adult to reside with her grandparents, she, by such circumstances and without more, may not be in a position to give greater details of the nature of her grandfather's occupation.

The period after 1990 to 2008

- [31] In 1990 when Ms. Montague returned to the property, one can hardly state definitively that she entered onto the land at that time and remained there to the period 2008 when Mr. Chateau died with the clear and unequivocal intent to possess the land for that period to the exclusion of its paper title owner. Her own evidence is that in 1990 *"...my grandfather met in an accident and I moved back to the Land permanently to take care of him."*
- [32] Mr. Cyrus gave some insight as to the basis on which Mr. Chateau entered on the land and remained there. While Mr. Cyrus strikes me as a person who did not set out to deliberately misguide the court, parts of his evidence I do accept and other parts present some difficulties. I do believe his evidence that Mr. McMillan and his forbears were the title holders to the land. I do believe him also when he claims that the McMillans and in particular Mr. McMillan's mother may have visited the land prior to her death. There is also evidence to support his contention that he may have been given some responsibilities to look after the land. Supportive evidence in the latter regard may be found in the tax notices to Mr. McMillan which were addressed to Mr. Cyrus.

[33] I do have difficulty however with Mr. Cyrus' definitive statements on the arrangement between Mr. McMillan's grandfather and Mr. Chateau. There is no evidence beyond his word about when this purported arrangement may have been put in place and any form of details about the same. There are also very scant details about Mr. Chateau's acknowledgment of the title ownership of the land to any of the McMillans or to Mr. Cyrus beyond Mr. Cyrus' say so. It does not strain belief however that Mr. Chateau may have entered onto the land with permission and remained there throughout with the understanding of both the McMillans and Mr. Chateau that he was there permissively. A significant part of Mr. Cyrus' case centers on his role as caretaker of the land. His evidence indicates that there are several other persons who occupy the land with Mr. McMillan's permission. His evidence on his interaction with these persons, including Ms. Montague is set out in his 2 affidavits. Yet it is curious that he has not produced the name and/or information regarding the arrangement with any of these persons. Even less so is any material supporting his assertions of his interactions with Ms. Montague.

What then is the legal position regarding the period 1990 before 2008?

[34] The case law recited above indicates that Ms. Montague must present evidence that is unequivocal about both the factual possession and intent to possess to the exclusion of the paper owner and all claiming on his or her behalf. The material presented about the periods of her occupation and that of Mr. Chateau before 2008 are at best equivocal about the basis on which either or both of them entered and remained on the land. The claim for possessory title before 2008 cannot be sustained.

What about the period after 2008

[35] What about the period after 2008 when Mr. Chateau died? Clearly, as a matter of trite law, it ought to be evident that any permission allegedly given to occupy the land by the forbears of Mr. McMillan to Mr. Chateau and afterwards by Mr. McMillan to Mr. Chateau, would have expired on Mr. Chateau's death in 2008. Yet Ms

Montague remained on the land. She planted crops on the land and maintained the property. She obtained utility services in her own name and continues to pay for the same. She performed maintenance and other works on the three-bedroom house constructed by herself and Mr. Chateau. She insists that she did so without permission or interference from anyone and without acknowledging anyone as owner of the land or entitled to it. Mr. Cyrus wishes me to believe that this is not true. For one thing, he claims, Ms. Montague continued to live on the land with Mr. McMillan's permission. As with my concerns about his evidence about the arrangement between Mr. McMillan's grandfather and Mr. Chateau, so go my thoughts on this issue. Other than Mr. Cyrus' word, there is simply no evidence that there was any agreement, arrangement or understanding between Ms. Montague and any of the McMillans and more specifically, Mr. McMillan about Ms. Montague's occupation of the land before 2008 and even more relevant to this part of the discourse, after 2008. There is also very little information beyond Mr. Cyrus' assertions that Ms. Montague ever acknowledged the title of anyone to the land. In this regard, I have also alluded to Mr. Cyrus' failure to produce any evidence beyond the tax notices that he was indeed the caretaker of this land, that there were other occupants of the land, and that he had any interactions of the sort that he claims with any one that may or may not have been on the land including Ms. Montague.

[36] What I take away from the foregoing is that Ms. Montague remained on the land after 2008 and treated with it in a manner to suggest that she was occupying it to the exclusion of all others including the title owners. What then of the letter dated 9th June 2021? The law is that where the occupant occupies the land for a period of 12 years, not only is the applicant entitled to a grant of possessory title but the land owner's right to claim recovery of the land is extinguished.

[37] Section 4 and 27 of the Limitation of Actions Act, Cap. 173 of the 2010 Continuous Revised Laws of Grenada, provide that –

“4. No person shall make an entry or distress, or bring an action to recover any land, but within twelve years next after the time at which the right to make the

entry or distress, or to bring the action, has first accrued to some person through whom he or she claims, or, if the right has not accrued to any person through whom he or she claims, then within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to the person making or bringing it.”

27. At the determination of the period limited by this Act to any person for making an entry or distress or bringing an action, the right and title of that person to the land for the recovery whereof the entry, distress, or action, might have been made or brought within that period shall be extinguished.”

[38] What can be fairly deduced from the foregoing facts and the law is that by 2020 (12 years after Ms. Montague occupied the property in her own right after her grandfather’s death), Mr. McMillan’s rights to the land, and those of all others who claimed on his behalf, were wholly extinguished. I have stated above that it was proper for Ms. Montague to have disclosed to the court that she received the 9th June 2021 letter. It was also proper for her to have conducted the required searches in the name of the title holder which was disclosed to her in the 9th June 2021 letter and presented the same to the court. Although, as a matter of procedural propriety, it is incumbent on an applicant to be candid and forthright on these applications, for the reasons that I have stated above, I do not find that these non-disclosures should be held against Ms. Montague. More significantly, I do not see how these non-disclosures could impact the outcome of this matter since, as a matter of law, by the time that Ms. Montague received the letter of 9th June 2021, Mr. McMillan’s rights to claim to claim recovery of the land were already extinguished since 2020.

[39] Ms. Montague has therefore made out her claim to a grant of possessory title to the land. In his response, Mr. Cyrus contended that Ms. Montague does not occupy as much land as she is claiming. Other than an allusion to concerns about the location of the boundaries on the survey plan presented to the court by Ms. Montague, Mr.

Cyrus has not presented any material, expert or otherwise, or sought leave to do so, to dispute the size of the land claimed by Ms. Montague.

Conclusion

[40] Having satisfied this court of her claim, it is ordered that Ms. Montague is in adverse possession of the land for a period of 12 years and is granted an order of possessory title to the piece or parcel of land situate Snug Corner in the Parish of Saint George in the State of Grenada measuring Seven Thousand Three Hundred and Fifty-six Square Feet (7,356 Sq. Ft.). This application being opposed, Ms. Montague will bear her own costs.

Raulston Glasgow
High Court Judge

By the Court

Registrar