

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

GRENADA

CLAIM NO. GDAHCV2022/0020

BETWEEN:

MASSY PROPERTIES (TRINIDAD) LTD.

Claimant

and

[1] **BASEL ALGHARBI**
[2] **TONI ALGHARBI**
[3] **NORAB MANSOUR**
[4] **ROHIT PERSAUD**
[5] **JASON FLEMING**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Melissa Modeste-Singh for the Claimant
Mr. Anslem Clouden for the Third Defendant

2025: March 4th; 6th.

ORAL RULING

[1] The main issue arising in this claim is whether the claimant's claim for possession of Lot No. 35 situate at True Blue, St. George, (hereafter referred to as "the disputed lot") is statute barred.

Background facts

[2] The claimant is the paper title owner of the disputed lot by virtue of an Indenture of Conveyance made 4th June 1975 between True Blue Beach Resorts Ltd. and others and the claimant (formerly "Grell and Company Ltd.").

- [3] The claimant avers that in or about 2021, the defendants wrongfully entered and took possession of the disputed lot and have remained in possession. By fixed date claim form filed on 14th January 2022, the claimant claims for possession of the disputed lot, mesne profits at the rate of \$8,000.00 per month until possession is delivered up, and damages against the defendants.
- [4] On 5th December 2024, the claimant filed a notice of discontinuance against the fifth defendant, as well as requests for entry of judgment on admission against the first, second and fourth defendants. The third defendant, Norab Mansour, is the only defendant to contest the claimant's claim.

Third Defendant's case

- [5] The third defendant admits that he entered into possession of an area on the disputed lot for the purpose of carrying on a fast-food business and bar, currently operating under the name "Abomaya". He states that he was let into possession by his cousin Saed Saad and continued in joint possession of the disputed lot until Saad relocated in or about the year 2008.
- [6] The third defendant states that he first operated a fast-food truck business situated partially on the disputed lot and partially on the kerb side which was eventually replaced with a chattel structure with concrete flooring and toilet facilities. He avers that the business is well established and frequented by locals, SGU students and tourists. He avers that he has performed all acts openly, without seeking permission, paying any rent or answering to anyone in excess of twelve years.
- [7] The third defendant contends that the claimant's claim is statute barred and counterclaims for a declaration of possession of an area of the disputed lot.

Legal Analysis

Whether the defendant has been in adverse possession of the disputed lot

- [8] It is not in dispute that the claimant is the registered paper title owner of the disputed lot and has a superior title. In **Powell v McFarlane**¹ it was stated by Slade J that:

"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 prime 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."

- [9] However, the third defendant asserts that he has been in adverse possession of a part of the disputed lot in excess of twelve years and has accordingly dispossessed the claimant for the part of lot 35 that he occupies.

- [10] Both parties refer to the House of Lords locus classicus decision in **JA Pye (Oxford) Ltd. et al v Graham et al**², on adverse possession where it is stated that:

"There will be a 'dispossession' of the paper owner in any case where (there being no discontinuance of possession by the paper owner) a squatter assumes possession in the ordinary sense of the word... Therefore if the squatter is in possession, the paper owner cannot be."

- [11] It is further stated in **Pye**³ that:

"If the law is to attribute possession of land to a person who can establish no proper title to possession, he must be shown to have both factual possession and the requisite intention to possess."

- [12] Factual possession is described in **Powell**⁴ by Slade J as follows:

"Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession.... 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."

¹ (1977) 38 P & CR 452

² [2002] UKHL 30

³ [2002] UKHL 30

⁴ (1977) 38 P & CR 452

[13] With respect to intent to possess, the House of Lords in **Pye**⁵ held that legal possession required an intention to exercise such custody and control on one's own behalf and for one's own benefit. As Slade J in **Powell**⁶ stated:

“In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner.”

[14] The third defendant states that he was not aware of the claimant's paper title. He states that Mr. Saed Saad first occupied the disputed lot from late 2004 after the passage of Hurricane Ivan. Thereafter in the year 2008, the third defendant states that he took over the area and began his business operation and has made significant improvements since his occupation in 2008.

[15] Evidence for the claimant is given by Joel Jack, a national of Trinidad and Tobago appointed as the financial consultant for the claimant in 2022. Mr. Jack recalls that in the year 2003 during his period of study at SGU, Lot 35 only consisted of shrubs, trees and natural vegetation. It was in 2022, the year of his appointment, that Mr. Jack states he observed a number of structures with several owners on Lot 35. Mr. Jack admits that the third defendant occupies and expanded his business on the disputed lot without permission. Mr. Jack in his witness statement states that the claimant, in order to dissuade the third defendant, undertook the fencing of the parameter of the Lot, but did not enclose the portion occupied by the third defendant.

[16] Mr. Gilbert Marsell, Licensed Land Surveyor who conducted a survey of the disputed lot in 2019 on behalf of the claimant, admits that the third defendant was in occupation of a chattel structure on the disputed lot at the time of the survey.

⁵ [2002] UKHL 30

⁶ (1977) 38 P & CR 452

- [17] Evidence in support of the third defendant is also given by Mr. Don Purcell who is the owner of a business named "Options" which is situate directly opposite the disputed lot. It is Mr. Purcell's evidence that he has operated his business in True Blue for approximately twenty years, sixteen of which he has known the third defendant conducting the fast food business openly in the exact same spot. Mr. Purcell recalls the year of the commencement of the third defendant's business operation to be 2008.
- [18] Mr. Albert Joseph states that he was a driver by profession responsible for the transportation of divers and fishermen to the St. George's University which is located in True Blue, near to the disputed lot. He recalls the third defendant's enterprise as starting business since 2008 in selling food on a table, then extending to a "food wagon", and continuing to expand the business on the part of the disputed lot.
- [19] From all accounts the third defendant's occupation is akin to that of a squatter. Counsel for the claimant drew the court's attention to the case of **Avon Estates Ltd v Evans**⁷ where it was observed at paragraph 51 that:

"In Pye v Graham, the squatter had possession of a whole field that was in the paper ownership of the Claimant. It was bounded by hedges and accessible only on foot or through locked gates controlled by the squatter. There was no doubt that whatever the squatter did, and whatever his intentions were, they applied to the whole of the land up to the actual boundaries of the paper owner's title. There is, it seems to me, a significant difference between such a case and one such as this which involves a boundary that is fairly ill defined on the ground, the areas of land in dispute are very small and necessarily at the margins of the alleged possessor's land, and the use made by the possessor of his own land is such that in truth the extent to which it affects the disputed margins is minor and intermittent. Such usage is likely by its nature to be inconclusive as to both whether it can in truth be said to be a sufficient exercise of physical control, and also whether it demonstrates the necessary intention to exclude others from the small areas concerned."

- [20] However, the Chancery Court continued at paragraph 52 stating⁸:

"[52] Lord Hutton in Pye v Graham drew attention to the existence of such inconclusive situations, again quoting from the judgment of Slade J in Powell:

⁷ [2013] EWHC 1635 (Ch) para 51

⁸ [2013] EWHC 1635 (Ch) para 51

“76 I consider that such use of land by a person who is occupying it will normally make it clear that he has the requisite intention to possess and that such conduct should be viewed by a court as establishing that intention, **unless the Claimant with the paper title can adduce other evidence which points to a contrary conclusion It is in cases where the acts in relation to the land of a person claiming title by adverse possession are equivocal and are open to more than one interpretation that those acts will be insufficient to establish the intention to possess. But it is different if the actions of the occupier make it clear that he is using the land in the way in which a full owner would and in such a way that the owner is excluded.**

77 The conclusion to be drawn from such acts by an occupier is recognised by Slade J in *Powell v McFarlane*, at p 472:

'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.'

...

In another passage of his judgment at pp 471-472 Slade J explains what is meant by 'an intention on his part to . . . exclude the true owner':

'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.'" [Emphasis added]

[21] The court accepts the evidence that the third defendant's physical occupation together with the improvements in transforming part of the disputed lot from a food truck placement to a chattel structure to facilitate his food selling business establishes the requisite factual possession.

[22] Lord Hope of Craighead in **Pye**⁹ said that:

"The acquisition of possession requires both an intention to take or occupy the land ("*animus*") and some act of the body ("*corpus*") which gives effect to that intention. Occupation of the land alone is not enough, nor is an intention to occupy which is not put into effect by action. Both aspects must be examined,

⁹ [2002] UKHL 30

and each is bound up with the other. But acts of the mind can be, and sometimes can only be, demonstrated by acts of the body. In practice, the best evidence of intention is frequently found in the acts which have taken place.”

[23] With respect to the requirement for an intention to possess, counsel for the claimant argues that the third defendant conceded that upon his initial occupation of the disputed lot, he sought to locate the true owner of the property. The third defendant stated in evidence that he wanted to purchase the land, and that he believed, albeit an incorrect belief, that the land was Government’s land.

[24] In response to the claimant’s argument, Mr A. Clouden, counsel for the third defendant, relies on paragraph 46 of **Pye**¹⁰ which states in the penultimate line of said paragraph that:

“...Once it is accepted that the necessary intent is an intent to possess not to own, and an intention to exclude the paper owner only so far as is reasonably possible, there is no inconsistency between a squatter being willing to pay the paper owner if asked and his being in the meantime in possession...”

[25] Mr Clouden further relies on paragraph 78 of **Pye**¹¹ which states:

“[78] It is clear that the fact that the Grahams would have given up occupation to the claimants or would have made payment for their occupation to the claimants, if requested to do so, does not prevent the existence of the intention to possess...”

[26] The fact that the third defendant was unaware of the true ownership of the disputed lot is irrelevant as what is required is a factual degree of physical control with a sufficient display of the intention to possess. The third defendant’s intention to purchase the disputed lot from the true owners does not negate an intention to possess but rather supports the intention to dispossess the paper title owner. It is the third defendant’s evidence, and the court accepts, that he intended to use the land in his own right. The third defendant remained on the disputed lot and continued his business although being served with notices of removal, and in spite of the claimant’s

¹⁰ [2002] UKHL 30

¹¹ [2002] UKHL 30

removal of surrounding vendors who were also squatters on the premises. This, the court finds, is an unequivocal demonstration of the third defendant's intention to possess and to continue in possession of the disputed lot. The court further finds that the third defendant's use of the land is not open to multiple interpretations and that he has made it plain to the world at large by his actions that he has intended to exclude the claimant as best he can.

- [27] The evidence supports the third defendant's claim of being in possession of part of the disputed lot continuously since 2008. The court especially accepts the evidence of Mr. Purcell and Mr. Joseph of the year of the commencement of the third defendant's business operation given their locality and familiarity with the area of True Blue where the disputed lot is located. The court applying the law to the facts finds that the third defendant has satisfied, on a balance of probabilities, his entitlement to adverse possession of the part of disputed lot.

Whether the claimant's claim is statute barred

- [28] Given that the court has found the third defendant to be in adverse possession, the question of whether the claimant's claim is statute barred becomes relevant.
- [29] The law concerning limitation of actions in a claim for possession of land is contained in **Sections 4 and 27** of the **Limitation of Actions Act**¹². The burden of proof rests on the third defendant to satisfy the statutory requirements to prove that they are entitled to resist the claim¹³.
- [30] Counsel for the claimant in further challenge to the third defendant's claim relies on **Section 16** of the **Limitation of Actions Act** which states that:

"When any acknowledgment of the title of the person entitled to any land has been given to him or her or his or her agent in writing, signed by the person in

¹² CAP 173

¹³ Ellen Works v Mitch Phillip et al GDAHCV2004/0429

possession or in receipt of the profits of the land, then such possession or receipt of or by the person by whom the acknowledgment has been given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent the acknowledgment has been given at the time of giving it, and the right of the last-mentioned person, or any person claiming through him or her, to make an entry or distress, or bring an action to recover the land, shall be deemed to have first accrued at, and not before, the time at which the acknowledgment or the last of the acknowledgments if more than one, was given.”

[31] Counsel for the claimant argues that it is evidenced before the court that the third defendant sought to procure a license from the claimant as acknowledgement of the claimant’s title in accordance with **Section 16 of the Limitation of Actions Act**. It was further brought out in the cross-examination of Mr. Joel Jack on behalf of the claimant, and of the third defendant, that the third defendant was interested in purchasing the premises owned by the claimant, as recent as within the year 2025.

[32] Mr. Clouden vehemently opposed the claimant’s reference to the purported procurement of a license. Two issues arise therefrom. Firstly, the document sought to be relied on, which is in the form of a letter dated 26th May 2022, is a without prejudice communication. Counsel for the claimant has not demonstrated the basis of her reliability on the privileged communication. The court, not having the benefit of referral to authority on this point, notes that the law on the admissibility of “without prejudice” communication, as stated by the authors of **Halsbury’s Laws of England**¹⁴, is as follows:

“The contents of a communication made ‘without prejudice’ are admissible when there has been a binding agreement between the parties arising out of it, or for the purpose of deciding whether such an agreement has been reached, and the fact that such communications have been made (though not their contents) is admissible to show that negotiations have taken place, or that an act of bankruptcy, or a severance of a joint tenancy, or a trigger for a rent review clause, has occurred, but generally speaking they are not otherwise admissible. Thus they cannot be used as admissions, or as acknowledgments to prevent a debt from becoming statute-barred, or, normally, for the purpose of deciding the question of costs, or to show malice, although it has been held

¹⁴ Vol 12 (2020) para 659

that they may be admitted to prove matters not connected with the merits of the dispute.

The consent of both parties to the dispute is required for the privilege to be waived, even if there has been only one communication; but a party deploying the substance of 'without prejudice' communications in support of its case may no longer object to the use by its opponents of any admissions in those communications. The critical question for the court as to admissibility is where to draw the line between the public policy of encouraging parties to resolve disputes without litigation, and wrongly preventing one or other party from putting their case at its best in litigation."

[33] Secondly, the court notes that the acknowledgment relied on by the claimant with respect to the purchasing of the property by the third defendant is as it relates to the entire premises and not restricted to the disputed lot. Mr. Joel Jack stated in re-examination that the third defendant "expressed interest in purchasing the entire lot". This is confirmed by the third defendant who stated in cross examination that he had and still has "an interest in purchasing the entire lot", but excluding the area which he claims to have adversely occupied in excess of twelve years. In any event, the reference to any purported negotiations in 2022 does not vitiate the accepted fact that the third defendant has been in open possession of the disputed area from 2008 which would have been in excess of twelve years by the time of the negotiations in 2022 to purchase the entirety of the disputed lot.

[34] The court is of the view that the third defendant's acknowledgment related to the remainder of the premises and not the area that he occupies. Consequently, the court cannot accept the third defendant's interest in purchasing the entirety of the premises as an acknowledgment for the purposes of **Section 16 of the Limitation of Actions Act**.

Conclusion

[35] The court finds that the third named defendant has been in open possession of a portion of the disputed lot from the year 2008 until present. The third defendant's conduct in his fast-food business has been open, notorious and unconcealed.

Accordingly, the court finds that the third defendant has satisfied on a balance of probabilities that the claimant's claim is statute barred.

[36] The third defendant in his counterclaims seeks a declaration of possession of title for the area measuring 2,000 square feet, however his claim is not supported by a survey plan. Accordingly, it is for the third defendant to pursue this relief in accordance with the procedure outlined in the Possessory Titles Act.

[37] Further, the claimant filed requests for judgment on admission against the remaining defendants. However, it is the claimant's evidence that the remaining defendants have all vacated the lot. The requests for judgment on admission fail to disclose the period of occupation and the amount claimed for mesne profit or damages. It is for the claimant to file further evidence to prove the quantum of damages.

ORDER:

[38] For the foregoing reasons, it is ordered and declared as follows:

- (i) The claimant's claim against the third named defendant is statute barred by operation of Sections 4 and 27 of the Limitation of Actions Act and accordingly stands dismissed.
- (ii) The third defendant succeeds on the counterclaim and is directed to make an application for possessory title pursuant to the Possessory Titles Act No. 22 of 2016;
- (iii) The claimant shall pay the third named defendant costs agreed in the sum of \$30,000.00 within twenty-one (21) days of the date of this order.
- (iv) Judgment on admission is granted in favor of the claimant against the first, second and fourth defendants.

- (v) The claimant shall file affidavits with supporting documents to satisfy the reliefs claimed. The terms of the order shall be determined upon application by the claimant.

Agnes Actie
High Court Judge

By the Court

Registrar