

EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2023/0069

BETWEEN:

ANTIGUA ISLE COMPANY LIMITED

CLAIMANT

And

REGISTRAR OF LANDS

ALEXANDER GRANT ENTERPRISES LTD

DEFENDANTS

APPEARANCES:

Mr. Hugh Marshall for the Claimant

Mr. Kevon Benjamin for the First Defendant

Mr. Justin L Simon K.C. for the Second Defendant

.....
2024: November 16;

2025: February 20
.....

DECISION

- [1] **DRYSDALE, J.:** This matter concerns the First Defendant's decision to award prescriptive title to the Second Defendant. This appeal, brought pursuant to CPR 60 and Section 147 of the Registered Land Act, seeks to invalidate the grant of ownership based on long-term possession.

BRIEF HISTORY

- [2] On May 3, 2021, the Second Defendant applied for prescriptive title to a parcel of land registered in the McKinnons registration section as Block 45 1696B; Parcel 735 (hereafter referred to as "the Property"). The application was supported by affidavits from Michael Alexander William Hachemi-McKie and David Percival, both attesting to the longstanding occupation of the Property.

- [3] Michael Alexander William Hachemi-McKie is the son of Pari Hachemi. His mother operated a business called Pari's Pizza
- [4] Which was later renamed to Pari's Pizza and Steakhouse on the Property. By his mother's will Mr. Hachemi-McKie was bequeathed the restaurant business.
- [5] During his childhood, prior to his mother's passing, he was a frequent visitor to the restaurant, where she imparted her business knowledge to him. The restaurant was twice devastated by hurricanes and subsequently reconstructed and he made substantial contributions to the second rebuilding effort, including procuring materials and assisting with the restaurant's redesign.
- [6] His mother was in possession of the Property for over 40 years from 1977 until her death and the Property was in the name of the Second Defendant from 1989.
- [7] Additionally, documents in his mother's possession demonstrate clearly that she applied in 1998 to the Government of Antigua and Barbuda for a further lease of Registration Section: McKinnons; Block: 44 1696B; Parcel: 614 and that she was granted approval of 1.5 acres of the said Parcel 614. Despite this, no rent was ever paid in respect of this property (Parcel 614) owned by the Government or the Property.
- [8] Pari's Pizza and Steakhouse is now owned by the Second Defendant a company for which Mr. Hachemi-McKie is the sole shareholder.
- [9] David Percival likewise deposed that he knew of Michael Hachemi-McKie for the past thirty years and had been an employee of their family at another business. That he would frequently assist Ms Pari Hachemi at Pari's Pizza and that Ms Hachemi was in occupation of the Property from 1977 until her death.

- [10] The Claimant lodged a formal objection, accompanied by a statutory declaration, against the Second Defendant's application for prescriptive title. The Claimant's primary contention was that the Second Defendant's occupation of the Property since 2003 had been pursuant to a lease agreement, thus precluding the acquisition of prescriptive rights. The Claimant further argued that the period of possession was insufficient to establish prescriptive title. A supplementary statutory declaration was also filed, providing further details in support of the objection. In this declaration, Ms. Govia, a Director of the Claimant, affirmed that the Property had been subject to a lease, with an expiry date of 2028, since 2003.
- [11] Following the death of Ms. Pari Hachemi in 2007, her son, who was designated as a co-executor of her estate, succeeded to her rights and obligations under the lease. The Claimant asserted a lack of awareness regarding the Second Defendant's alleged possession of the Property, suggesting that any such possession would have been facilitated by Michael Hachemi-McKie, Ms. Hachemi's son.
- [12] In February 2019 the Second Defendant applied to purchase the Property. That decision was revisited and rescinded in November 2019. That further the Second Defendant has unlawfully leased the Property to a third party from October 2019.
- [13] Further statutory declarations were lodged by both parties which do not change substantively the averments of the parties and for the purpose of brevity will not be articulated herein. On 7th February 2023 the First Defendant granted an order that the application for prescription be granted to the Second Defendant.
- [14] The Claimant being a person aggrieved by that decision seeks the following reliefs:
- (a) An Order that the Decision of the Registrar of Lands dated the 7th day of February 2023 granting the Application for Prescriptive title filed by the Second Defendant on the 21st day of May 2021 be set aside;
 - (b) Possession of the property more particularly described in the Land Registry as Registration Section: McKinnons; Block: 45 1696B Parcel: 735

The Evidence

- [15] The parties filed witness statements and were afforded the opportunity to cross-examine each other's witnesses during the trial. A summary of the evidence presented by both parties is provided below.

The Claimant

- [16] Ms. Shenella Govia, a Director of the Claimant, stated that although the Claimant is the registered owner of the Property, it holds the Property in trust for the Crown. This means the Crown ultimately determines how the land is to be used. This trust relationship, the witness argued, is evidenced by the 1998 lease agreement between the Government of Antigua and Barbuda and Pari Hachemi, which was subsequently extended in 2003.
- [17] The witness testified that Ms. Pari Hachemi occupied the Property under a lease until her death in 2007. Upon her passing, the management of the business transitioned to her estate. Michael Hachemi-McKie, her son and an executor of her estate, inherited his mother's leasehold interest. Subsequently, and unbeknownst to the Claimant, the Second Defendant, a company directed by Michael Hachemi-McKie, took possession of the leased property.
- [18] In 2019, the Second Defendant made an application to purchase the Property, which was subsequently denied by the Government. Furthermore, in 2019, the Second Defendant purported to enter into a ten-year lease agreement with a third party in respect of the Property. The witness asserts that this action constitutes a breach of Clause 1(3) of the lease agreement. Consequently, a notice of forfeiture dated August 6, 2021, was issued to Michael Hachemi-McKie, directing him to voluntarily relinquish possession of the Property.
- [19] The Claimant opposed the application for prescriptive title, asserting that the Second Defendant had not demonstrated uninterrupted possession of the Property for the statutory period of 20 years prior to filing the application. Moreover, the Claimant argued that the Second Defendant had failed to satisfy the specific requirements outlined in Sections 135 and 136 of the Registered Land Act for the acquisition of prescriptive title. The witness further contended that the First Defendant erred in its decision by erroneously concluding that possession could be considered

interchangeable or transferable, allowing the Second Defendant to benefit from the possession of others, potentially exploiting its position as a fiduciary.

[20] During cross-examination, the witness was questioned about the assertion that the Property was held in trust for the Government. The witness acknowledged that no documentary evidence explicitly confirmed this trust arrangement. However, the witness maintained that the Government appointed the directors of the Claimant and exercised control over how the property was to be utilized.

[21] The witness further acknowledged that the last will and testament of Pari Hachemi devised the business to her son. Moreover, documentary evidence indicated that, prior to Pari Hachemi's death, the business known as Pari's Pizza was operated by the Second Defendant, which was registered to trade under that name.

The Second Defendant's Evidence

[22] The Second Defendant submitted three witness statements. Michael Hachemi-McKie served as the principal witness, and his testimony was corroborated by the witness statements of Joan Fung and Georgice Mendes-Blackman.

Michael Hachemi-McKie

[23] The witness, the son of Pari Hachemi and Garen McKie, testified that he was born in Antigua and Barbuda in 1977 and, aside from brief vacations and a period of education abroad starting at age 16, has resided there his entire life.

[24] He testified that his mother had a long-standing operation of a business called Pari's Pizza on the Property. From a young age, he assisted her with the business after school, and as he grew older, she mentored him in the skills needed for successful business operation.

[25] The business suffered two instances of destruction by hurricanes. On both occasions, his mother undertook the rebuilding. Following the second devastating hurricane, he personally contributed

to the reconstruction effort, specifically in the procurement of materials, the design of the building, and the landscaping of the garden.

- [26] Shortly before her death, his mother gave him important papers related to the Pari's Pizza business. These documents show that the Cabinet of Ministers had granted her a 25-year lease, with an option to renew, for parcel 614 (the parent parcel) until the subdivision in November 2022, which created the Property and parcel 736.

- [27] By virtue of his mother's last will and testament, he received absolute ownership of the business known as Pari's Pizza.

- [28] He stated that his attorneys had advised him that his mother had occupied the Property for more than 20 years.

- [29] The witness further testified that neither he nor the Second Defendant ever remitted any rental payments to the Claimant or the Government of Antigua and Barbuda. He additionally stated that Pari's Pizza and Steak House is owned by the Second Defendant, of which he is the sole owner, and that both the company and his mother have enjoyed peaceful, open, and uninterrupted possession and occupation of the Property for a period exceeding 20 years.

- [30] While the witness stated during cross-examination that the Second Defendant's occupation was due to a 2003 assignment from his mother, he then contradicted himself by claiming that the occupation began in 1977, independent of the assignment.

- [31] The witness admitted that, up to the execution of the deed of assignment, his mother acknowledged the Government of Antigua as the legal owner and controlling party of the Property and further that he also had recognised the Government as the owner of the Property.

- [32] The witness confirmed that he had applied to the Government for the purchase of the Property, followed by a subsequent application for title. He further testified that this application for title was made 18 years after the execution of the deed of assignment.

Joan Fung

- [33] The witness's testimony was uncontested, as she was not cross-examined. The witness deposed that she had a personal acquaintance with Pari Hachemi for a period exceeding 20 years and became acquainted with her son, Michael, after Ms. Hachemi's demise. While familiar with the building housing the business, she had no knowledge of the underlying land ownership. With respect to the building itself, the witness confirmed that it had been twice destroyed by hurricanes and subsequently rebuilt by Pari Hachemi, who operated the business therein from 1977 until her death in 2007.
- [34] The witness further testified that, as Ms. Hachemi's legal counsel, she was aware of Ms. Hachemi's application for an extension of the lease on the Property and had received confirmation of its execution. The witness also stated that, although the lease provided for rent in the amount of \$36,000.00 for the period spanning November 1, 1998, to July 1, 2002, no payment was ever remitted. Subsequently, through new legal representation acting on Ms. Hachemi's behalf, the witness became aware that the Property was registered in the name of the Claimant, not the Government of Antigua and Barbuda.
- [35] Finally, she was informed by Michael Hachemi that the Second Defendant had owned Pari's Pizza since 2001.

Georgice Mendes-Blackman

- [36] The witness, an attorney and partner at Lockhart Mendes & Co., deposed that their firm was retained by Michael Hachemi-McKie to represent the Second Defendant in business matters. She further testified that, in 1997, Pari Hachemi registered her business under the name "Pari's Pizza & Steak House," which was subsequently re-registered on July 9, 2001, as "Alexander Grant Limited trading as Pari's Pizza and Steakhouse."
- [37] In 2008, after the death of Pari Hachemi in 2007, she was removed as a director of the company, and Michael McKie assumed the roles of sole director and shareholder of the Second Defendant. Based on her review of the relevant documentation, the witness opines that Pari Hachemi held initial ownership of the Second Defendant from as early as 1995, and that her business, Pari's

Pizza and Steakhouse, was operated by the Second Defendant as successor owner from July 2001.

[38] This witness was also not cross examined.

Discussion and Disposition

[39] The law governing prescriptive title is set out in the Registered Land Act (hereinafter “the Act”) Section 135 of the Act as amended provides that where a person has been in open, continuous and exclusive possession of land without the consent of the proprietor for an uninterrupted period of at least twenty years that person can apply to be registered as the proprietor of the land.

[40] A critical question therefore is whether the Second Defendant has met the required threshold sufficient to sustain a claim for prescription.

[41] The Claimant argues that the Deed of Assignment, executed in 2003, marks the commencement of the Second Defendant's occupation of the property. This is critical because the subsequent application for prescriptive title in 2021 falls short of the 20-year requirement, amounting to only 18 years. The Second Defendant, however, contests this, asserting a much earlier occupation date of 1977. This assertion, put forth by Director Michael Hachemi-McKie, presents a significant factual discrepancy, as the company was not incorporated until 1979. This discrepancy raises serious questions about the veracity of the Second Defendant's claim. Adding to this weakness, the Second Defendant has failed to provide any independent evidence, such as documentation, witness testimony, or other supporting materials, to substantiate its claim of occupation predating its incorporation. The sole basis for this claim is Mr. Hachemi-McKie's self-serving declaration, which carries considerably less weight than corroborated evidence.

[42] In its submissions, the Second Defendant has also put forward alternative dates for its possession of the property, suggesting either 1988 or 2001. However, these assertions are directly contradicted by the established facts. The documentary evidence, coupled with the lack of any credible counter-evidence, clearly establishes that the transfer of the business from Pari Hachemi to the Second Defendant occurred in 2003. Therefore, the Second Defendant's alternative dates

are unsupported by the evidence and lack merit. Moreover, because these alternative dates were not pleaded, they cannot be seriously entertained by the court.

[43] The Second Defendant's evidence heavily relies on Pari Hachemi's occupation, with all its witnesses claiming she occupied the property from around 1977 until her death in 2007. While Michael Hachemi-McKie suggests the Second Defendant jointly ran the business with his mother, the evidence presented suggests a different narrative. In 2003, Pari Hachemi executed a Deed of Assignment conveying the business to Alexander Grant (the Second Defendant). The recitals within the Deed explicitly state that Pari Hachemi, for the purpose of conducting the business as a limited liability company, acquired all shares in the existing limited liability company, Alexander Grant Enterprises Ltd., thereby becoming its sole shareholder, and subsequently sold the "Pari's Pizza" business to the company, which now operates it.¹ This document clearly demonstrates that the business was transferred to the Second Defendant only at that juncture. Therefore, the Second Defendant's claim of earlier occupation is not only contradicted by documentary evidence but also unsupported by any evidence beyond self-serving oral testimony. Further the witness' oral testimony, analogous to parole evidence, is inadmissible for the purpose of varying or contradicting the clear and unambiguous terms of a written instrument. Consequently, it is unreliable for establishing the long-standing possession necessary to sustain a claim for prescriptive rights.

[44] In light of the foregoing, in order for the Second Defendant to establish a claim to the Property by prescription, Pari Hachemi's occupation and possession thereof must be considered and credited to the Second Defendant. A core principle of prescription is that the Second Defendant's possession must be peaceful, open, continuous, and long-standing. This means the possession must be factual and without the owner's permission or other lawful authority, demonstrating an intention to possess the property as one's own. All these requirements must be met to obtain title.

¹The recitals reads: "The Assignor being desirous of carrying on the business as a limited liability company acquired the shares of an existing Limited liability Company Alexander Grant Enterprises Ltd becoming the sole shareholder thereof and thereafter sold the said business "Paris Pizza" to the Assignee Company and the Assignee Company now carries on the said business."

- [45] The critical point of contention arises from the Deed of Assignment between Pari Hachemi and the Second Defendant, which contains an explicit acknowledgment that Pari's occupation of the Property from 1978 to 1998 was by way of a sublease agreement. This admission is of significant legal consequence because it confirms that her possession during this time was with the consent and authority of a superior titleholder and thereby negates her intention to possess as owner. As enunciated by Dr Martin Dixon the author of Modern Law "[a]wareness that the land belongs to another cannot prevent the existence of a current intention to possess but acknowledgment that the land belongs to another will. Simply you cannot intend to treat the land as within your ultimate control if you believe that you are permitted to be there by the owner."²
- [46] Section 136(4)³ of the Registered Land Act also enshrines the principle that permissive possession, such as that under a sublease (or lease), does not constitute adverse possession for the purposes of acquiring prescriptive title. The clock for adverse possession only begins to run when the occupant's possession becomes adverse, i.e., when they begin occupying the land as a trespasser, without the permission of the titleholder. Since Pari's occupation was by way of a sublease for a period of at least 20 years, that time cannot be counted towards the Second Defendant's claim for prescriptive title.
- [47] The Deed of Assignment further details the transition from the sublease to a direct lease. It confirms that, once the sublease expired, Pari Hachemi entered into a new lease agreement for an extended period for the continued use of the Property. The aforementioned principle of permissive possession is equally applicable to this subsequent lease agreement. While these leases appear to have been contracted with the Government, and it has been established that the Government did not possess ownership of the Property (said ownership residing with the Claimant), this circumstance does not invalidate the established legal principle that adverse possession necessitates an intention to possess the property in one's own right, independent of

²5th edition, page 409

³Section 136(4) "If a person whose possession of land is subject to conditions imposed by or on behalf of the proprietor continues in such possession after the expiry of the term during which such conditions subsist, without fulfilment or compliance with them by such person and without any exercise by the proprietor of his right to the land, such subsequent possession shall be deemed to be peaceable, open and uninterrupted possession within the meaning of section 135."

any other rights or permissions. The case of **Toolsie Persaud Ltd v Andrew James Investments Ltd and others**⁴ explains the concept of an intention to possess as:

“An intention to exercise such custody and control on his own behalf and for his own behalf, independently of anyone else except someone engaged with him in a joint enterprise on the land.”

[48] President of the CCJ Michael de la Bastide P and Hayton J in a joint decision went to state:

“This latter requirement serves to make it clear that the factual possessor is not merely the landowner’s licensee or tenant or trustee or co-owner but is independently in possession, so that it is obvious to any dispossessed true owner (or any true owner who has discontinued possession of his land) that he needs to assert his ownership rights in good time if he is not to lose them.”

[49] Pari’s execution and acknowledgment of these leases clearly indicate that she never intended to possess the Property to the exclusion of all others and understood that her occupation was contingent upon the permission of the purported landowner. Therefore, while Pari clearly occupied the Property, she lacked the requisite animus possidendi – the intention to possess it as her own. Furthermore, under Section 136(6)⁵, such acknowledgment of a lease constitutes a legal interruption in the continuous possession required for a successful claim of prescriptive rights.

[50] As Pari demonstrably lacked the intention to possess the land as her own, her occupation period is irrelevant To the Second Defendant's prescriptive title claim. The Second Defendant's earliest provable possession date is 2003, which is insufficient to meet the 20-year requirement.

⁴72 WIR 292 para 28

⁵‘Possession shall be interrupted...by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted.’

[51] In the event that there may be a possibility of error in my analysis concerning Pari's occupation, I shall proceed to consider whether the Second Defendant can rely upon Pari's purported possession to substantiate a claim for prescriptive title. The sole avenue available to the Second Defendant in this regard is tacking, which permits an adverse possessor to aggregate their period of possession with that of a prior adverse possessor to satisfy the requisite statutory period. This principle was dealt with in the case of **Toolsie Persaud Ltd v Andrew James Investments Ltd and others** (supra) where the court explored whether the Appellant could add its own adverse possession of the land to the earlier adverse possession of the Republic of Guyana. In that case the Court found in the affirmative and ruled that once the requisite period had been acquired the appellant could have applied for title.

[52] While tacking is permissible, it is not automatic. It requires privity of possession—a legal connection between successive adverse possessors, usually established through family ties, a transfer agreement, or operation of law. This principle is supported by Section 136(3) of the Act, which stipulates that:

“Where from the relationship of the parties or from other special cause it appears that the person in possession of land is or was in possession on behalf of another, his possession shall be deemed to be or to have been the possession of that other.”

[53] In the present case, Pari, in 2005, executed her last will and testament, wherein she devised her business Paris Pizza and Steakhouse, which was established on the Property, exclusively to her son, Michael, and not to the Second Defendant. It is a fundamental principle of law that the Second Defendant, as a corporate entity, is legally distinct from Michael irrespective of Michael's status as a shareholder or director. In light of the probate of Pari's last will, it must be concluded that her testamentary intention was to bequeath the business to her son and not the Second Defendant Company. This conclusion is reinforced by the Second Defendant's 2008 application for reinstatement to the company register, which states the company was struck off in 2004, a year before Pari's will. While there's no direct evidence of Pari's awareness of this, as sole director and shareholder at the material time of the Second Defendant, it's a logical inference and may explain why, despite a deed of assignment a year prior stating that she desired the Second Defendant to operate the business, she exclusively devised the business to her son. This

demonstrates that Pari had no intention to allow the Second Defendant to use her years of occupation and possession to establish prescriptive title or any rights in the Property.

- [54] Based on the foregoing, the Second Defendant's claim to prescriptive title must fail due to a lack of evidence demonstrating possession of sufficient duration. Prescriptive title requires a party to prove continuous, open, notorious, and adverse possession for the full statutory period. The Second Defendant's evidence, as discussed above, does not establish uninterrupted and adverse possession for the required time, making it impossible for the court to grant prescriptive title.

Order

- [55] In light of the above it is hereby declared that:
- i. The appeal is allowed. The Decision of the First Defendant dated the 7th day of February 2023 granting the Application for Prescriptive Title is set aside.
 - ii. The Claimant is declared to be the owner of the parcel of land registered as Block 45 1696B Parcel 735.
 - iii. The First Defendant shall make the necessary changes to the land register to reflect the ownership of the Claimant.
 - iv. The Second Defendant shall pay the Claimant is prescribed costs pursuant to CPR 65.5(d) in the sum of \$10,000.00.

Justice Jan Drysdale

High Court Judge



By the Court

Registrar