

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

GRENADA

CLAIM NO. GDAHCV2023/0352 (formerly CLAIM NO. GDAHCV2019/0593)

**IN THE MATTER OF THE POSSESSORY TITLES ACT NO 22 OF 2016 OF THE LAWS
OF GRENADA SECTIONS 3 TO 8 INCLUSIVE THEREOF**

AND

**IN THE MATTER OF AN APPLICATION BY JEMMA MCLEOD FOR A POSSESSORY
TITLE DECLARATION IN RESPECT OF A PARCEL OF LAND TOGETHER WITH A
BUILDING THEREON MEASURING 2, 860 SQUARE FEET SITUATE AT GRAND
BAY IN THE ISLAND OF CARRIACOU IN THE STATE OF GRENADA**

AND

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

BETWEEN:

JEMMA MCLEOD

Applicant

AND

MICHAEL MCLEOD

Opposer

Before:

The Hon. Justice Raulston L.A Glasgow

High Court Judge

Appearances:

The Applicant in person via Zoom

Mr. Andre Thomas of counsel for the opposer

2024: September 26th

November 11th

2025: January 20th

REASONS FOR DECISION

[1] **GLASGOW, J.:** Before the court is the applicant's ("Ms. McLeod") application for a declaration of possessory title filed on 31st December

2019, wherein Ms. McLeod claims to be entitled to possession of a lot of land together with a building situate at Grand Bay in the island of Carriacou in the state of Grenada containing by admeasurement 2, 860 square feet ("the property"). On 28th May 2020, the opposer ("Mr. McLeod") entered an appearance indicating his objection to Ms. McLeod's application. Thereafter, on 16th June 2020 Mr. McLeod outlined the reasons for his opposition to Ms. McLeod's application in his claim. The matter proceeded to trial on 26th September 2024. For the reasons to follow, Ms. McLeod's application for a declaration of possessory title is refused.

Ms. McLeod's Application

Ms. McLeod's Claim

[2] Ms. McLeod estimates that the land on which the property is situated has a value of \$15,000, and the building on the property a value of \$75, 000. She claims that she is entitled to the property as she was born there and grew up there with her grandaunt and mother. She contends that since 1979, she has been the sole occupant of the property, no one has ever challenged her ownership, and she is owner of the property in her own right. Ms. McLeod's application recounts that before adverse possession began to run in her favour, the land was registered in her great grandmother's ("Ann E. Noel") name. Ms. McLeod highlights that the property is currently registered in the Deeds and Land Registry of Grenada in the name of 'Winifred Veronica Fernard', who wrongfully claims to be the owner of the property.

Ms. McLeod's Evidence

[3] In support of her application, Ms. McLeod deposes that she was born on 8th December 1958, is 61 years old and retired. Her elderly family members advised her that the property was originally owned by Ann E. Noel, who died in 1948. Her mother Rosie McLeod then migrated to the United Kingdom when Ms. McLeod was 2 years old in 1960. Ms. McLeod then lived on the property with Ann E. Noel's daughter, Maud G. Noel, who was her grandaunt and legal guardian until Maud G. Noel's death in 1979. The same house constructed on the property is the same house which she occupied over the years, which was constructed of wood and concrete pillars and was always fenced. Ms. McLeod believes this house was constructed by Ann E. Noel, and after Ann E. Noel's death, she lived on the property permanently until 1998, when she migrated to the United States of America. She visits Carriacou annually and resides in the house

on the property. Her son Kimberly McLeod was also born on the property and lived there with her, and when she migrated in 1998, he continued to occupy the property until he also migrated to the United States of America. Ms. McLeod indicates that she has continuously maintained the property, and whenever her children visit Carriacou on vacation, they reside there. From 1979 to present, the only persons who occupied the property were herself and her children.

- [4] It was recently brought to her attention by her attorneys, who conducted a search in the Deeds and Land Registry of Grenada, that Winifred Veronica Fernand had attempted to unlawfully acquire the property by causing a statutory declaration to be filed. This statutory declaration was sworn by Ruby Mills on 18th September 2013 and recorded in the Deeds and Land Registry of Grenada in Liber 21 – 2013 at page 540 references the property in the plan annexed thereto, and attempts to set up title to the property in the names of Christiana McLeod and Gertrude Gilbert. Ms. McLeod denies that these parties or Winifred Veronica Fernand ever occupied the property as alleged by them. Since occupying the property from 1979 onwards, except for attempts made by the above-mentioned persons to unlawfully acquire the land, Ms. McLeod concludes that no one else has ever challenged her occupation of the property and she does not know of anyone else who can claim to have any interest in the property.

Ms. McLeod's Supporting Evidence

- [5] Affidavits in support of Ms. McLeod's application were filed on 31st December 2019 by Cynthia Julien and Benedict Julien.

Cynthia Julien's Evidence

- [6] Cynthia Julien was born on 5th January 1939 and is 82. She was born in Grand Bay Carriacou, lived there for all her life and resides about 300 feet away from the property. She is familiar with Ms. McLeod who she knew since her birth, and she also knew Rose McLeod, Ms. McLeod's mother and Maud Noel, Ms. McLeod's grandaunt. She does not know the exact area of the property, but was shown a survey of the property dated 26th June 2013 as prepared by licensed land surveyor Denis Thomas and has no doubt that the plan accurately describes the property. As a young child, Cynthia Julien recalls that Ann E. Noel possessed the property, where she lived in a wooden house. Ms. McLeod's mother also lived in the house until she migrated in the early 1960s when Ms. McLeod was a very young child. Ms. McLeod then lived in the house with her grandaunt until her

grandaunt's death in 1979. From 1979 until the late 1990s, Ms. McLeod and her children lived continuously in the house on the property until they migrated just like Ms. McLeod did. After Ms. McLeod moved to the United States, she regularly visited Carriacou at least twice yearly, and on all of her visits, she lived in the house on the property. Ms. McLeod last visited Carriacou and lived in the house in June 2019 when she spent approximately 2 months there. From 1979 to the present time, the sole person in possession of the property was Ms. McLeod, and Cynthia Julien does not know of anyone else who has a claim or right to the property. Cynthia Julien concludes that she does not have a direct or indirect interest in the property and is not disqualified from swearing the affidavit in support of Ms. McLeod's application.

Benedict Julien's Evidence

[7] Benedict Julien was born on 21st July 1953 and is 66. He was born in Grand Bay, Carriacou, lived there for all his life, and resides less than a quarter mile from the property. He is very familiar with Ms. McLeod, who he has known for all his life, and he also knew Ms. McLeod and Maud Noel, Ms. McLeod's mother and grandaunt. He does not know the exact area of the property, but he was shown a recent survey of the property prepared by licensed land surveyor Denis Thomas dated 26th June 2013 and has no doubt that the plan accurately describes the property. Benedict Julien was advised by older members of the Grand Bay community that the original owner of the property was Ann E. Noel, who he was informed lived in a house on the property until Ann E. Noel's death in the 1940s. As a young child, he knew Ms. McLeod's mother who lived in the house on the property for a while. Maud Noel also lived in the house until the late 1970s.

[8] From 1979 to present, he knows that Ms. McLeod and her children continuously lived in the house on the property. Ms. McLeod has 2 children who were born in Carriacou and grew up in the house until they both migrated to the United States of America. Ms. McLeod regularly visits Carriacou and last visited in June 2019 when she spent 2 months in the property. From 1979 to the present time, the sole person in possession of the property was Ms. McLeod, and Benedict Julien does not know of anyone else who has a claim or right to the property. He concludes that he does not have a direct or indirect interest in the property and is not disqualified from swearing the affidavit in support of Ms. McLeod's application.

Mr. McLeod's Opposition

[9] Mr. McLeod filed his Claim & Statement of Facts on 16th June 2020, and affidavits were also filed by Roland Robert and Randolph Andrews.

Mr. McLeod's Statement of Facts

[10] Mr. McLeod claims to be the legal owner of the property, asserting that he has been in possession and occupation of the property since 2013, when the property was conveyed to him by virtue of Deed of Gift dated 6th February 2013 and recorded in the Deeds and Land Registry of Grenada in Liber 6 of 2014 at page 422. Mr. McLeod asserts that the property originally formed part of the estate of Gertrude Gilbert, his grandmother, and she was in possession of the property for over 50 years until she died on 19th March 2004. By Statutory Declaration dated 18th September 2013, Ruby Mills declared that Gertrude Gilbert was in undisturbed possession of the property up until her death, and same was recorded in the Deeds and Land Registry in Liber 21 of 2013 at page 540. Subsequently, the administratrix and co-owners of Gertrude Gilbert's estate partitioned the estate, and the property was allotted to Faith Theodora McLeod, Gertrude Gilbert's daughter and a beneficiary of her estate. Faith McLeod then conveyed the property to him, her son. Sometime in 1960, Gertrude Gilbert migrated to England and left her children, including Faith McLeod, to live with her aunt Marjorie Jane Noel in an old house owned by Gertrude Gilbert which was on the property.

[11] This old house was built by Christiana McLeod, Gertrude Gilbert's mother. Gertrude Gilbert gave permission to Marjorie Jane Noel to live in the house, to occupy the property and take care of the children. Marjorie Jane Noel had no children of her own, and took in Rosie McLeod, Ms. McLeod's mother to live with her. Sometime in the 1960s or 1970s, Faith McLeod rebuilt the old house for Gertrude Gilbert. Rosie McLeod migrated to England and Ms. McLeod and her brother moved into the house with Marjorie Jane Noel and lived with her with Gertrude Gilbert's consent and permission. Sometime in the late 1960s or the early 1970s, he also moved into the house with Marjorie Jane Noel who is his grandaunt and lived in the house with her, Ms. McLeod and Ms. McLeod's brother until Mr. McLeod migrated to the United States of America in 1977. Gertrude Gilbert allowed Ms. McLeod to live in the house because she had young children. Marjorie Jane Noel died in 1979 and after her death, Ms. McLeod continued to live in the house with Gertrude Gilbert's consent and

permission until 1998. During that time, the taxes for the property were paid by Faith McLeod. Getrude Gilbert always made it clear that the property including the house, would be allotted to Faith McLeod, since Faith McLeod had rebuilt Getrude Gilbert's house for her. Getrude Gilbert placed Faith McLeod in charge of managing the affairs of the property including the house while Ms. McLeod was residing in the house.

[12]Sometime in 1998, Ms. McLeod migrated to the United States of America leaving her boyfriend living in the house. Faith McLeod soon asked Ms. McLeod's boyfriend to vacate the house, and he did so. In 2001, Faith McLeod retained Roland Robert to maintain and supervise the house and property, ensure that the utilities were functioning properly and that the house was prepared for Faith McLeod and her family members whenever they visited Carriacou. Roland Robert had the keys to the property until 2019 when the keys were given to Ms. McLeod's daughter on her visit to Carriacou. Ms. McLeod's daughter never returned the keys to Roland Robert. Although both Faith McLeod and Ms. McLeod both reside in the United States of America, Faith McLeod came to Carriacou twice yearly when she was in good health and on every occasion, she lived in the house on the property. On some of her visits, Faith McLeod was accompanied by Ms. McLeod who resided with her in the United States of America and who stayed in the house with her during their visit to Carriacou. When Ms. McLeod visited Carriacou she stayed in the house with the consent of Gertrude Gilbert, Faith McLeod and in recent years, his consent.

[13]Mr. McLeod asserts that Ms. McLeod was always aware that the property came from Gertrude Gilbert's estate, that Gertrude Gilbert placed Faith McLeod in charge of the property, and that it was understood by all family members that the property would be allotted to Faith McLeod. In the early 1990s when Ms. McLeod was living in the house on the property, Faith McLeod renovated the house and after the passing of the Hurricane Ivan in September 2004, Faith McLeod again repaired the house by replacing the roof that was destroyed by the hurricane. On both occasions, Faith McLeod bore the cost of the repairs. Sometime in 2005, Mr. McLeod went to Carriacou to assist with repairs to the house. When the title of the property was transferred to Mr. McLeod in 2013, he began paying the property taxes for the property. Mr. McLeod contends that Ms. McLeod was never in adverse possession of the property, as when she lived in the house it was always with the permission of Gertrude Gilbert and Faith McLeod, and Ms. McLeod never displayed any acts of ownership of the property. In 2020, Ms. McLeod and another daughter arrived in Carriacou and began residing in the house. Mr. McLeod concludes that he is the

legal owner of the property and asks the court to dismiss Ms. McLeod's application.

Roland Robert's Evidence

[14]Roland Robert deposes that he was born on 20th October 1957 and is 62. He knows both Faith McLeod and Mr. McLeod, who are originally from Carriacou, but both presently reside in the United States of America. He was hired by Faith McLeod in 2001 as the caretaker of the property, and to the best of his knowledge, she is the owner of the property. In 2001, she gave him the keys for the house on the property and his responsibilities entailed ensuring that the house was always prepared for Faith and her family to reside on whenever they were in Carriacou, including cutting grass and ensuring utilities were connected. On some of her trips to Carriacou, Faith McLeod was accompanied by Jemma McLeod. For the last 5 years, Faith McLeod sent him money to pay the electricity bill which was in her name. He normally opened the house and gave the keys to persons visiting at Faith and Mr. McLeod's request. The keys to the house were usually returned to him at the end of persons' stay in Carriacou. There was one occasion within the last 19 years when Ms. McLeod visited Carriacou by herself and requested the keys for the house on the property. Faith McLeod instructed him to give her the keys, and Ms. McLeod stayed on the house for approximately 1 month. When Ms. McLeod left Carriacou, she returned the keys to him. Sometime in 2019, while he was vacationing in the United States of America, he received a phone call from his son who informed him that Faith McLeod's relatives came to Carriacou for a funeral and requested the keys for the house on the property. Roland Robert instructed his son to give the keys to the house to them, since they were Faith McLeod's relatives who were unwell at the time. Roland Robert concludes that his son gave the relatives the keys, but the keys were never returned to him.

Randolph Andrews' Evidence

[15]Randolph Andrews was born on 30th July 1968, is 51 and is a building contractor. He knows Faith McLeod who is originally from Carriacou but presently resides in the United States of America. Within the last 15 to 20 years, he was hired by Faith McLeod on at least 2 occasions to do construction related work on the property, which he believes was owned by her. On one occasion, he did a building extension to the house on the property and on another occasion, he removed the old shingles and replaced them with new ones. On both occasions, Faith McLeod

instructed him on what work was to be done on the house and on both occasions, she paid him.

ISSUES FOR THE COURT'S CONSIDERATION

[16]After the trial of this matter on 26th September 2024, and in consideration of the written closing submissions filed by Ms. McLeod on 29th October 2024 and Mr. McLeod on 11th November 2024, I determined that the principal issue for determination is whether Ms. McLeod is entitled to a declaration of possessory title.

DISCUSSION & LEGAL ANALYSIS

[17]Applications for declarations for possessory title derive from the Possessory Titles Act ("the Act")¹. Part II of the Act outlines the requirements of the application, and more particularly, section 3(1) provides:

"Where a person claims to be in adverse possession of a piece or parcel of land in Grenada, the person may make an application in accordance with section 4 to the Court for a declaration of possessory title to the said land."

[18]Adverse possession is defined in section 2 of the Act as –

"adverse possession" means 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]For Ms. McLeod's application to succeed, she must satisfy both requirements of adverse possession for the statutorily delineated period of 12 years as stipulated in the Act. Factual possession requires Ms. McLeod to prove that she exercised a significant degree of control over the land in question *nec vi, nec clam, nec precario* – in the open, not

¹ Act No 22 of 2016 of the laws of Grenada.

secret.² This element is generally satisfied where the adverse possessor shows that they have been dealing with the land as an occupying owner might have been expected to deal with it and that no one else has done so.³ Ms. McLeod must also prove that she intended to possess the land.⁴ This intention should be clear and unequivocal, as the adverse possessor must consciously act in a manner which is objectively consistent with a claim of exclusive possession on his own behalf⁵. The necessary intent to be proven is possession of the land by excluding the world at large generally⁶.

[20]Ms. McLeod, in her closing submissions, has asked the court to note that there is no formal deed registered for the property, which may be due to the passing of Hurricane Ivan and the historical problems affecting the Supreme Court Registry. She also highlights that Mr. McLeod's claims and that of his witnesses are weak and contradictory, as Mr. McLeod admits that she lived in the property until 1998 and that she lives in the property whenever she visits Carriacou. These facts, she claims, prove that her possession was open, well known and consistent. She also contends that the repairs to the house done by Faith McLeod were acts of goodwill to her, as she raised Mr. McLeod from the age of 6 months to 11 years and even though Faith sent remittances to pay bills for the home, these acts by Faith do not constitute acts of ownership. Ms. McLeod argues that Mr. McLeod's witnesses should be disbelieved as they could not remember pertinent dates when keys were allegedly given to her or her family members and they produced no evidence of any formal agreement or contract about caretaking or repairing the property. Ms. McLeod also highlights that it is well established that statutory declarations do not convey legal title as pronounced in **Phibiana George**

² Powell v McFarlane (1997) 38 P&CR 452.

³ Ibid at 41, per Lord Browne – Wilkinson.

⁴ JA Pye (Oxford) Ltd and another v Graham and another [2003] 1 AC 419.

⁵ Wilson v Martin's Executors [1993] 1 EGLR 178

⁶(n4).

v Dorothea Corion, Charles v Holas, Cynthia Francis v Theresa Bubb.

The deponent of the statutory declaration Ruby Mills did not provide live testimony which could be cross examined and for these reasons, Ms. McLeod claims that the statutory declaration should be given no weight.

[21] In support of her application, Ms. McLeod submits that she has satisfied the requirements of adverse possession by:

- a. Continuous possession – She possessed the property since 1979, and after migrating to the United States of America retained continuous possession of the property by permitting her son to live on the property.
- b. Exclusive possession – No other party including Michael McLeod has had possession or control of the property during the time of her exclusive possession.
- c. Open and notorious possession – Her possession has been visible and well known to the community and Mr. McLeod acknowledged in court that she lived on the property for years.
- d. Hostile possession – Her possession has been without permission from any legal owner or heir of Ann E. Noel, and while she initially received permission to live on the property from Maud G. Noel, Ann E. Noel's daughter, that permission ceased and expired with her passing in February 1979. She has never sought permission from anyone thereafter.

[22] In Mr. McLeod's closing submissions, he summarizes the pertinent evidence elicited at trial, and submits that he has established that Ms. McLeod was neither in factual possession nor formed the requisite intent to possess the property to the exclusion of everyone. Reliance was placed on the cases of **In the Application for a Declaration of Possessory Title to land by Saran Christophe⁷, Selwyn Pitt, Richard Pitt v Brian Pitt⁸** and **Nigel Joslyn v Edward Joslyn⁹**, and he asserts that Ms.

⁷ SVGHPT2017/001

⁸ GDAHCV2016/0423

⁹ SVGHCV2009/0001

McLeod's occupation of the property was always with permission, culminating with his mother Faith Theodora McLeod, who took care of the house by adding an indoor bathroom, repairing the roof after Hurricane Ivan and paid all expenses for the property. He further asserts that Ms. McLeod was not in exclusive control of the property, as cross examination elicited that several other persons lived in the property at various times without Ms. McLeod's approval. Mr. McLeod also highlights that Ms. McLeod made several references to the property being a 'family house' which contradicts her assertions of ownership in her own right, and the evidence of Faith McLeod's extensive repairs to the house are indicative of an owner conducting repairs and dealing with their property. For these reasons, Mr. McLeod contends that Ms. McLeod's application must fail.

FINDINGS AND CONCLUSIONS

[23] In assessing Ms. McLeod's application, it would be remiss not to mention that Ms. McLeod was the only party who was cross examined on their sworn evidence in support of her application at trial, as Cynthia Baptiste and Julian Baptiste did not appear. Their evidence was not tested by counsel for Mr. McLeod or the court and it is therefore given little weight in the court's assessment of whether adverse possession is founded in Ms. McLeod's favour. The case law is clear – even where an opposition is filed, the burden of proving the constituent elements of adverse possession in possessory title applications remain on the applicant to prove¹⁰. Ms. McLeod's own evidence at trial was quite contradictory, and I find that she had failed to establish either factual possession or an intention to possess. She acknowledged that Faith McLeod did substantial repairs to the house on the property, and when questioned on whether she had any input in these repairs, she attempted to explain that these were acts of kindness done by Faith McLeod for taking care of Mr. McLeod. Ms. McLeod was however unable to explain why Faith McLeod would do these acts years after Mr. McLeod became an adult. She equally failed to provide evidence of these acts being giftings by Faith McLeod to her.

[24] In considering the matter in the round, I agree with counsel for Mr. McLeod that these acts are more indicative of an owner of property exercising acts of factual possession, and not gifts as Ms. McLeod asserts. There was also evidence that several persons came on the property periodically who neither asked for nor received permission from Ms. McLeod to come on to or stay at the property. Roland Roberts' evidence remained steadfast

¹⁰ (n9)

in cross examination that he gave the keys to the property to persons over the years to stay at the property at Faith McLeod's insistence. These acts are not indicative of factual possession which excluded all others. Ms. McLeod also produced no cogent evidence at trial of herself or her son's continuing occupation of the property after she migrated. In this context, Ms. McLeod attempted to produce in closing submissions an electric bill in her name from 2003 – 2004. This court will take no notice of this belated evidence. In any event, even if I was to consider the bill, this evidence does not assist the claim being made by Ms. McLeod in view of all the material which indicates that she was not in factual possession of the property as required in law.

[25] Most tellingly, when tested at trial about the heritage and dealings with the property, Ms. McLeod continuously indicated that the property was considered 'family land' and gave the court her understanding of the chronology of ownership of the land from the times of Ann E. Noel to present. I cannot accept that an understanding and acceptance of property as 'family land' over the years would entitle Ms. McLeod to claim the property as her own in her own right or show that she intended to possess same in her own right. These two assertions are grossly inconsistent. In conclusion, I have found Mr. McLeod, and his witnesses' evidence to be much more thorough and believable, especially the evidence of Randolph Andrews, who was insistent about his evidence about the repairs done to the property on Faith McLeod's instructions. Ms. McLeod's application does not meet the requirements of the law and must therefore be dismissed.

IT IS HEREBY ORDERED THAT:-

- 1) Ms. McLeod's application for a declaration of possessory title is dismissed; and
- 2) No order as to costs.

Raulston L.A. Glasgow

High Court Judge

BY THE COURT

REGISTRAR