

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

GRENADA

CLAIM NO. GDAHCV2023/0328

BETWEEN:

[1] **MEREDALE TELESFORD**
[2] **BRENDA LYNN MOODOO**

Claimants

and

[1] **CHERYL ANTOINE**
[2] **JOSEPH FRASER**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Deborah Mitchell for the Claimants

Ms. Sheriba Lewis for the Defendants

2024: November 6th; 19th

RULING

[1] **ACTIE, J.:** This claim concerns the ownership of land situate at Pomme Rose, St. David.

Background

[2] By indenture dated 20th September 2021 Angella Fisher conveyed to the first claimant a lot of land measuring Five Thousand Nine Hundred and Ninety-four Square Feet (5,994 Sq. Ft.) (hereafter referred to as “the disputed land”). By deed of gift dated 26th May 2023 the first claimant conveyed an interest to the property to the second claimant.

[3] The claimants aver that in or about November 2022, the defendants encroached on the disputed land and constructed a wooden building which houses vicious

dogs. The claimants state that they are prevented from erecting their dwelling house on the disputed land due to the presence of the defendants resulting in loss and damage.

- [4] The claimants in a claim form filed on 27th June 2023 seeks among other things, a declaration that they are the owners of the disputed land, an order that the defendants pull down and remove the wooden building and deliver up possession of the disputed land, an order restraining the defendants from any further acts of trespass, damages for trespass and costs.

Defendants' case

- [5] The defendants were the original paper title holders of the disputed land. The defendants by deed of conveyance dated 11th March 1998 conveyed the disputed land to one Francis Hector. Francis Hector mortgaged the disputed land to RBTT Bank Grenada Limited. By Deed of Gift dated 28th April 2006, RBTT Bank Grenada Limited and Francis Hector conveyed the disputed to Angella Fisher. On 20th September 2021, Angella Fisher conveyed the disputed land to the first claimant.
- [6] The defendants contend that the claimants' title is invalid. They assert that Francis Hector, to whom the disputed property was transferred in 1998, did not pay the full consideration for the transaction. The defendants argue that Angella Fisher, who was then in a relationship with Mr. Hector, was not a bona fide purchaser for value since Ms. Fisher was aware of Mr. Hector's non-payment of the purchase price. The defendants assert that no valid title passed to Angella Fisher to convey to the claimants.
- [7] The defendants further assert that the claimants' predecessor in title discontinued possession of the land since the year 2006. The defendants alternatively claim that they have been in continuous and exclusive possession of the disputed land from 1997 and accordingly the claim is statute barred, and the claimant's title is extinguished pursuant to the Limitations Act CAP 173.
- [8] The defendants' counterclaim for a declaration that they are the owners in fee simple of the disputed land and costs.

The trial

- [9] The second defendant did not file a witness statement. The first defendant in her witness statement states that the defendants were unaware that they had transferred ownership of the disputed land to Francis Hector. The first defendant states “we have never been paid for the land as far as we are concerned it remained ours and no one else including Francis Hector, had a right to claim it or remove us from it”.
- [10] However, the second defendant in cross examination states that Francis Hector made a part payment of \$10,000.00 to the second defendant. The first defendant further stated that the 2nd defendant did not give her any part of the \$10,000.00 that he received from Francis Hector.

Legal Analysis

Whether the claimants hold valid paper title to the disputed land

- [11] The main issue arising from the evidence elicited from the first defendant’s suggests that the predecessor in title did not pay the full agreed price. However, the deed of conveyance by the defendants to the Francis Hector, predecessor in title, registered in the Deeds and Land Registry reads:

“NOW THIS INDENTURE WITNESSETH that in consideration of the sum of Seventeen Thousand Nine Hundred and Eighty-two Dollars (17,982.00) Eastern Caribbean Currency paid by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge)...”

- [12] The deed is taken to accurately reflect the full transaction between the defendants and Francis Hector. The deed clearly indicates that the defendants acknowledged receipt of the purchase price but does not state any sum due and owing on the transaction. The defendants signed the deed which is witnessed by one Delores Julien.
- [13] Michel JA in **Marlon Mills v Stacey McKie**¹ had the following to say on paper titles:

¹ SVGHCVP2016/0001

“[24] Title, in the context of property, refers to the right which a person has to the ownership of the property. ...Title may also be established by a document which specifies the property to which it refers, the person who is asserting the right to it, and the manner in which that right was acquired – whether by grant, by assignment, by purchase or otherwise. In the case of a purchase, the document should also contain the name of the vendor and the price or other consideration for which the property was sold.

[25] The document establishing title may be a deed or other note in writing. A deed is a specific legal instrument signed, attested, delivered and, in some jurisdictions, sealed by the person transferring the property right to another person. A note in writing may be any written document, whether or not accompanied by any specific formalities...”

- [14] The predecessors’ titles deed provides evidence of details of the delivery and acceptance of the title upon payment of the agreed consideration. Ms Deborah Mitchell, counsel for the claimants, relies on the court’s decision in **Rice v Rice**², which was applied in the case of **Rimmer v Webster**³ in the following terms:

“If the owner of property clothes another person with the apparent ownership and right of disposition thereof by not merely transferring it to him, but also by acknowledging that the transferee had paid him the consideration for it, he is estopped from asserting his title as against a person to whom such third party has disposed of it, and who took it in good faith and for value. *Rice v Rice* (1854, 2 Drew, 73) is a good illustration. If a man acknowledges that he has received the whole of the purchase money from the person to whom he transfers the property, he ‘voluntarily arms the purchaser with the means of dealing with the estate as the absolute legal and equitable owner free from any shadow of incumbrance or adverse equity’ (p 83), and he cannot be heard to say that he never in fact received such purchase money.”

- [15] Ms Mitchell argues further the defendants’ case is that of an unpaid vendor’s equitable lien. However, the purported equitable lien which is not documented cannot bind a bona fide purchaser of the legal estate for value who did not have notice of the unpaid vendor’s equitable lien.

² (1853) 61 ER 646

³ [1902] 2 Ch 163

[16] Counsel further relies on **Pilcher v Rawlins**⁴ where Sir W.M. James LJ stated:

“I propose simply to apply myself to the case of a purchaser for valuable consideration, without notice, obtaining, upon the occasion of his purchase, and by means of his purchase deed, some legal estate, some legal right, some legal advantage; and, according to my view of the established law of this Court, such a purchaser's plea of a purchase for valuable consideration without notice is an absolute, unqualified, unanswerable defence, and an unanswerable plea to the jurisdiction of this Court. Such a purchaser, when he has once put in that plea, may be interrogated and tested to any extent as to the valuable consideration which he has given in order to shew the bona fides or mala fides of his purchase, and also the presence or the absence of notice; but when once he has gone through that ordeal, and has satisfied the terms of the plea of purchase for valuable consideration without notice, then, according to my judgment, this Court has no jurisdiction whatever to do anything more than to let him depart in possession of that legal estate, that legal right, that legal advantage which he has obtained, whatever it may be. In such a case a purchaser is entitled to hold that which, without breach of duty, he has had conveyed to him.”

[17] The court agrees with the arguments of counsel for the claimants. **Section 5** of the **Deeds and Land Registry Act CAP 79** provides that:

“Every instrument, affecting land in Grenada, duly registered in accordance with the provisions of this Act, shall be good and effectual in law and equity according to priority of registering...”

[18] The defendants other their bare assertions have failed to satisfy the court that they have not been paid the full purchase price. The defendants have not demonstrated how the claimants would have had actual or constructive notice or were consciously aware of the non-payment especially having regard to the deed of conveyance which acknowledged receipt of the full payment of the purchase price to invalidate their title.

[19] In **Powell v McFarlane**⁵ 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.”

⁴ (1871) LR 7 Ch App 259

⁵ (1977) 38 P & CR 452

[20] **Section 23** of the **Deeds and Land Registry Act** provides for the rectification of records following the recording of an instrument by stating:

“The High Court may, on the application by summons of any person claiming any interest in any land in Grenada, order that any entry in the registry books be cancelled, or that any omission or mistake therein be rectified, or that any certificate indorsed or given under this Act be amended or cancelled, or that any instrument not registered be proved and registered, or that any person appear before the Court or before the Registrar and produce or prove any instrument and answer any question with reference to the registration or intended registration of any instrument.”

[21] Counsel for the claimant submits that there is no instrument recorded in the Deeds and Land Registry to put potential purchasers of the disputed land on notice of the purported equitable lien on the property, nor had the defendants filed an action with the High Court for the cancellation of the recorded instrument.

[22] The court is of the view that looking at the totality of the evidence is of the view that the claimants have satisfied their claim for ownership of the disputed lot. Accordingly, the court finds that the first claimant has proper registered paper title to the disputed land.

Whether the defendants have been in possession of the disputed land

[23] It is the evidence of the defendants that they went into occupation and have been planting and reaping produce on the disputed land. On the other hand, it is the evidence of Angella Fisher on behalf of the claimants that from 2006 until sale to the claimants she was in possession of the disputed land. She states that she would harvest the fruits and nutmegs on the land. She further avers that none of the defendants prevented her or her agents from accessing the land, and that the defendants did not plant nor work the land since her occupation.

[24] In the case of **J A Pye v Graham**⁶ it is stated that:

⁶ [2002] UKHL 30

“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.”

[25] Moreover in **Powell v McFarland and Another**⁷, it was held by Slade J that:

“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.”

[26] In addition, it is the evidence of the first claimant that he took possession of the disputed land upon purchase. He states that he visited the land three to four times a month, and that it was not until November 2022 when the defendants constructed the wooden dog house.

[27] The defendants have failed to provide evidence to satisfy their possession of the disputed lot. Given the evidence of Angella Fisher, the court is not satisfied of the possession propounded by the defendants. The court therefore dismisses the defendants' claim to the disputed property.

[28] In any event, the defendants conflate the issue of their unpaid vendor's lien with adverse possession. It is the evidence of the first defendant at trial that the defendants received and kept the payment of \$10,000.00 from Francis Hector on the completion of the conveyance to him, however they acknowledge that a balance is due and owing on the transaction. Given this circumstance, the proper avenue for the defendants to obtain relief is to pursue their unpaid vendor's lien for the balance of the purchase price owed to them by Francis Hector through Angella Fisher whom the defendants alleged was aware of the non-payment of the full purchase price, which was denied by Ms Fisher at the trial.

[29] Further the defendants in their counter claim claim ownership through their paper title on one hand and in the alternative claims possession in excess of twelve years.

⁷ (1977) 38 P & CR 452

[30] It is a basic principle of law that a paper title cannot claim adverse possession against his or her title. The defendants cannot on one hand state that they have not sold the land and retains paper title to the disputed land and on the other hand seeks ownership through adverse possession.

[31] The court of appeal in *Arnold Celestine (Administrator of the Estate of O'Ferril Celestine) v Carlton Baptiste*⁸ at Paragraph 12 said:

“ In my view, this is clearly an inconsistent pleading. To claim to be in possession of land “as of right”, whilst at the same time claiming to be in adverse possession of it, is simply incomprehensible, given the legal connotation of each. If an owner is in possession “as of right” (i.e. with the paper title) then the question of that owner being in adverse possession to his own paper title simply cannot arise as a matter of law.

[32] The court applying these principles to the facts is of the view that the claimants have satisfied their claim on a balance of probabilities. The claimants are deemed to be innocent parties who obtained title to the disputed land without notice of any other party's claim to the title of that property and are not to be bound by equitable interests of which they do not have actual, constructive, or imputed notice,

[33] The defendants further argue that the rights of the claimants were extinguished by operation of Section 4 of the Limitation of Actions Act, however having failed to establish possession, it is not necessary for this court to consider the Limitation of Actions Act.

[34] Given the above circumstances the court allows the claim of the claimants and dismisses the counterclaim of the defendants.

ORDER

[35] It is ordered and directed as follows:

- (i) The claimants' claim is allowed and the defendants' counterclaim is dismissed;

⁸ HCVAP 2008/011

- (ii) The claimants are declared the owners of all that lot piece or parcel of land situate at Pomme Rose in the parish of St. David containing by admeasurement Five Thousand Nine Hundred and Ninety-four Square Feet (5,994 Sq. Ft.).
- (iii) The defendants shall forthwith pull down and remove the wooden building used as a dog house and constructed by them, their servants and/or agents.
- (iv) The defendants shall deliver up possession of the disputed land to the claimants immediately upon removal of the wooden building used as a dog house.
- (v) The defendants are restrained whether by themselves their agents or howsoever from any further acts of trespass on the disputed land.
- (vi) Damages for trespass to be assessed, if not agreed, upon application by the claimants.
- (vii) Agreed Costs in the sum of \$7,500.00 to be paid to the claimants by the defendants within thirty (30) days of today's date.

Agnes Actie
High Court Judge

By the Court

Registrar