

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

GRENADA

CLAIM NO. GDAHCV2020/0487

BETWEEN:

FORT JEUDY ASSOCIATION INC.

Claimant

and

AUGUSTINE TELESFORD

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mrs. Linda Dolland and Ms. Sephorah Khan for the Claimant
Mr. Kadeem Strachan, Ms. Skeeta Chitan, Mrs. Crystal Braveboy-Chetram
and Mr. Ricardo Sylvester for the Defendant

2023: November 20
December 11,12

JUDGMENT

- [1] **ACTIE, J.:** The main issue arising in this claim is whether the claimant's claim filed on 25th November 2020 for the possession of premises situate at Fort Jeudy, St. George is statute barred.

Background Facts

- [2] The claimant is a non-profit company incorporated on 18th October 2000 under the Companies Act¹. The claimant was established for the purpose of enabling members to share mutual responsibilities in connection with the communal

¹ No. 35 of 1994 of the Laws of Grenada

facilities in the Westerhall Fort Jeudy Development Scheme (hereafter referred to as “the Development Scheme”), among other things.

- [3] The claimant became the registered owner of the Development Scheme through a deed of conveyance dated 25th February 2002 between Westerhall Fort Jeudy Ltd. (hereafter referred to as “the Developer”) and the claimant (hereafter referred to as “the 2002 conveyance”). Subsequently, the claimant discovered that other lots, including Lot 225A in the Development Scheme (hereafter referred to as “the premises”) were not included in the 2002 conveyance. The Developer went into voluntary liquidation on 4th July 2004. By conveyance dated 21st March 2014 (hereafter referred to as “the 2014 conveyance”), Brian Robinson, as liquidator, transferred the premises to the claimant.
- [4] The claimant seeks an injunction against the defendant for the removal of all chattel and other effects from the premises together with damages for trespass, among other things. The claimant asserts that the defendant was a paid handyman for the Developer and that the premises were utilized by the Developer as a guard hut, and for the storage of pipe materials, to which the defendant had access and also utilized.
- [5] The claimant further asserts that the defendant’s use of the premises has always been with the consent of the claimant and/or its predecessors in title for the purpose of conducting plumbing and maintenance services. The claimant also avers that the defendant’s occupation of the premises was as a licensee with the permission to plant crops and to use and occupy the premises.
- [6] The claimant states that on numerous occasions before 2016 and during the period of 2016-2019, its representatives, Andrew Minors and Christopher DeAllie met with and gave directions to the defendant’s occupation and use of the premises, to which the defendant temporarily complied. In particular, the claimant communicated its objection to the defendant selling alcohol on the premises without the requisite liquor licence.

- [7] The claimant contends that in or about the year 2016, a licence was prepared for the execution by the defendant in order to formalize the defendant's occupation of the premises, however the defendant failed, neglected and/or refused to sign the licence. A formal notice was issued to the defendant on 27th March 2019 requiring him to execute the licence and to desist from conducting commercial activities and selling alcohol, failing which a notice to vacate the premises would be issued without further warning.
- [8] The defendant in correspondence dated 24th April 2019 in response asserted an interest in the premises.
- [9] The claimant contends that the defendant has failed, neglected and or refused to vacate the premises or to execute a licence in respect of same and that he is therefore a trespasser on the claimant's property.

The Defendant's case

- [10] The defendant died on 6th May 2023, and pursuant to Section 36 E of the Evidence Act a notice was filed to tender the witness statement of the deceased. The deceased's sons, Augustine Telesford Jr and Dr. Devon Angus Francis, were substituted in place of the deceased defendant.
- [11] The defendant in his pleaded defence denies that he is a trespasser or a licensee of the claimant, or the Developer, the claimant's predecessor in title. The defendant admits however that he was a contractor who supplied plumbing and maintenance services to the Developer.
- [12] The defendant further states that even if it is found that he was initially a licensee of the Developer, that such license was terminated on or about 9th July 2004 when Developer was placed in voluntary liquidation, or alternatively when the defendant ceased providing any plumbing services to the Developer, years prior to the Developer going into liquidation. The defendant contends that he has been in exclusive possession of the premises since in or about July 2004 without the permission or consent of the Developer or the claimant.

[13] The defendant states that when he first took possession of the premises, it was densely forested with large trees and high woods, and that he cleared the premises and cultivated agricultural crops thereon. The defendant avers that he built a one-bedroom house on the premises, and that over the years he has been in possession, has burnt coals and operates a bar. It is the case of the defendant that he has been in open, free and undisturbed possession of the premises for in excess of 40 years.

[14] The defendant avers that the claimant's right to bring an action, if any, is barred by virtue of Section 4 of the Limitation of Actions Act, and that pursuant to Section 27 of the Act, the claimant's title has been extinguished.

Legal Analysis

Whether the claimant's claim is statute barred

[15] The defendant argues that the claimant's claim against his occupation of the premises is statute barred by operation of the Limitation of Actions Act.

[16] The law concerning limitation of actions in a claim for possession of land is contained in **Section 4** of the **Limitation of Actions Act**² which states the following:

"No person shall make an entry or distress, or bring an action to recover any land, but within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to some person through whom he or she claims, or if the right has not accrued to any person through whom he or she claims, then within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to the person making or bringing it."

[17] Further, **Section 27 of the Limitation of Actions Act** states:

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

² CAP 173

[18] The claimant's main contention is that the defendant's use and occupation of the premises had always been with the consent of the claimant and or predecessors in title as a licensee. The claimant further contends that the defendant has never been in adverse possession of the claimant's property as the claimant became entitled in its own right to claim possession of the premises when it obtained title in March 2014.

[19] The issue is what is the nature of the defendant's occupation. The claimant asserts that the defendant's occupation had always been that of a licensee. The case of **Duffy's Valley Corporation Ltd v Kunta Brookes**³ defines the characteristics of a licence, wherein it was stated that:

"A bare licence is one granted otherwise than for valuable consideration. It amounts to a mere permission to enter and occupy. A critical feature of the bare licence is that it gives that licensee no proprietary interest in the land and can be withdrawn at any time by the licensor without notice but the licensee must be given a reasonable time to depart. It follows that where, as in this case, there is no reason to impute a contractual arrangement between the Parties, the permitted occupancy remains that of a revocable licence.

It is also clear that a licensee's presence on the land is only justified to the extent granted in the licence. If the licensee acts in anyway which is inconsistent with the permission granted, then his act will be considered a trespass. In the same way, a licensee who remains on land after his licence expires or is properly revoked is also a trespasser."

[20] The defendant on the other hand asserts that the licence to occupy the land was terminated when he remained in possession in his own right from 2004 when the developer went into liquidation.

[21] In **Halsbury's Laws of England**⁴, the authors state the following:

"Since a licence does not create an interest in land, it is not binding upon a successor in title of the original grantor unless the circumstances are such as to give rise to a constructive trust... A gratuitous licence is revocable by notice at any time, and is revoked by the death of either party or by assignment of the land over which the licence is granted."

³ BVIHCV2016/0002

⁴ (5th edn., 2022) vol. 62, para 6

[22] It is clear from the documents before the court that the defendant's occupation of the premises commenced through that of a license by the Developers, the claimant's predecessors. The defendant states that he was placed on the premises by the Developer for the purposes of maintenance.

[23] Thus, between the years 2004 and 2014 (when the premises were transferred to the claimant) there was no recorded owner of the premises to have had the technical capacity to grant a license to the defendant, nor was there an occupier of the premises other than the defendant.

[24] Possession with permission cannot be deemed adverse. Megarry and Wade in **The Law of Real Property**⁵ states this very principle in the following quotation:

"If a person is in possession of land with the permission of the true owner, his possession cannot be adverse. The permission may be expressly given or it may be implied. It will be implied where there has been some overt act by the land owner or some demonstrable circumstances from which it can be inferred that permission was given."

[25] There is no evidence that the relationship of licensee/licensor was then resumed as between the claimant and the defendant when it obtained title in 2014, so as to break the continuity of the possession of the defendant in his own right. As a result, the court determines that from July 2004, the defendant occupied the premises without license, and in his own right.

[26] In the seminal case of **Powell v McFarlane**⁶ it was opined that:

"The word "possession" traditionally means that degree of occupation or physical control, coupled with the requisite intention to dispossess the true owner ... The word dispossession denotes simply the taking of possession in such a sense from another without the other's consent. The defendant must show actual, continuous, uninterrupted, peaceable, public, unequivocal and sole and exclusive possession of the disputed lands".

⁵ 7th edn, page 1417

⁶ (1977) 38 P & CR 452

[27] The authors of **Elements of Land Law**⁷, on adverse possession, remark as follows:

“The rules of adverse possession confirm that possession and title are by no means discrete concepts. Possession is the root of title. Possession of land serves as prima facie evidence of seisin in fee and seisin ‘gives ownership good against everyone except a person who has a better, because older title’. However, where the assertion of all older titles is statute-barred, the current possessor’s title becomes, for all practical purposes, an unchallengeable title to the land .”

[28] This court in **Don-Lee Clarke v Desmond Alexander & Anr**⁸ cited the following from Kevin Gray in the text ‘Elements of Land Law’:

“A title may be acquired by adverse possession even though the claimant (in this case defendants) was unaware of the true ownership of the property or believed that it was already his. Indeed, the animus required of the adverse possessor relates not to ownership of the land at all but rather to the assertion of a factual degree of ‘complete and exclusive physical control’ over the land – an assertion which is wholly consistent with an erroneous assumption of entitlement.”

[29] In the case of **J A Pye v Graham**⁹ it is stated 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.”

[30] Counsel for the defendant cited the decision in **Grenada Distillers Ltd v Keith Newton**¹⁰:

“The assertion by Mr. McKenzie that Mr. Newton indicated an interest to purchase the plot further supports the Annumus Possidendi requirement to satisfy a claim for adverse possession.

[31] The law is clear as to the point in time the right to bring an action against someone in possession accrues. The limitation period begins to run from the date of the owner’s dispossession by an adverse possessor or from the date of the inception of adverse possession or from the date of the inception of adverse possession by a third party following a discontinuance of possession by the original owner.

⁷ Kevin Gray 2nd Edition

⁸ GDAHCV2011/0454

⁹ [2002] UKHL 30

¹⁰ GDAHCV2014/0299

[32] **Section 4** of the **Limitation of Actions Act** makes reference to the first accrual of the right of a person to bring an action to recover land. **Section 5** of the **Limitation of Actions Act** provides when the right shall be deemed to have accrued and the relevant subsections of the section, as raised by counsel for the parties, state that:

“In the construction of this Act, the right to make an entry or distress or to bring an action to recover any land shall be deemed to have first accrued at such time as is hereinafter mentioned, that is to say—

- (a) when the person claiming the land, or some person through whom he or she claims, has in respect of the estate or interest claimed, been in possession or receipt of the profits of the land and while entitled thereto has been dispossessed or has discontinued the possession, then the right shall be deemed to have first accrued at the time of the dispossession or discontinuance of possession or at the last time at which any such profits were so received; ...
- (b)
- (c) when the person claiming the land claims in respect of an estate or interest in possession granted, appointed, or otherwise assured by an instrument, other than a will, to him or her or some person through whom he or she claims, by a person being, in respect of the same estate or interest in the possession or receipt of the profits of the land, and no person entitled under the instrument has been in such possession or receipt, then the right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he or she claims, became entitled to such possession or receipt by virtue of the instrument;...”

[33] Counsel for the claimant argues the relevance and applicability of **Section 5(c)** to the extant case, and relies on paragraph 69 of the case of **Ellen Works v Mitchell Phillip et al**¹¹ wherein Ellis J stated the following:

“The Defendants have advanced no basis upon which the Claimant’s title as reflected in the Indenture of Conveyance dated 15th April 1993 can be disputed or invalidated. The Claimant’s title is therefore indefeasible unless the Defendants can prove that they have acquired an interest in the Property through adverse possession. The Court reiterates that the onus of proof therefore lies squarely on the Defendants who must demonstrate on a balance of probabilities that they satisfy the statutory requirements of the Limitation of Actions Act. The Court in *Vera Noel v Laurina Charles et al.* explained it this way;

¹¹ GDAHCV2004/0429

“It is said that “The burden is on the plaintiff to prove a right to possession as against the defendants. Once this burden has been discharged on a balance of probabilities, the burden then lies on the defendants, on the same standard, to prove that they are entitled to resist the claim by virtue of the Limitation of Actions Act.” (per Alleyne J.in JOSEPH LETT v NATHANIEL DAVIS and VERONICA JONES Civil Suit No. 403 of 1994 Grenada).”

[34] There is difficulty in applying **Section 5(c)** to the facts of the extant case given the following condition stated therein:

“when the person claiming the land claims in respect of an estate or interest in possession granted, appointed, or otherwise assured by an instrument, other than a will, to him or her or some person through whom he or she claims, **by a person being, in respect of the same estate or interest in the possession or receipt of the profits of the land...**” [emphasis added]

[35] **Section 5(c)** of the **Limitation of Actions Act** specifically requires that the person assuring by instrument the estate or interest in possession must be a person who is in the possession or receipts of the profits of the land. It is factually impossible for the Developer, the person assuring the claimant, to have been in possession or receipt of the profits of the premises as of the year 2004 after liquidation.

[36] The authors of **Halsbury’s Laws of England**¹² under the rubric “claim based on assurance other than by will” gives an exposition of **Section 5(c)** of the **Limitation of Actions Act**:

“Where any person brings a claim to recover unregistered land, being an estate or interest in possession assured otherwise than by will to him, or to some person through whom he claims, **and where the person making the assurance was, at the date when the assurance took effect, in possession of the land** (or, in the case of a rent charge created by the assurance, in possession of the land charged), and no person has been in possession of the land by virtue of the assurance, the right of action is deemed to have accrued on the date when the assurance took effect.” [emphasis added]

¹² Vol 68 (2021) para 1146

[37] The date the assurance took effect would be the date contained in the 2014 conveyance to the claimant, ten years after the Developer, the person making the assurance, was liquidated.

[38] On the other hand, counsel for the defendant relies on **Section 5(a)** as the applicable law in the extant case. Counsel directed the court to the case of **Sigma Marina & Resorts Limited v Alban Redhead**¹³, specifically paragraph 32 thereof, wherein Bennett JA (Ag.) made reference to Sections 4 and 27 of the Limitation of Actions Act and stated the following:

“The aggregate effect of the foregoing provisions is: where a person other than the Crown seeks to make an entry or distress or to take action to recover land in the possession of a squatter he must do so within twelve years from the date that the right **could first have been exercised by one of his predecessors in title, or if not, by himself**. If he fails to do so his title to the land will be extinguished. If he subsequently attempts to enter upon the land to assert his right of beneficial ownership, he will be a trespasser.” [emphasis added]

[39] It is the view of this court that on consideration of the facts as proven, the more appropriate subsection of **Section 5** is that of **Section 5(a)**. The similar provision to **Section 5(a)** is pronounced on by the authors of **Halsbury’s Laws of England**¹⁴ under the rubric “present interests” as follows:

“If a person bringing a claim to recover unregistered land, or some person through whom he claims, has been in possession of the land, and has, while entitled to the land, been dispossessed or has discontinued his possession, the right of action is deemed to have accrued on the date of the dispossession or discontinuance.”

[40] In the extant case, and according to the claimant, the person through whom the claimant claims ownership of the premises was entitled to the premises (on paper) up until the 2014 conveyance when it transferred paper title to the claimant. However, on 9th June 2004, the claimant’s predecessor’s title was liquidated thereby discontinuing the Developer’s possession of the premises as of that date.

¹³ GDAHCVAP2011/0024

¹⁴ Vol 68 (2021) para 1141

Given the evidence of this discontinuance in possession, **Section 5(a)** provides that it is at that time that the right of recovery would have first accrued.

- [41] In **George Charles v Gwendolyn Gittens et al**¹⁵, after making reference to Section 4(a) of the Real Property Limitation Act Cap 86 of the state of St. Vincent and the Grenadines, akin to **Section 5(a)** of the **Limitation of Actions Act**, Sir Vincent Floissac C.J, as he then was, stated the following:

“The cumulative effect of sections 3, 4(a) and 31 of the Real Property Limitation Act (Cap.86) is to extinguish a proprietor’s right and title to his land and his right to recover the land from an adverse possessor, where the adverse possessor has been in adverse or prescriptive possession of the land (i.e. continuous, uninterrupted, peaceable, public and unequivocal possession of the land as owner thereof and to the exclusion of the sole proprietor for at least 12 years) whether the adverse or prescriptive possession was the result of dispossession of or discontinuance of possession by the proprietor.”

- [42] On the application of the above law, the claimant’s right as proprietor is extinguished given the discontinuance of possession by its predecessor in title, sixteen (16) years before the claimant asserted its right and this action was pursued in court. This is notwithstanding that at the date of the 2014 conveyance, the claimant would not have yet been ousted by the **Limitation of Actions Act**, and would have had the opportunity of two years after the purchase to bring proceedings against the defendant.
- [43] The defendant by his action displayed his intention to own the premises . It is the evidence that there is no record of the defendant being paid wages since 2002 after the formation of the claimant company and the first conveyance. The claimant was always fully aware of the defendant’s occupation. The claimant’s directors, Andrew Minors and Christopher DeAllie, state that they have been residents in excess of twenty-two years, and that there were efforts to regularize the defendant’s status by way of licence. Mr DeAllie said that he had a cordial relationship with the claimant.

¹⁵ Civil Appeal No. 6 of 1991

- [44] It is the evidence that the defendant continued overt acts of ownership. The defendant surveyed the lot in 2009. His attorney- at-law in correspondence dated 16th June 2009, addressed to the liquidator, Mr. Brian Robinson, referenced the purported agreement by the Developer to convey the premises as a compromise for the Developer's failure to pay his NIS contributions. The defendant continued in possession, built a one-bedroom house in 2005, operated his bar selling alcohol which had been an issue as reflected in the claimant's minutes of meetings since the formation of the association and with the full knowledge of the claimant post incorporation in 2000.
- [45] Both Mr. Christopher DeAllie and Mr. Andrew Minors at the trial stated that they did not expressly give consent to the defendant for the use and occupation or planting crops on the premises. Consequently, the defendant from all accounts treated the area as his own with the requisite animus possidendi, that is intention to possess. The defendant has established that his physical occupation and control of the premises has been nec vie, nec clam, nec precario, that is, without force, without stealth and without permission in excess of twelve years prior to the filing of this claim.
- [46] The claimant failed to take any effective action to dispossess the defendant. The filing of the claim in 2020 was the only effectual action recognised in law to interrupt the defendant's open occupation of the premises. The claim being filed in excess of sixteen years, way outside the limitation period of twelve years, is fatal to the claimant.
- [47] Consequently, given that the defendant was in possession of the premises from the date of liquidation of the Developer, by the year 2016, any claim for recovery against property of which he was in possession was effectively barred by operation of the **Limitation of Actions Act**.

Whether the defendant was an occupant in his own right of the entire area of the premises

[48] In a letter dated 21st June 2002, Mr. William Dunn, Managing Director of the Developer wrote to Mr. Andrew Minors, Vice President as he then was, giving permission to the claimant for the use of the guard house and the grounds immediately surrounding the guard house. Mr. Christopher DeAllie in his witness statement states that the claimant, since 2002 has continued to use the gate house/hut and paying electricity connection. The court accepts the evidence that the claimant has historically had use and occupation of the security guard booth. In the circumstances, the court is of the view that the claimant's claim for the premises is limited to the area where the guard hut is situated.

Conclusion

[49] A person claiming a possessory title must either show a dispossession of the paper title owner or a discontinuance of possession by the paper title owner where the true owner goes out of possession and is followed by possession of the person claiming possession. In the instant case, given that the defendant was in possession of the premises from the date of liquidation of the Developer, by the year 2016, any claim for recovery against property of which he was in possession is effectively barred by operation of the Limitation of Actions Act. The claimant also evinces that it provided the defendant with a draft license for his execution, but that he refused to so execute. The refusal to accept a licence was a clear indication of intention to own as owner. It is clear that the defendant was treating with the premises as his own, by defying the claimant's requests to desist the sale of alcohol on the premises, planting crops on the premises for his own benefit, and further by pouring concrete on the premises.

[50] However, the court is of the view that the defendant's occupation as owner did not extend to the area where the guard hut is erected. It is the evidence that the claimant is and has been responsible for the electricity supply and the maintenance of the guard hut to date. The court therefore finds that the claim for the premises is statute barred, save and except where the guard hut is erected.

Order

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

- (i) The claimant's claim against the defendant, save as to where the guard hut is erected, is statute barred by operation of Sections 4 and 27 of the Limitation of Actions Act .
- (ii) The parties having each had partial success agree to consent on the issue of costs.

Agnes Actie
High Court Judge

By the Court

Registrar