

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

GRENADA

CLAIM NO. GDAHCV2020/0530

IN THE MATTER OF THE POSSESSORY TITLES ACT NO. 22 OF 2016

AND

**IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF POSSESSORY
TITLE FOR THE LOT OF LAND SITUATE AT GRAND BAY IN THE ISLAND OF
CARRIACOU IN THE STATE OF GRENADA**

AND

**WALDRON GARRAWAY AS ADMINISTRATOR FOR THE ESTATE OF MARY
NELLIS JOHN (ALSO KNOWN AS NELLIS JOHN) DECEASED**

BETWEEN:

YVETTE DOWNES LOGAN

Applicant

and

WALDRON GARRAWAY

Respondent

Before:

The Hon. Mr. Justice Raulston L.A. Glasgow

High Court Judge

Appearances:

Ms. Hazel Hopkin for the Applicant

Ms. Yurana Phillip for the Respondent

2022: November 14.
December 13; (Written Submissions)
2023: June 14

DECISION

[1] **GLASGOW, J.:** This is a ruling in respect of an application filed by the applicant (“Ms. Logan”) pursuant to the Civil Procedure Rules 2000 (“CPR”) 13.4, 26.1(2)(k) and 39.5 for an extension of time to file an application to set aside a declaration of possessory title granted by this court to the respondent, (“Mr. Garraway”). Ms. Logan wishes the court to set aside the grant of possessory title pursuant to the provisions of sections 21, 30 and 31 of the Possessory Titles Act¹ (“the Act”).

[2] On 29th September 2021, this court granted a declaration of possessory title in Mr. Garraway’s favour further to an application² filed by him under the Act with respect to property situate at Grand Bay, Mt. Pleasant in the island of Carriacou. The declaration was subsequently published in the Government Gazette on 8th October 2021 in accordance with section 23 of the Act.

The application

[3] On 3rd May 2022, Ms. Logan filed the present application which seeks an extension of time to file an application to set aside the declaration of possessory title. Mr. Garraway objects to the extension of time. The parties were ordered to file written submissions on or before 13th December 2022 and thereafter the court will issue its ruling.

Relief sought

[4] Ms. Logan seeks the following relief:

¹ Act No. 22 of 2016

² Application for Declaration Possessory Title filed on 16th December 2020

- 1) That time be extended pursuant to the CPR Rule 26.1(k) for Ms. Logan to make an application under CPR 39.5 and/or section 21 of the Possessory Titles Act No. 22 of 2016 to set aside the declaration of possessory title made ex parte in favour of Mr. Garraway on 29th September 2021.
- 2) That Ms. Logan's application dated 3rd May 2022 is deemed properly filed.
- 3) That the declaration of possessory title made on 29th September 2021 be set aside pursuant to sections 30 and/or 31 of the Act.
- 4) That the declaration of possessory title be set aside pursuant to CPR 13.4.
- 5) That leave be and is hereby granted to the applicant to file evidence in opposition to Mr. Garraway's claim in accordance with section 9 of the Act.
- 6) Costs.

Grounds of the application

[5] The grounds of the set aside application can be subsumed under two broad heads, that is, request for declaration of (1) fraud, and (2) material mistake. Much of the grounds recite allegations that Mr. Garraway misrepresented certain facts in his application for possessory title and that he was not in possession of the property as claimed.

Issue

The sole issue for determination is whether Ms. Logan ought to be granted an extension of time to file the application to set aside the declaration of possessory title in accordance with CPR 26.1, CPR 13.4 or CPR 39.5 and/ or further to the court's inherent jurisdiction.

Mistake

[6] Ms. Logan's set aside application cites section 21 of the Act which prescribes:

“(1) Where a declaration of possessory title is voidable by virtue of section 31, a person may apply for the declaration to be set aside by an order of the Court.

(2) A person who seeks to claim in opposition to an application for declaration of possessory title may, not later than **sixty days** after the order of the Court has been published in the *Gazette* pursuant to section 23, apply for the judgment to be set aside or varied, where—

(a) the judgment was obtained without trial.

(b) the person entered an appearance but failed to file a written claim within the prescribed time and the judgment was obtained in *ex parte* proceedings.” (My emphasis)

[7] Ms. Logan has asked the court to extend the sixty day period stated in section 21 so as to allow her set aside application to proceed. Ms. Logan’s position is that section 21 of the Act gives the court the jurisdiction to set aside an *ex parte* order which is voidable under section 31. She argues that section 31 indicates no prescribed time limit and that her reasons advanced for setting aside the declaration of possessory title are proper.

[8] Conversely, Mr. Garraway argues that section 21(2) of the Act prescribes that a person who seeks to claim in opposition to an application for a declaration of possessory title in respect of which judgment has been given, may not later than sixty days after the order of the court has been published in the *Gazette* by the Registrar, make an application to set aside or vary the judgment. Mr. Garraway’s posture is that given that the sixty day time limit is specifically stated at section 21 of the Act, CPR 26.1(2)(k) cannot apply as claimed by Ms. Logan. This is since CPR 26.1(2)(k) refers to an extension of time in instances where the time limit is imposed by a rule, practice direction, order or direction of the court. The time for making an application under section 21(2) of the Act is a time limit imposed by statute and is clearly not one contemplated by the items recited in CPR 26.1(2)(k). Consequently, Mr. Garraway concludes, the time period set out in section 21 of the Act is not amenable to being extended by invoking CPR 26.1(2)(k).

My thoughts on section 21

Mistake

[9] I agree with the applicant that section 21 states the time within which a set aside application should be brought on the grounds of mistake. In this regard, section 21 (1) and (2), set out above, must be read together. This is since the applicant is claiming the courts’ intervention in a case where the grant of an order for possessory title was made “without trial” (section 21 (2)(b)).

[10] Ms. Logan’s application to set aside the declaration was filed on 3rd May 2022 some seven months after the declaration was gazetted on 8th October 2021. The application on the grounds of mistake was not made within the sixty-day prescribed time and is therefore out of time. Section 21(2) makes no provision for the court to extend the time to file an application to set aside the declaration on the ground of mistake. Therefore, the question remains and will be examined below whether the time can be extended by invoking the provisions of the CPR and/or the court’s inherent jurisdiction.

Fraud

[11] With respect to the ground of fraud, it does not seem to me that Parliament made the same provisions on time within which to file an application to set aside the grant of an order for possessory title as it did with mistake. There is no mention of fraud within section 21 while specific reference is made to mistake. Fraud is dealt with exclusively in section 30 where the section states –

“...any declaration or title obtained as a result of the making of the material false statement or representation, or the suppression or non-disclosure of the material document or information, shall be null and void.”

[12] This provision, in my view, is a deliberate act of the lawmakers in recognition of the fact that, as stated by Lord Denning in **Lazarus Estate Ltd v Beasley**³:

“No court in this land will allow a person to keep an advantage which he has obtained by fraud. **No judgment of a court, no order of a Minister, can be allowed to stand if it is obtained by fraud. Fraud unravels everything.** The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts, and all transactions whatsoever...” (Bold emphases mine).

[13] In **Lazarus Estates** the court explored the viability of an assertion that a statutory limitation period did not apply where a defence of fraud was raised in answer to a claim for arrears of rent. Statute, in that case, required the applicant to challenge a claim for arrears of rent on certain grounds, particularly that “... the repairs had not been done to the value specified...”. A challenge on the grounds set out in the statute could only be brought within a

period of 28 days. Fraud was not limited as one of the grounds on which a challenge should be raised within the 28 days’ limitation period. The court found that the claimant –

³ [1956] 1 QB 702 at 712

“... by challenging the declaration on the ground that it was fraudulent, was challenging its validity on grounds other than that repairs had not been done to the value specified therein, for fraud vitiates all transactions known to the law, and the landlords could not recover rent by reason of their fraud.”⁴

[14] As stated above, Ms. Logan’s application in respect of the issue of fraud was grounded in section 30 of the Act. Ms. Logan alleges that Mr. Garraway presented false statements in his possessory title application. For instance, Ms. Logan points out that Mr. Garraway relies on Nellis John’s (deceased) possession of the estate in question. Ms. Logan vociferously maintains that Ms. Nellis John was not in factual possession of the property since Ms. Nellis John lived her entire adult life in the United States of America and could not have been in possession of the property at the time of her death. Ms. Logan argues that this fact, among others, were well known to Mr. Garraway, who failed to present those facts to the court as he was obliged to do when making his application for possessory title. The foregoing exposition of law and the fact that Parliament did not prescribe the time within which to set aside the order for possessory title on grounds of fraud as it did with respect to mistake suggests that these allegations of fraud can be pursued at trial since there is no evidence that they have not been presented in a timely manner.

[15] Some allusions were made to the Limitation Act, Cap. 173 of the Laws of Grenada. Sections 4 and 22 of the Limitation Act say as follows –

“4. No land or rent to be recovered but within twelve years, etc.

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.

22. In cases of fraud no time shall run whilst the fraud remains concealed

In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land of which he or she, or any person through whom he or she claims, may have been deprived by the fraud, shall be deemed to have first accrued at and not before the time at which the fraud has been or with reasonable diligence might have been first known or discovered:

⁴ [1956] 1 QB 702 at 704

Provided that nothing in this section contained shall enable any owner of lands to have a suit in equity for the recovery of them, or for setting aside any conveyance of them, on account of fraud against any *bona fide* purchaser for valuable consideration who has not assisted in the commission of the fraud, and who, at the time that he or she made the purchase, did not know, and had no reason to believe, that any such fraud had been committed.”

[16] I would say in response to the Limitation Act argument that Ms. Logan’s setting aside application is not, in strict sense, an application for the recovery of land but rather, her application seeks the setting aside of an order of this court. However, even if it can be said to be an application for the recovery of land, Ms. Logan’s application was filed within the period limited by the Limitation Act as it was filed some 7 months after the order granting Mr. Garraway possessory title to the land that Ms. Logan claims as her own.

Extension of time

Applicability of CPR 26.1(2)k and 13.4 and 39.5

[17] Ms. Logan pleaded that the court possesses the power to extend the time within which a set aside application may be filed and served. In this regard, Ms. Logan relies on CPR 26.1(2)(k), 39.5 and 13.4 and/or the court’s inherent jurisdiction. Counsel for Ms. Logan, Ms. Hopkin, submits that section 19 of the Act states clearly that the CPR applies to proceedings under the Act. Counsel relies on the decisions in **Wilfred Miller et al v Gregory Miller**⁵ heard together with **Aldonio Matthews v Yolanda Faye Sayers**⁶ in support of her contentions. If the court is of the view that the CPR does not apply, counsel posits, the court retains an inherent jurisdiction to set aside an order so as to do justice between the parties. In support of this argument counsel relies on the decision in **Patrick Morille v Hermina Roseline Morille**⁷ where the court found that the court below failed to consider that in the absence of a specific rule in the CPR or a provision of the Act in question, the court retained an inherent jurisdiction to set aside its own orders. Ms. Hopkin explains that Ms. Logan acted promptly and without delay once she became notified of the order granting possessory title. This evidence, she states, is contained at paragraph 25 of Ms. Logan’s affidavit filed on 11th November, 2022.

[18] Counsel for Mr. Garraway, Ms. Phillip, opposes the application on those grounds. Counsel, Ms. Phillip rejects Ms. Logan’s posture that the declaration in this case is akin to a default judgment obtained without an appearance that may

⁵ SVGHPT2012/0041

⁶ SVGHPT2012/0025

⁷ SLUCHCVAP2010/0035

be set aside pursuant to CPR 13. 4. Ms. Phillip explains that even though the declaration was granted without trial pursuant to section 12(1) of the Act, it is not akin to a default judgment obtained pursuant to CPR Part 12 and cannot be set aside further to CPR 13.4. Counsel relies on the decision of our Court of Appeal in **Lux Locations Ltd. v Yida Zhange**⁸ to submit that the difference between a default judgment under CPR Part 12 and the declaration in this case is that a default judgment is an administrative order while the declaration of possessory title is a judicial order. Even though no one entered an appearance to the possessory title application, Mr. Garraway was still required to prove his case. Counsel states that the court would have examined the merits of the application for possessory title. Counsel concludes that the court was indeed satisfied with the evidence presented on the application for possessory title and therefore granted the declaration of possessory title.

[19] Further, counsel for Mr. Garraway submits that it would not be correct to invoke the inherent jurisdiction of the court to extend the clear and unambiguous sixty day time limit set out in section 21(2) of the Act where neither under the section nor under any other section of the Act is the power given to the court to extend time on a discretionary basis. Counsel relies on the decision of our Court of Appeal in **Fairfield Sentry Limited (in Liquidation) v Alfredo Migani and others**⁹ where the court stated at paragraph 11 of the judgment that the inherent jurisdiction of the court “*cannot be prayed in aid to flout a clear provision*”.

Discussion on extension of time

[20] As stated above, section 21(2) of the Act does not provide a mechanism for the court to extend the time for filing an application to set aside a declaration on the ground of either mistake or fraud. The rest of the provisions of the Act are equally silent on the matter. Dealing with the court's inherent jurisdiction firstly, I am constrained by authority which instructs that in view of the statutory schema, there is no authority in this court to extend the time limit therein contained by reverting to the court's inherent jurisdiction. Our Court of Appeal addressed this issue frontally in the case of **Fairfield Sentry Limited v Migani et al**¹⁰. In that case the court dealt with a request for an extension of time to file leave to appeal to the Privy Council in circumstances where a statutory time limit of 21 days was exceeded. The applicant asked the court to utilize its inherent jurisdiction to extend the time limited by Article 4 of the Virgin Islands (Appeals to Privy Council) Order 1967. In refusing the extension application, our Court of Appeal relied on the following dictum from **Texan Management Limited et al v Pacific Electric Wire & Cable Company Limited**¹¹ where it was observed that –

⁸ ANUHCVP2020/0025 at para. 32

⁹ BVIHCVP 2011/041-052; BVIHCVP 2011/054-056; BVIHCVP 2011/058-062

¹⁰ BVIHCVP 2011/041-052; BVIHCVP 2011/054-056; BVIHCVP 2011/058-062

¹¹ [2009] UKPC 46, para. 57

“... the modern tendency is to treat the inherent jurisdiction as inapplicable where it is inconsistent with the CPR, on the basis that it would be wrong to exercise the inherent jurisdiction to adopt a different approach and arrive at a different outcome from that which would result from an application of the rules: *Raja v Van Hoogstraten* (No 9) [2008] EWCA Civ 1444, [2009] 1 WLR 1143. That decision concerned the court’s power under the inherent jurisdiction to set aside an order made without notice *ex debito justitiae*. It was held that although the inherent jurisdiction may supplement rules of court, it cannot be used to lay down procedure which is contrary to or inconsistent with them, and therefore where the subject matter of an application is governed by the CPR it should be dealt with in accordance with them and not by exercising the court’s inherent jurisdiction.”

[21] The Court of Appeal in **Fairfield**¹² therefore concluded that –

“We adopt this approach. Article 4 is clear. It lays down a time line of 21 days for the making of an application and gives no power to this Court to extend that time, and we do not consider that it would be correct to invoke the inherent jurisdiction of this Court so as to arrogate to itself a power to extend the time as limited in Article 4, where neither in Article 4 nor in any other provision contained in the 1967 Order is such a power (save where specifically permitted) given, and thereby engage a procedure to arrive at a different outcome to that contemplated by Article 4. This power appears to be reserved to the JCPC under the 2009 Rules. This Court has no power to extend the time under Article 4 of the 1967 Order.”

[22] I come to the same conclusion with respect to CPR 26.1(2)(k) and 39.5 Section 21 of the Act is unambiguous and clear as to its intendment with respect to time limits for opposing claims for possessory title and for setting aside orders granting the same. There is no lacuna or obfuscation in section 21. Parliamentary intention is always to be presumed to be deliberate and plain except where to form that view would lead to ambiguity, obscurity or patent absurdity in the meaning of the legislation. As was said in **Fairfield**, if it was intended that the mandatory time limit could be extended, then Parliament would have said so pellucidly. Parliament enacted no such provisions on extensions of time in the Act and as such, it cannot be the case that the CPR, which contains subordinate legislative pronouncements can be utilized to supplant, augment or adjust the clear provisions of the Act which are substantive legislation.

¹² BVIHCVAP 2011/041-052; BVIHCVAP 2011/054-056; BVIHCVAP 2011/058-062 at para. 11

[23] This reasoning is even more graphic in the situation appertaining to the time limit in Rule 39.5. That rule prescribes that an application to vary a judgment given where a party was absent at a trial must be made within 14 days of the service of the order or judgment. It is clear that this time limit stated in CPR 39.5 conflicts with the 60 day time limit in section 21 of the Act. In view of the fact that section 21 of the Act appears to enact a complete code on setting aside orders in the circumstances and manner envisioned therein, there is no authority (and indeed none has been produced by Ms. Logan) for a resort to CPR 39.5.

[24] All in all, I find that Ms. Logan has not shown that there is any basis in the CPR and/or under the court's inherent for the grant of an extension of time to file an application under section 21 of the Act to set aside an order for possessory title.

The CPR 13.4 argument

[25] Sections 11 and 12 of Act provide that:

“11.—(1) The Court shall hear every application for declaration of possessory title in open Court.

(2) Every affidavit and written claim filed with respect to an application for declaration of possessory title shall stand as pleadings, and no further pleadings shall be filed without the leave of the Court.

(3) Where at the hearing of an application for declaration of possessory title the Court requires further evidence, the Court may take such evidence orally or by affidavit as it sees fit.

12. (1) An applicant may obtain judgment without trial, where in respect of the application for declaration of possessory title—

(a) no person enters an appearance within the prescribed time; or

(b) no person files a written claim within the prescribed time.

(2) Where a person who has entered an appearance pursuant to section 9 fails to file a written claim within the prescribed time, the Court **may proceed ex parte** and the Court may make an order or give a decision as it sees fit.” (My emphases)

[26] CPR 12.4 and 12.5 set out the conditions that must be satisfied in order to obtain default judgment on a claim form and statement of claim:

“CPR 12.4 prescribes:

Conditions to be satisfied – judgment for failure to file acknowledgment of service.

12.4 The court office at the request of the claimant **must enter judgment** for failure to file an acknowledgment of service if –

- (a) the claimant proves service of the claim form and statement of claim;
- (b) the defendant has not filed –
 - (i) an acknowledgment of service; or
 - (ii) a defence to the claim or any part of it;
- (c) the defendant has not satisfied in full the claim on which the claimant seeks judgment;
- (d) the only claim is for a specified sum of money, apart from costs and interest, and the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it;
- (e) the period for filing an acknowledgment of service under rule 9.3 has expired; and
- (f) (if necessary) the claimant has the permission of the court to enter judgment.

And CPR 12. 5 prescribes:

Conditions to be satisfied – judgment for failure to defend.

12.5 The court office at the request of the claimant **must enter judgment** for failure to defend if –

- (a) (i) the claimant proves service of the claim form and statement of claim; or
- (ii) an acknowledgment of service has been filed by the defendant against whom judgment is sought;
- (b) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired.” (My emphases)

[27] The language used in CPR 12.4 and 12.5 are mandatory. Both rule 12.4 and 12.5 state that the court “must enter” judgment where the requisite conditions have been satisfied. The court has no discretion to refuse entry of the default judgment once those conditions as set out have been met.

[28] On the other hand, a whole different set of factors are engaged in relation to disposing of applications for possessory title. Section 11 mandates that the court must hear every application in open court. The court must also consider all affidavit and other material placed before it. The court can also take evidence

orally or by affidavit. All in all, under section 11, a hearing must be conducted before granting an order for possessory title. Section 12 then says that the applicant may obtain judgment, properly after a section 11 hearing, even where there is either no appearance or where there is an appearance, but no written claim has been filed within the time set out in the Act by the person who has filed the appearance.

[29] Accordingly, I agree with Ms. Phillip's submission that while a default judgment as envisaged by the CPR is entered as an administrative Act, an application for possessory title pursuant to section 12 of the Act is determined by the court based on evidence and pleadings contained in the application. CPR 13.4 does not apply to such circumstances. Rather, I would say that the statutory regime under section 12 of the Act is more analogous to CPR 27 which contains provisions on hearings in cases where a fixed date claim has been served and no defence has been filed. In those cases, the court is still required to examine whether the claimant has made out a case on the fixed date claim and statement of claim. The claimant is not perfunctorily or administratively granted a judgment by default as is the case in claims falling within the CPR 12 process.

Conclusion

[30] I have therefore found that the prescribed time for filing an application to set aside the declaration of possessory title pursuant to sections 21 and 31 of the Act cannot be extended by way of the court's case management powers under CPR 26.1(2)k or 39.5 or its inherent jurisdiction. Section 21 of the Act is determinative of the time limit within which to bring such a set aside application. Ms. Logan's application filed pursuant to section 31 of the Act on the grounds of mistake, having been filed on 3rd May 2022, is out of time and is refused.

[31] Where fraud is concerned, however, the Act does not set out a period within such an application may be filed and served. Even if the Limitation Act is said to apply, the application to set aside on grounds of fraud is not out of time. Therefore, the section 30 application is not time barred and will proceed to trial on the assertions of fraud subject to the following directions –

- (1) The trial will take place on 19th September 2023;
- (2) The parties may file and serve further evidence by way of affidavits at least 21 days before the trial date;
- (3) The parties are to comply with CPR 39.1 in preparation for trial; and
- (4) The costs of this application will be costs in the cause.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar