

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

GRENADA

CLAIM NO. GDAHCV2015/0459

BETWEEN:

THE LEVERA GROUP LIMITED

Claimant

and

ANTHONY BENJAMIN

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. James Bristol KC with Mr Deloni Edwards for the Claimant

Mr. Ruggles Ferguson for the Defendant

2022: September 20th
2023: March 24th

JUDGMENT

[1] **ACTIE, J.:** This matter concerns the possession of property forming part of sulphur springs, Chambord Estate situate in the parish of St. Patrick, Grenada.

Claimant's case

[2] By Fixed Date Claim Form filed on 12th October 2015, the claimant claims:

- (1) Possession of the occupied property;
- (2) Mesne profits at the rate of \$1,000.00 a month until possession is delivered up; and
- (3) Costs.

- [3] The claimant avers that he became the owner of property known as Chambord Estate situate in the parish of St. Patrick, Grenada, containing by ad measurement four hundred and nineteen acres, one rood and four poles (419 Acs. 1 Rd. 4 Pls.).
(hereafter “the Estate) by virtue of a final order of foreclosure made on 21st May 1999 in Suit No. 164 of 1989.
- [4] The claimant avers that in or about the year 2010, the defendant entered part of the Estate being the area known as the River Sallee sulphur springs (hereafter “the occupied property”) and took possession thereof and has thereafter remained in possession.
- [5] The claimant contends that it has been deprived of the use and enjoyment of the occupied property and has thereby suffered damage.

Defendant’s case

- [6] The defendant asserts that the claimant’s title has been extinguished given the defendant’s continuous, overt and exclusive possession of the occupied part of the property for over twelve years, since about the year 1999.
- [7] The defendant also contends that he resides in the occupied property having built his house thereon, and that as of 2015, he had been living there for the past ten years.

Legal Analysis

Whether the defendant is in adverse possession of the occupied property

- [8] The law on adverse possession was explained in the House of Lords' case of **J A Pye v Graham**¹ wherein their Lordships stated:

"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."

- [9] **J A Pye v Graham**² cited with approval the case of **Powell v McFarland and Another**³, where 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."

- [10] The defendant argued that he has been in possession of the occupied property since the year 1999. He stated that he learnt of the occupied property being abandoned, and that he had a vision for its development. In the period of 1995 to 1999, he visited the occupied property on a regular basis to visualize how to develop the area, and by the year 1999 had satisfied himself that the land was abandon and decided to occupy the area and possess it. It was then he commenced development.

- [11] On taking possession of the occupied property the defendant established boundaries, based on what adjacent farmers indicated to him were their boundaries.

- [12] It is the evidence that the occupied property was a rocky piece of land containing the natural resource of sulphur springs, and that when the defendant took possession of the occupied property, it

¹ [2002] UKHL 30

² [2002] UKHL 30

³ (1977) 38 P&CR 452

was a heavily wooded area, and was populated with large pickle trees and thick bush. The defendant stated that it took him several years to clear and develop the whole area.

[13] Harold Williamson, witness, shareholder and director of the claimant, also admitted in evidence that the defendant cleared the occupied property and made it open to the public.

[14] In or about the year 2013, the defendant approached Mr. Clifton Paul, then parliamentary representative in the area, and through him catalysed the building of a concrete road from Lower La Taste main road to the occupied property. Today, the occupied property is developed, transformed and a tourist attraction.

[15] The defendant also indicated that in addition to the leisure aspect of the occupied property, he has cultivated parts of the land with corn, peas, saffron, watermelons, ground nuts, soursop and coconuts, and that he keeps sheep, iguanas and rabbits on the property.

[16] It is the defendant's evidence that prior to 2015 no one contested his ownership of the occupied land and he enjoyed undisturbed possession of it. This is supported by witness for the defendant, Tafawa John who stated that he knew the defendant to be in undisturbed occupation and possession of the occupied property in excess of fifteen years, in witness statement filed 14th March 2016.

[17] Witness for the defendant John Philbert, who is a farmer, recalled that in the year 2000 the defendant was in possession of the sulphur spring area, and same is corroborated by witness Siggy Andall. Siggy Andall also indicated that by the year 2003, the defendant had so transformed the place erecting structures and that people started to come to see the place as an attraction and take sulphur baths.

- [18] Witness for the defendant, Haniff Juerakhan, indicated that after the year 2004, the defendant erected structures using local material such as bamboo and construction debris.
- [19] This is also the evidence of Gilbert Massell, witness for the claimant, who indicated that he knows that the defendant erected a structure on the occupied property which he described as wooden and without foundation.
- [20] The defendant's actions of establishing boundaries, clearing out the property, catalysing the building of a concrete road, planting crops, housing animals, erecting structures are all acts which demonstrate a degree of physical control which the defendant exercised over the property, and an intention to not only possess, but further to develop the occupied property.
- [21] The claimant raised through the evidence of Aloytha Thomas that, based on an unsigned letter received from the defendant in the year 2015 wherein the defendant is purported to seek a rental agreement between himself and the claimant with respect to the occupied property, the defendant did not have the requisite intention to possess the occupied property. Though counsel for the claimant failed to argue this point in submissions, the court is minded to disagree with the claimant's contention.
- [22] It has been held that a willingness to pay rent does not negative an intention to possess property⁴. What is required to establish adverse possession is not an intention of ownership, but an intent of possession. This was held in the case of **Buckinghamshire County Council v Moran**⁵, wherein Slade J concluded:

“Nevertheless, I agree with the judge that ‘what is required for this purpose is not an intention to own or even an

⁴ J A Pye v Graham [2002] UKHL 30

⁵ [1990] 1 Ch. 623

intention to acquire ownership but an intention to possess'..."

[23] The law has established that despite a squatter having a willingness to pay rent to the owners of the property, this is not mutually exclusive to the animus required for adverse possession. For adverse possession, all that is necessary is for the squatter to go into ordinary possession of the land for the requisite period without the consent of the owner⁶. Thus, in the case of **Mayor & Burgesses of the London Borough of Lambeth v Blackburn**⁷ a squatter who had no claim to the freehold and would have been happy to pay rent had he been asked or permitted to do so, gradually moved into premises over a number of years. It was only after he had been in possession in excess of twelve years when he was served with eviction proceedings, and only on taking advice became aware of the provisions of the Limitation Act. It was held by the Court of Appeal that he had the necessary animus possidendi to be entitled to title by adverse possession.

[24] 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."

[25] In **Mayor & Burgesses of the London Borough of Lambeth v Blackburn**⁹ it was held that:

⁶ BVIHCVAP2009/0022 Winston Molyneaux v Hugh Smith & Ors

⁷ (2001) 82 P&CR 39

⁸ GDAHCV2011/0454

⁹ (2001) 82 P&CR 39

“...in order to be an adverse possessor a trespasser must have actual possession of the property throughout the twelve year period before the commencement of the proceedings and that throughout that period he must have a present manifested intention to possess the property to the exclusion of all others including the paper owner. As Slade LJ put it in the passage just quoted, he must have that intention ‘for the time being’. The fact that at any particular moment he expects or intends to leave the property in the near future does not prevent his having that intention, but **in order to defeat the paper owner’s claim for possession he must in fact remain in possession for the full 12 years and he must have a present intention to remain in possession throughout that period.**” (Emphasis added).

[26] Consequently, it is for the defendant to show that for a twelve year period, he had been in factual possession and exhibited animus possidendi, This court is satisfied from the evidence that the defendant, throughout his possession of the property up to the year 2015, had exhibited both factual possession and an intent to possess.

Whether the claimant’s action is statute barred

[27] The law concerning limitation of actions in a claim for possession of land is contained in **Section 4 of the Limitation of Actions Act CAP 173** 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.”

[28] 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.”

[29] The claimant sought to establish that the year in which the claimant entered into occupation was 2010. Witness Aloytha Thomas stated that the defendant has been on the occupied property from the year 2010.

[30] In addition, witness for the claimant, Winston Whyte who is a shareholder and director of the claimant gave evidence that the defendant commenced possession of the occupied property in about 2010 when he started clearing it, and Lowin John, also witness for the claimant, testified that she and the defendant both went into possession of the occupied property in 2010.

[31] On the other hand, it is the evidence of the defendant's witnesses John Philbert, Haniff Juerakhan, and Tafawa John that they have known the defendant to be in possession of the occupied property commencing between the years 1997 to 2001.

[32] The witness of the claimant who give evidence as to the date from which the defendant obtained possession are individuals who, in some manner, have an interest in the outcome of this matter, or are in some way involved with the Estate.

[33] Witness Aloytha Thomas was employed with counsel for the claimant. Lowin John was a tenant of the Estate of the claimant. Winston Whyte is a shareholder and director of the claimant. He states that he was an active promoter and director of the claimant. He admitted that he was aware that the defendant had been in occupation of the estate but could not confirm as to the length of time of his occupation. However, he denies that the defendant

had been in occupation in excess of fifteen years. Mr Whyte further stated that he was aware that there several squatters on the estate but did not take any action to have them evicted because of his humanitarian disposition.

[34] Conversely, the witnesses for the defendant are witnesses who have no association with this matter or the occupied property and are not motivated by any particular outcome of this case.

[35] Taking the year 2001, which is the latest year from which the evidence of the defendant indicates that the defendant obtained possession, the claimant's action would have been statute barred by the year 2013. Accordingly, on a balance of probabilities, and noting the tested evidence given at trial, the court is satisfied of the veracity of the statements of the witnesses for the defendant.. Accordingly, the claimant's case is statue barred and stands dismissed with costs to the defendant.

ORDER

[36] In summary and for the foregoing reasons, it is ordered and directed as follows:

- (i) The claimant's claim stands dismissed.
- (ii) Prescribed costs in the sum of \$7,500.00 to be paid to the defendant by the claimant pursuant to CPR 65.5 (2)(b) within thirty days of the date of this order.

Agnes Actie
High Court Judge

By the Court

Registrar