

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

GRENADA

CLAIM NO. GDAHCV2022/0272 (formerly GDAHCV2014/0296)

BETWEEN:

GRENADA DISTILLERS LIMITED

Claimant

and

KEITH AUGUSTINE

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Kadeem Strachan for the Claimant

Mr. Ruggles Ferguson with Ms Danyish Harford for the Defendant

2022: October 3rd
2023: March 24th

JUDGMENT

[1] **ACTIE, J.:** This matter concerns the recovery of possession of parcels of land situate at Hope Vale, St. George, with a sole issue for determination of whether the claimant's claim for possession is statute barred.

Claimant's case

[2] The claimant is the owner in fee simple of an estate known as Hope Vale Estate situate at St. Mary's, Hope Vale in the parish of St. George in Grenada through a deed of conveyance dated 29th November 1944.

[3] By Fixed Date Claim Form filed 23rd June 2014, the claimant claims:

- (1) Damages for trespass on land situate at St. Mary's, Hope Vale in the parish of St. George totalling approximately eight (8) acres;
- (2) Possession of land now in the possession of the defendant;
- (3) A mandatory injunction ordering the defendant to remove any structure he has erected on the land;
- (4) Mesne profits;
- (5) Costs; and
- (6) Further or other relief.

[4] The claimant argues that the defendant has been trespassing on and occupying land totalling approximately Eight Acres (8 Acs.) situate at St. Mary's, Hope Vale, St. George's, by cultivating agricultural crops on the land without the permission of the claimant.

[5] The claimant contends that it discovered that the defendant was occupying a portion of the property after the Grenada revolution measuring Four Acres Twenty Poles (4 Acs. 20 Pls.) (hereafter referred to as "lot 1"). The claimant also avers that after the passage of Hurricane Ivan, the defendant has taken up an additional three/four acres of land (hereafter referred to as "lot 2").

Defendant's case

[6] The defendant avers that in or about the year 1980, during the period of the Grenada revolution, he was allotted lot 1 by the then Prime Minister Maurice Bishop. The defendant also avers that in the year 1990, he took possession of lot 2.

- [7] The defendant contends that he reared pigs and cultivated mangoes, oranges, vegetables and other crops for the industrial park, and that after the fall of the revolution in 1983, he continued to operate his farm cultivating cabbage, cauliflower, eggplant, lettuce, tomato, ochro, pawpaw, yams and sweet potato, and rearing cows and sheep. Moreover, the defendant asserts that this has been his livelihood from 1980 to present. The defendant states that he sells his produce at the marketplace in St. George's, and the livestock to the butchers in the abattoir in St. George's.
- [8] The defendant contends that from the time of the fall of the revolution in the year 1983, he considered himself to be the owner of lot 1, which, he states, apart from this action, no one has ever challenged his right to occupation. The defendant contends further that from the year 1990 to present, he has also considered himself to be the owner of lot 2.
- [9] The defendant asserts that he remained in undisturbed and exclusive possession of lot 1 and lot 2, and denies demonstrating an intention to purchase the disputed land. The defendant also states that he built two wells on the property, one 30 feet in depth, the other 50 feet in depth.

Legal Analysis

- [10] It is not in dispute that the claimant is the paper title owner of the disputed lots pursuant to a deed of conveyance dated 29th November 1944 between Grenada Cane Growers Ltd as the vendor, Ferdinand McElvinna as the liquidator and the claimant as the purchaser.
- [11] The issue to be discussed therefore is whether the defendant has dispossessed the claimant as title owner of the lots in dispute by virtue of the provisions of the Limitation of Actions Act CAP 173.

Possession of the Defendant

[12] In the case of **J A Pye v Graham**¹ 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.”

[13] Moreover, in **Powell v McFarland and Another**, 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.”

[14] This court in **Don-Lee Clarke v Desmond Alexander & Anr**² 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.”

[15] Furthermore, **Section 4 of the Limitation of Actions Act CAP 173** 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

¹ [2002] UKHL 30

² GDAHCV2011/0454

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.”

[16] Mr. McKenzie Mc Donald, a witness for the claimant states that the defendant stated his willingness to purchase the four-acre lot of land at a time when the claimant had decided to sell lands to interested parties. A survey was done, and a plan was drawn up in the defendant’s name. The claimant argues that the defendant expressed intention to purchase the disputed lands is an acknowledgment of the proprietorship of the claimant.

[17] It is also the claimant’s argument that though the defendant’s factual possession of the disputed lands continued post 1984, the premise under which the defendant occupied continued to be that the then Government gave the disputed lands to him to farm, and that the defendant did not have the intention to possess the disputed lands in his own name and on his own behalf.

[18] The claimant also asserts that in 1998, the defendant engaged the claimant with a view to being compensated for his cultivation of the disputed lands.

[19] Notwithstanding these arguments, this court is of the view that the defendant has demonstrated that he exercised the requisite factual possession and animus, as he considered the property his own. Although he admits to have been given the property by the then Government, the defendant has not acknowledged the Government as the owner of the property but has treated the property as his own. The defendant remained in occupation rent free, and continued cultivating the land, planting vegetables on a large scale, without any legally recognizable intervention by the

claimant until the filing of this claim in 2014. Moreover, as in this court's decision in **Grenada Distillers Ltd v Keith Newton**³:

"The assertion by Mr. McKenzie that Mr. Newton indicated an interest to purchase the plot further supports the Annimusi Possidendi requirement to satisfy a claim for adverse possession. The Grahams in **Pye** were prepared to pay for the grazing licence and had actually made an offer to purchase the land from the paper title holder although they first entered into possession with consent under rental arrangement."

[20] The defendant remained in occupation of the land without payment of rent or accounting to anyone after the grant by the then Government, and the twelve-year limitation period within which to dispossess the defendant would have expired when the claim was filed in 2014.

[21] As there are two lots of land involved in this matter, the defendant's entitlement to possession of each will be examined.

Lot 1

[22] The claimant has presented a number of witnesses who testify that he has been in possession of property in Hope Vale in excess of twelve years. Though these witnesses do not specify as to which lots they have known the defendant to be in possession of, witnesses Veronica Hunt and Jeanetta Mitchell Bartholomew indicated that they know that the defendant has been cultivating a large area of land at Hope Vale from about the time of the revolution. Veronica Hunt specifically stated that it was the defendant and his father who used to cultivate the land, then the defendant solely when his father died in 2000. In addition, witness Lionel Etienne indicated that he knew when the disputed land was all in bush and when it was cleaned up by the defendant,

³ GDAHCV2014/0299

immediately after the revolution in 1979. Given that this evidence puts the defendant on property in Hope Vale from or around the time of the Grenada revolution, this court will take it to relate to Lot 1.

- [23] As the right of action to recover land is barred whenever twelve years have elapsed from the time any right of action accrued. The court accepts the evidence that the defendant has been in open possession with the requisite animus possidendi in relation to Lot 1 in excess of twelve years. Accordingly, the action against the defendant with respect to Lot 1 must fail given the passage of time.

Lot 2

- [24] The claimant argues that the defendant took possession of Lot 2 post Hurricane Ivan in 2004, however the defendant states that he has been in possession since the year 1990. There is nothing to prove either of the dates proffered by the claimant and the defendant. The court observes however that the survey plan drawn at the request of the manager of the claimant for the defendant in the year 1994 includes only Lot 1. The court also observes that letter dated in 2005 to the defendant by the then attorneys for the claimant makes reference to Lot 2.

- [25] Earl Bullen, a witness for the defendant stated that since the year 1999 he has known the defendant to have been in possession of property in Harvey Vale however he failed to specify which lot or lots were being referred to. This does not help the court in this aspect either.

- [26] The defendant confirms that he took possession of the purported Lot 2 which from the evidence is contiguous to Lot 1. The defendant asserts that he commenced occupation sometime after

1994 but before 2005 and therefore the claimant's claim is statute barred.

[27] It is the claimant's evidence that the defendant has taken up more land in addition to the four acres in Lot 1. The defendant asserts his occupation of the alleged lot 2 and has pleaded a defence of limitation of action. However, there is no survey to establish the extent of the defendant's occupation in excess of the four acres of land in the survey plan for Lot 1.

[28] Also, it was for the claimant to have proven the commencement period of the defendant's possession of Lot 2, which, to the court, is of critical importance as it has been contested. It is the defendant's evidence that he commenced occupation of the purported Lot 2 since the 1990's. The court accepts the defendant's occupation which in essence prescribes the claimant's action.

[29] The limitation of action operates as a shield and not as a sword. It is used to prevent a paper title owner from insisting on his strict legal rights, when it would be unjust to allow him to do so.

[30] However, the court is not convinced of the extent and actual occupation of the alleged Lot 2. The claimant's claim speaks of eight (8) acres which evidence is not before the court. Mr McKenzie, the claimant's witness states that the defendant has taken up more land in addition to the four acres in Lot 1. The defendant states that he has occupied an additional three to four acres.

[31] The court cannot be asked to speculate to establish trespass and to make an order for delivery of possession against the defendant neither can the defendant benefit on the statute of limitation to defeat the claimant's claim for the entirety of an additional 4 acres in the absence of a survey or diagram to establish the extent of the alleged Lot 2.

[32] For the foregoing reasons, the court makes no finding in relation to the claimant's claim for trespass and possession against the defendant and neither in favour of the defendant's limitation defence for the entirety of the purported Lot 2.

ORDER

[1] For the foregoing reasons, It is ordered and directed as follows:

- (i) The claimant's claim with respect to lot 1 is dismissed.
- (ii) The court makes no ruling with respect to lot 2 and accordingly the reliefs claimed stand dismissed.
- (iii) 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 sixty (60) days of the date of this order.

Agnes Actie

High Court Judge

By the Court

Registrar