

IN THE SUPREME COURT OF GRENADA

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

GRENADA

CLAIM NO. GDAHCV2015/0289

BETWEEN:

GERMAINE BRATHWAITE

Claimant

and

[1] GLORIA THOMPSON

[2] AARON THOMPSON

(Substituted in place of Earla Thompson by Order dated 15th November 2022)

[3] JUDINE THOMPSON

(Substituted in place of Nola Thompson by Order dated 15th November 2022)

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Georgell George Claimant

Ms. Danyish Harford for the Defendants

2022: November 15th
December 28th

JUDGMENT

[1] **ACTIE, J.:** This claim raises the issue of the claimant's entitlement to property situate at Brunswick in the Island of Carriacou in the State of Grenada.

Claimant's case

[2] By Fixed Date Claim Form filed 17th July 2015, the claimant claims:

- (1) An order that the defendants do forthwith pull down, demolish and remove chattel houses built on land situate at Brunswick in the Island of Carriacou in the State of Grenada and do forthwith deliver up vacant possession of the said land to the claimant;
- (2) An injunction to restrain the defendants whether by themselves, their servants or agents or otherwise howsoever from entering or remaining on the said land for the purpose of

interfering with or otherwise obstructing or interfering with the claimant's enjoyment of the said land;

- (3) Special damages in the sum of \$1,005.00;
- (4) Mesne profits; Interest; Such further or other relief; and Costs.

- [3] The claimant contends that at all material times she was the owner of premises measuring Fifteen Thousand Two Hundred and Forty-six square feet (15,246 Sq. Ft.) situate at Brunswick in the Island of Carriacou (hereafter "the property") by virtue of what she claims to be an Indenture of Conveyance made on 22nd September 2009.
- [4] The claimant avers that in or about the year 1999, her brother Norbert Cummins at the request of the first defendant gave the first defendant a licence to occupy a house spot to erect a chattel house on the property at a fee of \$20.00 a year. Subsequently, the second and third defendants also erected chattel houses on the property, but without the claimant's permission.
- [5] In or about the year 2003, the claimant avers that she visited the property and informed the first and second defendants that they had six months to remove their structures and vacate the property.
- [6] On 16th November 2010 and later in 2012, the claimant gave the first and second defendants formal notices to remove their chattel houses within twenty-one days of receipt of the letters. To date, the first and second defendants have refused to comply.

Defendants' case

- [7] The defendants deny that the claimant is the owner of the property and put her to strict proof that her title deed is valid.
- [8] The defendants admit that in 1979, the first defendant requested permission from Norbert Cummins to erect a chattel house, which permission was granted. The second defendant also avers that she obtained permission from Norbert Cummins in 1999 to erect a chattel house and that she erected same in 2000.

- [9] In 1981, the defendants state that the third defendant obtained permission from Muriel McLeod to erect a chattel house on a property near to, but separated by a road from the property. The third defendant avers that she continues to pay rent to Bernard McLeod to this day.
- [10] The defendants admit that the second and third defendants are the daughter and sister of the first defendant, however this contradicts the witness statements of the defendants which indicate that the second defendant is the daughter of the third defendant and niece of the first defendant, and that the third defendant is the sister of the first defendant. The defendants did not amend their pleadings.

Legal Analysis

Whether the Claimant holds valid paper title to the Property

- [11] Michel JA in **Marlon Mills v Stacey McKie**¹ at paragraphs 24 and 25 of his judgment stated thus:

“[24] Title, in the context of property, refers to the right which a person has to the ownership of the property. In terms of title to land, the right may be established by long possession of the land, with the intention to possess it as owner to the exclusion of everyone else. 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...”

[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. To constitute a note in writing that satisfies the requirements of the Statute of Frauds and qualifies to be called a paper title, the note must identify the property transferred, the consideration for the transfer, the name of the transferor and of the transferee, and it must be signed by or on behalf of the transferor.”

- [12] The claimant relies on a document titled an “Indenture of Conveyance” dated 22nd September 2009 between herself as Administratrix of the Estate of Mary Theresa John, Kathleen Mitchell as Grantor and the claimant as Grantee. The Indenture is in fact a deed of gift. No reference is made to the root of title of the said Mary Theresa John in the deed of gift, nor has the claimant provided the court with further documentation in support of her title.

¹ SVGHCVP2016/0001

[13] The Indenture states that at her death on 23rd October 1953, Mary Theresa John was seised of the property and that on 25th March 2010, letters of administration was granted to the claimant.

[14] The claimant's deed of gift does not amount to title to the land. This court in **Gabriel Dubissette & Anr v Joyce McIntyre & Anr**² stated the following at paragraph 24:

“According to J T Farrand in Contract & Conveyance, a good root of title is an instrument of disposition which must deal with or prove on the face of it, without the aid of extrinsic evidence, the ownership of the whole legal and equitable estate in the property sold; contain a description by which the property can be identified; and show nothing to cast any doubt on the title of the disposing parties.”

[15] The title presented by the claimant does not prove on the face of it, without aid of extrinsic evidence, the ownership of the whole legal and equitable estate for reasons stated in **Gabriel Dubissette & Anr v Joyce McIntyre & Anr**. The deed of gift cannot therefore be relied on by the claimant as proof of her paper title ownership of the property.

[16] In addition, the deed of gift relied on by the claimant contains deceptive recitals. It is the evidence of the claimant that her mother, Mary Theresa John, had four children surviving at her death in 1953 – Norbert, Cosmos, Kathleen and herself. Though Mary Theresa John died intestate, the deed of gift refers only to the claimant and Kathleen. It is the claimant's evidence that Cosmos died sometime in the 1990s, and that her brother, Norbert Cummins died in 2012, after the making of the deed. This circumstance demanded an account of Cosmos' and Norbert's interest in the property in the said deed of gift, especially so as it is the evidence that Norbert Cummins died leaving beneficiaries entitled to his estate.

[17] Moreover, the claimant lacked capacity in treating with the estate of Mary Theresa John at the time of the execution of the deed of gift, given that the deed was executed on 22nd September 2009, yet the letters of administration in Mary Theresa John's Estate was granted to the claimant on 25th March 2010, some six months after the deed of gift.

[18] It is a renowned maxim that he who comes to equity must come with clean hands. The application of this maxim makes the claimant's reliance on a deed, the contents of which are knowingly

² GDAHCV2007/0581

misleading to the claimant, an abuse of process of this court. The claimant does not hold valid legal title to the property and cannot therefore, given the state of her claim to title to the property, seek relief from this court.

Possession of the Defendants

[19] In the case of **J A Pye v Graham**³ 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.”

[20] 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.”

The First Defendant

[21] The first defendant's history of occupation of the property begins with her obtaining permission from Norbert Cummins to erect a chattel house. It is her evidence that Norbert Cummins did not charge her any rent, nor did he indicate for how long she could stay on the property.

[22] The first defendant states that she constructed a board and wall house, and moved into same on 5th December 1979.

[23] It is the first defendant's evidence that after being given permission to reside on the land she treated it as her own, and that no one has ever made claim for it up until the claimant filed claim.

[24] The first defendant has stated that she has been residing on the property for now forty-three years. The first defendant's children now reside on the lot on the property.

[25] The first defendant's evidence of possession is corroborated by Clyne Paul, who stated that he has known the first defendant to be occupying a lot on the property since the 1970s.

³ [2002] UKHL 30

The Second Defendant

- [26] It is the evidence on behalf of the second defendant that in 1999, Earla Thompson approached Norbert Cummins for a house spot to the front of where the first defendant's house was located. Earla Thompson indicated that Norbert Cummins gave her permission to build her house, and that he did not charge her rent nor inform her that she has a certain number of years to stay there.
- [27] It is the second defendant's evidence that Earla Thompson cleared the lot on which her house is located, and commenced building in the year 2000. Earla Thompson completed her house on 23rd February 2001, which said house is on concrete pillars.

The Third Defendant

- [28] The evidence of the third defendant demonstrates that in or about 1981 Nola Thompson inquired about the spot on which she intended to put her house and was informed that it belonged to Myione McLeod. Nola Thompson then obtained permission of Myione McLeod through her agent Libon Phillip to occupy the land at a rent of \$60.00. The third defendant avers that Nola Thompson moved onto the land in the said year 1981.
- [29] It is the evidence of the third defendant that Nola Thompson paid rent for the spot where her house is until 2001. This is inconsistent with the third defendant's pleadings, wherein it is averred that Nola Thompson continues to pay rent to Bernard McLeod.
- [30] There is however evidence given by Bernard McLeod that Nola Thompson has been in possession of the property since the early 1980s by way of a tenancy to the McLeod's. Initially this was through Myione McLeod, then Bernard McLeod, that latter of whom offered to sell the land to Nola Thompson in or about the year 2001.
- [31] The third defendant's claim to entitlement to possession through the McLeod's is strengthened by evidence of Clyne Paul corroborating the history of possession of that specific lot on the property.

Whether the Defendants have a better claim to the property than the Claimant

- [32] It is trite that at common law title to land is relative. In **Ocean Estates Limited v Normand Pinder**⁴ it was held that:

“Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C might have a better title than A, if C is neither party to the action nor a person by whose authority B is in possession or occupation of the land.”

- [33] As was cited in **Claribelle Connell v Trelton Connell**⁵, the learned authors of Law of Real Property by Megarry and Wade (3rd ed.) at p. 997 stated:

“Possession by itself gives a good title against all the world, except someone having a better legal right to possession.

“This last proposition is fundamental to our concept of title to land. If the occupier’s possession is disturbed for example by trespass or nuisance, he can sue on the strength of his possession and does not have to prove his title. It follows that the person disturbing the occupier’s possession cannot attack his title if he admits his possession. As against a defendant having no title to the land, the occupier’s possession is in itself a title.

- [34] Given that the claimant has failed to provide the court with proof of valid paper title and has breached the hereinbefore equity mentioned maxim, she cannot succeed in her claim against the defendants who have demonstrated to have been in possession of portions of land from 1979, 2000 and 1981, respectively. The deed on which the claimant relies cannot support her claim, neither is she in possession of the property. Consequently, the claimant cannot establish title.

- [35] The court finds that given Norbert Cummins’ beneficial interest in the estate of Mary Theresa John, he granted the first and second defendants’ occupation of portions of the property based on his entitlement to same. The court also finds that the third defendant has sufficiently satisfied the court of her possession of the lot of land through the McLeod’s, and that the claimant has not proven her entitlement to same.

- [36] Thus, the relative strengths of the defendants’ possession surpass that of the claimant’s claim, as the claimant has not proven her case.

⁴ Privy Council Appeal No. 30 of 1967

⁵ Civil Appeal No. 25 of 2004

ORDER

[37] For the foregoing reasons, the court denies the relief sought by the claimant.

[38] 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 defendants 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