

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

GRENADA

CLAIM NO. GDAHCV2021/0384

Formerly CLAIM NO. GDAHCV2021/0232

BETWEEN:

ANTHONY JONES

Claimant

and

THE ATTORNEY GENERAL OF GRENADA

Defendant

Before:

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

High Court Judge

Appearances:

Ms. Celene Edwards and Mr. Zuriel Francique for the Claimant

Mrs. Karen Reid-Ballantyne, Solicitor General, and Ms. Caryn Adams, Crown Counsel, for the Defendant

2022: June 7;
July 29 (Closing submissions)
November 15.

JUDGMENT

[1] **GLASGOW, J.:** This claim concerns land situate at Calivigny in the parish of Saint George (the property) originally owned by the late Elias Joseph which is evidenced by a deed of conveyance dated 27th December, 1927. The claimant, (Mr. Jones), contends that his father, Bruce Jones, became the owner of the property by virtue of a deed of conveyance dated 29th December, 1959 conveying the property from the government of Grenada to Bruce Jones. In 2007 a conveyance was executed transferring the property from the estate of his father to Mr. Jones.

- [2] The deeds in favour of Mr. Jones, Bruce Jones and Elias Joseph are all documents duly recorded in the Deeds and Land Registry. Additionally, Bruce Jones' estate, Elias Joseph and his successors continue to be listed as owners of the property on the tax register at the Inland Revenue Division. Mr. Jones complains that the Government of Grenada (the government) having sold Elias Joseph's property to the late Bruce Jones, was obliged to remove Mr. Joseph's estate as owner of the property on the tax register and to cease issuing tax certificates in the name of his estate.

Claimant's case

- [3] In his statement of claim Mr. Jones pleads that –

- (1) The property was originally owned by Elias Joseph. In 1959, the Financial Secretary acting on behalf of the government sold Elias Joseph's property to Bruce Jones due to Mr. Joseph's failure to pay outstanding taxes;
- (2) Thereafter, Bruce Jones went into possession of the property until his death in 2000. Mr. Jones is the son of Bruce Jones;
- (3) Elias Joseph died in 1956 leaving a will. That will was probated in 1979. Elias Joseph's estate then purported to sell the property to several purchasers who erected homes on the property;
- (4) He would occasionally inspect the property from the public road. However, given the topography of the property, he was not able to see the buildings on the property that were erected by the persons who purchased from Mr. Joseph's estate;
- (5) Several individuals now occupy the property having received title from purchases from Mr. Joseph or his estate;
- (6) A purchaser for value from Elias Joseph's estate searching the Deeds and Land Registry under the name of Elias Joseph would not find the deed from the government to Bruce Jones;

- (7) The problem arose because of government's failure to remove Elias Joseph's name as owner of the property on the tax register and to cease issuing tax certificate certifying the property to be owned by Elias Joseph;
- (8) It was incumbent on government to amend the tax register so that an individual searching the tax register under Elias Joseph's name would be informed that Elias Joseph was no longer the owner of the property. Further, the government was obliged to refrain from issuing tax certificates certifying Elias Joseph and his estate as owner and collecting transfer tax in respect of the property;
- (9) The present situation was created solely as a result of the action or inaction of the government;
- (10) He afforded government the opportunity to correct the same, which offer as declined.

Defendant's case

[4] On 7th July 2021 the defendant (the AG) filed a defence in opposition to the claim. In summary, the AG states that:-

- (1) The property was sold by the Financial Secretary of the colony of Grenada on 29th December 1959 pursuant to the **Taxes Management Act**¹ which was the tax law in force at that date. The property was sold by way of an auction for valuable consideration as evidenced by the deed between the government and Bruce Jones²;
- (2) Based on section 5 of the **Deeds and Land Registry Act**³, every instrument affecting land in Grenada, duly registered in accordance with the provisions of that Act, shall be good and effectual in law and in equity according to priority of registering;

¹ Cap. 290 of the 1958 Revised Laws of Grenada

² Dated 30th December 1959 and recorded in the Deeds and Land Registry in Liber C10 at page 934

³ Cap. 79 of the 2010 Revised Edition of the Laws of Grenada

- (3) As it relates to paragraph 5 of the claim, the AG states that upon registration of the Bruce Jones Indenture, Bruce Jones became the lawful and beneficial owner of the property;
- (4) When the property was conveyed to Bruce Jones he received indefeasible title free from encumbrances as provided by section 56 of the Taxes Management Act;
- (5) Further, section 57 of the Taxes Management Act required the Financial Secretary to execute and deliver a conveyance to Bruce Jones as purchaser of the property. Therefore, the indenture in favour of Bruce Jones was prima facie proof that all statutory duties to Bruce Jones were fulfilled and discharged;
- (6) Under the unregistered system of land, a proper and prudent search on the name of Bruce Jones and/or Elias Joseph for title and/or encumbrances would have revealed to a third party the true owner of the property;
- (7) Individuals who purchase property are added to the tax register and assessment notices are issued to them for their property. The ownership of property is not determined by the payment of taxes;
- (8) Bruce Jones was listed on the tax register as the owner of the property. There is no duty placed on the Financial Secretary by either the Taxes Management Act or the Deeds and Land Registry Act to remove individuals from the tax register. The tax register does not provide proof of ownership of property;
- (9) It was incumbent on Bruce Jones to recognise any error on being issued his property tax assessment notice in 1960. He ought to have brought the same to the attention of the Inland Revenue Department to be corrected. Having failed to do so, Bruce Jones and his successors in title have acquiesced to the alleged breach of duty as they ought to have been reasonably aware of this since the year 1960;
- (10) Mr. Jones and his predecessor in title are barred by their own laches from maintaining any claim of failure to perform duty and/or negligence. Any negligence arising from the failure to amend the tax register should have

been brought within six years of the date on which the action accrued in accordance with section 40 of the **Limitation of Actions Act**⁴.

(11) With respect to the relief claimed, the defendant denies that Mr. Jones is entitled to any relief. Moreover, there is no basis in law upon which any of the reliefs sought can be ordered against the defendant and as such the claim ought to be struck out.

Evidence

[5] It is uncontroverted that Elias Joseph (Mr. Joseph) was the owner of the property by virtue of the deed of conveyance dated 27th December, 1927 recorded in his name. The property is situate at Calivigny, Saint George and measured 2 acres 2 roods and 16 poles. It would be useful to set out some of the relevant facts.

Evidence of Xiomara Cherebin-Forsyth

[6] The Registrar of the supreme court, Mrs. Xiomara Cherebin-Forsyth, in her first affidavit deposed to the following relevant facts with respect to the property-

- (1) Mr. Joseph died on 4th April, 1956 leaving a will dated 5th December 1955;
- (2) On 29th December 1959, the property was sold by Financial Secretary of the Colony of Grenada to Bruce Jones;
- (3) Thereafter, on 5th March 1973 probate of his will was granted to Edmund Joseph;
- (4) On 29th February 1984, Edmund Joseph, Jane Joseph and Annieta Richards then sold the property to Sebastian J. Mitchell and Pearl E. Mitchell measuring 2 acres, 2 rood and 16 poles;
- (5) On 15th June 1984, Sebastian and Pearl Mitchell then obtained a mortgage from Barclays Bank International Limited (the Bank). Thereafter, the Bank

⁴ Cap. 173 of the 2010 Continuous Revised Edition of the Laws of Grenada

together with Sebastian and Pearl Mitchell sold the property to following persons-

- (a) On 3rd November, 1986 to Winston Donal and Augustina Donald;
 - (b) On 10th December, 1986 to Glenna Doreen Steele;
 - (c) On 26th August, 1987 to Pearl Elizabeth Charles;
 - (d) On 12th May, 1988 to Francis Parris; and
 - (e) On 14th April, 1987 to Bertrand Gurley, Bernard Gurley and Louisa Gurley.
- (6) Bruce Jones died on 23rd September, 2000. On 24th August 2004, letters of administration of his estate was granted to Anthony Jones;
- (7) By way of an administrator's conveyance, the property was conveyed to Anthony Jones. On 14th August 2020, Mr. Jones then sold two portions of the property each measuring 6,000 square feet to Jamie Alexander and Alynthia Alexander. On 29th April 2021, Mr. Jones again sold another portion of the property to Akesha Patterson and Che Charles measuring 8,171 square feet.

Evidence of the officers of the Inland Revenue Department

Evidence of Michell Julien

- [7] Michell Julien, Assistant Valuation Officer of the valuation division of the IRD, tendered the following evidence-

- (1) Prior to 1986, records of tax payments were made to individual District Revenue offices in handwritten tax ledgers. Those tax ledgers were replaced by individual property tax record cards. However, those tax ledgers were by damaged by damp and mould. They cannot be retrieved;

- (2) The valuation division of the IRD was created by virtue of the passage of the Real Property Tax Act in 1987. That new division was tasked with undertaking a cadastral survey and preparing a series of maps identifying all property in Grenada for the purpose of creating a valuation list. The first valuation list was published in 1987 for inspection by the public and landowners who were entitled to peruse same and make objections;
- (3) In April 1990, a fire completely gutted the Treasury building and all of the records of the IRD including the valuation division were burnt. As a result, all of the cadastral survey maps were destroyed. It therefore became necessary to create new maps which took several years to complete;
- (4) Between 1992 and 1996, field officers began a cadastral survey in the Calivigny area for the purpose of gathering information to draw the maps and compile the valuation list;
- (5) In 1997, after the passage of the Property Tax Act, a new valuation list was published. Similar to the provisions of the Real Property Tax Act, the Property Tax Act prescribes that a valuation list be published for inspection by the public and provides that landowners may lodge objections to the list;
- (6) Where there is a dispute as to the ownership of property, each competing owner is given a unique parcel number. Once the matter is resolved by the court, the person who has not been determined as the owner is entitled to a refund and their parcel number is cancelled;
- (7) Prior to 2004, no property tax demand notices were issued as the system was not computerised. All tax payments prior to the above date were made at the District Revenue offices;
- (8) The property in question was divided into parcels 14, 15, 16, 19, 20 (which later became 100 and 51) and 50 and 52. The above parcel numbers were assigned to various persons who purchased land from Barclays Bank, Sebastian Mitchell and Pearl Mitchell, save and except for parcel 14 which was sold by Herbert James Simmons and parcel 20 which was sold by Barclay's Bank to Joseph Canute Burke;

- (9) In March 2009, Mr. Jones attended the valuation division with the 1959 deed to claim ownership of the property. A cadastral report form was compiled and he was assigned the parcel number 90. He then sold 2 parcels of the property which were given parcel numbers 118 and 123;
- (10) There is no record of the property being owned by Bruce Jones in any valuation list published since 1997 and no property tax record card has ever been issued in his name.

Evidence of Tawana Julien

[8] Tawana Julien is the Deputy Comptroller of the Inland Revenue Department (IRD) in the Ministry of Finance. On 28th February 2022, Ms. Julien tendered the following evidence in relation to the operations of the IRD –

- (1) Her responsibility is to manage and supervise the registration, assessment, collection and enforcement of taxes, including property taxes;
- (2) With respect to the property, Ms. Julien states that the IRD has no records of the sale of the property in 1959 to Bruce Jones following the destruction of all records in the Treasury Building by fire in 1990. At the time of the sale of the property in December 1959, the Taxes Management Act was in force which empowered the Financial Secretary to sell property by public auction for the non-payment of taxes. The office of the Financial Secretary fell under the Ministry of Finance which was housed in the Treasury Building. The records in that building which also housed the IRD, Statistics office, Department of Economic, among other departments, were all destroyed by the 1990 fire;
- (3) As a result of the fire, there would be no records of a property owner unless that owner was identified during the cadastral mapping process that was undertaken after the fire between 1992 and 1996 or where objections were made to the valuation list by owners of property;

- (4) The valuation list is prepared by a valuation officer of the Valuation division of the IRD. In accordance with section 18 of the Property Tax Act, the property tax register is compiled using the records from the valuation list. A property will not be included on the property tax register if it is not on the valuation list. Under the Property Tax Act and its predecessor, Real Property Tax Act, persons claiming ownership of land were entitled to object to the omission of their property in the valuation list and property tax register.

Submissions

Claimant's submissions

- [9] Counsel for Mr. Jones, Ms. Celene Edwards, submits that Grenada uses the unregistered system of conveyancing by deeds. Ms. Edwards explains that this means that, in order to transfer fee simple title to property, a conveyance/deed has to be recorded in the Deeds and Land Registry of Grenada. Prior to the recording of those deeds, an extensive search must be undertaken. When the land is registered, a "cadastral" number or parcel number is assigned so that there is no uncertainty as to the parcel of land that is the subject matter of the transaction. The only change, counsel says, is to the listed owners of the property.
- [10] Ms. Edwards continues, that upon completing a transaction in the unregistered system, a title search must be undertaken using the names of the parties to trace their predecessors in title for up to 30 years. That search would reveal each predecessor in title and how they became owners of that property. Counsel points out that once that chain link of ownership is established for up to 30 years together with a suitable root of title document, then the title to that land is said to be in order.
- [11] Ms. Edwards further explains that where there is uncertainty as to the ownership of land, persons may wish to apprise themselves of the cadastral mapping and property tax register at the Inland Revenue Department (IRD) which the IRD is mandated to compose and maintain pursuant to sections 18(1), 19(2) and 20(4) of

the Property Tax Act. Counsel accepts that the above information situate at IRD does not confer ownership of property, but this information serves as a means to confirm details regarding land during the investigation process, that is the measurement of the lands and its boundaries and most significantly the ownership of the land. After the title searches are complete, the IRD assesses the property transfer tax which is payable by the vendor to the Government. Counsel states that the vendor is required to pay the assessed property transfer tax together with all property taxes, in order to obtain a tax clearance certificate. If those taxes are not paid, then the deed cannot be recorded at the Deeds and Land Registry pursuant to section 75(1) of the Property Tax Act.

[12] Counsel for Mr. Jones, Ms. Edwards, recites IRD alleged obligation to be –

- (1) compile and maintain a property tax register annually;
- (2) compile and maintain a valuation list annually;
- (3) compile and maintain a cadastral map annually that identifies every parcel of land in Grenada and its owner;
- (4) issue tax demands annually to the owners of the property;
- (5) certify that parcel of land being transferred is on the valuation list and that all taxes are paid up to date.

[13] In addition to those obligations, counsel says that the IRD has the power to –

- (1) withhold the tax clearance certificate necessary to complete any transfer of title;
- (2) amend the valuation list; and
- (3) make changes to the tax roll, register or valuation list to reflect any changes in ownership of property.

[14] Further, Ms. Edwards recites various provisions of the Property Tax Act, including sections 18(1), 19(2), 20(4) and 29(1) 31(1), 40, 63(3) and 75(1). Counsel also says that the government was negligent and failed to meet their obligations under the Tax Management Act, in that they failed to –

- (1) properly update the tax register from the information provided by the Registrar pursuant to section 13 in the year 1959 after the sale of the property to Bruce Jones; and
- (2) serve or cause to be served on Elias Joseph, a notice of intended sale pursuant to section 52(1) and (2).

And under the Property Tax Act, the IRD failed to –

- (1) properly compile and update the property tax register/valuation list pursuant to section 18;
- (2) enter the name and address of each owner on the valuation list;
- (3) properly enter the name and address of each owner on the valuation list pursuant to section 19(2)(b);
- (4) update and certify the valuation list pursuant to section 20(4);
- (5) make necessary alternation to the valuation list (section 29(1)(b));
- (6) make amendments to the property taxes payable by the estate of Elias Joseph (section 31(1)(c)(ii) and (v));
- (7) properly issue tax demands to the correct owner of the property (section 40(3)(a));
- (8) cease issuing tax clearance certificates to estate of Elias Joseph (section 75(1));

[15] Ms. Edwards concludes that had the IRD met all of its obligations and made the mandatory updates and changes to the tax register, valuations list and cadastral maps, it was not possible for the tax demands and tax clearances to be issued in the estate of Elias Joseph as well as Bruce Jones and his successors in title.

Defendant's submissions

- [16] Conversely, counsel for the defendant, Mrs. Reid- Ballantyne, submits that there is no duty or obligation on the tax officers to remove a name from the tax register. In fact, the law places the duty of recording a change in the ownership of the property squarely on the new owners under section 14 of the Property Tax Act. Learned counsel says that the tax officer's obligation is to compile the tax register for each year and if a person's name is incorrectly spelt on the register, then that person enjoys a right of appeal. The duty of the tax office is to ensure that persons liable to pay tax are listed on the tax register. Counsel points out that it is clear from the four tax receipts produced by Mr. Jones that Bruce Jones was duly added to the tax roll as the taxes were paid in his name in respect of the property.
- [17] Further, counsel states that there is no evidence whatsoever that the name Elias Joseph was recorded as the owner of the property on the tax roll after the sale of the property to Bruce Jones in 1959. The concept of property transfer taxes was only introduced to Grenada by virtue of section 5 of the Land Transfer Tax Act, Cap 163, which prescribed that the Registrar of the Supreme Court was precluded from registering a conveyance or instrument of transfer unless satisfied that property transfer tax on behalf of the vendor was paid.
- [18] Counsel submits that it is uncontroverted that prior to the commencement of the Land Transfer Tax Act in 1987, the heirs of Elias Joseph sold the property to Sebastian J Mitchell and Pearl Mitchell in 1984 by virtue of a conveyance dated 29th February 1984 and recorded in Liber B9X, page 13. At that time, there was no obligation for any certificate from the tax authorities and no duty existed in respect of the payment of property transfer taxes. It is only until the commencement of the Real Property Tax Act, that this system changed. The above Act introduced a Comptroller of Inland Revenue and prescribed under section 3 that property tax was to be done on assessment of the market value of the land. The valuation division was tasked with determining the value of the property and to compile an annual valuation list of taxable property. When that valuation list is certified it is then sent

to the Comptroller, who prepares a property tax register and affixes it to a conspicuous place in each District Revenue Office and causes same to be published in the Gazette and in the newspaper.

[19] Further, that Act prescribed that no conveyances or other instruments are to be recorded in the Deeds and Land Registry unless they are accompanied by a tax clearance certificate issued by the Comptroller. In this case, counsel submits, there was nothing in law preventing the property from being sold to Sebastian and Pearl Mitchell in 1984. There was no requirement for the issuance of tax clearance certificates in 1984. Counsel argues that the statutory duty that Mr. Jones asserts did not exist as there was no statutory duty for the tax authorities to issue a tax clearance certificate at the time of the sale.

[20] Counsel explains that Bruce Jones was entitled to apply to set aside and cancel the 1984 conveyance to Sebastian and Pearl Mitchell from the Deeds and Land Registry. In the absence of such action to set aside the above conveyance, the successors in title of Sebastian and Pearl Mitchell (those persons whom they sold to), were entitled to be included on the valuation list and the real property tax register which were compiled following the commencement of the Real Property Tax Act in 1987.

[21] Moreover, counsel posits, there may be competing deeds evidencing ownership of the same property with each person being given a parcel number until the dispute is settled. Section 15 of the 1987 Act provides that property taxes must be paid by the tenant or person in occupation of the land and not necessarily the owner. This requirement, counsel says, explains why the payment of taxes has long been held not to be proof of ownership of property. Counsel relies on the case of **George Donald Barclay and others v Hilda Clement nee La Pierre** ⁵in support of this submission, where the court held that the payment of taxes is not indicative of ownership of property. In the circumstances, counsel is of the view that the payment

⁵ [2011] ECSCJ No. 161

of property taxes cannot certify or convey title. The presence of names on the tax roll/register for the collection and payment of taxes cannot create a legal or statutory duty on the taxing authority to certify title to property.

Discussion

The Deeds and Land Registry Act

- [22] Under the unregistered land system, the transfer of land or property is evidenced by the recording of a deed in the Deeds and Land Registry. When one looks at the relevant law, it is apparent that there may be instances under this unregistered land system where multiple persons may record deeds claiming ownership of the same property. Section 5 of the Deeds and Land Registry Act (the Deeds Act) provides:

“Instruments affecting land to be registered and have priority accordingly

Every instrument, affecting land in Grenada, duly registered in accordance with the provisions of this Act, shall be good and effectual in law and equity according to priority of registering:

Provided that the following documents need not be registered namely—

- (a) a lease or agreement for a lease for not more than one year, or an agreement for the use and occupation of land for not more than one year, such lease or agreement being accompanied by actual possession; or
- (b) a lease or agreement for a lease for a period not exceeding five years, whereby not more than fifty dollars is reserved by way of rent..”

- [23] With respect to the rectification of errors in the registry’s books, section 23 of the Deeds Act states:

23. Rectification of errors, etc.

“The High Court may, on the application by summons of any person claiming any interest in any land in Grenada, order that any entry in the registry books be cancelled, or that any omission or mistake therein be rectified, or that any certificate indorsed or given under this Act be amended or cancelled, or that any instrument not registered be proved and registered, or that any person appear before the Court or before the Registrar and produce or prove any instrument and answer any question with reference to the registration or intended registration of any instrument.”

- [24] The section provides that the High Court may, upon application by summons of any person claiming any interest in any land in Grenada, order that any entry in the registry books be cancelled, amended or rectified.

[25] Section 24 of the Act makes provision for the admissibility of registered deeds as follows:

“24. Admissibility of registry books or certified copy

A copy of any instrument (other than a will) which has been registered in the Registry, the copy being either contained in the registry books or certified by the Registrar as a true copy, shall be admissible in all courts as prima facie evidence of the contents of the instrument, and that it was made by the party by whom it purports to have been made.”

[26] When one reads these provisions together, there seems to be no indication therein or in fact in any other part of the Act, that the fact of registration is determinative of the true ownership of the land or even whether the contents of the registered deed are true and correct. More particularly, the terms of section 24 of Deeds Act seems to indicate and I so find that the act of recording the deed in the registry is merely evidence of –

- (1) the fact of registration of the deed;
- (2) the contents of the deed; and
- (3) the party(ies) who executed or effected the deed.

[27] Significantly, in instances where there is a contestation or dispute as the ownership of land, a registration under the Deeds Act does not resolve the contest. Indeed section 5 of the Deeds Act makes it clear that the act of registration makes the registered deed “*good and effectual in law and equity according to priority of registering.*” Contestations as to ownership must be determined by the high Court in accordance with section 23 of the Deeds Act and not simply resorting to the Deeds register. I agree with the statement from the Registrar that “*the Registry does not settle disputes as to ownership of land or determine the validity of instruments. Persons disputing a deed or disputing title must seek to have such claims adjudicated upon by the Court. Our function is only to record instruments which are properly executed in accordance with the Act.*”

The Property Tax Act

[28] A fair construction of the provisions of the Property Tax Act suggests that the property tax register was created to collate a list of property owners for the purposes of registration of persons who are liable to pay property taxes. I do not agree with Mr. Jones that the Property Tax Act was designed or enacted with a view to identifying or determining the question of ownership of land. But Mr. Jones claims that if the Government had properly maintained the tax register, the error in ownership would not have arisen. It is therefore imperative to look at what the Property Tax Act says about the compilation and maintenance of the tax register. In this regard, Part IV of the Property Tax Act is summarised as follows –

- (1) Section 18 – obligates the Comptroller of the Inland Revenue to keep the tax register which is to consist of –
 - (a) every property as described in the Valuation list;
 - (b) the taxable value of each such property;
 - (c) the name and address of the owner;
 - (d) the appropriate rate per cent at which property tax is levied;
 - (e) the amount of property tax to be paid in respect of each such property;
 - (f) the year in respect of which property tax is levied; and such other information, if any, as may be prescribed or administratively appropriate.
- (2) Where the property is owned by more than one person, section 18(2) permits the Comptroller to use the description “and another” or “others”
- (3) Section 19 requires the compilation of a valuation list by a valuation officer. That valuation list comprises of –
 - (a) each property together with its approximate location, parcel number and classification;
 - (b) the name and address of the owner of each such property if the same can be ascertained by the Valuation Officer;

- (c) the taxable value of each such property;
 - (d) such other information, if any, as may be prescribed
- (4) Instructively, the valuation is permitted to use the description “and another” or “others” as the case may be in cases of joint ownership but in this case he or she must notify the Comptroller of the names of all the co-owners. Section 19(3) and (4)
- (5) Section 19(5) obligates the valuation officer to update the valuation list from time to time as necessary;
- (6) Section 20 provides for the commencement of the valuation list. Significantly section 20(5) obligates the valuation officer to update and verify the valuation list by the 15th November of every year and to forward the update list to the Comptroller;
- (7) Importantly section 20(6) states –
- “The valuation list in force from time to time shall be conclusive evidence of the taxable values of the several properties at that time included in such list.”
- (8) Sections 21 to 24 outline the process of compilation of the valuation list starting with the process for preparation of a draft list, publication of the draft list for public inspection, process for property owners to object to the draft list, revision to the draft list including service of a notice on property owners who objected in certain cases, appeals from property owners who issued an objection and the final settling of the valuation list;
- (9) Section 25 obligates the Comptroller to deposit the valuation list in his or her officer upon receipt and to publish the same in the official gazette. If the valuation officer informs the Comptroller of alterations to the list, the Comptroller is required to make the alterations;
- (10) Section 26 a property owner may make a proposal about his or her dissatisfaction with any aspect of the list except where it is an objection which could have been made when the draft list was published;

(11) Sections 27 to 29 deal with the process for processing proposals for changes to the valuation list and the powers of the valuation officer to make alterations to the list.

[29] The foregoing shows clearly that there is no power given to the Comptroller and/or the valuation officer to adjudicate on or to alter the property tax register to verify ownership or settle disputes in relation to the ownership of land. The intention of Parliament could not have been more precisely stated than at section 20(5) which states that the valuation list is “conclusive evidence of the taxable values” of the properties on such list. Parliament under section 29 (1) conferred on the valuation officer, the power to make alternations to the valuation list in cases of clerical or arithmetical errors; change in ownership of property or change in use of any property. There is no mechanism in the Act for officers to amend or rectify the property tax register where there is a dispute as to the ownership of a particular property or to verify the ownership of the property. The section merely requires them to record those persons who purport to be the owner of the land. It therefore cannot be said that the IRD officers’ duties is extended to validating deeds brought to the IRD as proof of ownership and vetting to find who are the actual legal owners of land in Grenada. Parliament, in my view, gave them no such power.

[30] In the circumstances, I am not satisfied that the officers of the Inland Revenue Division and the Valuation Division were not under any obligation or duty to resolve the ownership of property between the estate of Elias Joseph and Bruce Jones by amending the property tax register or the valuation list to remove Elias Joseph’s estate and his successors in title. Additionally, neither the IRD nor the government was obliged to remove Elias Joseph’s estate from the tax register in the manner claimed by Mr. Jones or was under any obligation to cease issuing tax certificates under the Elias Joseph’s name for tax purposes. In my view, any move by the officers of the IRD to amend or certify the tax register, maps or valuation list in the manner suggested by Mr. Jones would be outside their scope of power.

[31] However, there is a larger point being made by counsel. Counsel is of the view that had the list been “properly” maintained the error would not have arisen. But as I see it there is no evidence in this case that the IRD did not do what it was statutorily tasked with doing. In fact, as argued by the AG, Bruce Jones could have ensured that the tax registration existing during the time that he purchased accurately indicated that he was the rightful owner. Additionally, once the systems of valuations lists were in place in law and those lists were published, the publication served as notice to the world. It was then incumbent on the persons claiming to be property owners, being Mr. Jones’ who was alive at the time or thereafter his estate, to approach the tax officers to verify the list and to ensure that their property was properly identified for tax purposes. At the risk of repetitiveness, I will say that it was not the duty of the IRD officers to verify the true owners of the property. Again, any contestation as to the true to the ownership of the property could only be determined by the High Court, upon filing of the requisite application or claim. If the IRD has wrongfully collected property taxes from a purported land owner, then that is a matter between that person and the IRD. They may be entitled to demand a refund of those monies paid in error.

[32] In any event, I agree with the defendant that it is trite law that the payment of property taxes does not constitute conclusive evidence of proof of ownership. Indeed, the mere inclusion of the names of persons on property tax register or valuation lists for tax purposes is not indicative of the true ownership of land. In **George Donald Barclay and others v Hilda Clement nee La Pierre**⁶, Price Findlay J (as she then was) stated at paragraphs 83 and 84 of the judgment, that-

“The payment of land taxes is not indicative of ownership of land. The Defendant and her sister both gave evidence that Rosa Turpin and then the Defendant paid the land taxes for 22 acres of land at L'ance (Anse) La Roche. They ask that due weight be given to this alleged fact. They have submitted that the Taxes Management Act, Cap 29 requires that the owners of land pay land taxes for the acreage they occupy. But that Act also provides for tenants and persons who have a charge on taxed

⁶ GDAHCV2003/0177 or [2011] ECSCJ No. 161

property to pay taxes and either deduct them from the rent or recover them from the owner.

It stands to reason that persons paying land taxes is not necessarily an indication that they are the owners of that property.” (My emphasis)

- [33] The long and short of it is that Mr. Jones has not been able to demonstrate that the government owed him or his father’s estate any duty of the sort claimed. He has therefore failed to show that he has any cause of action against the government. His claim has therefore failed and is dismissed for this reason and the reasons to follow.

Whether the claim for breach of statutory duty or negligence is statute barred or barred in equity by reason of laches/delay

- [34] Having found earlier that the provisions of the Deeds and Land Registry Act and Property Tax Act do not give rise to a private law claim, there is no need to consider whether the claim is statute barred or barred in equity. Nevertheless, I will consider this issue for completeness.

Claimant’s submissions

- [35] With respect to whether the claim is statute barred pursuant to section 27 of the Limitations of Actions Act, Ms. Edwards submits that the defendant cannot avail itself of the defence of limitation. Counsel concedes that, even though the acts complained of accrued in 1959, Mr. Jones did not acquiesce to them since he only found out of the failures of the government in or about 2021. Ms. Edwards contends that, at the very least, time began to run from this discovery in 2021. Therefore, the defence of limitation is not available to the defendant.
- [36] Further, Ms. Edwards explains that the defence of laches can only succeed where there is no statutory bar to bringing the action. Counsel relies on the decision of

Gershon Robertson v Baldwin King et al⁷, where Redhead JA stated at paragraph 100 of the judgment that –

“For laches, the element of acquiescence is included, and a court of equity will refuse to assist the claimant with a stale claim where the claimant has slept upon his right and acquiesced for a great length of time who is then said to be barred by laches. The defence of laches could not succeed in this case in any event, because the appellant is entitled to the 12 years statutory bar period under section 17 of the Limitation of Action Act Cap. 99 which would operate from the date Mr. King acquired and entered into possession of the land. Laches is only allowed where there is no statutory bar. (At para 1476 of Halsbury’s).”

- [37] In reliance on the **Baldwin King** decision, counsel Ms. Edwards concludes that since there is provision for statutory limitations in respect of Mr. Jones’ claim and there is no evidence of acquiescence, the defendant cannot avail itself of the defence of laches. Ms. Edwards reiterates that Mr. Jones did not know or have reason to suspect that the beneficiaries of Elias Joseph’s estate were engaged in purported transfers of the property. Further, he did not know that the IRD failed to perform their duties in updating and maintaining the tax register. He avers that he only became aware in 2021 that there was an issue with his ownership and occupation of the property.

Defendant’s submissions

- [38] The defendant submits that Mr. Jones’ case is barred both pursuant to statute and in equity. Mrs. Reid Ballantyne, Solicitor General refers to section 40 of the **Limitation of Actions Act** which prescribes that -

“40. Limitation of actions for trespass, etc.

(1) No action for trespass to the person or for malicious prosecution shall be brought but within four years next after the cause of action; no action for slander or libel shall be brought but within four such years; and no action for any other form of trespass, and no action for debt (not on specialty), or

⁷ SVGHCVAP2008/020

debt for arrears of rent, shall be brought but within six years next after the cause of action:

Provided that nothing herein shall extend any period of limitation contained in any law giving jurisdiction to magistrates.

(2) No action of account or for not accounting, or for such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be brought but within six years after the cause of action arose; and no claim in respect of a matter which arose more than six years before the commencement of such action shall be enforceable by action by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of the action.”

[39] The Solicitor General submits that while it is difficult to identify Mr. Jones’ cause of action, the general principle in relation to limitation periods is that the right to bring an action accrues under statute from the earliest date from which an action can be brought⁸. Counsel argues that in the case of the government’s failure to amend the tax register, Bruce Jones’ right to bring any action against the Financial Secretary accrued from the date when the tax register, which included the name Elias Joseph as owner of the property, was published by the government after the property was sold in 1959. The time for bringing that action, she says has long since expired.

[40] Further, counsel submits that from the evidence it is clear that following the 1990 fire, Bruce Jones, was not included as owner of the property on the new cadastral survey map, valuations and new property tax register. Counsel explains that the property Tax Act came into effect on 1st January, 1997 and that since the publication of the cadastral maps, valuations list and property tax registers, Bruce Jones took no steps to record ownership of his property thereon. He failed or refused to exercise his statutory rights to object and/or appeal and he similarly did not inspect the map or the list to see if there other persons claiming ownership of his land. Any right that Mr. Jones or his estate possessed to bring a claim in respect of the maps, valuation list or property tax register would have expired in 2003. Therefore, counsel submits that the claim filed on 4th June, 2021 is statute barred.

⁸ See *Reeves v Butcher* [1891] 2 Q.B. 509

- [41] Additionally, the defendant contends that bringing a claim in 2021 in respect of the contents of the tax register after 1959 would be unjust. Counsel relies on the case of **Lindsay Petroleum Company v Hurd and others**⁹. Counsel also relies on Halsbury's Law of England¹⁰ where the learned authors stated that in determining whether delay can amount to laches, the main points to consider are whether - (1) there was acquiescence on the claimant's part; and (2) any change of position that has occurred on the defendant's part.
- [42] The Solicitor General adverts to the fact that Bruce Jones was granted infeasible title in 1959 under the 1959 deed. The property was purportedly sold in 1984 by Elias Joseph's heirs to various persons between the years 1986-1988. Counsel states that not once between 1984 and 2000 did Bruce Jones take any step to assert his property rights or to seek the court's intervention to set aside the 1984 conveyance. Further, during those sixteen years, Mr. Jones failed to have the tax register, valuation list and property tax registers amended. Those lists, maps and registers were open for public inspection at any point in time. The statutory requirement for publication of the notice in relation to the lists, maps and registers serves to give notice to the whole world of the matters stated therein and as such Mr. Jones cannot complain that he had no notice of it. Therefore, counsel is of the view that Bruce Jones acquiesced to those persons claiming title to his property.
- [43] In the alternative, counsel posits, that at any point after 1984, Bruce Jones could have visited and walked upon his land to ensure that no one was trespassing on the same. However, he did not do so and no explanation is presented for such failure. Counsel says that Mr. Jones decades later seeks to have the Crown compensate him for his father's own inaction and disregard of his property rights.

Analysis

⁹ (1874) L.R 5 P.C. 221 as per Lord Selbourne at pages 239-240 of that judgment

¹⁰ Vol 47 paragraph 225.

- [44] I agree with the Solicitor General's arguments that the claim is statute barred. The evidence shows that the property was sold by the Government to Bruce Jones on 29th December, 1959. Further, the Real Property Tax Act of 1987 was repealed and replaced by the provisions of section 77 of Property Tax Act which came into effect in 1997. The latter Act imposed certain statutory duties on officers of the IRD and VD with respect to the preparation and amendments of the property tax register, valuation list and cadastral maps. In respect of the limitation period to bring a claim for negligence, section 40 of the Limitation of Actions Act which is recited above prescribes that all tortious actions, save and except trespass to the person and malicious prosecution must be brought within six years after the date of the cause of action.
- [45] There is no evidence that either Mr. Jones or his father took any steps to assert their rights to this property. In particular and graphically, there is no evidence for instance, that Bruce Jones took any steps to assert his right to have his name inserted as owner under the Taxes Management Act, or that Bruce Jones or his estate took any steps further to the initiation of the verification process pursuant to the Property Tax Act in 1997. As I have stated above, once the IRD published notice of the valuation exercise pursuant to that Act, it became notice to all land owners. Any right to bring a claim in respect of the government's alleged failure to amend, rectify and/or certify the property tax register and valuations lists published in 1997 would have accrued from the date of the publication of the notices. The prescribed time for filing this claim for breach of statutory duty or negligence expired sometime in 2003. This claim was filed in 2021 which is in excess of those six years. Accordingly, Mr. Jones' claim is statute barred and dismissed.
- [46] Interestingly, Mr. Jones also testifies in his affidavit¹¹ that by virtue of a deed of conveyance dated 10th January 2007 he became owner of the property. He states at paragraph 9 of the affidavit that "*I took possession of my property and thereafter would inspect my property from the public road from time to time but because of the*

¹¹ Affidavit of the Claimant – Anthony Jones filed on 28th February, 2022

landscape of my property, I never saw buildings on it; I would not have been able to see them from the road.” Mr. Jones continues at paragraph 10 that “[s]ometime after, I decided I was ready to sell the said property and I realized that several persons occupied my property and they purported to do so under the title from Elias Joseph. Even the lots with no buildings on them were supposedly sold to various persons.”

[47] Having regard to Mr. Jones’ evidence it suggests that it was only when he desired to sell the property in sometime 2020 that he realised that several persons were already in occupation. Notwithstanding this discovery, it is his evidence that on 14th August 2020, Mr. Jones sold two portions of the property to Jamie Alexander and Alynthia Alexander and on 29th April 2021, Mr. Jones again sold another portion of the property to Akesha Patterson and Che Charles.

[48] The question therefore arises whether Mr. Jones can maintain a claim against the Government for possession of the property. Sections 4 and 27 of the Limitation of Actions Act prescribe -

Section 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.”

And section 27:

“At the determination of the period limited by this Act to any person for making an entry or 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.”

[49] The conjoint effect of sections 4 and 27 of the Limitation Actions Act instruct that actions for the recovery of any land must be brought within 12 years after the right to bring the action accrued. Elias Joseph’s estate sold the property to Sebastian and

Pearl Mitchell in 1984. Bruce Jones' right to bring an action for possession against them would have extinguished sometime in 1996. Therefore, I find that Mr. Jones' claim for possession of the property filed in 2021 is also statute barred.

Laches

[50] Moreover, with respect to the defendant's submissions on laches, it is uncontroverted that there are persons who have constructed homes on portions of the property. It is also unconverted that Bruce Jones failed to bring any action against Sebastian and Pearl Mitchell or their successors in title and/or the Elias Joseph's estate for possession of the property. Indeed, Mr. Jones admits at paragraph 10 of the statement of claim that after Elias Joseph's will was probated in 1979, his estate purported to sell the property to persons and as such several homes have been erected on the property. Mr. Jones, in his evidence says that he failed to physically enter the lands for a number of reasons. I do not find that he took active steps to assert his rights over this property but rather slept on his rights. Mr. Jones, by his conduct, stood by and acquiesced to those persons occupying his property in excess of 30 years (1984 to 2021).

[51] The learned authors of **Halsbury's Laws of England**¹² state as follows -

“254. The defence of laches.

A claimant in equity is bound to prosecute his claim without undue delay. This is in pursuance of the principle which has underlain the statutes of limitation 'equity aids the vigilant, not the indolent' or 'delay defeats equities'. A court of equity refuses its aid to stale demands, where the claimant has slept upon his right and acquiesced for a great length of time. He is then said to be barred by his unconscionable delay ('laches'). The defence of **laches** is, however, allowed only where there is no statutory bar.”

“256. Acquiescence as an element in laches.

The chief element in laches is acquiescence, and sometimes this has been described as the sole ground for creating a bar in equity by the lapse of time. Acquiescence implies that the person acquiescing is aware of his rights and is in a position to complain of an infringement of them.”

¹² Equitable Jurisdiction (Volume 47 (2021) 8. Equitable Defences: Unconscionable Delay (Laches) at paras. 254 and 256

[52] Additionally and instructively, at paragraph 254 of **Halsbury's**, the learned authors indicate that the defence of laches is not available where there are statutory limitation periods for bringing claims for possession. I have already found above that the claims for possession are statute barred pursuant to sections 4 and 27 of the Limitation of Actions Act. Therefore, the defendant cannot avail itself of the equitable defence of laches.

Comments/Postscript

[53] In my view, this case is a glaring example of the problems and inefficiencies which plague land owners who record deeds under the registration of deeds system in Grenada. Plainly put, it is by now more than evident that a myriad of problems may arise with the registration of deeds that can hardly ever be verified, if at all. Mr. Jones, in this case, realised some of these problems and craftily sought to argue that the difficulties could be avoided if only the tax authorities keep what he terms “an accurate” record of land owners. But as has been n demonstrably exposed in this case, the tax laws relied on are, with respect, specifically designed to identify taxable persons and not to “ferret” out or discern who is the correct owner of land.. Parliament has not placed that burden on the tax authorities. Resolution of challenges and disputations about ownership of land are specially stated in section 23 of the Deeds Act to fall solely within the remit of the courts. Indeed it might be even proper to conclude that the present deeds registration structure leaves it entirely up to the person who claims to be owner of land to be diligent as to who is registered as owner at the deeds registry or on the tax register in respect of land that the person purportedly owns. One needs only to state this to highlight that such a paradigm is fraught with potential for confusion at best and at worst potential fraud. One can safely suggest, in the circumstances, that it may be well past high time for the troubling deed registration system in Grenada to be comprehensively revised and reformed or done away with and replaced by a land registration or registration by title system, which by all measures, minimises the occurrences of these land ownership discords and disparities.

Conclusion

[54] It is hereby ordered that:

- (1) The claim filed on 4th June 2021 is dismissed.
- (2) Judgment is entered for the defendant.
- (3) The claimant shall pay costs to the defendant in the sum of \$3,000.00.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar