

**EASTERN CARIBBEAN SUPREME COURT
STATE OF ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2021/0128

BETWEEN:

SKEFFINGTON W DEFOE

Claimant

and

GAIDEN BROOKS

Defendants

Appearances:

Ms. Latoya A. Letlow for the Claimant

Mr. Wendel Alexander Robinson for the Defendant

2022: June 21st ;
July 26th.

ORAL DECISION

[1] **BYER, J. :** This was a very simple matter. The Claimant, on the 12th January 2000 became the registered owner of a lot of land at Registration Section Cassada Gardens and New Winthorpes, Block 42 1992B Parcel 136(the said parcel). Having assumed legal ownership of the said parcel from the Government of Antigua and Barbuda, the Claimant (on his own admission) found the defendant occupying a chattel house which was encroaching on the said parcel. After having issued a Notice to Quit on the 8th January 2020 to the defendant to give up occupation of the portion of the said parcel on which he had placed his house, the defendant having failed to comply, the claimant issued these proceedings seeking the following relief :

- (1) A declaration that the claimant is the rightful owner of the said parcel and should repossess the land with immediate effect
- (2) A declaration that the defendant has no prescriptive title to the said parcel
- (3) An injunction restricting the defendant from erecting a permanent structure on the said parcel
- (4) Costs and
- (5) Such further and other relief as the court may seem just.

[2] In response the defendant filed a defence denying that the claimant was the rightful owner of the said parcel and claimed that he had acquired ownership of the said parcel by way of prescription, having occupied the same for a period, in excess of 32 years.

[3] At the trial of the matter, the claimant relied on his own evidence while the defendant having failed to file any witness statements within the time specified, was prohibited from calling any evidence on his own behalf. The court ordered that the parties were to give oral closings at the close of trial which both counsels did and the claimant additionally relied on written submissions filed on the 31st December 2021.

[4] On the 1st June 2022 this court as presently constituted having ordered that closing addresses would be made at the end of trial also ordered that all authorities upon which the parties sought to rely, should be disclosed seven days before trial. The defendant once again failed to do so, therefore the court was only assisted by the submissions made at trial.

The Claimant's case

[5] The claimant's case encapsulated in his fourteen paragraph witness statement, cited four instances which his counsel indicated amounted to sufficient actions to interrupt any alleged possession of the defendant. The first was in 2001 when on a visit to Antigua by the claimant (who does not habitually reside in Antigua), the claimant noted that the defendant had planted trees on his land, his evidence was that on that occasion he approached the defendant and informed him that he was encroaching. The second was on another visit to Antigua in 2009, when the claimant had the said parcel resurveyed and was informed by a third party that the surveyor who had undertaken the re-survey of the said parcel had

informed the defendant of his encroachment ¹. The third was in 2019 when on another visit to Antigua, the claimant realized that the defendant was still on the said parcel at which point he appointed his cousin Patrick Defoe ² under a power of attorney to take matters into hand. It was out of a report on a visit to the said parcel by Patrick Defoe to the said parcel that it was indicated that the said Patrick Defoe had once again emphasized the encroachment which was then met by hostility by the defendant and his wife. The fourth time was in 2020 when the claimant through his attorney Patrick Defoe, issued instructions to his attorneys at law to serve notice to quit on the defendant as a trespasser.

[6] At the trial of the matter the claimant maintained his position that he had taken steps to have the defendant removed but that the defendant had failed to do so and that he was, as registered owner, entitled to the said parcel.

[7] Counsel for the claimant therefore submitted to the court that as the registered owner, it was for the defendant to show that he had dispossessed the claimant by prescription. Counsel for the claimant contended that the defendant had not done so in that he led no evidence upon which the court could make any finding to that effect. In any event however pursuant to the provisions of section 136(6) of the Registered Land Act ³ (the Act) the claimant had interrupted any purported possession of the defendant by reliance on the factors itemized above at paragraph 5. Indeed counsel for the claimant contended that the acts as set out by the claimant amounted to either physical entry by himself or his agents or the institution of legal proceedings which were sufficient to disrupt any purported factual possession of the defendant.

[8] Additionally counsel for the claimant contended that in any event, the defendant's possession could only have said to have commenced in 2020, after the defendant received the notice to quit and he then commenced to construct a concrete structure on the said parcel. Up until then the building that was on the said parcel was a chattel house, a moveable structure which could not amount to an act of possession enabling the defendant from relying on any prescriptive rights.

¹ Documents #4 and #5 in TB #3 filed 31/5/2022

² This person was a witness for the claimant but failed to present him for trial of the matter

³ Cap 374 of the Laws of Antigua and Barbuda

The Defendant's case

[9] As the court noted above the defendant called no evidence. The only document he could rely on was his defence, and the answers he obtained on cross examination of the claimant. The admissions of the claimant upon which he relied were as follows:

- a) that the claimant knew of the encroachment of the defendant's house since 2000
- b) that the first time that the claimant sought legal advice was in 2019
- c) that the claimant waited until 2021 to file action as the defendant had informed him that he would move the house

[10] It was therefore the contention of the defendant that the claimant had failed to establish that he was entitled to an order of possession against his client.

[11] Counsel for the defendant submitted that by the admission of the claimant himself, the defendant had been in occupation of the property in excess of twenty years when the claim was filed. That when the claimant became the registered owner with the knowledge that the defendant was in occupation, the claimant took the said parcel subject to the occupation of the defendant. Counsel further contended that the occupation of the defendant having been open, peaceful and adverse to the claimant, that the defendant had acquired not only the factual possession but held the requisite intention to possess.

[12] Counsel for the defendant therefore contended that the claimant had not acted in any way that could have been said to have interrupted the possession of the defendant as required by the Act. That the mere engaging the defendant in a conversation was not enough and as such the defendant's possession remains undisturbed. Counsel also submitted that as such the defendant was entitled to a declaration of ownership, but after having accepted that no such prayer had been contained in a counterclaim filed by the defendant and that there is a specific procedure to do so under the Act, this was not pursued by counsel for the defendant.

Court's findings and analysis

[13] The starting point for the court in this matter must be the provisions of the Act that govern the acquisition of prescriptive rights over the land of another.

[14] Section 135 (1) of the Act states “ *the ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of twelve years:*

Provided that no person shall acquire the ownership of Crown land.”

[15] By section 136 (6) possession that is acquired under section 135 however can be interrupted by

a) the physical entry upon the land by any person claiming it in opposition to the person in possession with the intention of causing interruption if the possessor thereby loses possession or

b) by the institution of legal proceedings by the proprietor of the land to assert his right thereto or

c) by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted.

[16] Additionally by The Registered Land (Amendment) Act 2007 at section 35 thereof the words twelve years in section 135(1) of the Act were amended to twenty years.

[17] It is therefore the conjoint effect of these provisions that this court must consider in determining if the claimant is entitled to his relief as prayed.

[18] There having been only one witness in this matter, this court must assess if it accepts that on a balance of probabilities he has established his claim.

[19] When that assessment is undertaken, it is clear that the claimant was aware from the time that he obtained registration of the land in 2000 that he knew of the presence of the defendant. In this court's mind this is also the period from which the defendant's cause of action accrued. In spite of counsel for the defendant, submitting to the court that the occupation of the defendant must be calculated from 1989, this being the period before the

claimant's legal acquisition, this court finds that this proposition has no support in law. Section 135(1) is clear, there is to be no adverse possession as against crown land – regardless of the number of years. You cannot adversely possess against crown land. How or when the defendant occupied the said parcel before transfer to the claimant is of little moment. The period that this court must therefore be concerned with is from 2000 to 2021 when this present claim was filed.

[20] That having been said, it was also from the lips of the claimant himself that on his return in 2009 and then in 2019 and even when he first obtained registration in 2000 that he was well aware of the presence of the defendant. It was also clear that between 2000 with the planting of trees to the construction of a building in 2009, the defendant continued in occupation. It was therefore with some interest that this court heard counsel for the claimant submit that the fact that the defendant had constructed up until 2020 a wooden structure that that structure could not afford him possession.

[21] There was no authority presented to the court to substantiate this submission and this court resoundingly rejects the same. The law is clear. The only two things that an individual seeking to rely on adverse possession must prove are 1) Factual possession and 2) an intention to possess.⁴ That is, that there must be “...an appropriate degree of physical control. It must be a single and [exclusive] possession...”⁵ and that the defendant must also show that he has held that intention. Thus “[a] defendant’s attitude to ownership is irrelevant. He may be well aware that the land belongs to someone else or he may mistakenly believe that it is his, but the defendant must intend to exclusively possess it- in other words he must intend to take control of it as if it were his own and to exclude everyone else from it.”⁶

[22] Since the defendant led no evidence, this court can only use the evidence of the claimant to determine whether the defendant evinced any such possession and intention to possess. From the claimant’s own evidence despite his “confronting” the defendant in 2000, 2009 and then in 2019 the defendant made no move to desist in his activities on the said parcel. This court does not accept on the evidence of the claimant himself that the

⁴ **JA Pye (Oxford) Ltd v Graham** 2002 UKHL 30 ; **Powell v McFarlane** (1977) 38 P & CR 452

⁵ **Powell v McFarlane** Ibid at 470-471

⁶ **Ellen (Edlyn) Works v Mitch Phillip and Margaret Phillip** GDAHCV2004/0429 at paragraph 77

possession of the defendant was anything less than clear evidence on his part to possess the same as his own. The acts of the defendant could not therefore be termed as “intermittent or sporadic”.⁷

[2] However the issue does not end there. The claimant has sought to rely on the acts of “confrontation” culminating with the issuance of a notice to quit through his attorney at law as sufficient to amount to an interruption of the possession of the defendant which this court finds that the defendant effected.

[24] However this assertion as contended by counsel for the claimant is not supported by the case law. In the case of **Ellen(Edlyn) Works** ⁸ my sister Ellis J in examining similar contentions had this to say, “ it is quite clear that mere assertions by the paper owner about his legal rights will be ineffective to stop time running in favour of a trespasser.” Later in the judgment relying on the decision of Alleyne J in **Iri Anthony Francis v Raphael Frederick and anr** ⁹ she quoted this passage “in order to interrupt acts of adverse possession the party must initiate and pursue effectively a remedy....” .

[25] Indeed this position was also proffered in the case of **Alfred St Clair Neverson v Brenda Neverson** ¹⁰. In that case the court stated it thusly “...it is settled law that extra judicial acts do not constitute acts of interruption of adverse possession. The principle is outlined by Sir Vincent Flossaic in the case **Florence Louise Belfon v Lester McIntosh** Civ App No 13 of 1944 as follows “ the respondents extra judicial protests, objections and demands do not in law constitute acts of ownership (ie acts which evince an intention to assert ownership) or acts of possession (ie acts which evince an intention to assume, retain or regain possession) or acts which legally interrupt, disturb or other wise affect the quality of adverse possession.”

[26] Additionally in the case out of the Caribbean Court of Justice **Toolsie Persaud Ltd v Andrew James Investments Ltd and ors** ¹¹ Justices de la Bastide and Hayton made it

⁷ **Egon Stoult and Joseph Frett v Ecedro Thomas and ors** BVIHCV2007/0224

⁸ Supra at paragraph 98

⁹ Grenada Civil Suit 100 of 2001

¹⁰ High Court Possessory Titles Claim 71 of 2009 (SVG) per Thom J (as she then was) at paragraph 24.

¹¹ [2008] CCJ 5 at paragraph 43

clear that “..if a dispossessed landowner is to stop time running in favour of the person in undisturbed possession of the land he must bring proceedings against that person. Alternatively of course the landowner could physically enter the land and take possession thereof, but the danger of breaches of the peace and resultant criminal proceedings are better avoided especially if the person in possession is likely to resist the landowner.”

[27] It is therefore clear to the court that the nature of the acts relied on by the claimant are insufficient to amount to an interruption of the said possession of the defendant which this court finds as a fact existed.

[28] In those circumstances the claim is dismissed with costs to the defendant on an unvalued claim pursuant to Part 65.5 CPR 2000.

Order of the court

1. The claim is dismissed in its entirety
2. Costs to the defendant on an unvalued claim pursuant to Part 65.5 CPR 2000

P. Nicola Byer
High Court Judge

BY THE COURT

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Registrar