

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

GRENADA

CLAIM NO. GDAHCV2017/0141

BETWEEN:

THEOBALD DELFISH

Claimant

and

[1] ANASTASIA WILLIAMS

[2] CHRISTOPHER COURTNEY

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Deborah St. Bernard for the Claimant

Mr. Ruggles Ferguson and Ms. Danyish Harford for the Defendants

2022: June 21, 30

JUDGMENT

[1] **ACTIE, J.:** This is a claim for delivery of possession of two-house spots forming part of a parcel of land comprising of Thirty-three Thousand Six Hundred and Fifteen Square Feet (33,615 sq. ft.) situate at Hermitage in the parish of St. Patrick in the State of Grenada (hereafter “the disputed land”).

Claimant’s case

[2] By fixed date claim form filed 3rd April 2017 and amended on the 29th June 2017, the claimant claims:

(1) A declaration that the claimant is the legal title owner in fee simple of the disputed land;

- (2) A declaration that the defendants occupy the respective house spots as bare licensees;
- (3) Delivery up of possession to the claimant by the defendants of the two respective house spots on the disputed land;
- (4) Such further and other relief; and Costs.

[3] It is the claimant's pleaded case that he is one of three sons of his deceased mother, Nadina Delfish, who died intestate on 28th February 2010. The claimant avers that Nadina Delfish was the original owner of the disputed land and during her life granted a licence to Rachel Charles, who was the mother of the first defendant, and to the second defendant to occupy house spots on the disputed land.

[4] The claimant avers that he became the legal title owner of the disputed land by virtue of a deed of conveyance executed on 21st July 2015 through administration of the estate and by purchasing the beneficial interest of his two siblings.

[5] The claimant contends that since the death of Nadina Delfish in 2010, both defendants have made attempts to claim possessory rights to the house spots that they occupy.

First Defendant's case

[6] The first defendant admits that the lot formed part of a larger lot owned by Nadina Delfish. The first defendant states that her mother, Roselyn Charles, was put in possession and permission was given by Nadina Delfish to build a chattel house on the lot in or about the year 1966 or 1967. The first defendant avers that Roselyn Charles paid rent to Nadina Delfish for the first two years of possession. Thereafter, Nadina Delfish asked Roselyn Charles not to pay any more rent as a result of a favour that Roselyn had performed for Nadina.

- [7] The first defendant states that she lived on the said lot with her mother, Roselyn Charles, from the age of sixteen (16) years until the age of forty (40) when she migrated from Grenada. The first defendant avers that her mother considered herself to be the owner of the lot and some time in or about the year 1991, converted a part of her wooden house to concrete and repaired a concrete driveway which leads up to the house. The first defendant states that there was never any challenge made to any of these activities by the said Nadina Delfish who later died in 2010. The first defendant states that Roselyn Charles died intestate on 29th December 2011, and she is the only person entitled to share in her deceased's mother's estate.
- [8] The first defendant avers that sometime in 2014, the claimant told her that he would like her to break down the house. The first defendant contends that the claimant's wife, from late 2015 to early 2016, committed acts of trespass on the said lot. The first defendant avers that letters were sent by her Attorney-at-Law to the claimant and his wife advising them of legal action if they failed to stop committing trespass on the said lot.
- [9] The first defendant contends that she is the owner of the lot of land on which her mother resided due to her mother's long, open, overt and undisturbed possession of same for more than 45 years and as sole beneficiary of her mother's estate.
- [10] The first defendant counterclaims for:
- (1) A declaration that the first defendant is the owner in possession of the lot of land on which Roselyn Charles resided;
 - (2) An injunction restraining the claimant, his servant and/or agents from trespassing on, interfering with, or exercising acts of ownership in relation to the said lot of land;
 - (3) Damages for trespass; and Costs.

Second Defendant's case

[11] The second defendant avers that Nadina Delfish became his adopted mother, though not legally and gave him the plot of land in 1994 to construct his dwelling home. He avers that he built his house at the age of twenty-two and lived there until he migrated to St. Kitts in 1998. He left the house with care takers and then rented it out. He returned to Grenada on vacation every year and would spend time at the home of Nadina and some time at his house whenever it was not rented. He avers that he built his home at the insistence of Nadina Delfish and has been the owner in possession of the disputed land measuring approximately fifty (50) feet long by thirty (30) feet wide. He said he considered himself as owner of the lot of land and has been continuously living in full, free, overt, undisturbed and exclusive possession of the lot of land to the exclusion of the claimant.

[12] The second defendant contends that the claimant's claim is barred, and that the claimant's title was extinguished by virtue of sections 4 and 27 of the Limitation of Actions Act CAP 173.

[13] The second defendant counterclaims:

- (1) A declaration that the second defendant is the owner in possession of the lot of land on which he resides;
- (2) An injunction restraining the claimant, his servant and/or agents from trespassing on, interfering with, or exercising acts of ownership in relation to the said lot of land;
- (3) Damages for trespass; and Costs.

Legal Analysis

Whether the defendants are entitled to occupy portions of the disputed land in their own right

[14] Neither party in these proceedings has presented any valid paper title to the property. The conveyance upon which the claimant relies is premised on a statutory declaration, which does not have the effect of vesting title.

[15] As was posited in the case of **Gordon Charles v Clarie Holas**¹:

“Both parties appear to have proceeded under the assumption that a statutory declaration has the legal effect of vesting title in land. It has no such effect. A statutory declaration is nothing more than a written document containing allegations of fact solemnly declared in form of law. It may have certain limited evidential value, but it is not an alternative method of conveying title to land.”

[16] The claimant in his witness statement and at trial states that his mother, up to her demise in March 2010, was the owner of the land in dispute. Upon death the property was administered, and he purchased his brothers' shares and became the sole owner of the parcel by indenture made on 21st July 2015. Sometime before he obtained title, he approached the first defendant and enquired what she intended to do with her deceased mother's house. She then asked that he sell or rent to her. He said he was not yet the owner and could not rent or sell.

[17] The claimant asserts that both defendants are bare licensees and that their license terminated on the death of Nadina Delfish. The claimant relies on a deed of indenture made on 21st July 2015. The second recital of the deed reads that Nadina Delfish was at the date of her death and by virtue of a Statutory Declaration dated 2nd March 2015 seized of indefeasible title to the property described as measuring 33,615 sq. feet. It is the evidence that Nadina Delfish died on 28th February 2010. The statutory declaration recited as the root of title in the deed of conveyance was made 2nd March 2015 which is five (5) years after

¹ Civil suit No. 151 of 1996

her death and four (4) months before the claimant's deed of indenture dated 21st July 2015 was executed.

- [18] It is trite that a statutory declaration does not automatically transfer title in land but can be relied on as evidence to support a claim for ownership. Both defendants acknowledged that the disputed property belonged to Nadina Delfish. However, they both contend that ownership had been passed on by virtue of acquiescence by Nadina Delfish in excess of the limitation period and had acquired rights to the said property by acts done overtly and continuously without any interference by Nadina Delfish or anyone else.

The first defendant

- [19] The first defendant admits that her deceased mother, Roselyn Charles, was put in possession of a house spot about the year 1966 or 1967 and given permission to build a chattel house on the disputed land.
- [20] Roselyn Charles began paying rent then stopped after two years, and thereafter converted part of her wooden house into concrete and repaired a concrete driveway leading up to the house without objection from the said Nadina Delfish. The reason for not paying rent was stated to be a favour which the said Roselyn Charles performed for the said Nadina Delfish, but this was not elaborated on by the first defendant.
- [21] The claimant in his reply states that there existed a paid license when Roselyn was put in possession of the land. The nature and/or terms of the tenancy agreement between the parties were not defined by either the claimant or the first defendant. Neither did the claimant provide any evidence that the said Roselyn Charles was a paying licensee.
- [22] The court accepts that the Roselyn Charles initially entered the property as a paying tenant. The issue is whether having entered as a paying tenant she can now dispossess Nadina Delfish who was the purported owner. To dispossess a paper title holder or purported owner, one must have entered the land without

their permission from the beginning, or having entered with permission, it must have expired.

[23] In **JA PYE Oxford Ltd and Another v Graham and another**², the House of Lords granted title to the Grahams who entered in possession as paying tenants. The Grahams stopped paying rent but remained in possession of the land performing acts of ownership without any challenge by the paper title, Pye. The House of Lords found that the result of Pye's inaction was that the Grahams enjoyed the full use of the land without payment for twelve (12) years.

[24] Slade J in **Powell v Mc Farlane**³ states that factual possession:

“...signified an appropriate degree of physical control. It must be a single and [exclusive] possession... Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances of the case in particular, the nature of the land and the manner in which land of that nature is commonly used or enjoyed. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so.”

[25] The most glaring demonstration of ownership and intention to so own by the first defendant and her predecessor is the development of the initial wooden house on the disputed land to a more permanent concrete structure. This, followed by the restoration of a concrete driveway to said house. It is the evidence that all the permanent improvements were made openly and unrestrained by Nadina Delfish and the claimant.

[26] The House of Lords in **JA Pye (Oxford) Ltd and others v Graham**⁴ further said:

“If the law is to attribute possession of land to a person who can establish no paper to possession, he must be shown to have both factual possession and the requisite intention to possess (“animus possidendi”).”

²[2002] 3 AER 865

³[1977] 38 P&CR 452

⁴2002] 3 AER 865

[27] The court is satisfied that the first defendant has established that her mother Roselyn Charles, having entered the property as a paying tenant remained in peaceful, uninterrupted, unconcealed possession of the lot of land as owner without paying rent in excess of twelve years. She has made permanent improvements to the dwelling home by adding concrete extension and concrete pavement to the access road leading to her home without any objection of Nadina Delfish from whom she first obtained permission to enter.

Whether the claimant's claim against the first defendant is barred by virtue of sections 4 and 27 of the Limitation of Actions Act

[28] **Section 4 of the Limitations of Actions Act CAP 173** provides that:

“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 claims, or, if the right has not accrued to any person through whom he 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.”

[29] Further, **Section 27 of the Limitation of Actions Act CAP 173** states:

“At the determination of the period limited by this Act to any person for making an entry of distress or bringing an action, the right and title of that person to the land for the recovery whereof the entry, distress, or action, might have been made or brought within that period shall be extinguished.”

[30] The right of action to recover land is barred whenever twelve years have elapsed from the time when any right of action accrued⁵. Time begins to run against an owner entitled in possession only when he/she has been dispossessed⁶. With respect to the first defendant, this would be on the expiration of the period for which payment rent was made⁷. Because, based on the evidence, the precise date on which the tenancy determined is not clear, it is open for the court to use the date of 1991 when the concrete structures were erected/restored as a starting

⁵ JA Pye (Oxford) Ltd & Ors v Graham and Another [2002] 3 WLR 221, 229

⁶ Gordon Charles v Clarie Holas GDAHCV1996/0151

⁷ Claim No. 23 of 2011 Reuben John v Doris Wyllie & Anr

point. From then to 2003, neither the claimant nor his predecessor has demonstrated any act to show their superiority of title. Thus, the claimant and his predecessor's right of action was barred, latest, by the year 2003. Consequently, the claimant's claim against the first defendant is statute barred.

The second defendant

[31] It is the second defendant's pleaded claim that from the age of eight (8), Nadina Delfish treated him like an adopted child. This was confirmed by his mother, Eileen Nedd. Eileen Nedd in her witness statement and at trial states that Nadina took the second defendant to live with her and treated him as her son. Ms. Nedd states that Nadina gave the second defendant the said spot when he stated his desire to add on a room to her house for his use. Ms. Nedd also indicates that Nadina told second defendant that he should build his own house on the spot of land.

[32] The second defendant's pleadings raises the issue of proprietary estoppel. The doctrine of proprietary estoppel is based on three main elements, namely a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance.

[33] The Privy Council in **Mohammed v Gomez and others**⁸ cited with approval the case of **Inwards v Baker [1965] 2 QB 29**, in which a father had allowed an expectation to be created in the mind of his son, that a bungalow built by him on the father's land would be and remain his home. Lord Denning MR (relying on *Plimmer v Wellington Corpn* (1884) 9 App Cas 699, 710-11) rejected the submission that the principle only applied when there was an expectation of some precise legal term and said:

“But it seems to me, from *Plimmer's* case in particular, that the equity arising from the expenditure on land need not fail merely on the ground that the interest to be secured has not been expressly indicated ... the court must look at the circumstances in each case to decide in what way the equity can be satisfied.”

⁸ [2019] UKPC 46

- [34] The Privy Council in **Mohammed** further cited what Lord Eldon LC said in *Dann v Spurrier* (1802) 7 Ves 231, 235-236:

“this court will not permit a man knowingly, though but passively, to encourage another to lay out money under an erroneous opinion of title; and the circumstance of looking on is in many cases as strong as using terms of encouragement.’

56. I would prefer to say (while conscious that it is a thoroughly question-begging formulation) that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity, in a case of this sort, is hugely dependent on context ...’ (paras 54-55)”

- [35] The court accepts the evidence that Nadina Delfish encouraged and acquiesced in the second defendant’s construction of his home on the plot of land given to him in 1994. The claimant in his witness statement admits that his mother allowed the second defendant to occupy the house lot and to construct a wooden house.
- [36] It is the claimant’s evidence in cross examination that he resided out of the jurisdiction from 1967 to 2005 and made periodic visits to Grenada about three (3) times between 1980 and 2002. The claimant accepts that he would not be privy to the agreement between the second defendant and Nadina Delfish.
- [37] The court does not accept the claimant’s assertion that the second defendant made a request to purchase the said lot as it is the claimant’s evidence that the second defendant instructed his lawyer to write a letter dated 2nd December 2016, with allegations of trespass. It would be incongruous that the second defendant would have approached the claimant indicating his interest to purchase and at the same time instructs his lawyer to issue the claimant with a letter alleging trespass.
- [38] The court based on equity and good conscience finds in favour of the second defendant on the proprietary estoppel principle raised in the pleadings and submissions filed. The essential principles of proprietary estoppel namely, encouragement or acquiescence, detrimental reliance, unconscionability in withdrawing the promised benefit⁹ are all applicable to the facts of this case. The

⁹ *FBO 2000 (Antigua) Limited v Vere Cornwall Bird Jr et al* ANU Civil Appeal No 30 of 2003

court accepts that the Nadina Delfish acquiesced in the second defendant's possession and construction of his home as owner of the lot. The second defendant relied on the encouragement on the belief that the lot belonged to him. It would be unconscionable to withdraw the promised benefit of owning the plot of land and making the improvements in building his home since 1994. The court is a court of equity and will not allow the claimant to withdraw the agreement made by Nadina Delfish and the second defendant in excess of twenty-years before the claimant's Deed of Indenture executed in 2015 and the filing of the claim in 2017.

[39] The court finds that both defendants have satisfied their counterclaims on a balance of probability. The court takes into consideration the defendants' expenditure and the permanence of the buildings in unconcealed possession without any objection and with the acquiescence of Nadina Delfish.

[40] The disputed lots form part of the larger parcel of land described in the claimant's Deed of Indenture. It is for the defendants to obtain surveys to delineate the plots of land that they respectively occupy from the parcel described in the said conveyance. Secondly, the first defendant admits that the estate of her deceased mother "Roselyn Charles" has not been administered. Accordingly, the said lot and house forms part of the estate of Roselyn Charles, until administered and vested in accordance with the Devolution of Estates Act.

[41] This claim is one of the plethora of land disputes in the court system and further highlights the need to regularise and guarantee land ownership through a nationwide land registration and titling project as was done in many of the OECS states.

ORDER

[42] For the foregoing reasons, it is ordered and directed as follows:

1. The claimant's claim against the defendants stands dismissed.

2. The first and second defendants succeed on their counterclaims against the claimant.
3. In relation to the first defendant, it is ordered and declared as follows:
 - a. The first defendant, Anastasia Williams, holds the lot of land and the dwelling house in dispute on behalf of the estate Roselyn Charles, deceased, until the estate is administered and vested in accordance with the Devolution of Estates Act.
 - b. An injunction restraining the claimant, Theobald Delfish, his servants and/or agents from trespassing on, interfering with, or exercising acts of ownership in relation to the said lot of land.
4. In relation to the second defendant, it is ordered and declared as follows:
 - a. The second defendant, Christopher Courtney, is the owner in possession of the lot of land on which he resides.
 - b. An injunction restraining the claimant, Theobald Delfish, his servants and/or agents from trespassing on, interfering with, or exercising acts of ownership in relation to the said lot of land.
5. The court takes into consideration that both defendants, although having filed separate defences and counter claims, were represented by the same legal practitioner and accordingly awards Prescribed Costs in the sum of \$7,500.00 to each of the defendants pursuant to CPR 65.5 (2) to be paid by the claimant within Sixty (60) Days of today's date.

Agnes Actie
High Court Judge

By the Court

Registrar