

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

GRENADA

CLAIM NO. GDAHCV2016/0402

BETWEEN:

ADOLPHUS JOHN SITNEY

Claimant

and

[1] **BENEDICT NOEL**
[2] **MARTHA NOEL**
[3] **BERNADINE STEELE**
[4] **RACHEL STEELE**
[5] **DUNBAR CHRISTOPHER STEELE**
[6] **JAVIER RICKY STEELE**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mrs. Danielle Williams Mitchell for the Claimant

Dr. Francis Alexis QC for the First and Second Defendants

Mr. Anslem Clouden for the Third, Fourth, Fifth and Sixth Defendants

2022: March 21;
May 31

JUDGMENT

[1] **ACTIE, J.:** This is a claim for recovery of possession situate at Cook Hill Road, Grenville, in the parish of St. Andrew in the State of Grenada (hereafter “the said land”).

Claimant's Case

[2] By fixed date claim form filed 24th October 2016 the claimant claims:

- (1) Damages for trespass;
- (2) An order that the defendants forthwith vacate and deliver up possession of all that portion of land comprising One Rood Three Poles (1 Rd. 3 Pls.) at Cook Hill Road, Grenville, St. Andrew's belonging to the claimant which the defendants now occupy without the claimant's permission;
- (3) An order that the defendants forthwith break down and remove the chattel houses and all other structures that are unlawfully erected on the claimant's said land;
- (4) An injunction restraining the defendants, their servants or agents from further trespassing upon, building upon or in any other way encroaching upon the claimant's lot of land;
- (5) Mesne profits at the yearly rate of EC\$300.00 from 2013 until possession;
- (6) Interest; Costs; and Such further and other relief as the court deems just.

[3] The claimant contends that he is the owner of the said land by virtue of a deed of gift dated 15th April 1997 from his mother, Rita Sitney. The claimant states that he has paid property tax for the property since he became owner. No property tax receipts are before the court.

[4] The claimant avers that he has always been aware that his mother was in possession of the property. He states that his mother planted short crops on the land, cleared the land, and used the property for her own purposes.

[5] The claimant also states that he was aware that Geraldine Noel, the mother of the first and second defendants, built a small wooden house on an area of the property. The third, fourth, fifth and sixth defendants reside in the same wooden

house. The third defendant is the daughter of Alexander and Catherine Steele and she resided in the house built by her parents from childhood.

- [6] The claimant avers that after becoming owner of the property he became aware that the defendants' parents and/or grandparents had built their wooden houses on the property by virtue of a rental arrangement with his family. He states that his mother collected rent from both families for use of a house spot on the property.
- [7] The claimant contends that he continued the rental agreements with the parents of the defendants collecting a yearly rent of \$50.00 through his agent and cousin, Miranda Belle (hereafter "the claimant's agent"). The claimant's agent would thereafter issue receipts to the tenants.
- [8] The claimant avers that in 2001, he raised the yearly rent to \$75.00, then to \$100.00 in 2005 and \$300.00 in 2008.
- [9] The claimant contends that his agent collected rent and issued receipts to Geraldine Noel from 1997 to 2010 when she passed away, and from Alexander Steele from 1997 to 2009. Upon Alexander Steele's death on 30th September 2009, the claimant states that his agent collected yearly rent from Catherine Steele.
- [10] The claimant states that he offered to sell the property to Catherine Steele and Geraldine Noel by way of letters dated 10th April 2010 and 18th October 2010 respectively, however they both died before a sale could be concluded. Following their death, the claimant considered his tenancy agreement at an end and offered to sell the property to their children. Two sale agreements were prepared, and each sale was for Five Thousand Eight Hundred and Fifty-three square feet (5,853 sq. ft.) of land in respect of the area of land where the two houses in which the defendants lived.

- [11] The claimant avers that the defendants indicated that they were interested in purchasing the property. As a result of the expressed interest, the claimant did not insist on the payment of rent while negotiations were ongoing.
- [12] A sale agreement dated 27th October 2013 was prepared by the claimant's agent between him and Lindy Alexander, sister of the third defendant, and a second sale agreement was prepared between the claimant and Anastasia Noel, the sister of the first and second defendants. According to the claimant, Anastasia Noel was paying for the property as the first and second defendants appeared slow witted.
- [13] Anastasia Noel however decided not to continue the sale on her attorney's advice that the claimant's title was defective.
- [14] The claimant argues that correspondence from the attorney of Anastasia Noel demonstrates that the first defendant knows that she has no right to stay on the property and that she sought advice on purchasing the property.
- [15] Following the break down in the agreement to buy the property, the claimant's agent demanded the yearly rent from the defendants, but the defendants failed to pay. Accordingly, no rent was paid by the defendants since 2010 when Geraldine Noel died and after the death of Catherine Steele in 2012. The claimant instructed his then attorneys to issue a Notice to Quit the premises to the first, second and third defendants.
- [16] The claimant later brought proceedings in the magistrate court against the first, second and third defendants for recovery of possession and non-payment of rent. The action failed however, as the magistrate ruled that the defendants were not tenants. In the defence in the magistrate's court however, the defendants admitted to paying rent, but that it was a mistake in law or fact. The claimant argues that this is evidence that the defendants do not own the property and were not in occupation of the property with intent to own the property.

- [17] According to the claimant, the defendants refuse to pay rent and to move from the property, thus they are unlawfully trespassing, as they do not have the permission of the claimant to remain on the property.

First and Second Defendants' case

- [18] The first and second defendants (hereafter "the Noels") are siblings and the children of Geraldine Noel who died on 25th June 2010.

- [19] The Noels dispute that the claimant is the owner of the lot of land and put the claimant to strict proof of the legality and validity of the deed of gift which is the claimant's title, and the statutory declaration upon which the claimant's title is based.

- [20] The Noels aver that Geraldine Noel built her wooden house on the property in or about 1955, and that they have been living in the house built by their mother. Geraldine did not do any construction on the wooden building.

- [21] The Noels deny that there was any such agreement for rental between their parents or grandparents and the claimant's family. The Noels do state, however, that Geraldine Noel paid the claimant a yearly sum of \$50.00 in 2000 and \$75.00 in the years 2001 to 2003 on the representation made by the claimant that he had become the owner of the property. After paying rent for April 2003 to March 2004, the Noels aver that the claimant indicated to the said Geraldine Noel that rent would be increased to \$100.00 for April 2004 to March 2005.

- [22] The Noels contend that Geraldine Noel was induced by a representation by the claimant that he owned the property which was a mistake in fact or law. Geraldine then stopped paying rent to the claimant, terminating any tenancy arrangement which would have existed from April 2004. The Noels aver that in the circumstances, any receipt purporting to show that Geraldine paid rent to the claimant after April 2003 is false. The Noels further state that no rent was paid to the claimant's agent.

[23] The Noels aver that regarding the sale of land to Lindy Alexander and Anastasia Noel, no mention was made in the letter to Anastasia Noel of the claimant's intention to sell land to either of the Noels. The Noels further state that there was never any discussion between them and the claimant on purchasing the property.

[24] The Noels contend that neither of them paid rent to the claimant, and that no agent ever demanded rent from them. They admit to receiving a notice to quit, however they aver that they were not tenants of the claimant.

[25] The Noels state that they have been in long open continuous possession of the property without paying rent to the claimant or otherwise recognising him as owner of the property, adversely to any claim by him to ownership thereof, undisturbed by him. The Noels therefore contend that the occupation by them of the property has been nec vi, nec clam, nec precario. Further, no rent was paid to the claimant's agent on behalf of the claimant. The Noels have been living at their home on the property with Geraldine until she died on 25th June 2010 and have since been living by themselves. The Noels therefore contend that the claimant cannot bring an action in 2016 by virtue of Section 4 of the Limitation of Actions Act CAP 173.

[26] The Noels counterclaim for:

(1) A declaration that they are in law entitled to possession of all that lot of land situate at Cook Hill Road in the town of Grenville in the parish of St. Andrew in the State of Grenada containing by estimation some Five Thousand Eight Hundred and Fifty-three Square Feet (5,853 sq. ft.) English Statute Measure more or less and the wooden dwelling house thereon which they have been in occupation or possession of without recognising anyone else as owner since April 2004;

(2) An injunction restraining Adolphus John Sitney whether by himself or by his servants or agents or otherwise howsoever from trespassing upon or in any way encroaching upon the said lot of land of the first and second defendants;

Third, Fourth, Fifth and Sixth Defendants' case

- [27] The third, fourth, fifth and sixth defendants (hereafter "the Steeles") deny the claimant's claim of ownership over the disputed lot.
- [28] The Steeles contest the validity of the deed of gift since the root of title is a statutory declaration. No particulars with respect to Rita Sitney's alleged occupancy were given, and the Steeles aver that Rita Sitney never planted crops or tended to the property as alleged by the claimant.
- [29] The Steeles state that in or about the year 1966, Catherine Steele and Alexander Steele constructed a wooden house on the disputed lot. They state that their father, Alexander Steele, cleared the land to build their house as the land was uninhabited and covered with trees. He later died on 30th September 2009. The third, fourth and fifth defendants reside on said property while the sixth defendant resides elsewhere. According to the sixth defendant, he has not resided on the disputed lot since 2004.
- [30] The Steeles contend that they have no knowledge of the claimant's mother collecting rent as alleged and put the claimant to strict proof thereof. The Steeles state that any payments of rent made were ceased in 2003 when Alexander Steele and Catherine Steele became suspicious of the claimant's ownership of the disputed lot. Any rents which were paid were mistakenly paid on the belief that the claimant had good title to the property. The Steeles further aver that rent was not collected prior to the year 2000, nor after the year 2003, and that after Alexander Steele's death, Catherine Steele did not pay any rent.
- [31] The Steeles admit that a concrete bathroom was added to their home and was completed without receipt of letter from the claimant as alleged. The fourth defendant avers that she constructed said bathroom.
- [32] The Steeles deny showing or expressing any interest in purchasing the disputed lot, and further state that they never solicited the advice of an attorney with regard to purchasing the property from the claimant. The Steeles further aver that they

were never party to any agreement for the sale of the property, nor did they ever have sight of a notice to quit.

[33] The Steeles contend that since April 2004 they have been in long, open, continuous and undisturbed possession of the disputed land without paying any rent to the claimant and/or his agent or acknowledging him to be the owner of the property. Their occupation being nec vi, nec clam, nec precario having so occupied the property to the exclusion of the world at large. The Steeles state that by virtue of Section 4 of the Limitation of Actions Act, CAP 173, the claimant is barred from making such a claim for possession of the property.

[34] The Steeles counterclaim for:

- (1) A declaration that they are in law entitled to possession of the lot of land and the wooden dwelling house thereon built by Catherine Steele and Alexander Steele which they have been in occupation or possession of undisturbed without recognising anyone else as owner since April 2004;
- (2) An injunction restraining Adolphus John Sitney from trespassing upon or in any other way encroaching upon the said lot of land of the third, fourth, fifth and sixth defendants;
- (3) Such further or other relief as the court shall deem fit and Costs.

Legal Analysis

Whether the claimant's title to the lot of land is superior to the defendants'

[35] According to Michel JA in **Marlon Mills v Stacey McKie**¹ at paragraphs 24 and 25 of his judgment:

“[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

¹ SVGHCVP2016/0001

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."

[36] It is trite law that a statutory declaration does not confer title², however it provides evidence of possession. The claimant's title being a deed of gift which has a root of a statutory declaration thus amounts to a title through possession.

[37] Consequently, neither of the parties in these proceedings has presented any valid paper title to the property. In **Claribelle Connell v Tredon Connell**³, citing the learned authors of Law of Real Property by Megarry and Wade (3rd ed.) at p. 997 had this to say on the principle to be applied:

"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.

[38] It is the claimant's case that from 1997 until the year 2010 he collected rent from Geraldine Noel, and from 1997 until 2012 from Alexander Steele, and, following the death of Alexander Steele, from Catherine Steele.

² Stephanie Baptiste v Salisha Jones GDAHCV2014/0591

³ Civil Appeal No. 25 of 2004

- [39] On the other hand, it is the Noel's case that rent was paid up until 2004, and it is the Steele's case that rent was paid up until 2003. Thereafter, both the Noels and the Steeles contend that they have been in possession in their own right.
- [40] The claimant relies on copies of receipts to prove the payment of rent by the predecessors of the defendants. One such receipt is signed by the claimant and appears to be issued to Alexander Steele on 16th April 2010. This is factually impossible as Alexander Steele died in 2009.
- [41] Also questionable is the associated numbers on the receipts provided. Receipt number 95 in the name of Alexander Steele is dated for the rental period of 2008-2009, whereas receipt numbered 96, in said name of Alexander Steele, is dated for a period prior to the period contemplated in receipt 95, as 2007 to 2008. This is from copies of the same receipt book.
- [42] Furthermore, there is no evidence before the court of the claimant's receipts for rent for the period 1997 to 2000; the receipts exhibited commence from the year 2000. Moreover, there is no receipt before the court with respect to the rent which the claimant asserts was paid on behalf of the Steeles relative to the year 2012.
- [43] A further inconsistency is the claimant's offer of first refusal to Geraldine Noel by way of letter dated October 2010, when it is a fact that Geraldine passed away on 25th June 2010.
- [44] Given the above, the court is more inclined to find for the defendants that their predecessors paid rent to the claimant, and were tenants thereof, up until April 2004 in the case of the Noels, and 2003 in the case of the Steeles.
- [45] As regards the defence of the first, second and third defendants filed in the Magistrate Court on 25th August 2015 which the claimant relies on as evidence that the defendants paid rent, the court is of the view that said defence is inconclusive as to when rent was paid so as to confirm the payment of rent by the defendants. As it stands, the claimant has not produced any document evidencing payment of rent in the name of the defendants.

- [46] Furthermore, the claimant's evidence regarding any potential sale with Anastasia Noel and Lindy Alexander is of no moment as neither is a party against whom the claimant is bringing this action.
- [47] The existence of a tenancy, which the defendants admit, albeit up until a certain point, evidences a superior right to entitlement to the property by the claimant than that of the defendants for that period. Counsel for the claimant submits that a tenant cannot assert title adverse to his landlord whether it be for himself or for a third party and relies on **Wisbech St. Mary Parish Council v Lilley**⁴.
- [48] The principle in the case of **Wisebech**, however, is that where a tenant claims a title in himself that is adverse to the landlord, or he permits a third party to have possession of the leased premises for the purpose of enabling the third party to set up a title that is adverse to the landlord, then such an act of the tenant would amount to a repudiation of the landlord's title and would result in a forfeiture of the lease⁵. This does not prevent a tenant from asserting a title adverse to the landlord, and, in any event no such agreement or tenancy arrangement existed between the defendants and the claimant.
- [49] There is no evidence of any of the defendants acknowledging the claimant as owner of the property. This is since before the death of their predecessors, whom, only from 2000 to 2003 (for the Steeles) or 2000 to 2004 (for the Noels) acknowledged the claimant as owner of the property. The court does not agree with the claimant that since the predecessors of the defendants had, at some point in time, acknowledged the claimant as owner of the property, by extension the defendants are estopped from disputing the claimant's title. The Noels' and Steeles' possession in their own right would have commenced following the death of their predecessors, whose possession in their own right commenced at their refusal to pay rent to the claimant.

⁴ [1956] 1 WLR 121

⁵ SVGHCV2009/0094 Pomme-Granate Ltd v Gregory Browne & Anr

- [50] The test to satisfy the requisite intention to dispossess a paper title owner was outlined by Slade J in **Powell v Macfarlane** and approved by the House of Lords in **JA Pye (Oxford) Ltd and others V Graham**⁶ said:

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

.....

“what is really meant, in my judgment, is that the animus possidendi involves the intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow”

- [51] The Grahams in **JA Pye (Oxford) Ltd and others V Graham** were prepared to pay for the grazing licence and had actually made an offer to purchase the land from the paper title holder although they first entered into possession with consent under rental arrangement. The House of Lords in **JA Pye** cited the Privy Council decision in *Ocean Estates Ltd v Pinder* [1969] 2 AC 19, 24 where Lord Diplock said that an admission by the squatter to that effect “which any candid squatter hoping in due course to acquire a possessory title would be almost bound to make” did not indicate an absence of an intention to possess. Once it is accepted that the necessary intent is an intent to possess not to own and an intention to exclude the paper owner only so far as is reasonably possible, there is no inconsistency between a squatter being willing to pay the paper owner if asked and his being in the meantime in possession. An admission of title by the squatter is not inconsistent with the squatter being in possession in the meantime. The court held that the Grahams were in occupation of the land which was within their exclusive physical control with the requisite animus possidendi.

⁶ 2002] 3 AER 865

[52] This possession in their own right, in the instance of the Steeles, is demonstrated through the construction of a concrete bathroom structure in 2007, which the Steeles aver was completed.

[53] The claimant argues that the defendants would only have dispossessed the claimant from his land from the end of the time provided by the Notice to Quit, as only then were they occupying the property with the intention to dispossess the claimant.

[54] The court does not agree. In **Reuben John v Doris Wyllie & Anr**⁷, Thom J, as she then was, referred to the case of Hayward and Another v Challoner in respect of which she stated:

“In Hayward’s case a small parcel of land was let to a rector on a yearly tenancy. No rent was paid after 1942. In 1955 the plaintiff bought lands including the parcel of land that was let to the rector. In 1966 the plaintiff instituted proceedings to recover the land. In dismissing the appeal of the claim for possession, the court held that there having been a periodic oral tenancy to the rector, he ceased to be a tenant when the period covered by the last payment of rent expired and the subsequent possession became adverse possession. The plaintiff’s right of action to recover the land was therefore barred since the land was adversely possessed for more than twelve years.”

[55] The court is thus of the view that time began running from the expiration of the period for which payment of rent was made.

[56] This being the case, the court is thus of the view that the claimant has not made out to have a superior title to possession than that of the defendants. It is trite law that he who alleges and seeks to establish their rights in law must prove his case, and on a balance of probabilities, and the claimant in this instance has failed so to do.

Whether the claimant’s claim is barred by virtue of sections 4 and 27 of the Limitation of Actions Act

⁷ Claim No. 23 of 2011

[57] **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.”

[58] 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.”

[59] The right of action to recover land is barred whenever twelve years have elapsed from the time when any right of action accrued⁸. Time begins to run against an owner entitled in possession only when he/she has been dispossessed⁹.

[60] From the date on which Geraldine Noel discontinued payment of rent which is April 2004 up until the filing of the claim in October 2016, the period as required by statute for the bringing of an action has elapsed.

[61] Similarly, from the date on which Alexander Steele discontinued payment of rent, which is in 2003, up until the filing of the claim in October 2016, the period as required by statute for the bringing of an action has elapsed. Consequently, the claimant's claim against the defendants is statute barred.

[62] The court is of the view that the Noel's and Steele's, have established that they both had the factual occupation and requisite intention to possess (Animus Possidendi) to dispossess the claimant.

⁸ JA Pye (Oxford) Ltd & Ors v Graham and Another [2002] 3 WLR 221, 229

⁹ Gordon Charles v Clarie Holas GDAHCV1996/0151

Conclusion

[63] Based on the foregoing, the court finds that the defendants have proven their defence and counterclaim. They have been in possession *Nec vi*, *Nec clam*, *Nec precario*, that is, 'not by force, nor stealth, nor the licence of the owner'.

[64] It is therefore ordered and declared as follows:

- (1) Benedict Noel and Martha Noel are in law entitled to possession of all that lot of land situate at Cook Hill Road in the town of Grenville in the parish of St. Andrew in the State of Grenada containing by estimation some Five Thousand Eight Hundred and Fifty-three Square Feet (5,853 sq. ft.) English Statute Measure more or less and the wooden dwelling house thereon which they have been in occupation or possession of without recognising anyone else as owner since April 2004.
- (2) Bernadine Steele, Rachel Steele and Dunbar Christopher Steele are in law entitled to possession of all that lot of land situate at Cook Hill Road in the town of Grenville in the parish of St. Andrew in the State of Grenada containing by estimation some Five Thousand Eight Hundred and Fifty Three Square Feet (5,853 sq. ft.) English Statute Measure more or less and the wooden dwelling house thereon built by Catherine Steele and Alexander Steele which they have been in occupation or possession of undisturbed without recognising anyone else as owner since 2003;
- (3) Adolphus John Sitney whether by himself or by his servants or agents or otherwise howsoever is restrained from trespassing upon or in any way encroaching upon the said lot of land of the defendants described at paragraphs 1 and 2 above; and
- (4) The claimant, Adolphus John Sitney, shall pay prescribed costs pursuant to CPR 65 .5(2) (b) in the sum of \$7,500 to the defendants Noels and

Steeles, respectively, within sixty(60) days from today's date unless otherwise agreed.

Agnes Actie
High Court Judge

By the Court

Registrar