

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

GRENADA

CLAIM NO. GDAHCV2016/0277

BETWEEN:

**JOAN HERRY
(Administratrix of the Estate of Wilson Stroude)**

Claimant

and

GRACE MARSHALL

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Sandina Date for the Claimant

Mr. Derick Sylvester and Ms. Alicia Lawrence for the Defendant

2022: March 21, 31

JUDGMENT

[1] **ACTIE, J:** This is a claim for recovery of possession of a parcel of land comprising Five Thousand Six Hundred and Eighty-nine Square Feet (5,689 sq. ft.) situate at Ottley Lane, Gouyave, in the parish of St. John in the State of Grenada (hereafter "the said land").

Claimant's Case

[2] By fixed date claim form filed 28th July 2016 the claimant claims:

- (1) A declaration that the claimant is entitled to the freehold property and possession of the said land;
- (2) An injunction to restrain the defendant whether by herself or her servants and/or agents or otherwise howsoever from trespassing on the said land;

- (3) An injunction restraining the defendant from erecting or permitting to be erected any structure on the said land or otherwise interfering with the said land;
- (4) General damages for trespass;
- (5) Possession of the said land;
- (6) An order that the Statutory Declaration of Virginia James dated the 10th September 2010 and recorded in the Deeds and Land Registry of Grenada in Liber 32-2010 at Page 306; and the Deed of Gift dated 10th September 2010 from Septimus Britton to the defendant and recorded in the Deeds and Land Registry of Grenada in Liber 33-2010 at Page 968 be cancelled off the register or records of the Deeds and Land Registry of Grenada pursuant to the powers of the High Court contained in Section 23 of the Deeds and Land Registry Act Cap. 79 of the Continuous Revised Laws of Grenada 2010.
- (7) Such further and other relief as this Honourable court deems just; and Interest.

[3] The claimant brings this action in her representative capacity as Administratrix of the estate of Wilson Stroude, deceased, late of Gouyave, St. John.

[4] The claimant avers that Wilson Stroude was at all material times the freehold owner in possession of land formerly part of Gouyave Estate, St. John, containing by admeasurement One Rood Two Poles (1 Rd. 2 Pls.) English Statute Measure referred to in a conveyance made 16th January 1950 between Susan Hewitt of the One Part and Wilson Stroude of the Other Part (hereafter “the said conveyance”).

[5] On 10th September 2010 however, a Statutory Declaration duly acknowledged by Virginia James declared that Septimus Britton was in exclusive possession of the

said land, which, the claimant avers, forms part of the estate of Wilson Stroude, being part of the land referred to in the said conveyance.

- [6] That same day, the said Septimus Britton conveyed the property referred to in the Statutory Declaration to the defendant by way of deed of gift which is recorded in the Deeds and Land Registry of Grenada (hereafter “the said deed of gift”).
- [7] The claimant contends that Septimus Britton came onto the said land when he and his common law wife, Faith Marshall, who was the defendant’s mother, purchased a chattel house on the property from a former tenant of Wilson Stroude, Sarafin (sometimes referred to as “Sara”) Commissiong, in which the claimant admits that she has no interest. The claimant states that Septimus Britton was always a tenant of the estate of Wilson Stroude paying rent in the sum of \$15.00 per annum at one period of time, \$30.00 per annum at another period of time, and lately \$100.00 per annum to the claimant, or agents of the estate of Wilson Stroude, for a house spot for the chattel house. The last date on which the claimant avers a portion of rent was paid by Septimus Britton was 17th September 2007.
- [8] On 27th June 2011, the claimant through her Attorneys wrote to Septimus Britton demanding payment of outstanding rents in the sum of \$440.00 and delivery of vacant possession. Thereafter in April 2012, the claimant filed an claim against Septimus Britton in the Gouyave Magistrate Court for vacant possession, rent arrears and mesne profits, among other things. Septimus Britton died on 5th November 2012, before the conclusion of the hearing at the Magistrate’s Court.
- [9] The claimant further avers that Dorrani Marshall, the son of Faith Marshall and brother of the defendant, after the death of Septimus Britton, paid the outstanding rents for the house spot and continues to pay rent at the rate of \$100.00 per annum. The claimant therefore contends that the defendant cannot show user as of right nec vi nec clam nec precario¹.

¹ The defendant’s response to this pleading is that the Reply to Defence and Defence to Counterclaim were filed out of time

Defendant's case

- [10] The defendant avers that since in or around 1975, Septimus Britton continuously and exclusively occupied the said land until his death on or about 5th November 2012, without accounting or paying any rent to the said estate of Wilson Stroude or to any other person in respect of the said land. Septimus Britton occupied the property together with Faith Marshall, Dorrani Marshall, the defendant and the defendant's son Jason Marshall.
- [11] The defendant states that at no time was there any purported interruption of the possession and occupation of the said Septimus Britton or any family member on the said land prior to 2012 when Septimus Britton died, and that Septimus Britton had been in occupation for a period of at least 36 years. Because of this, the defendant contends that the claimant is barred from asserting any title against Septimus Britton over the said land by virtue of sections 4 and 27 of the Limitation of Actions Act.
- [12] The defendant further denies that Dorrani Marshall paid any sums as rent in respect of the said land on the instruction of Septimus Britton, and states that if any payments were made it was not made under the defendant's authority.
- [13] In proof of ownership, the defendant denies that Septimus Britton sought permission from anyone for the construction of a concrete bathroom and toilet.
- [14] The defendant states that since becoming the owner of the property, she has not paid any sums to the claimant or to any other person in respect of the said land, and has paid property taxes for the years 2011 to 2016.
- [15] The defendant counterclaims for, inter alia:
- (1) A declaration that the defendant is the owner of the said land, or alternatively a declaration that the defendant has an equitable interest in the said land;

- (2) A permanent injunction restraining the claimant in her capacity as Administratrix of the estate of the said Wilson Stroude or any of the claimant's servants and/or otherwise howsoever, from trespassing upon or interfering with or in any way disturbing the peaceful enjoyment by the defendant of the said land;
- (3) Such further or other relief as the court shall deem fit; and Costs.

Legal Analysis

Whether a tenancy existed between the claimant and the defendant's predecessor or whether the defendant's predecessor or the defendant adversely possessed the said land

- [16] It stands to be considered whether Septimus Britton, through whom the defendant claims title to the property, or the defendant, were tenants of the Estate of Wilson Stroude, or whether the said Septimus Britton and the defendant adversely occupied the said land.
- [17] Title can be acquired by adverse possession even though a person is unaware of the true ownership of the property, or believed that it was already theirs². The animus required of the adverse possessor relates not to ownership of the land but rather to the assertion of a factual degree of complete and exclusive physical control over the land³. It must be shown that the alleged possessor had 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 so⁴.
- [18] The defendant states in her witness statement that she was born and raised on the said land from the year 1955. In cross-examination, moreover, the defendant averred that she recalls moving to the said land when she was younger and going to school. This however contradicts the defendant's pleading at paragraph 4 of

² Elements of Land Law cited in GDAHCV2011/0454 Don-Lee Clarke v Desmond Alexander & Ors

³ GDAHCV2011/0454 Don-Lee Clarke v Desmond Alexander & Ors

⁴ GDAHCV2011/0454 Don-Lee Clarke v Desmond Alexander & Ors

the Amended Defence and Counterclaim filed, as well as the evidence of Virginia James, who states in the 2010 Statutory Declaration that Septimus Britton was continuously in full, free and exclusive possession of the land from around the year 1976. Further, Dorrani Marshall, who is the brother of the defendant but as a witness for the claimant, indicated that he was about the age of 12 when his mother and Septimus Britton purchased a chattel house on the land. The time therefore that Septimus entered the property is established to be in the 1970s.

[19] It is the claimant's position that since Septimus Britton came onto the said land, full rent has been collected from him up to the year 2006, and that thereafter difficulty was encountered in collecting rent when partial rent was paid in 2007. The court notes that the claimant avers that she has been managing the property from 2004 to present, yet only one copy of a receipt in 2007 has been produced to prove her collection of rent.

[20] This receipt is not uncontested. The defendant contends that it cannot be established whether the receipt produced is a carbon copy of the receipt, or the original, which, based on the claimant's position, ought to be in the possession of the said Septimus Britton. Furthermore, as the Grant of Letters of Administration in the Estate of Wilson Stroude is dated in 2008, the defendant argues that the claimant is seeking to establish that prior to obtaining authority to act on behalf of the deceased's estate, she collected rents on behalf of the estate. Consequently, the defendant argues that this receipt was fabricated for the purpose of establishing a claim in respect of the said lot of land.

[21] In addition, the claimant sought to prove that Dorrani Marshall paid the arrears of rent from 2007 to 2012, when Septimus Britton died, and thereafter until the year 2018. The receipts produced by Dorrani Marshall in support of the claimant's indication of rent being charged and paid for by Dorrani Marshall on behalf of Septimus Britton's occupation are also questionable. Firstly, details of three of the receipts are incomplete due to the improper copying of same. Secondly, the numbers of the receipts put into evidence do not accord with significant passage

of time. The first receipt number in 2013 is 18563-⁵ while the last receipt number is 185792, and the copies of the receipts demonstrate that they were all taken from the same receipt book which has consecutively numbered sheets. It is not coincidental that each of the receipts produced start with the number “185”, and taking this evidence as it appears to the court, this means that for about 5 years, only about 162 receipts were issued by the law office to their clients.

- [22] The court totally rejects the evidence of Dorrani Marshall. It is the evidence of this witness, as well as of the defendant, that he added a bedroom which forms part of the house located on the said land during Septimus Britton’s occupancy. Based on this evidence, therefore, as well as the above analysis of the receipts produced, the court is of the view that this witness’ evidence is self-serving and unhelpful to these proceedings.
- [23] As the existence of a tenancy is to be determined solely on the evidence that has been produced by the parties, given the challenges to the 2007 receipt and Dorrani Marshall’s evidence, as well as the fact that the other witness’, Rhonda Herry’s, evidence of collection of rent is familial to the claimant, the court can only rule that the claimant has not proven on a balance of probabilities that there existed a tenancy between the said Septimus Britton or the defendant and Wilson Stroude and his estate.
- [24] It falls to be considered therefore, whether the defendant is proven to be in adverse possession of the claimant.
- [25] By virtue of the said conveyance, Wilson Stroude’s Estate became entitled to One Rood Two Poles (1 Rd. 2 Pls.) of land situate at what was formerly part of Gouyave Estate in the parish of St. John. It is the claimant’s evidence that the said land forms part of the land conveyed in the said conveyance. In cross examination, the claimant stated that a survey was done of the lot which evidences that the defendant was occupying the lot, but admitted that said survey was not before the court.

⁵ Last number unable to be ascertained

- [26] The defendant has produced evidence of Virginia James, and of Dennis Duncan, a witness. Indeed, statutory declarations, in this case in the form of Virginia James' evidence, do not confer title⁶, however they provide evidence of possession, that is, evidence of possession by Septimus Britton since the year 1976.
- [27] It is also evident that a concrete bathroom and toilet was constructed on the said land without objection by the claimant. The bathroom was constructed on the instruction of the defendant, which, in cross examination, she stated was done to facilitate her father, Septimus Britton, who had then fallen ill.
- [28] It is also the evidence of the defendant that after the recording of the deed of gift, she permitted Septimus Britton and her brother, Dorrani Marshall to continue to reside on the property. Moreover, since the said Septimus Britton became deceased, it is also the defendant's evidence that her son, Jason Marshall, along with Dennis Duncan, have taken care of the property in her absence. She has produced tax receipts for taxes she has paid for in her name, as an alleged possessor of the property.
- [29] Taking the evidence in the round, the court accepts that the defendant and her predecessor have proven to be in possession of the said land. These pieces of evidence show that there was exclusive possession and demonstration of acts of ownership by the said Septimus Britton through whom the defendant claims, as well as the defendant. The claimant has, moreover, failed to demonstrate objection to the construction of the concrete structure on the said land. The court therefore finds that the defendant and her predecessor have dealt with the said land and asserted themselves as occupying owners and have effectively dispossessed the Estate of Wilson Stroude of the said land.

⁶ Stephanie Baptiste v Salisha Jones GDAHCV2014/0591

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

[30] **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."

[31] 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."

[32] The right of action to recover land is barred whenever twelve years have elapsed from the time when any right of action accrued⁷. Time begins to run against an owner entitled in possession only when he/she has been dispossessed or has discontinued possession and adverse possession of the land has been taken by someone else⁸.

[33] The defendant's case reveals that there was no assertion of ownership by the claimant against the said Septimus Britton's possession from the year 1976, until, in 2011, a letter and notice to quit was served on Septimus Britton, and in 2012, the filing of a magisterial claim. This would have been 35 years after the right to bring an action to recover land would have accrued.

[34] Consequently, as it is the defendant's case that she is entitled to possession of the land by virtue of the possession of Septimus Britton, the claimant's claim against her is statute barred.

⁷ JA Pye (Oxford) Ltd & Ors v Graham and Another [2002] 3 WLR 221, 229

⁸ Gordon Charles v Clarie Holas GDAHCV1996/0151

Conclusion

[35] Based on the foregoing, the court finds that the defendant has proven her defence and counterclaim.

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

(1) The defendant is the owner of the said lot of land.

(2) A permanent injunction restraining the claimant in her capacity as Administratrix of the estate of Wilson Stroude or any of the claimant's servants from trespassing upon, or interfering with or in any way disturbing the peaceful enjoyment by the defendant of the said land is granted.

(3) Costs to the defendant agreed in the sum of \$5,000.00.

Agnes Actie
High Court Judge

By the Court

Registrar