

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

CLAIM NO. GDAHCV2016/0423

BETWEEN:

**[1] SELWYN PITT
[2] RICHARD PITT**

Claimants

and

BRIAN PITT

Defendant

Appearances:

Mr. Ruggles Ferguson for the Claimants
Mrs. Sabrita Khan-Ramdhani for the Defendant

2021: June 17;
November 10.

JUDGMENT

[1] **GLASGOW, J.:** This judgment concerns the opposition to an application filed by the defendant (Brian Pitt) on 18th November 2016 in which he sought an order of the court that he is owner of property situate at St. George's, Grenada. Brian Pitt asserts that he became the owner by reason of his exclusive and undisturbed possession of the same for over a period of twelve years. Brian Pitt pursued that application pursuant to the Possessory Titles Act. No. 22 of 2016 (the Act). The claimants are his brothers. This judgment identifies them as "the claimants" or as "Richard Pitt" or "Selwyn Pitt". On 12th April 2017, the claimants filed this claim in opposition to Brian Pitt's application for possessory title on the grounds that the

property belongs to a family company. They contend that their brother never acquired title to the property by adverse possession or at all.

Background

- [2] Some of the uncontroverted facts provide a helpful background to the present familial rancour. The parties are all the children of Joseph and Edlyn Pitt. They have a sister, Jean Pitt, who is not a party to this claim but she is engaged in it. Jean Pitt is named as one of the executors of her mother, Edlyn Pitt's estate. Brian Pitt is the other named executor, but Jean Pitt obtained probate of their mother's will on 21st August 2015. A document signed by Brian Pitt and dated 16th July 2014 indicates that he thereby renounced his right to obtain probate of the will of Edlyn Pitt.
- [3] Joseph Pitt was the fee simple owner of the property that is the subject of this suit. In 1974, he formed a company called Grenada Television Company Limited (the company). He along with then wife, Edlyn Pitt, the parties and their sister Jean Pitt were registered as shareholders of the company. The Government of Grenada was also listed as a shareholder. Indeed, the Government was listed as the largest shareholder.
- [4] On the 28th May 1974 Joseph Pitt conveyed all of his interest in the property to the company. However, 6 years later in 1980, the People's Revolutionary Government (the PRG) took physical possession of the property. There was no official acquisition process as required by the law and no compensation was ever paid to the company for the acquisition of its sole asset.
- [5] Joseph Pitt and Edlyn Pitt eventually got divorced. The ancillary relief aspect of the divorce exercise included a property adjustment order dated 7th December 1992. Further to that order and by deed of release dated 7th December 1997 Joseph

relinquished his share interest in the company to Edlyn Pitt. The shareholding in the company was thereafter adjusted to reflect the following –

- (1) Edlyn Pitt – 700 shares;
- (2) Brian Pitt, the defendant – 300 shares;
- (3) Jean Pitt – 300 shares;
- (4) Selwyn Pitt – 300 shares;
- (5) Richard Pitt – 300 shares;
- (6) Government of Grenada – 700 shares;
- (7) Glyn Evans – 72 shares.

[6] The company was struck off the register of companies (the register) in 1980. The parties and Edlyn Pitt served as directors of the company at the time that it was struck off the register.

[7] In 1995 the Government of Grenada relinquished physical possession and control of the property. The exact nature of the Government's relinquishment of the property forms the core of the family dissension. The claimants plead that the property was properly returned to Edlyn Pitt on the company's behalf. Their further complaint is that if Brian Pitt had physical possession of the property when it was handed over in 1995, he held it in trust for the company. Brian Pitt vigorously and vociferously resists his siblings' characterisation of the government's action in 1995. His rejoinder is that the company was struck off the register and could not hold property. He maintains emphatically that the government turned over the property to him. He held and used it as his own exclusively without acknowledging ownership in anyone and without interference. Hence his request for title by adverse possession. It may serve this discourse well to recite the various claims made by both sides in some detail.

Case for Brian Pitt

[8] Brian Pitt filed an application on 18th November 2016 in which he sought an order for possessory title to the property. The affidavit attached to that application averred, among other things, that –

- (1) He was in possession of the property for over 12 years;
- (2) There was no other claim affecting the property at the time of making the application;
- (3) There are no other persons claiming the property besides the company;
- (4) He was put in possession of the property on or about 1st June 1995 by a Minister of Government;
- (5) He was given the keys to the property as one of the children of the deceased majority shareholder of the company;
- (6) The company was defunct;
- (7) He has expended his own resources to fix up the property, conducted routine maintenance and major repairs that were necessitated after the building was damaged by hurricane Ivan in 2004;
- (8) He has rented out the property to tenants and collected rents from them without accounting to anyone for the rents;
- (9) Has taken all other major decisions in relation to the property without being required to consult with anyone.

[9] The affidavit acknowledges that Joseph Pitt transferred the property to the company in 1974. The affidavit also accepts that the company was struck off the register in 1980. Brian Pitt also pleads that the PRG government took possession of the property, but that the PRG government took the property without formally doing so in accordance with the compulsory acquisition process. Brian Pitt asked the court to find that the company had discontinued possession of the property or was dispossessed of the same by him. As such he is entitled to a declaration of

possessory title since he was in exclusive and undisturbed possession for over 12 years.

- [10] Brian Pitt's application is supported by the evidence of 2 witnesses, McDonald Bullen and John Andy Baptiste, a plumber and tradesman respectively. They both carried out maintenance works at the property at the instance of Brian Pitt. They say in their evidence that since 1995 they have known Brian Pitt to be treating the property as his own; repairing it, maintaining it, renting it out and collecting rents. They are not aware that anyone besides Brian Pitt owns the property.

Case for the claimants

- [11] After laying out the background regarding the company as stated above, the claimants aver that if Brian Pitt has been in possession of the property from 1995 to 2014 as he asserts or for any period, he did so as the agent of Edlyn Pitt.
- [12] Alternatively, they insist that if Brian Pitt had possession for the claimed period or at all, he did so in his capacity as a director of the company and as such he held the property on trust for the company. The claimants say that Brian Pitt's fiduciary duties to the company precluded him from setting up a claim for possessory title in respect of the property.
- [13] The claimants insist that Brian Pitt was well aware that Edlyn Pitt professed ownership of the property from 1995 when it was returned by the Government and maintained her claim to ownership up until her death in 2014. Indeed, they plead, Edlyn Pitt left a will dated 26th June 2008 in which she devised the property to the claimants, Brian Pitt and their sister, Jean Pitt.

- [14] The claimants urge the court to find –

- (1) Edlyn Pitt was the person put back in possession of the property since 1995;
- (2) Selwyn Pitt has been living at the property since 2007 at the behest of his mother, Edlyn Pitt;
- (3) The property was at some time maintained with moneys raised by all the parties and Jean Pitt further to a consent order whereby family assets, namely a property at Old Fort, St. George, was used to raise funds from Grenada Development Bank and RBTT;
- (4) Brian Pitt had accounted to the executor of the estate, Jean Pitt, for the income and expenses associated with the property;
- (5) As late as December 2016, Brian Pitt acknowledged the claimants' interest in the property;
- (6) The company was restored to the register in February 2017.

Affidavit of Kinna Marrast-Victor

[15] The claimants provided evidence from Mrs. Kinna Marrast-Victor, former Government representative to the company. In an affidavit filed on 7th March 2019, Mrs. Victor recounted the history of the property, the company and its interactions with the government as I have recited above. Mrs. Marrast-Victor also stated the following –

- (1) She attended a meeting of the company's shareholders held on 16th April 2018. By the time of the shareholders' meeting, Brian Pitt had already filed the present proceedings for possessory title and his brothers, the claimants had already filed their claim opposing the same;
- (2) The shareholders' meeting elected a new Board of Directors. The meeting also passed a resolution that ratified the proceedings filed by the claimants to oppose Brian Pitt's application for possessory title to the property. The meeting also authorised the claimants to continue the action on behalf of the company;

- (3) Brian Pitt's reliance on a letter dated 20th March 2007 from then Minister of Legal Affairs, Elvin Nimrod is misplaced and it is premised on false information presented by Brian Pitt to Mr. Nimrod. In particular, Brian Pitt's assertion that no title deed existed with respect to the property was false in light of the existence of the deed of transfer dated 28th May 1974 transferring ownership of the property from Joseph Pitt to the company;
- (4) Mr. Nimrod's letter was in response to a letter dated 16th January 2007 in which Brian Pitt indicated to Minister Nimrod that the property was owned by the company. In that January 2007 letter, Brian Pitt also informed the Minister that "there was an agreement to take back the building in lieu of any claim against the Government of Grenada."
- (5) Between 2013 and September 2016, Brian Pitt and the Government were engaged in discussions regarding compensation to the company by the Government;
- (6) Government never disposed of its interest in the property by handing it to Brian Pitt. The Government firmly maintains that the property belongs to the company and that it alone ought to determine whether and how it ought to be disposed.

Brian Pitt's response to the claimants' case

[16] Unsurprisingly, Brian Pitt strongly objects to the claimants' characterisation of his claim. He responded thereto and in particular to the affidavit of Mrs. Victor-Marrast. His response came by way of affidavit filed on 10th August 2019 in which his rejoinder states (after again reciting the history of the company, the property and the PRG's acquisition of the same) –

- (1) The PRG abandoned occupation of the property in or around 1993 and he took physical possession of the same. From that time he renovated and occupied the property up until today's date;

- (2) In 1995 the Government formally relinquished possession of the property to him by handing him the keys to the property through his attorneys, Grant and Joseph;
- (3) When he filed his application for possessory title on 18th November 2016 and up until its publication on 25th November 2016, the company was not restored to the register;
- (4) The company was restored further to an application made by Richard Pitt;
- (5) The claimants did not live in Grenada between the years 1980 to 2006. Richard still lives out of Grenada;
- (6) Selwyn Pitt returned to Grenada in or about 2006 and in 2008, Brian Pitt renovated an apartment at the property and placed Selwyn Pitt therein as he had no place to live;
- (7) The company was restored after 37 years of being struck off in 1980. It has no share or title in the property since the same was extinguished over time by Brian Pitt's sole undisturbed occupation of the same.

[17] The claim for each side is supported by written submissions and authorities.

Submissions for the claimants

[18] After taking issue with some of Brian Pitt's evidence given under cross examination, the claimants submit that –

- (1) The evidence reveals that Brian Pitt did not form an intention in 1995 to treat the property as his own. The decision to treat with the property as one's own is a sine qua non for a successful application for possessory title (see section 2 of the Act);
- (2) Brian Pitt has not presented evidence of when he formed the intent to treat with the property as his own so as to assist the court to assess whether he held the property as his own for the requisite statutory 12 year period;

- (3) Brian Pitt presented the court with documents in which he admitted to providing accounts for the estate to Jean Pitt who is the executor of the will of Edlyn Pitt. The court is reminded that Edlyn Pitt claimed the property as her own in her last will;
- (4) Even after filing his application for possessory title, Brian Pitt acknowledged that he was not claiming the property solely as his own but rather that he intended to sell it and share the net proceeds of the sale with his siblings who are also sharing a beneficial title pursuant to their mother's will;
- (5) Brian Pitt admits that his brother, Selwyn Pitt, has been living on the property for over 12 years from the time of his return to Grenada from Canada.

Claimants' submissions in respect of Brian Pitt's supporting witnesses

- [19] The claimants also address the evidence of Brian Pitt's witnesses, McDonald Bullen and John Andy Baptiste. The claimants ask the court to find that this supporting evidence does not meet the threshold of section 5 of the Act. That section obligates the applicant for possessory title to present "*one affidavit each of at least two individuals with knowledge of the applicant's adverse possession of the piece or parcel of land.*" The claimants' case is that the apotheosis of the supporting witnesses' assertions is the fact that they worked for Brian Pitt and that they have knowledge of the property. The claimants' contend that beyond this, the evidence of the supporting witnesses does not assist the court to ascertain whether they knew that Brian Pitt possessed the property as owner, tenant, licensee, agent or otherwise.

Claimants' submissions in respect of the company's ownership of the property

- [20] The claimants reiterate their argument that the company is the rightful owner of the property. They rely on sections 483 to 485 of the Companies Act, Cap. 58 A of the revised laws of Grenada. I pause here to observe that section 483 of the Companies Act deals mainly with the procedure by which the registrar of companies may strike a company off the register. There is no debate in this case as to whether this procedure was followed. The claimants make special note of section 483 (5) of the Companies Act which I will address later.
- [21] The claimants also place emphasis on section 484(1) of the Companies Act which reads –
- “(1) Where, after a company has been dissolved, there remains any outstanding property, real or personal, including things in action and whether within or outside Grenada which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was dissolved, but which has not been realised or otherwise disposed of or dealt with by the company or its liquidator, such property shall, for the purposes of this section and section 485 and notwithstanding any enactment or rule of law to the contrary, by the operation of this section be and become vested in the Official Receiver for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof”
- [22] The claimants also place emphasis on section 485 (1) and (2) of the Companies Act which sections reads –

“(1) Upon proof to the satisfaction of the Official Receiver that there is vested in the Official Receiver by operation of section 484 or of an enactment of a proclaimed state containing provisions similar to the provisions of section 491, any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Official Receiver may get in, sell or otherwise dispose of or deal with the estate or interest or any part thereof as he or she sees fit.

(2) The Official Receiver may sell or otherwise dispose of or deal with any such property either solely or in concurrence with any other person in such manner for such consideration, by public auction, public tender or private contract upon such terms and conditions as the Official Receiver thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with any such property as he or she thinks expedient, and may make, execute and give such contracts, instruments and documents as he or she thinks necessary...”

[23] The claimants’ posture regarding these provisions of the Companies Act is that –

- (1) Any assets that the company owns or that to which it is entitled at the date that is struck off the register and thereby dissolved is vested in the Official Receiver;
- (2) The Official Receiver has the power to dispose of the asset(s) of the dissolved company and to pay out any surplus after paying off any expenses attaching to the asset or the process of its disposal;
- (3) There is nothing in sections 483 to 485 of the Companies Act and indeed in any other section of the Companies to the effect that the company’s title or beneficial interest in the property is extinguished by its dissolution;

- (4) While the assets of the company in this case were deemed to be vested in the Official Receiver who could dispose of the same, there is no evidence that the Official Receiver exercised such powers;
- (5) By operation of law, the property was deemed to be restored to the company once the company's name was restored to the register. **Re Five Star Properties Ltd**¹ was cited as the authority for this proposition.

Claimants' submissions on Brian Pitt's and others directors' fiduciary duties to the company

[24] On this score the claimants posit that pursuant to section 483(5) of the Companies Act, any liability of the directors, officers and members of the company during the period that it has been dissolved continue as if the company had not been dissolved. Consequently, Edlyn Pitt and every director of the company, including the defendant, Brian Pitt, continued to owe fiduciary duties to the company and in particular, fiduciary duties in respect of the preservation of its assets. The claimants rely on **Re Systems Building Services Group Limited**² and **Davies v Ford**³.

[25] The essence of the claimants' complaint therefore is that Brian Pitt could not hold the property as its owner whenever it was returned by the Government. They submit that he could not so hold the property because he was a director of the company when it was dissolved and remained a director up until it was restored to the register. Therefore, Brian Pitt owed a fiduciary duty to the company which duty precluded an ability to assert a personal interest in the assets of the company for himself against the interest of the company. He possessed the asset on trust for the company.

¹ [2015] EWHC 2782(CH)

² [2020] EWHC 54 (ch)

³ [2020] EWHC 686 (Ch)

Brian Pitt's submissions

- [26] Brian Pitt relies on section 2 of the Act recited above. He also relies on sections 4 and 27 of the Limitation of Actions Act⁴. Those sections read –

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.”

Section 27

“At the end of the period of limitation, the right of party out of possession to be extinguished 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.”

- [27] Brian Pitt submits that the conjoint reading of both sections suggest that the company's rights to the property were extinguished because –

- (1) The company was the proper party to oppose his application for possessory title and not the claimants;
- (2) The company's right to bring a claim for its property arose in 1981 when the PRG took possession of the property and that right was extinguished 12 years later in or about 1993;

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

- (3) The evidence shows that the company took no action after being struck off the register to assert its paper title. Equally it took no action against the applicant when he took possession in 1995;
- (4) The company has taken no steps to be joined as a party to this claim, even though it is aware of the same;
- (5) The pleadings show that the litigation in this claim has been pursued by the claimants in their personal capacity and not on behalf of the company;
- (6) There is no evidence of a directors' resolution since the company has been restored in 2017;
- (7) Despite the declarations sought by the claimants and notwithstanding the fact that they were shareholders of the company at the time of filing their claim, there is no written resolution from the company authorising the claimants to act on its behalf. It was some 17 months after filing the claim that the claimants purport to have a resolution from the company to participate in the proceedings. Notwithstanding this resolution, section 17 (1) of the Companies Act suggest that after its restoration to the register, the company should have been joined as party to the proceedings. The claimants did not therefore have any locus to act on behalf of the company in this claim.

Brian Pitt's submissions on the company's right to possession by virtue of holding the property's paper title

- [28] On this score, Brian Pitt recites his side of the story as to how the company was struck off the register, the property was appropriated by the PRG, the keys to the property were thereafter handed to him in 1995 and how he treated with the same as his own to the exclusion of the "rest of the world".⁵ He points out that the claimants in their evidence acknowledge that he is in de facto control of the property and collects rent therefrom.

⁵ Brian Pitt's submissions filed on 29th July 2021 at para. 21

- [29] He insists that he has remained in exclusive and undisturbed possession and carried out all acts as owner, including the maintenance and repair of the property. He points out that throughout his period of undisturbed, exclusive possession no person, including representatives of the company, challenged his possession and occupation of the property.
- [30] Brian Pitt says that Mrs. Marrast-Victor agreed with him that once a company was struck off the register, the company was no longer in existence. Brian Pitt further asks the court to find that Mrs. Marrast-Victor's evidence demonstrates that he engaged the Government to settle the title deed of the property since the Government took possession in 1980. He says that Mrs. Marrast-Victor's evidence does not show that the Government was engaged because it was a shareholder of the company.
- [31] Brian Pitt also addresses an earlier argument made by the claimants in their pleadings that Edlyn Pitt could not divest the property in her will. I need not repeat these arguments since the claimants, rightly, in my view, accept that Edlyn Pitt could not hold the property in her personal capacity.

Discussion and Analysis

- [32] There are 2 bases on which I disagree with Brian Pitt. I shall refer to them as (1) the Companies Act basis; and (2) the Possessory Titles Act basis.

The Company Act basis

What happens to the assets of a company when it is struck off the register and becomes dissolved?

- [33] The evidence discloses that the company's assets included the property situate at Scott's Street, St. George's. The evidence further discloses that after its incorporation, the Government was listed as one of the shareholders of the

company. Additionally, even though the PRG did not formally acquire the property during its time in office, the PRG physically appropriated and occupied the property. After the end of the PRG, successive governments continued to occupy the property.

- [34] The company was struck off the register sometime in 1980. Section 484(1) of the Companies Act cited above states that after a company has been struck off and dissolved, the outstanding property, real or personal, which were vested in the company become vested in the Official Receiver. Section 388 of the Companies Act provides that for the purposes of the Act, the Official Receiver means the Official Receiver attached to the court for bankruptcy purposes. By virtue of the section, the Official Receiver is an officer of the court. There is no evidence that any other receiver was appointed during the period when the company was dissolved. Further, there is no evidence that the company's property was disposed of or sold during the period of its dissolution. Therefore, by operation of law the property was vested and remained in the hands of the Official Receiver during the period of its dissolution.

What was the position of the directors once the company was dissolved?

- [35] Brian Pitt takes the position that once the company was struck off, it was dissolved. Accordingly, the company became defunct and as such he, Brian Pitt could hold the property in his personal capacity. In fact, his case is more assertive than I have stated. His case is that he was put into possession when the keys were handed to him by the Government and he has acted as owner exclusively from the year 1995 without disturbance. On this score, Brian Pitt is, regrettably, mistaken. Section 483 (5) of the Companies Act states:

“(5) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on

the publication in the Gazette of this notice the company shall be dissolved, but—

- (a) **the liability, if any, of every director, managing officer, and member of the company continues and may be enforced as if the company had not been dissolved;** and (b) nothing in this subsection affects the power of the court to wind-up a company the name of which has been struck-off the register.” (Bold emphasis mine)

And section 512 of the Companies Act provides:

512. Liability continues

“Where a body corporate is struck-off the register, the liability of the body corporate and of every director, officer or shareholder of the body corporate **continues and may be enforced** as if it had not been struck-off the register.” (Bold emphasis mine)

- [36] The conjoint reading of sections 483(5) and 512 of the Companies Act suggest to me that during the period when a company is struck off the register, the liabilities of its directors to the company continue. These duties include their continued fiduciary obligation to act in good faith with a view of the best interests of the company. In **Re Systems Building Services Group Limited, Hunt and Anor v Michie and Anor**⁶ Barber J observed instructively –

“...the general duties of a director of a company to the company set out in ss 171–177 CA 2006 do survive the company's entry into administration and creditors' voluntary liquidation. Whilst in office, a director continues to owe the company the duties laid down in ss 171–177 CA 2006, as applied and interpreted in accordance with the underlying common law rules and equitable principles on which such duties were based: ss 170(3) and (4).”

⁶ [2020] 2 All ER (Comm) 565 at para. 55

[37] The statutory duties cited in **Re Systems** are similar to the general duties of a director under the Companies Act. Section 97 of the Companies Act prescribes:

“(1) Every director and officer of a company in exercising his or her powers and discharging his or her duties shall—

(a) act honestly and in good faith with a view to the best interests of the company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) In determining what are the best interests of a company, a director may have regard to the interests of the company’s employees in general as well as to the interests of its shareholders.

(3) The duty imposed by subsection (2) on the directors of a company is owed by them to the company alone; and the duty is enforceable in the same way as any other fiduciary duty owed to a company by its directors.”

[38] Brian Pitt was a director of the company as at the date of its dissolution. Section 97 of the Companies Act placed a fiduciary duty on him as a director to act honestly and in good faith with a view to the best interests of the company. Sections 483(5) and 512 of the Companies Act suggest that the directors’ fiduciary obligation to the company to act in a manner that is in its best interest subsists, even though it was struck off and deemed to be dissolved.

Breach of duty

[39] Section 484 of the Company’s Act makes it plain that the company’s right to the property was not extinguished by the striking off from the register. Indeed, the

company's right to the property was preserved by section 484 and was vested in the Official Receiver. I cannot see how Brian Pitt could successfully assert that he is acting in the best interests of the company by asserting that he received the company's property as his own. See the discussion above on sections 97, 483(5) and 512 of the Companies Act.

[40] Brian Pitt had a continuing obligation to act in the best interests of the company even though it had been struck off the register. In that regard, he was duty bound to avoid all potential conflicts with his duties to the company. His assertion that he received the property as his personal property is a clear admission of an act that was patently in conflict with the best interests of the company. Brian Pitt ought not to have placed himself in such a position.

[41] In **Davies v Ford & Ors**⁷, although speaking of the property of an insolvent company, the learned judge Johnson QC opined appositely that–

“268. ...Although a company director may certainly breach his duties to the company by misappropriating its existing assets, that is not a pre-requisite. He may also breach his duties in other ways, not at all dependent on the misapplication of pre-existing corporate assets, **for example by putting himself in a position of conflict** and thereby making an unauthorised profit.

269. A good example is *Re Bhullar Bros. Ltd* [2003] EWCA Civ. 424, [2003] BCC 711. In that case, a company owned an investment property which was used as a bowling hall. Two directors of the company came to know that a plot of land next to the investment property was for sale, and they acquired it using another company which they owned and controlled called Silvercrest. They said that there was no breach of fiduciary duty in doing so because the company itself has shown no interest in acquiring the plot of land at the relevant time, and accordingly had not been deprived of any maturing

⁷ 2020 [EWHC] 686 (Ch)

business opportunity. This argument was rejected and the Court of Appeal affirmed the declaration made by the judge at first instance that Silvercrest held the plot of land on trust for the company. It was not necessary, in determining that there had been a breach of duty, to show that the company had some pre-existing interest in the opportunity in question. Jonathan Parker LJ said as follows:

[27]. I agree with Mr Berragan that the concept of a conflict between fiduciary duty and personal interest presupposes an existing fiduciary duty. But it does not follow that it is a pre-requisite of the accountability of a fiduciary that there should have been some improper dealing with the property 'belonging' to the party to whom the fiduciary duty is owed, that is to say with trust property.

[28]. In a case such as the present, where a fiduciary has exploited a commercial opportunity for his own benefit, the relevant question, in my judgement, is not whether the party to whom the duty is owed (the company, in the instant case) had some kind of beneficial interest in the opportunity; in my judgement that would be too formalistic and restricted an approach. Rather, the question is simply whether the fiduciary's exploitation of the opportunity is such as to attract the application of the rule⁸. (Bold emphasis and underlining mine)

[42] See also Gordon QC in our Court of Appeal's decision of **AG v Constance Mitcham**⁹ quoting from **Regal (Hastings) Ltd v Gulliver and others**¹⁰ on the question of the fiduciary obligations of trustees, directors, agents and others in analogous situations –

⁸ Davies v Ford 2020 [EWHC] 686 (Ch) at paras. 268-269

⁹ SKNAP 2004/0005

¹⁰ [1942] 1AER 378

“The question can be briefly stated to be whether an agent, a director, a trustee or other person in an analogous fiduciary position, when a demand is made upon him by the person to whom he stands in the fiduciary relationship to account for profits acquired by him by reason of his fiduciary position, and by reason of the opportunity and knowledge, or either, resulting from it, is entitled to defeat the claim on any ground save that he made the profits with the knowledge and assent of the other person. The rule in such cases is compendiously expressed to be that an agent must account for net profits secretly (that is without the knowledge of his principal) acquired by him in the course of his agency. The authorities show how manifold and various are the applications of the rule. **It does not depend on fraud or corruption.**” (Bold emphasis mine).

[43] His Lordship Johnson QC in **Davies v Ford** further noted that the court in **Bhullar**¹¹ found that even in cases not involving a misapplication of pre-existing property in the strict sense, “*the appropriate remedy may nonetheless be a proprietary one*”¹². In **Bhullar**, a constructive trust was found to be the proper remedy. Such an outcome seems proper in this case. The appropriate answer to Brian Pitt’s actions is to find and I so find that he received the property and held the same on trust for the company. Mr. Justice Johnson QC observed that this result reflects: “*the equitable rule that where a fiduciary acquires a benefit in breach of duty, he is to be treated as having acquired the benefit on behalf of his principal, so that it is beneficially owned by the principal*”¹³.

[44] For completeness, I must add that there is nothing to the argument that the company could not hold and did not hold the property as its own since it was deemed to be struck off and thus dissolved. Mr. Justice Johnson QC in **Davies v Ford** stated correctly that: “*It is no answer to a claim for breach of duty for a trustee to say that the opportunity he has exploited was not one which could ever*

¹¹ [2003] EWCA Civ. 424

¹² [2020] EWHC 686 (Ch) at para. 270

¹³ **Davies v Ford** [2020] EWHC 686 (Ch)

*have been taken up by the beneficiary*¹⁴.” In any event, I have already alluded to section 484 of the Companies Act which preserved the company’s rights to the property, even though it was struck off and deemed to be dissolved.

[45] There is equally no merit in an argument that the Official Receiver did not act to collect in or preserve the property. On this score, Brian Pitt would have held the property on trust for the property for the company and would have been liable to answer to the Official Receiver.

[46] Much debate centred on the claimants’ failure to join the company as a party to these proceedings. Nothing turns on this issue since it appears that the company by resolution dated 25th January 2018 ratified the claim filed on its behalf and has endorsed the claimants’ prosecution of the same on its behalf.

The Possessory Titles Act basis

Can Brian Pitt claim adverse possession of the property?

[47] The company is the paper title owner of property in this claim as cited at paragraph 34 above. **Hector Caesar Luke v Bernard Alexander**¹⁵ which was referred to and followed by our Court of Appeal in **Marlon Mills v Stacey McKie**¹⁶ is instructive. In **Hector Caesar**, Rawlins J stated:

“The Court will, *prima facie*, ascribe possession to the paper owner of land or a person who can establish title through the paper owner. The court can only ascribe possession to a person who does not have paper title if that person has factual possession and *animus possidendi*, the requisite intention to possess the land. **Factual or physical possession means a single and conclusive possession, or exclusive physical control of the land.** The acts that constitute a sufficient degree of exclusive physical

¹⁴ Davies v Ford [2020] EWHC 686 (Ch) at para. 277

¹⁵ [2002] ECSCJ No. 186 or alternative citation DOMHCV2001/0161

¹⁶ SVGHCVAP2016/0001 at para. 4 of the Headnote

control will depend upon the circumstances, particularly the nature of the land and the manner in which land of that nature is commonly used and enjoyed. **The *animus possidendi*, has been described as the intention to possess the land to the exclusion of all other persons, including the owner with the paper title, so far as is reasonable and so far as the process of law will allow¹⁷.**” (My emphasis)

- [48] There is also a statutory definition for “adverse possession” which is elucidated at section 2 of the Possessory Titles Act No. 22 of 2016 as follows –

“adverse possession” means factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Grenada for a continuous period not less than twelve years immediately preceding the claim, accompanied by the requisite intention to possess the said land as owner thereof.”

- [49] With respect to who can bring an application for a declaration of possessory title, section 3 of the Possessory Titles Act prescribes:–

3. –

“(1) Where a person claims to be in adverse possession of a piece or parcel of land in Grenada, the person may make an application in accordance with section 4 to the Court for a declaration of possessory title to the said land.

(2) Without prejudice to the provisions of the Limitation of Actions Act, Chapter 173, an application for declaration of possessory title shall not be made in respect of Crown Lands.

¹⁷Marlon Mills v Stacey McKie SVGHC VAP 2016/0001at para. 15

(3) Notwithstanding subsection (1), where a person claims to be in adverse possession of a piece or parcel of land in Grenada and dies in factual possession of the land, an application for declaration of possessory title may be made by a person claiming in the capacity of executor, administrator, trustee or other person in a fiduciary capacity for the estate or for the beneficiaries of the deceased person, as the case may be, but not in breach of the duties as executor, administrator, trustee or fiduciary.

(4) For the avoidance of doubt, an application for declaration of possessory title may be made by a person claiming in the capacity of executor de son tort if, in the opinion of the Court, the person is not in a fiduciary relationship or capacity.” (Underlining supplied)

Requisite intention to possess as owner

[50] Some of the evidence in this case suggests to me that Brian Pitt did not form the requisite intent to hold the property exclusively as his own. These include –

- (1) When confronted in 2014 about his dealings with the property, he did not object to but provided accounts to his siblings of the income and expenditure of the property;
- (2) Other property belonging to the Pitt family situate at Old Fort was mortgaged with the involvement, knowledge and acquiescence of Brian Pitt to raise funds some of which was used to renovate and maintain the property. The property was not maintained solely by the funds of Brian Pitt;
- (3) By letter dated 2nd December 2016¹⁸, Brian Pitt wrote to Jean Pitt, the executrix of his mother’s estate informing her of his application for possessory title of the property. Brian Pitt made it very clear in that letter to his sister that if his application for possessory title is successful he intended –

¹⁸ Page 203 of the Trial Bundle

- (a) to sell the property;
- (b) after the sale was completed, to prepare a balance sheet accounting for the expenses and revenue of the property over the 21 years of his occupation; and
- (c) to share the balance from the proceeds of sale *“in four equal portions for the four siblings”*.

[51] The above suggests to me that Brian Pitt-

- (1) was prepared to account to his siblings and to his mother's estate for his use of the property and monies he collected therefrom;
- (2) acknowledged his siblings' beneficial interests in the property; and
- (3) did not intend to claim exclusive ownership of the property thereby disinheriting his other siblings.

[52] Instructively, Brian Pitt pleads at paragraph 3 (e)(ii) of his affidavit in support of his application for possessory title that he *“was given the keys to the property as one of the children of the deceased majority shareholder of the defunct Company”*. He never retreated from that posture thereafter or at trial. In a letter dated 20th March 2007 addressed to Brian Pitt from the then Minister of Legal Affairs, Brian Pitt was advised to *‘[P]rovide affidavits of witnesses attesting to the Pitt's (sic) ownership of the property...’*.

Matters did not get better at trial. During his cross-examination of Brian Pitt, Mr. Ferguson counsel for the claimants asked *“you are telling this court in 1995 that your intention was to acquire that property as your own?”* Brian Pitt replied *“no”*. This statement is in direct conflict with the evidence as contained in his affidavit, where he states *“I am the absolute owner of the property...having been, either for myself or through others holding under me, been in actual, peaceable, continuous, exclusive, open and undisturbed possession and occupation thereof”*¹⁹.

¹⁹ Affidavit of Brian Pitt filed on 14th November 2015 at para. 3(k)

[53] The totality of the foregoing matters indicates to me that Brian Pitt did not treat with this property with the requisite mental disposition that he was its sole owner. Indeed the evidence leads me to conclude that throughout he viewed this property as family property and so comported himself with respect to his dealings with it.

Was Brian Pitt in continuous and undisturbed factual possession of the property for twelve years prior to the claim?

[54] At trial and under cross-examination, Brian Pitt admitted and I accept that his brother, Selwyn Pitt, upon his return from Canada, began to occupy a section of the property in or around 2007. Selwyn Pitt continues to reside there up to present. Brian Pitt in his report²⁰ entitled "*Scott Street Property: Income, expense and debt report*" states that "*Mr. Selwyn Pitt also resides on the property since 2008. No rent is collected. The last rental value was \$1,200.00 per month*". In this report Brian Pitt admits that Selwyn Pitt occupied the property from 2008 to present without paying him any rent. Selwyn was also a shareholder of the company and as such held a beneficial interest in the property. It seems to me that he was entitled to use and enjoy the property as a beneficial owner and he so did. Brian Pitt thereby acknowledged his brother's beneficial interest in the property.

[55] The common law position on factual possession as stated by Rawlins J in **Hector Caesar** and by our Court of Appeal in **Marlon Mills** is recited above. Those authorities instruct that factual possession of property for the purposes of a possessory titles application must be exclusive and undisturbed. Brian Pitt insists that he allowed Selwyn Pitt to occupy a room at the property. But I do not see how this could be the case when Selwyn Pitt as did all of the siblings shared a similar and equal beneficial interest in this property. Indeed there is no evidence to suggest that Selwyn Pitt was occupying the property in any other capacity than as a co-beneficiary. This fact is compounded with the evidence above regarding Brian Pitt's state of mind in respect of holding the property as owner.

²⁰ Page 225 of Trial Bundle

A word about Brian Pitt's two independent witnesses

- [56] McDonald Bullen, a plumber and John Andy Baptiste, a tradesman gave evidence supporting Brian Pitt's claim to be the sole and exclusive owner of the property. At trial and under cross examination, Mr. Ferguson referred McDonald Bullen to his statement at paragraph 6 of his affidavit. At paragraph 6 of that affidavit, Mr. Bullen states: "*I am not aware of anyone ever asking the applicant to account for rents, to acknowledge title in anyone else*". Mr. Ferguson then asked: "*what exactly do you mean by that?*" Mr. Bullen in his response stated: "*well once I worked there the only person that paid me was Brian Pitt and he was the one who cause me to work with him*". This evidence suggests that all he knew about the property was that Brian Pitt paid him and "*caused him to work there*". I am of the view that Mr. Bullen did not provide reliable evidence to show that it was probable that Brian Pitt occupied and treated with the property as owner in the sense required by the common law and the Possessory titles Act.
- [57] John Andy Baptiste's evidence is similarly circumstanced. Mr. Baptiste testified under cross-examination by Mr. Ferguson that his only relationship to the property was through maintenance work which he carried out over the years up to present. Therefore, I am of the view that his evidence asserting that Brian Pitt did not acknowledge title to anyone else is also unreliable.

Conclusion

- [58] The compendium of the foregoing evidence and findings impels me to conclude that Brian Pitt was not in factual possession of the property as required by the law and he did not possess the requisite mental intent to hold the property as owner. Equally, I conclude that, given his fiduciary duties to the company, he could not

and did not hold the property in his personal capacity as it is owner. In fact, I conclude that he held or holds the property on trust for the company which continues to be its lawful owner.

Order

[59] I therefore order that:

- (1) Judgment is granted in favour of the claimants;
- (2) Brian Pitt's application for a declaration of possessory title filed on 18th November 2016 is refused;
- (3) The Grenada Television Company Limited is entitled to ownership and possession of the property together with building thereon situate at Scott Street in the Town of Saint George's in the State of Grenada measuring One Thousand Seven Hundred and Seventy-three square feet (1,773 sq. ft.) English Statute Measure;
- (4) Mr. Brian Pitt is hand over all keys and materials belonging to the property to a representative appointed by the company to receive same;
- (5) Mr. Brian Pitt is to hand over all keys and other materials belonging to the company within 30 days of the date of this order;
- (6) The defendant is to provide a detailed statement of his dealings with the company from 1st May 2021 to the date of the delivery of the keys and other materials belonging to the company; and

(7) The defendant is to pay costs to the claimants in the sum of \$2,000.00.

Raulston L.A. Glasgow

High Court Judge

By the Court

Registrar