

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

CLAIM NO. GDAHCV 2017/0318

BETWEEN:

**BASIL WILLIAMS
(also known as JULES WILLIAMS)**

Applicant

AND

- 1. BRENDA SAMUEL**
- 2. WINSTON STEPHEN**

Respondents

Appearances:-

Mr. Francis Williams for the Applicant
Ms. Herricia Willis for the First Respondent
Mr. Anselm Clouden for the Second Respondent

2021: March 23.

RULING

- [1] **GLASGOW, J.:** This is a claim for recovery of possession of land situated at Laura in the parish of Saint David in the State of Grenada (the land) filed on 11th August 2017 and amended on 23rd October 2017. The claimant (Mr. Williams) seeks an order that he is entitled to possession of the said land and an order removing the respondents' (Ms. Samuel and Mr. Stephen) homes from the said land.

Background

Mr. Williams' case

- [2] Mr. Williams' claim is that he purchased the unencumbered fee simple possession of the land which measures approximately one acre of land at Laura in the parish of Saint David for the purchase price of Eighty Thousand Dollars (EC\$80,000.00). The land was purchased from Ms. Marian Williams, his sister. Mr. Williams alleges that when he purchased the land from Ms. Marian Williams, he was informed that Ms. Samuel and Mr. Stephen were licensees on the land and could be removed whenever he so desired.
- [3] Mr. Williams' claim is that sometime after the purchase of the land, a dispute arose with Ms. Samuel and Mr. Stephen. As a result of the dispute he verbally requested that they vacate the land. Mr. Williams avers that further to the verbal requests to vacate, he wrote two letters to Ms. Samuel and Mr. Stephen asking them to vacate the land. He acknowledges that Ms. Samuel was not served with the letter because the bailiff was unable to locate her.

Ms. Samuel' case

- [4] Ms. Samuel (aged 73 years old) defends the claim by saying that Mr. Williams is aware that she has a right to live and remain on the land. Ms. Samuel states that the parties are all related and lived on the land together at some point in time. She asserts that at some time Mr. Williams' 'immediate family' and Ms. Samuel's immediate family lived together in the same house on the land. Ms. Samuel says that she is Mr. Williams' niece. She claims that the land was originally owned by Henrietta Bullen who was Mr. Williams' aunt and her great aunt.
- [5] Ms. Samuel alleges that Ms. Bullen had originally granted the permission to her mother and children to live on the land. Therefore, she was raised on the land. When she became pregnant with her first child in or around 1968, Ms. Bullen gave her permission to build a house on the land. This was the place where she bore and raised her five children. There was no question between her and Ms. Bullen that this was the place that she expected to live for the remainder of her life.

- [6] When Ms. Bullen died in October 1990, she left a will in which she devised the land to her daughter, Ms. Marian Williams who is Mr. Williams' sister. Marian Williams acknowledged Ms. Samuel's right to remain on the land. Marian Williams wrote a letter to Mr. Williams in May 1998 indicating that she permitted Ms. Samuel and Mr. Stephen to live on the land but not to reap her crops. Ms. Samuel presents this letter as proof of her assertion that she had a right to remain on the land.
- [7] Ms. Samuel insists that Mr. Williams is aware of her right to remain on the land. She denies that he was told that she has a mere licence. She denies that she received the letter demanding that she vacate the land.

Mr. Stephen's case

- [8] Mr. Stephen alleges that he has been in possession of a portion of the land where his house was built and has resided there since the year 1990. He denies Mr. Williams' allegations that he and Ms. Samuel are licensees. He further denies that a dispute arose over the land and that he together with Ms. Samuel were asked to vacate therefrom.
- [9] Mr. Stephen states that he has established physical custody and control over the portion of land where he resides for his own benefit and for a period exceeding twenty-six (26) years. He further asserts that he has excluded all others having any proprietary interest in the portion of land. He pleads that he has remained in factual possession of the portion of land and has been refilling and cultivating it. His further case is that he built banks and planted shrubs to support the soil from erosion into the ravine.

Reply to Respondents' Defence

- [10] Mr. Williams' responded to Ms. Samuel's defence and denied that she has a right to remain on the land. Mr. Williams' reply states that the prior title to Marian Williams was Mr. Carol Bristol. Therefore, he disputes the statement that Henrietta Bullen granted the right claimed by Ms. Samuel and her family. Mr. Williams maintains that Ms. Samuel is a bare licensee and relies on the letter dated 27th May 1998 from the Marian Williams (the 1998 letter).
- [11] Mr. Williams repeats his complaint that he gave Mr. Stephen both verbal and written notices to vacate the land. Mr. Williams explains that Mr. Stephen began occupation of the land with permission from his predecessor in title, Marian Williams. Mr. Williams submits that Mr. Stephen is a bare licensee. He relies on the 1998 letter and 19 December 2012 letter requesting Mr. Stephen to vacate the land.

Mr. Williams' submissions

- [12] On 13 June 2018, Mr. Williams filed legal submissions. Regarding Ms. Samuel's contention concerning improvements to the land, counsel referred the court to the **Law of Real Property**¹ where the authors stated:

"Expenditure on another's land where A spends money on buildings or improvements on B's land with B's agreement, but with no intention of a gift or a Loan there will be a resulting trust or constructive trust for A proportionate to this expenditure."

- [13] Counsel explains that an example of this is where A was B's mother-in-law and had paid for an extension to accommodate her in B's house, but later had to leave owing to differences. **Hussey v Palmer**² is presented as further support for this view. Counsel explains that the principle emerging from **Hussey v Palmer** is that

¹ The Law of Real Property by Robert Megarry and H.W.R. Wade 5th Edition (1984) at page 472 para (d)

² (1972) 1 W.L.R 1286

there must be an agreement between the owner of the land and the person expending the money. This, he says, is the root of the doctrine of proprietary estoppel.

[14] Counsel disputes whether there was such agreement between Ms. Samuel and the then owner of the land, Marian Williams. He urges the court to find that there was no such agreement when Ms. Samuel constructed her concrete house following the passage of Hurricane Ivan on 7 September 2004. Counsel posits that even if there was an agreement, the law requires that it must have been in writing since it concerns land. He refers the Court to the provisions of the **Real and Personal Property (Special Provisions) Act**³.

[15] Counsel says that Mr. Williams was not the lawful owner of the land on 1 July 2011 when Ms. Samuel built her concrete house on the land. Therefore, he could not give her permission to build at that time. Counsel further states that in the absence of agreement between Mr. Williams' predecessor in title and Ms. Samuel there can be no claim for constructive or resulting trust. Equally, there can be no claim by Ms. Samuel for improvements to the land.

[16] Counsel submits that Mr. Williams' predecessor in title gave permission to Ms. Samuel to build a wooden house and not a concrete house on the land. Counsel charges that Ms. Samuel is a trespasser having received a notice to quit on 19 December 2012 which she failed to obey.

[17] In respect of Mr. Stephen, counsel submits that Mr. Stephen has been in occupation of the land pursuant to a family arrangement. Counsel explains that Henrietta Bullen granted permission to Mr. Stephen's mother to occupy the house that previously existed on the land that is now occupied by Mr. Stephen.

³ Cap 273 of the 2010 Continuous Revised Edition of the Laws of Grenada

[18] Counsel argues that Mr. Stephen cannot avail himself of the principle of adverse possession since occupation of his house on the land arose from the permission given to his mother to reside thereon. Counsel relies on the Barbadian High Court case of **Edwards v Brathwaite**⁴ to support his view that Mr. Steven cannot maintain a claim for adverse possession. Counsel submits that like the claimant in **Edwards**, Mr. Stephen is nothing more than a licensee and is incapable of deriving title by prescription. Counsel concludes that Mr. William's predecessor in title had an unfettered right to sell all of the land to Mr. Williams at the time of the sale.

Ms. Samuel's submissions

[19] Counsel for Ms. Samuel explains that she initially built a board (wooden) house that was erected on concrete pillars with the consent of Henrietta Bullen and Marian Williams. Counsel points out that Ms. Samuel used her own funds and received financial assistance from her family to improve the house. In particular, Counsel observes that the house was improved with the assistance of Ms. Samuel's husband and her children who expended vast sums of money to rebuild the house after the passage of Hurricane Ivan.

[20] Counsel submits that when Mr. Williams purchased the land he knew that Ms. Samuel had already constructed a concrete house thereon comprising three bedrooms, bathroom, kitchen and living room. Counsel remarks that Mr. Williams was quite aware that Ms. Samuel invested, developed and enhanced her house on the belief that the portion of the land where the house was built belonged to her. The house is now valued at \$190,000.00.

[21] Counsel opines that Mr. Williams should be estopped from asserting his strict legal rights to possess the land as he is aware that Ms. Samuel has not lived anywhere else. He was also cognisant of the fact that she made significant financial

⁴ (1978) 32 WIR 85

improvements to the land. Counsel submits that it would be unconscionable for Mr. Williams to be permitted to deny what he knowingly allowed or encouraged. In other words, Counsel's view is that Mr. Williams should not be able to deny the existence of Ms. Samuel's rights to the land by relying on an erroneous opinion of title to her detriment. Counsel concludes by saying that Ms. Samuel was assured by Mr. William's conduct that he would allow her to reside on the land and relies on the authority of **Inwards & Ors. v Baker**⁵.

Mr. Stephen's submissions

[22] Counsel, Mr. Clouden, submits that Mr. Stephen has been a user of that portion of the land since the year 1990 *nec vi nec clam nec precario* (without force, secrecy or permission) and cites **Stuges v Bridman**⁶ as his authority.

[23] Counsel states that at the time of Mr. Williams' purchase of the land in 2011, Mr. Stephen was already in possession of a portion of the land for some twenty-one (21) years. Counsel explains that Mr. Stephen spent many years filling and reclaiming the portion of the land on which his dwelling house stands. Counsel argues that Mr. Stephen exercised exclusive physical control and custody over the portion of land without accounting to anyone. Therefore, by the time Mr. Williams purchased the land in 2011, Mr. Williams' predecessor in title, Marian Williams, was already dispossessed by Mr. Stephen. Further, Counsel submits that Mr. Stephen planted crops and cultivated the land with vegetables and other economic trees.

[24] In closing, Counsel adopts the language of Slade J in **Powell v Mc Farlane**⁷ where he stated –

“In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person

⁵ [1965] 1 All ER 446

⁶ (1879) 11 Ch D 852 at page 863

⁷ (1977) 38 P&CR 452

with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.

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”).**” (Bold emphasis added)

Discussion

[25] In **Inwards and others v Baker**⁸ Lord Denning expressed the following principles:

“It is quite plain from those authorities that, if the owner of land requests another, or indeed allows another, to expend money on the land under an **expectation created or encouraged by the landlord that he will be able to remain there**, that raises an equity in the licensee such as to entitle him to stay. **He has a licence coupled with an equity**. Counsel for the plaintiffs urged before us that the licensee could not stay indefinitely. The principle only applied, he said, when there was an expectation of some precise legal term; but it seems to me, from *Plimmer's case* ((1884), 9 App Cas at pp 713, 714) in particular, that the equity arising from the expenditure on land does not fail

“merely on the ground that the interest to be secured has not been expressly indicated ... the court must look at the circumstances in each case to decide in what way the equity can be satisfied.”

[1965] 1 All ER 446 at page 449

So in this case, even though there is no binding contract to grant any particular interest to the licensee, nevertheless the court can look at the circumstances and see whether there is an equity arising out of the expenditure of money.

All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the court will not allow that **expectation to be defeated where it would be inequitable so to do.**" (*emphasis mine*)

[26] I have no hesitancy in finding and I so find that both Ms. Samuel and Mr. Stephen were allowed to build on and develop property on portions of the land in question with the direct encouragement and acquiescence of the applicant's predecessor in title, Marian Williams. Even though Ms. Samuel's wooden house was built before Ms. Marion Williams became the owner of the land, the evidence indicates that Ms. Marian Williams accepted Ms. Samuel's occupation and building up of the property through expending considerable sums of money. Ms. Marion Williams confirms the nature of the occupation in her 1998 letter to Mr. Williams. The letter confirms that both Ms Samuel and Mr. Stephen were occupying and buliding up the portions of the land that they occupied with Ms. Marian Williams' explicit permission. Ms. Marion Williams was quite unequivocal in her letter that both respondents were allowed to remain on the land subject only to the condition that they do not reap her crops growing on the land. Nothing in the 1998 letter or on the evidence suggests that Ms. Samuel or Mr. Stephen's occupation was to be temporary or limited.

[27] Indeed it would seem that Ms. Marian Williams actively encouraged or did not object at all to Ms. Samuel build up and extension of her home from a wooden structure to a permanent concrete structure. When Ms. Samuel performed this reconstruction in 2004, and when Mr. Stephen built an enbankment and planted

crops on the land, there is no evidence to suggest that Ms. Marian Williams objected to any of these acts. It is therefore not difficult to conclude and I so conclude that the facts of this case fall squarely within the principles enunciated in **Inwards v Baker**. Ms. Samuel and Mr. Stephen were permitted to build on and expend considerable sums on the properties that they occupied. They did so with the explicit permission and/or acknowledgment of Ms. Marian Williams, Mr. Williams' predecessor in title. They did so with the explicit acknowledgment of Ms. Marian Williams, Mr. Williams' predecessor in title, that they would remain there indefinitely.

[28] This ruling would not be complete without stating that I categorically agree with Ms. Samuel and Mr. Stephen that Mr. Williams was quite aware of the nature and extent of their occupation. Mr. Williams' awareness arises from the fact that he lived on the very lands with them for his whole life and he did so as part of the family structure. His protestations to the contrary of these conclusions are, in my assessment, convincingly eviscerated by the terms of the 1998 letter from his predecessor in title, Ms. Marian Williams. Instructively, that letter was sent to Mr. Williams in his capacity as caretaker of the very lands. He could not have been in any better position to have cognisance of the nature of Ms. Samuel's and Mr. Stephen's occupation of the lands. Indeed Lord Denning makes the point in **Inwards** "that any purchaser who took with notice would clearly be bound by the equity"⁹.

[29] The point is further made in **Inwards** that the "equity is well recognised in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as the result of that expenditure, he will be allowed to remain there. It is for the court to say in what way the equity can be satisfied."¹⁰ I am of the view that the equity in this case can be satisfied by holding that the respondents are to be allowed to remain with a fee simple title to only the portion of the land on which their houses are built. A mere order for occupation during

⁹ *Inwards v Baker* [1965] All ER 446 at 449

¹⁰ *Inwards v Baker* [1965] All ER 446 at 449

their lifetime would ignore the fact that they both were allowed to occupy and build up these properties, raise their families thereon from at least the 1960s and treat their occupation with a substantial degree of permanence. See **Plimmer and Another v the Mayor, Councilors and Citizens of the City of Wellington**¹¹ for the court's discretion to determine the extent of the equitable interest in all the circumstances.

- [30] In respect of Mr. Stephen's claim to prescriptive title, it can hardly be the case that the same is sustainable in view of the evidence that Mr. Williams' predecessor in title asserted her title to the property both in writing and through engaging a caretaker there who Ms. Stephen and Ms. Samuel both acknowledged. Additionally, I have already concluded that both respondents resided there with permission and/or acquiescence of Ms. Marian Williams to remain there permanently.

Conclusion

- [31] For the reasons advanced above, it is hereby ordered and declared as follows:
- i. That Mr. Williams' claim for recovery of possession, an injunction, damages against Ms. Samuel and Mr. Stephen is denied;
 - ii. That Mr. Williams and his successors in title are estopped from removing Ms. Samuel and Mr. Stephen from their respective portions of the land that they now occupy;
 - iii. Ms. Samuel and Mr. Stephen are declared to have a fee simple title to the portions of the land that they occupy;
 - iv. Ms. Samuel and Mr. Stephen are to commission surveys of their respective portions on the land that they now occupy to ascertain the

¹¹ (1884) 9 App. Cas. 699

measurements thereof. They will each bear the costs of the survey of the portions of the land that they occupy;

- v. The surveys are to be conducted on or before 30 July 2021;
- vi. Mr. Stephen's counterclaim for a declaration of possessory title and/or adverse possession of the portion of the land that he occupies is denied.
- vii. The parties are to each bear their own costs on this claim.

Raulston L. A. Glasgow
High Court Judge

By the Court

Registrar