

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

GRENADA

CLAIM NO: GDAHCV 2014/0519

BETWEEN

**Stephanie Baptiste
(By Her Lawful appointed Attorney Sharmain Ragbasingh)**

Claimant

And

Salisha Jones

Defendant

Before:

The Hon. Mde Justice Agnes Actie

Appearances:

Mr. Anselm Clouden for the claimant

Mrs. Celia Edwards Q.C with Mr Deloni Edwards and Miss Celine Edwards for the defendant

2020: December 17

RULING

[1] **ACTIE, J:** The claimant filed a claim on 14th November 2014 seeking a declaration that she is entitled to the freehold property and possession of a parcel of land measuring 6010 Square feet situate at Fontenoy in the parish of Saint George, Grenada. The claimant relies on the Statutory Declaration sworn by Paul Braithwaite on 4th October 2006 and recorded in the Deeds Registry.

[2] The claimant alleges that she lived with her grandmother, Ms Girley St. Louis, and her uncle, William St Louis, who had been in exclusive possession of the said land in excess of thirty

years. The claimant avers that the defendant wrongfully entered onto the land in 2012 and constructed a concrete dwelling house notwithstanding repeated verbal requests to vacate the land.

[3] The defendant contends that the property was originally owned by James Alexis (deceased) leaving his widow, Adriana Alexis and one child Agnes Alexis king. After the death of Adriana, the property was vested in Agnes Alexis King in 1993, who died leaving her husband Kenneth King and one child Jean King Frey. By Deed of Gift made in 2005, Jean King Frey gifted the said land to John Jones, the father of the defendant. On 17th August 2012, John Jones donated the said property to the defendant.

[4] At the trial, the claimant's witness, Mr Paul Braithwaite, who swore to the Statutory Declaration in favour of the claimant states that he was quite familiar with the claimant who frequently visited his grandmother, Adriana Alexis. Mr Braithwaite said that the land belonged to his grandmother. In cross examination he admitted that he collected rent or some form of money token from the St. Louis family to buy "things" for his grandmother.

Analysis

[5] Mrs Celia Edwards, Senior Counsel for the defendant contends that the claimant in her statement of claim is seeking to assert title as freehold owner and as adverse possessor. Senior Counsel states such a pleading is not permissible in law and relies on the Court of Appeal decision in **Arnold Celestine (Administrator of the Estate of O' Ferril Celestine) v. Carlton Baptiste**¹. In that case the claimant sought declarations to the effect that he was the fee simple owner and possessory owner of a parcel of land. George- Creque, J.A (as she then was) said:

[12] In my view, this is clearly an inconsistent pleading. To claim to be in possession of land "as of right", whilst at the same time claiming to be in adverse possession of it, is simply incomprehensible, given the legal connotation of each. If an owner is in

¹ HCVAP2008/011

possession “as of right” (i.e. with the paper title) then the question of that owner being in adverse possession to his own paper title simply cannot arise as a matter of law. It goes without saying that the obverse position is this: Adverse possession can only arise where it is recognized by the “adverse possessor” that the paper title is vested in someone else. In essence, the adverse possessor seeks to say that he has dispossessed the paper owner. (A presumption possession operates in favour of the paper owner)

[6] The claimant’s claim for both actual owner and adverse possessor is clearly inconsistent in keeping with the Court of Appeal’ decision in **Celestine v Baptiste**. The inconsistent pleading can bring the claimant’s claim to an end without the court probing further into the evidence. However, the court will analyse the evidence merely to confirm that the claimant has failed to prove her case.

[7] The claimant contends that she and her family have been in undisturbed possession of the land in excess of thirty (30) years commencing with her grandmother Ms Girly St Louis (deceased) who raised her from the age of 5 years. She said possession continued by her uncle, William St Louis, and then herself. The claimant avers the dwelling house in which her predecessors and then herself lived was severely damaged by hurricane Ivan in 2004 but was repaired. The claimant relies on a Statutory Declaration deposed by her witness Paul Braithwaite to assert title.

[8] The law is well established that a Statutory Declaration without more does not confer title. Henry J in **Nancy Jaleel v Neville Elcock et al**² citing Alleyne J. in **Gordon Charles v Claire Holas**³ said:

“ A statutory declaration is nothing more than a written document containing allegations of fact solemnly declared in the form of law. It may have certain limited evidential value, but is not an alternative method of conveying land”

² GDAHCV 2002/0490 consolidated with GDAHCV 2003/02130

³ GDAHCV 1996/0151

[9] A person seeking adverse possession must prove that his/her possession to be *Nec vi, Nec clam, Nec precario*, that is, 'not by force, nor stealth, nor the licence of the owner'. The requirement that possession be adverse requires that the possession was not in occupation pursuant to a licence, whether expressed or implied from the paper title owner.

[10] It is the evidence of Paul Braithwaite that the claimant's predecessors paid a rent or some form of money token for their occupation of the said land. When asked by the court in cross-examination as to when the payment stopped, he was unable to give a satisfactory response.

[11] The court having heard the evidence of both parties accepts that the claimant and predecessors had been in possession for a significant period in excess of the twelve years limitation period. However, the court is of the view that they were in possession as licensees with consent as an act of generosity. The Privy Council in **Ramnarace v Lutchman**⁴ describes a license to be "something in the circumstances such a family arrangement, an act of friendship or generosity or such like".

[12] It is settled that 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"⁵). Everything must depend on the particular circumstances. There must be a change in the nature of the occupation in order for use by consent or occupation as a licensee to become adverse possession.

[13] In **Powell v McFarlane** at pp 470-471, Slade J defined factual possession as follows:

"(3)

The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed., but broadly, I think what must be shown as constituting factual possession is that the alleged

⁴ 2001 UKPC 25

⁵ *JA Pye (Oxford) Ltd and others v Graham*

possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."

[14] The claimant has not demonstrated that she had exclusive physical control of the property to dispossess the paper title owner. Likewise, the claimant's claim as freehold owner is not supported by any memorandum in writing from the paper title owner. It is the evidence that the defendant has been in possession with a registered paper title and built a concrete dwelling house on the lot of land. The claimant has failed in the circumstances to establish that she is entitled to the reliefs claimed in the statement of claim and the claim is accordingly dismissed with costs.

Order

[15] The claimant's claim stands dismissed with Prescribed Costs to the defendant in the sum of \$7500.00 pursuant to CPR 65.5 (2) (b).

**Agnes Actie
High Court Judge**

By the Court

Registrar