

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

GRENADA
CLAIM NO. GDAHCV2014/0299

BETWEEN:

GRENADA DISTILLERS LIMITED

Claimant

and

KEITH NEWTON

Defendant

Before:

The Hon. Mde Justice Agnes Actie

Appearances:

Mr. Dickon Mitchell with Ms Crystal Braveboy Chetram and Ms. Skeeta Chitan for
the Claimant

Ms. Winnifred Duncan- Phillip with Caryn Adams for the Defendant

2020: September 14
October 19

JUDGMENT

- [1] **ACTIE J:** The issue for determination in this claim is whether the claimant's claim for possession is statute barred having been filed in excess of twelve years of

the time prescribed by the Limitation of Actions Act. The court having reviewed the facts and circumstances of the case finds in favor of the defendant and the claimant's claim is dismissed for the reasons outlined below.

Background

- [2] On 23rd June 2014, the claimant filed a fixed date claim seeking damages for trespass, possession, mesne profits and a mandatory injunction against the defendant. It is the evidence that sometime in 1960's the defendant "Keith Newton" entered into possession of lands owned by the Sugar Factory Company at Hope Vale, St George's, Grenada. Mr. Newton said that he was allotted a portion of land measuring approximately 30,946 square feet under an agreement with the company. It was a standard arrangement whereby plots of land would be allotted to farmers for cultivating sugar cane for the company's use. Deductions for rent were made from the proceeds of sale of sugar cane to the company. The Sugar Cane company kept one third (1/3) of the price of the sugar cane sold as rent and the planters were paid the remaining two thirds (2/3) less deductions for manure and other incidentals provided by the company.
- [3] Mr. Newton states that the standard arrangement continued until 1976 when the then Eric Gairy Government of Grenada made a public announcement that Sugar Cane company lands had been acquired. It was also announced that the Government would be granting the farmers title for the plots they were cultivating. Mr. Newton further states that farmers were informed at a meeting convened by Mr. Norman De Souza, a Government Minister, that the move was part of the Government's program called "Land for the landless".
- [4] Mr. Newton said that he stopped paying rent on reliance of the Government's statement and also stopped planting sugar cane entirely in 1978. Mr. Newton said he cultivated more cash crops such as cabbage, tomatoes, lettuce, eggplant, peas, corn and yams. He said he remained in undisturbed possession cultivating and

selling his produce to various supermarkets without paying rent or accounting to anyone.

[5] On 18th March 2010, the claimant company wrote to Mr. Newton asking him to cease his unlawful trespass of the land that he occupied. The company offered Mr. Newton alternative land to farm on terms and conditions to be agreed.

[6] Counsel responded informing the company that Mr. Newton had been in possession of the land from 1962 and intended to rely on the **Limitation of Action Act**.

The sole issue for determination is whether the claimant's claim is statute barred.

The Law

[7] **Section 4 of the Limitation of Actions Act** provides

"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".

[8] **Section 27 of the Limitations Act** provides:

"At the determination of the period limited by the 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"

[9] The combined effect of the two sections is that a claim for possession or right of action dealing with land must be commenced within twelve years of the date of the accrual of the cause of action.

- [10] A person seeking adverse possession must prove his/her the possession to be Nec vi, Nec clam, Nec precario, that is, 'not by force, nor stealth, nor the licence of the owner'.
- [11] The burden shifts to a defendant who pleads limitation of action in a claim for possession by the paper title owner. Mr. Newton is required to prove that he had (a) a sufficient degree of physical custody and control with factual possession of the land and (b) a factual requisite intention to possess and exercise such custody and control on his own behalf and benefit commonly referred to as Animus Possidendi.
- [12] The question of what acts constitute a sufficient degree of exclusive physical control depend on the circumstances, in particular the nature of the land. In relation to factual possession the test is whether the alleged 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 had done so. As to intention, what is required is not an intention to own or even acquire ownership, but an intention to possess to the exclusion all others, including the owner of the paper title¹.
- [13] The test to satisfy the requisite intention to dispossess a paper tile owner was outlined by Slade J in **Powell v Macfarlane** and approved by the House of Lords in **JA Pye (Oxford) Ltd and others V Graham**² said:

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

.....

"what is really meant, in my judgment, is that the animus possidendi involves the intention, in one's own name and on one's own behalf, to

¹ Powell v Mc Farlane (1977) ; Buckingham County Council v Moran [1990] Ch. 623,639-643;

² 2002] 3 AER 865

exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow"

- [14] Mr. Newton states that he originally occupied the land as a tenant back in the 1960's. However, he exercised full control without paying rent or accounting to anyone from 1976 when the Government of Grenada announced that the lands had been acquired. He surveyed the property in 2014 and recorded a statutory declaration in the Deeds and Land Registry on 11th June 2014 to assert his acquired right before the claimant filed its claim on 23rd June 2014.
- [15] Counsel for Mr. Newton posits that the facts of the extant case are akin to the House of Lords decision in **JA PYE Oxford Ltd and Another v Graham and another**³. Pye owned a substantial amount of land. In 1977 he sold off his farmhouse and some of the land and retained the disputed land, which consisted of four fields, with a view to develop it in the future. In 1982, the Grahams purchased the farmhouse and in 1983 entered an annual grazing agreement with Pye in respect of the disputed land for which they paid £2,000. The following year, Pye refused to renew the agreement as he wished to apply for planning permission and thought it would be easier if the land was not in use. The Grahams were asked to vacate the land at the end of the agreement. The Grahams continued to use the land and the following year requested a new agreement, but this was not accepted. The Grahams continued to use the land and gave up seeking to communicate with Pye as they were getting no reply to any correspondence. In 1999 Pye issued proceedings to gain possession of the land. The House of Lords held that the Grahams sought rights to graze or cut grass on the land after the summer of 1984 and were quite prepared to pay. When Pye failed to respond they did what any other farmer in their position would have done: they continued to farm the land. They were not at fault. But the result of Pye's inaction was that they enjoyed the full use of the land without payment for 12 years.

³[2002] 3 AER 865

- [16] The House of Lords citing Slade J **Powell v Mc Farlane** at pp 470-471, defined factual possession as follows:

"(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. 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. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged 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."

- [17] The case for Mr. Newton is in my view similar to the Grahams in **Pye**. Mr. Newton's occupation started with the consent of the company under a rental arrangement. He remained in occupation without payment of rent or accounting to anyone after the Government's announcement of the intention to grant title to the farmers in occupation.

- [18] There is no evidence actual acquisition of the lands by the then Government. However, the evidence of Mr. Nickels, Managing Director of the company, supports the defendant's assertion that there was some form of Government intervention in the control of the company. The evidence at trial is that the company was in private ownership until 1979 and returned to private control in 1984. Mr. Nickels in cross

examination states that he repurchased shares from the Government and is now the majority shareholder of the company since 2001.

[19] The claimant's witness, Mr. Mc Kenzie McDonald, confirmed that the PRG government was in charge of the lands between 1979 to 1983. He said that the company sold lands to the farmers. He further states that Mr. Newton expressed his desire to purchase the plot that he occupied; a fact denied by Mr. Newton.

[20] Counsel for the claimant contends that Mr. Newton was a licensee and cannot therefore maintain a defence of limitation. Counsel in his submissions states that even if the Government acquired the land in 1976, it reinforces that Mr. Newton continued occupation was with permission or licence of the then owner of the land, the Government of Grenada. Counsel further stated that even if the land was given back to the claimant in 1984, it reinforces the fact that Mr. Newton's continued farming was pursuant to the licence first granted to him in the 1960's which continued in 1976 .

[21] What constitutes a licence was defined by the Privy Council in **Ramnarace v Lutchman**⁴ as follows:

"Before an occupier who is in exclusive occupation of land can be treated as holding under a licence and not a tenancy there must be something in the circumstances such a family arrangement, an act of friendship or generosity or such like, to negative any intention of legal relations".

[22] Whether a person with limited permission to use or occupy land might rely on more extensive activity to claim adverse possession is a question of fact turning on the circumstances of the case. There must be a change in the nature of occupation. The court will have to look at purpose of the occupation and the surrounding circumstances.

⁴ 2001 UKPC 25

- [23] It is acknowledged that Mr. Newton came unto the land with the permission of the company with a rental arrangement which terminated sometime in 1976. Mr. Newton remained in occupation rent free and continued cultivating the land planting all sorts of vegetables on a large scale which he said supplied to supermarkets. Mr. Newton's rent-free occupation from 1976 until 1983 was on his intention to become title owner based on the representations made by the then Government. This having failed he remained in occupation continuously planting and selling crops without any intervention by the claimant who regained control of the said lands. The assertion by Mr. McKenzie that Mr. Newton indicated an interest to purchase the plot further supports the Annimus Possidendi requirement to satisfy a claim for adverse possession. The Grahams in **Pye** were prepared to pay for the grazing licence and had actually made an offer to purchase the land from the paper title holder although they first entered into possession with consent under rental arrangement.
- [24] To dispossess a paper title holder, one must have entered the land without the permission from the beginning, or having entered with permission, it must have expired. Taking the evidence to the furthest point from 1984 after the demise of the PRG Government or 2001 when the company went back into private ownership, the twelve year limitation period within which to dispossess Mr. Newton had expired when the claim was filed in 2014. The right of action to recover land is barred whenever twelve years have elapsed from the time any right of action accrued: It does not have to be a period immediately before the action is brought. In the case of unregistered land (**as in this case**), on the expiration of the limitation regulating the recovery of land, the title of the paper owner is extinguished.⁵
- [25] In **Wilhelmina Mc.Laren v Leroy Davidson**⁶ Baptiste J, as he then was, citing **J. A Pye (Oxford) Ltd v Graham** held that defendant and his wife occupied the

⁵ J A Pye(Oxford) Ltd v Graham @ Paragraph 26

⁶ GDAHCV1990.0399

disputed land and made full use of it as owner would have and is such a way as to exclude the owner.

- [26] Looking at the totality of the evidence and the authorities, I am of the view that Mr. Newton has established that he had both the factual occupation and requisite intention to possess (Animus Possidendi) to dispossess the claimant. Mr. Newton has by his action fortified his intention to own the land in his own name. He surveyed the property and made a statutory declaration asserting his aim to claim the land by adverse possession.
- [27] There is no evidence to indicate that the claimant took any effective action to dispossess Mr. Newton prior to the filing of the extant claim other than the letter sent by the company in March 2010. A letter demanding possession does not stop the limitation period from running for the purposes of adverse possession⁷.
- [28] Mr. Newton has through the long period for which he remained in uninterrupted, unconcealed possession and use of the land coupled with intention to own (animus possidendi) has discharged the burden to establish that the claimant's claim was brought outside the twelve year limitation period proscribed by the Limitation of Actions Act and is therefore statute barred.
- [29] The defendant in his defence pleaded the statute of limitation but did not counterclaim for possession. The plea of limitation of action is available only as a defence and not as a cause of action. Accordingly, no declaration of title is made in favor of Mr. Newton in this claim.

⁷ Carmel Investments Limited v Peter Thoulow 1988 3 All ER 129

ORDER

- [30] For the forgoing reasons, the claimant's claim against the defendant having been brought in excess of the twelve years limitation period 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

**Registrar Supreme
Court Grenada**

