

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2018/0077

BETWEEN:

NAOMI DUNCAN

CLAIMANT

AND

ALSTON MAY

DEFENDANT

Appearances:

Mr. Richard Williams and Ms. Danielle France for the Claimant

Mr. Jomo Thomas for the Defendant

2020: 29th September
29th October

JUDGMENT

Byer, J.:

- [1] By Amended Fixed Date Claim Form filed on the 25th May 2020, the claimant, after extensive management of the case at the Pre Trial Review, claimed as against the defendant the following relief:
- i. A declaration that the claimant is the owner of all that lot piece or parcel of land more particularly described as Lots 1 & 2 on Plan C1823 situate at Sandy Bay in the Parish of Charlotte in the State Vincent and the Grenadines.
 - ii. Possession of the said lands more particularly described as Lots 1 & 2 on Plan C1823 situate at Sandy Bay in the Parish of Charlotte in the State of Saint Vincent and the Grenadines.
 - iii. An order cancelling Survey No. C1774.

iv. Damages for trespass.

v. An injunction restraining the defendant from trespassing on her lands situate at Sandy Bay more particularly described as Lots 1 & 2 on Plan C1823 situate at Sandy Bay in the Parish of Charlotte in the State of Saint Vincent and the Grenadines.

vi. Damages.

vii. Such further or other relief.

[2] In response the defendant relying on the provisions of the Limitation Act, counterclaimed that he had been in occupation of the land that the claimant seeks possession of for over 12 years and that in any event, the claimant was not the legal owner of the land the same having been executed by someone who purported to be a Justice of the Peace before his effective appointment. The defendant therefore claimed as follows:

i. A declaration that the claimant Naomi Duncan is not the legal owner of the disputed parcel of land.

ii. A declaration that through the acts of occupation and possession and dominion over the said 8.377 acres of land for more than 12 years, the Defendant has effectively ousted the true owner of legal title to the said 8.377 acres of land.

iii. A declaration that the title of the said 8.377 acres of land situate in Sandy Bay butted and bounded to the NORTH by 16ft road to the SOUTH by a cliff, gutter and land owned by the heirs of James Delves, to the EAST by lands owned by Fred Toppin and to the WEST by a 16 ft. Road is legally vested in the defendant.

iv. A declaration that the defendant acquired a beneficial interest in the lands sold by the claimant to Mr. Henry John Marriott and Andrew Dennis Hadley of the Cocoa Company to the defendant.

v. Any such further or Orders as the court may deem just.

vi. Costs.

[3] The reply and defence filed on behalf of the claimant denied that the defendant had been in occupation of the land for the period of time as pleaded and that in any event, the claimant was the one who had given the defendant permission to be on the land so any such occupation could not be adverse. In response to the claim against the title deed, the claimant's position was that the deed contained an error as to date only and that that error could not render the deed of conveyance null and void as pleaded.

- [4] The defendant in his defence and counterclaim had also pleaded that the claimant had without authority alienated a portion of the land that he claimed to be entitled to possession. The defendant having recognized that a portion of the land that he claimed had been sold to the Cocoa Company at some point in 2015 through its purchasers Henry Marriott and Andrew Hadley sought relief that not only were these purchasers not entitled to land so purchased but additionally by virtue of the actions of the claimant he was also entitled to the benefit of the purchase price.
- [5] Before this court therefore delves into the other claims as sought by the defendant, I wish to deal with this specific pleading seeking an interest in the purchase money paid for the parcel sold to the Cocoa Company, in short order.
- [6] It was with some consternation that the court was not provided with any evidence in chief of the defendant to support this pleading. Therefore, the only evidence that this court had in relation to this relief as sought came from what was elicited from the defendant himself during his extensive cross examination.
- [7] Under that cross examination the defendant had this to say about the sale to the Cocoa Company:
"The land that the cocoa company bought is Ms. Hoyte's land in 2015. She was not alive in 2015." Then further *"the land that the cocoa company bought has nothing to do with me. ... the cocoa company bought land from Ms. Hoyte. Ms. Duncan sold Ms. Hoyte land to the cocoa company."*
- [8] When this court considers this evidence two things become clear. One, that the defendant has clearly stated that he is not concerned with the land that the Cocoa Company bought from the claimant and two, that he has categorically stated under oath that the land that was sold to the Cocoa Company belonged to Ms. Hoyte (or Auntie Urs as she will be referred to in this judgment with no disrespect being intended to the deceased). In fact the clear inference that emerged from the manner in which this evidence was given that the angst that the defendant felt about the sale to the Cocoa Company was not that the land that was sold he considered his, but rather that it was Auntie Urs and that the claimant had no right to sell the same.
- [9] It was therefore having heard these admissions that at the end of trial, the court addressed counsel for the defendant as to whether the defendant was still maintaining his prayer claiming a beneficial interest in the purchase monies paid by the Cocoa Company to the claimant. However, counsel for the defendant indicated that the defendant was still pursuing this prayer and submitted emphatically that his client was in fact in possession of the parcel of land sold to the Cocoa Company.
- [10] In this court's mind, these two positions are diametrically opposed. Either the land was the defendant's in that he claimed the possession thereof and which was sold by the claimant without authority or the land was Auntie Urs and was sold as her land after her death.

- [11] Therefore in spite of counsel for the defendant valiantly attempting to redeem his client's case and insist that the prayer for the beneficial interest in the purchase monies was still an extant issue, in this court's mind, the defendant has abandoned his claim to the portion of land that was sold to the Cocoa Company in 2015 by his own admissions as identified. I therefore find that the defendant is not entitled to the relief sought in his defence and counterclaim touching and concerning 4.141 Acres of the 8.377 Acres as shown on the Plan C1774 dated September 2017. Therefore the claims seeking an interest in the proceeds of sale, a declaration that he has a beneficial interest in those lands and a declaration that the claimant pays damages for trespass to the land consequent upon the sale to the Cocoa Company are dismissed summarily.
- [12] That being said, this court therefore considers that there are only now two issues to be addressed:
1. Whether the defendant can successfully raise the defence under the Limitations of Actions Act CAP 129 of the Revised Laws of Saint Vincent and the Grenadines as to defeat the claimant's claim for a declaration of ownership and an order for possession of Lots 1 and 2 on the Plan C1823 dated 15th October 2018 measuring 4.24 Acres.
 2. Whether the claimant is entitled to a declaration of ownership and possession of property.
- [13] As identified in the oral closing addresses of the parties, the answer to those questions lies primarily in the evidence that was placed before the court.
- [14] This would therefore require an assessment of the relative cases led before this court at trial and a finding on the analysis of that evidence.

The Case for the Claimant

- [15] The claimant's case was based on the evidence of four witnesses, the claimant herself, one Sydney Roberts, the surveyor Kendon Lavia and the Justice of the Peace who executed the claimant's deed, Melvin Pompey.
- [16] The claimant's evidence was that she was the person who lived with her predecessor in title Joannie Hoyte (Auntie Urs). She admitted to having a very close relationship with the defendant who was a nephew of Auntie Urs. She told the court that after the defendant's witness Fred Toppin (who was also a relative of Auntie Urs) got into a legal dispute over the parcel of land that the defendant now occupies, the court made Mr. Toppin return the land to Auntie Urs. However, before this occurred Auntie Urs had in 2001 given instructions to a lawyer's office to prepare the deed in which Auntie Urs gave her the entire lot of land over 50 acres in measurement. However, the deed was never registered until 2015.

- [17] After Auntie Urs died, the claimant alleges that the defendant approached her in 2013 and sought her permission to cultivate an area at Cocoa Walk which she gave. The area that he started to cultivate, in the evidence of the claimant was only about 2.5 Acres. The claimant stated that the defendant did a little cultivation for about a year, stopped and never re-cultivated. The claimant stated that in 2015 when she negotiated the sale of a parcel of land to the Cocoa Company the defendant again approached her to allow him to use about 1.5 acres of adjoining lands and she refused. It is after this refusal that the claimant gave the defendant Notice to Quit in February 2017 for the original parcel, which he did not adhere to which then led to the filing of the instant claim in 2018. The claimant on cross examination maintained that she had given the defendant the permission to occupy one parcel of land and that she knew exactly where the lands were even if she had not gone there herself. She owned all the land that the defendant occupied by virtue of the deed of gift from Auntie Urs.
- [18] Sydney Roberts gave evidence on behalf of the claimant. His evidence essentially was that the portion of land that is being occupied by the defendant was a portion of the lands over which Ms. Hoyte and Fred Toppin had their dispute and that the land occupied by the defendant is primarily in bush with very little evidence of cultivation or occupation.
- [19] Kendon Lavia was the surveyor who was instructed by the claimant to demarcate the land that was being claimed by the defendant relative to the entirety of the lands owned by the claimant. In doing so he created Plan C1823 dated October 2018 and Plan C1837 dated February 2019.
- [20] On cross examination Mr. Lavia admitted that Plan C1837 was not produced in keeping with the order of the court made on the 25th June 2019 in that the same was done in the absence of the surveyor for the defendant and the defendant himself.
- [21] The final witness for the claimant was Melford Pompey the Justice of the Peace who allegedly witnessed the execution of the deed to the claimant from Auntie Urs.
- [22] At the commencement of this evidence it was clear that Mr. Pompey had no recollection at all as to the preparation of the witness summary on his behalf. However upon the witness being excused and counsel making submissions on the manner in which the witness summary could be entered, upon Mr. Pompey's return to the stand, it appeared he had a miraculous revelation and remembered everything about the circumstances of the preparation of the witness summary on his behalf of which he had only moments before been apparently clueless. This court makes no more comment on those circumstances save and except to indicate that it is on the occurrence of incidents like that, that the shortcomings of having court virtually (as we are presently constrained to convene) become apparent.
- [23] The evidence of Mr. Pompey was that the date on the deed of gift clearly had an error in that he was not a Justice of the Peace (JP) before December 2001. He therefore opined that the date on

the deed to the claimant which stated the same as being January 2001 was an obvious error and surmised the same was in fact signed in 2002 after his appointment.

- [24] The witness' fortification of this opinion was that he would not have been in possession of a stamp indicating his appointment as a JP if he had not been so appointed. This stamp was clearly affixed to the deed where his signature could be found.

The Case for the Defendant

- [25] The defendant in support of his case relied on three witnesses inclusive of himself.
- [26] The defendant's own evidence was that he has always been in occupation of the lot of land for which he claimed for over a period of 20 years. Contrary to the assertion in his examination in chief he however admitted on cross examination that he was in fact aware that the land he occupies was the land that he helped cultivate during the lifetime of Auntie Urs husband and after his death when he assisted Auntie Urs. He however stated that he never had a discussion with Mr. Hoyte (Auntie Urs husband) as to the commencement of his occupation of the land, how he would occupy the land or how he worked the same. In fact, Auntie Urs was his aunt and he had a very close relationship with her and her husband as a child with his parents. Thus while helping the Hoytes, he was responsible for grazing the animals that belonged to them on the same parcel of land he now occupies and stated that his cultivation having started before the death of Mr. Hoyte, Mr. Hoyte never made any attempt to stop him from planting on the said land.
- [27] In cross examination when he was asked to look at the Plan C1837 and to indicate where on the plan he is actually claiming, the defendant clearly and unequivocally pointed out the area demarcated as Lot 4 on that plan. The defendant throughout his evidence denied seeking permission of the Hoytes or the claimant to cultivate the said land and he also adamantly denied that he had not consistently planted on the land for the last 20 years.
- [28] One of the witnesses for the defendant was Mr. Fred Toppin. Mr. Toppin who admitted to being a relative of the defendant and their deceased Auntie Urs was no stranger to the court or to the land that had been in the ownership of Auntie Urs.
- [29] Mr. Toppin relayed to the court how previous to the death of Auntie Urs, she had purported to give him a portion of land that she owned but then changed her mind and took him to court to have the parcel returned. Mr. Toppin made it clear that he never had an opportunity to work the parcel of land and refused to agree with counsel for the claimant that the parcel of land claimed by the defendant was a portion of the same parcel of land he had to reconvey to Auntie Urs pursuant to the order of the court. Mr. Toppin's evidence was that on Plan C1837 the defendant was in fact occupying a portion of what was demarcated as Lot #4 thereon and that he had been occupying

that said portion since the 1990s. Finally, Mr. Toppin denied that there was any “bad blood” between himself and the claimant, but he did admit that he no longer speaks to her.

- [30] Esford Lavia was the final witness for the defendant. This witness’s evidence was that he was aware that the defendant used to help Mr. Hoyte with grazing animals on the same parcel of land that he is occupying now and used to plant crops on that land for the Hoytes. Mr. Lavia told the court that he was aware that the defendant started to plant his own crops on the said parcel after Auntie Urs died. This witness, unlike Mr. Toppin and the defendant, was unrelated to Auntie Urs but he was related to the claimant. Like Mr. Toppin, he also denied having any animosity towards the claimant but was aware that his brother had been involved in some litigation with the claimant previously.

Issue #1 - Whether the defendant can successfully raise a defence under the Limitation Act CAP 129 of the Revised Laws of Saint Vincent and the Grenadines as to defeat the claimant’s claim for a declaration of ownership and an order for possession of Lots 1 and 2 on the Plan C1823 dated 15th October 2018 measuring 4.24 Acres.

- [31] The requirement of the defendant to successfully rely on this defence is to satisfy the court on a balance of probabilities that he has occupied this parcel of land adverse to the owner for a period in excess of twelve (12) years.
- [32] In assessing this case and the evidence presented together and the manner in which those witnesses gave evidence, I accept firstly that the evidence of Mr. Pompey the JP was credible. I accept that in the execution of the deed, the year of 2001 was incorrectly included in the deed and that in fact the reference to January was January 2002 after Mr. Pompey had been substantially appointed as a JP. Indeed when one considers that it took another 14 years for the deed to be registered after execution, this court accepts that there was a real probability that dates and timing were not effectively managed by counsel who had conduct of the deed.
- [33] Secondly, I also accept that the evidence did not support an inference that the deed had been obtained by collusion, fraud or undue influence on the part of the claimant and that the defendant having not pleaded the same was barred from asking the court to make any such inference and all the evidence as to the state of mind or health of Auntie Urs was completely without merit.
- [34] Thirdly, on a balance of probabilities I find that the version of events leading to the occupation of the parcel of land by the defendant as proffered by the claimant was however generally without merit although I do accept that the defendant and his witnesses greatly exaggerated the way and manner the defendant’s occupation of the same commenced.

[35] Therefore when this court considers the evidence this court accepts the following and finds as a fact on a balance of probabilities:

- (i) That the defendant knew whose land he was occupying despite his repeated attempt to state that he had no knowledge of the same. His own witness Esford Lavia clearly stated that the lands belonged to the Hoytes and the defendant started there by cultivating the lands for the Hoytes.
- (ii) That the defendant being close to the parties who owned the land, that overtime without demurrer from the owners commenced cultivating the land on his own volition.
- (iii) That the defendant's initial entry onto the land commenced with the implied consent of the owner Mr. Hoyte.
- (iv) That after the passing of both Mr. Hoyte and Auntie Urs he continued in occupation in his own right.
- (v) That it was not the claimant who gave the defendant permission to cultivate the lands. That he had been in occupation of the same from 2007 to the filing of this claim by the claimant.

[36] In making these findings of fact, it is therefore apparent that the defendant's occupation of the land changed from what occurred in the period before the death of Mr. Hoyte to the period after the death of Mr. Hoyte and his wife, Auntie Urs.

[37] In this court's mind, and from the facts found, the defendant during the lifetime of the Hoytes entered the land as a bare licensee. There was no evidence of payment to the Hoytes or direct permission having been given by them but having entered onto the land he utilized the same. When the Hoytes died, this license would have been determined. However, upon that determination, the subsequent owner, the claimant took no action against him (and indeed the evidence of the defendant was that he and the claimant were good friends until the claimant filed this suit, but I am more inclined to consider that the friendship ended when the deed was finally registered and that Notice to Quit was sent to the defendant) and as a result the defendant continued in undisturbed occupation of the lot of land adverse to the claimant.

[38] The case from the jurisdiction of Grenada **Iri Anthony Francis v Raphael Frederick and Daphne Frederick**¹ is instructive in this regard. Alleyne J as he then was, clearly recognized that an intervening act or a change in circumstances can change the user of property to enable the party relying on the shield of limitation to an action for possession to do so even if the initial entry was incapable of grounding such relief. In that case, the court found that when the defendant had remained in undisturbed possession after the claimant had obtained judgment against them for the

¹ Civil Suit 0100/2001 (GDA High Court) Unrep

same parcel of land but did nothing to enforce the judgment, the defendants were at liberty to rely on the provisions of the Limitations Act and were successful in that reliance.

- [39] I therefore find that after the death of Auntie Urs in 2007, that the defendant had both sufficient degree of physical control and custody of the said parcel of land with the requisite intention to possess the said parcel Lot #4 on Plan C1837 or Lots #1 and 2 on Plan C1823. I accept therefore that his “use of the land [was] in the way in which an owner would”.²
- [40] However although I have made these findings, it is clear that the period of occupation by the defendant in his own right commenced no earlier than 2007. By 2015 when the claimant was registered as owner, she caused to be sent to the defendant a Notice to Quit which the defendant did not acknowledge and his exclusive occupation continued thereafter until the filing of the instant suit in 2018. It was only upon the filing of this suit and pursuit of the same that the period of the exclusive occupation of the defendant would have been effectively interrupted.
- [41] As Alleyne J in the **Iri Francis** case put it so succinctly “in order to interrupt acts of adverse possession, the party must initiate and pursue effectively a remedy. ...Any steps that he might have taken thereafter on that judgment subject to the Limitations Act would have interrupted the period of adverse possession. However, his failure to take any steps would have resulted in time running against him.”³
- [42] The learning in that case was also followed in the later case of **Ellen (Edlyn) Works v Mitch Phillip and Margaret Phillip**⁴ in which my sister Ellis J in applying the dicta of Alleyne J in the **Iri Francis** case also noted⁵ that the law is that where a Notice to Quit has been served without action being taken on the same, time will not stop running for the person claiming adverse possession. In that case, a Notice to Quit was served on the defendant who was relying on adverse possession to extinguish the rights of the claimant in April 1993 with a view to ensuring vacant possession for the proposed purchaser. However the claimant did nothing else and the court found that as of April 1993 time would have begun to run when permission was withdrawn and that the defendant continuing in possession for 12 years thereafter would have effectively extinguished the claimant’s right to bring an action for recovery. However in that case like the case at bar the period of 12 years had not elapsed since the possession had commenced and the defendant was not permitted to rely on the Limitations Act to defeat the claimant’s right to her order of possession.
- [43] In the case at bar, the defendant’s possession commenced as of 2007. By 2018 when this claim was issued, the required 12 years had not passed and certainly the Notice to Quit in February 2017

²Toolsie Persaud Ltd v James Investments Ltd [2008] CCJ 5; 72 WIR 292

³ Op Cit at paragraph 10

⁴ GDAHCV2004/0429

⁵ Per Ellis J at paragraphs 94-100

would not have interrupted his possession. The statutory limitation period has therefore not been attained and the claimant's right to seek possession has not been extinguished.

[44] Therefore this court finds that the defendant cannot rely on the statutory provisions as laid out in the Limitation Act.

Issue #2: Whether the claimant is entitled to a declaration of ownership and possession of property.

[45] Following on therefore from the finding above and this court also being satisfied on a balance of probabilities that the claimant's title deed is not rendered void and there having been no allegations of undue influence or duress, this court determines that the claimant is entitled to her relief as prayed.

[46] The claimant is therefore entitled to her prayer for a declaration of ownership and possession of the parcel of land at Lots 1 and 2 as demarcated on Plan C1823 as pleaded. Further in light of the submissions made on behalf of the claimant as to the damages suffered; this court accepts that there was no evidence that the claimant in fact suffered any damage as a result of the trespass of the defendant. In those circumstances, this court awards the claimant a nominal sum of \$250.00 to evidence the fact that there was in fact trespass on the part of the defendant.

The order of the court is therefore as follows:

On the claim:

1. Judgment is entered for the claimant. The claimant is therefore declared the owner of all that lot piece or parcel of land more particularly described as Lots 1 & 2 on Plan C1823 situate at Sandy Bay in the Parish of Charlotte in the State Vincent and the Grenadines.
2. The claimant is entitled to possession of the said lands more particularly described as Lots 1 & 2 on Plan C1823 situate at Sandy Bay in the Parish of Charlotte in the State of Saint Vincent and the Grenadines and the defendant shall deliver such possession within 30 days of today's date.
3. In light of the finding that the defendant has not established adverse possession for the requisite period this court orders that Survey No. C1774 purportedly demarcating the area occupied by the defendant shall stand cancelled.
4. Damages for trespass to the claimant in the sum of \$250.00.

5. The defendant is restrained from trespassing on the lands of the claimant more particularly described as Lots 1 & 2 on Plan C1823 situate at Sandy Bay in the Parish of Charlotte in the State of Saint Vincent and the Grenadines.
6. Prescribed Costs to the claimant on an unvalued claim pursuant to Part 65.5 CPR 2000.

On the Counterclaim:

1. The counterclaim of the defendant is dismissed in its entirety.
2. Prescribed costs to the claimant on the dismissal of the counterclaim on an unvalued claim pursuant to Part 65.5 CPR 2000.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar