

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHPT2016/0020

IN THE MATTER OF AN APPLICATION BY DEBRA MARIA GREAVES FOR A DECLARATION OF
POSSESSORY TITLE TO LAND

APPLICATION FOR A DECLARATION OF POSSESSORY TITLE TO LAND

BETWEEN

DEBRA MARIA GREAVES

APPLICANT

AND

AMOS GIBSON

Beneficiary of the Estate of Keith Murphy
(By his lawful Attorney on Record MONICA DAVIS)

RESPONDENT

Appearances:

Mr. Mathias Stewart counsel for the applicant.

Mrs. Cheryl Bailey and Ms. Mandella Campbell for the respondent.

2018: Mar. 20
May 31
Jul. 30

JUDGMENT

BACKGROUND

[1] **Henry, J.:** This case involves competing claims to ownership of a parcel of land situated at

Dorsetshire Hill, Saint Vincent and the Grenadines, widely regarded as an affluent neighbourhood. Ms. Debra Maria Greaves alleged that she has been in possession of the subject land in excess of 35 years. She claimed that it was gifted to her by her caretaker Alice Clarke. Her testimony revealed that she meant she was Ms. Clarke's caretaker. She explained that she had taken care of Alice Clarke for many years and was verbally given the land in return for her services. She claimed that she has treated it as her own since then. Two years ago she filed¹ an application for a declaration of possessory title of the land.

[2] Three months later, Amos Gibson (through his lawful attorney Monica Davis) filed² a claim in opposition. Mr. Gibson claimed that his deceased father Keith Murphy bought the subject land from Percy Marshall and that the title is registered by Deed of Conveyance No. 12 of 1957.

[3] Mr. Gibson claimed further that Debra Greaves' mother Evelyn Greaves Murphy aka 'Enie' rented a portion of the subject lands and paid rent to his grandmother Alice Clarke who was Keith Murphy's mother. He averred that he cultivated the subject land from 1995 and lived there between 1996 and 1999 with Theresa Baptiste, after which he migrated to England. He asserted that two of his children have continued to live there.

[4] Mr. Gibson claimed a declaration that Keith Murphy deceased is the true and only owner of the land. He prayed that the Court should make an order dismissing Ms. Greaves' application for possessory title and award him costs. I have concluded that Ms. Greaves has not established that she has enjoyed adverse possession of the subject lands. Her application for a declaration of possessory title is dismissed.

ISSUE

[5] The issue is whether Debra Maria Greaves should be granted a declaration of possessory title of the subject land?

¹ On 20th May.

² On 29th August.

ANALYSIS

Issue – Should a declaration of possessory title be issued to Debra Maria Greaves?

[6] Ms. Greaves produced a survey plan of the disputed land. It was approved and lodged at the Lands and Survey Department on 9th February 2016 by Chief Surveyor Mr. Keith Francis. The plan was numbered G3115 and is identified by Survey Order No. P65/2016. The land depicted comprises 8,465 sq. ft. The survey plan also reflects that the land contained two board houses and a board shop at that time.

[7] Based on the demarcation and description provided by Ms. Greaves the subject land has a triangular shape and is bounded on the North by remaining lands on Survey Plan G28/7 (Amos Gibson), on the South partly by a road, on the East by a road and on the West by a road. A valuation filed³ by Ms. Greaves estimated the value of the land to be \$84,650.00.

[8] Monica Davis exhibited a different survey plan which depicted an area of land consisting of 35,915 sq. ft. It was assigned plan number G28/7 and was approved and lodged at the Lands and Survey Department on 23rd November 1998 by the Chief Surveyor. Significantly, the survey plan did not reflect that any buildings were on the land at the date of survey. It appeared to be a larger plot of land incorporating the lands on Debra Greaves' survey plan.

[9] The legislative regime governing the grant of declarations of possessory title is outlined in the Possessory Titles Act⁴ ('the Act'). It provides that a successful applicant must establish that she has enjoyed adverse possession of the subject property. The Act defines 'adverse possession' as 'factual possession of an exclusive and undisturbed nature for a continuous period of twelve years or more accompanied by the requisite intention to possess the land as owner.' Ms. Greaves must establish those elements in order to prevail in this case.

[10] She testified and was cross-examined. She presented four witnesses - Ertha Gibson, Loretta Smith, Regina Greaves and Paulinea Greaves. Ms. Monica Davis called 5 witnesses and she

³ On 20th May 2016.

⁴ Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

testified on her father's behalf. Her witnesses Yvonne Bonadie, Beverly Frederick, Le Anna Gibson, Theresa Baptiste and Julieth Greaves gave accounts which in material respects contradicted Ms. Debra Greaves' position. The central issue stands to be resolved largely on the credibility of the respective witnesses.

[11] Debra Greaves swore to two affidavits⁵ in support of her claim. They were admitted into evidence at the trial without objection from Mr. Gibson's lawful attorney, along with the attached survey plan and copy of a tax receipt. During cross-examination, Ms. Greaves acknowledged that she was unable to read. The *jurat*⁶ on her affidavits did not reveal this. No evidence was led that the affidavits were read to her before she signed them.

[12] On Amos Gibson's behalf, learned counsel Ms. Mandella Campbell submitted that the affidavits should be struck out because they failed to comply with the mandatory requirements as to the content of the *jurat*. She submitted that there is no evidence whether Ms. Greaves appeared to understand the contents of the affidavits or whether she accepted them as true and correct. She argued that CPR 30.5(4) stipulates that those procedures be observed.

[13] Learned counsel Ms. Campbell submitted that while the CPR imposes no sanctions for non-compliance with that provision, a sanction is set out in the English Practice Directions ('PD') which are applicable in this jurisdiction. In this regard, she argued that the English PD 32 stipulates that such an affidavit may not be used in evidence, if the person before whom it was sworn omitted from the *jurat* a statement certifying that:

1. he read the affidavit to the deponent;
2. the deponent appeared to understand it and
3. the deponent signed or made his mark in his presence.

[14] Learned counsel Ms. Campbell pointed out that this provision has been incorporated into the laws

⁵ Filed respectively on 20th May 2016 and 18th September 2017.

⁶ A *jurat* is the clause at the end of an affidavit or other document which states the date, place, and name of the person before whom it was sworn.

of Saint Vincent and the Grenadines by virtue of section 11(1) of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act⁷ and section 3 of the Evidence Act⁸. Those sections provide respectively that where no special provision is made in rules of court to govern proceedings or the admissibility of documents in the Supreme Court, its jurisdiction shall be exercised in conformity with the law and practice in the High Court of Justice in England.

[15] Learned counsel Mr. Stewart countered that section 4 of the Illiterates Protection Act⁹ provides that:

1. no document is valid against an illiterate unless:
 - a) it is signed by him in the presence of an official attestor and attested by the attestor;
 - b) before it is signed by the illiterate, the attestor must explain it to him and refuse to attest it unless the illiterate appears to understand its contents; and
2. The attestation by the official attestor shall be conclusive evidence that the illiterate person understood and approved the contents of the document before signing it.

[16] Learned counsel Ms. Campbell contended that persons who are found to be illiterate are afforded the protection of the Illiterates Protection Act in respect of certain documents but not affidavits. She argued that the definition of 'illiterates' does not include a person who is unable to read. She contended that therefore Ms. Greaves' situation falls outside of the provisions in that Act.

[17] The relevant definitions under the Illiterates Protection Act are as follows:
'illiterate person' includes a person who, at the time of the execution or purported execution of the document concerned, was unable to write his name, whether temporarily or permanently and whether by reason of infirmity of mind or body or by reason of any physical or mental disability or for any reason whatsoever.'
'document' means -

⁷ Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

⁸ Cap. 220 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

⁹ Cap. 288 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

- (a) any deed whereby an illiterate person conveys land or renders himself liable to any obligation;
- (b) any agreement for the sale or purchase of land by an illiterate person;
- (c) any agreement made with an illiterate person for a lease of land, whether the rent is reserved as a yearly rent or otherwise;
- (d) any promise in writing by an illiterate person to answer for the debt, default or miscarriage of another person; and
- (e) any promissory note for an amount exceeding four dollars and eighty cents made or indorsed by an illiterate person;'.¹⁰

[18] Learned counsel Ms. Campbell argued that guidance on the meaning of 'illiterate' is outlined in the case of **Hoyte v Toppin**. The presiding judge, Alleyne J. stated:

'...The natural and ordinary meaning of the word is reflected in the Oxford Pocket Dictionary as "uneducated person, especially one unable to read" and in the Cambridge International Dictionary of English as "a person not knowing how to read and write..."¹⁰.

[19] It must be noted however that while the definition of 'document' in that Act provides an exhaustive list of the records which are captured by the provisions of the Act, the definition of 'illiterate' is not so restricted. By using the verb 'includes', Parliament demonstrated that the categories of persons was not closed. It is therefore conceivable that the description 'illiterate' extends to persons who are unable to read.

[20] I agree that the definition of 'document' in the Illiterates Protection Act excludes a number of written records from contemplation. This includes affidavits. Accordingly, the instant case is not caught by that Act. In view of my observation regarding the Act's applicability to affidavits, it is not necessary to explore that point further.

[21] Learned counsel Ms. Campbell has made some compelling arguments regarding the admissibility of the referenced affidavits. Ms. Greaves did not disclose prior to the trial date that she was unable to read. She adduced no evidence regarding the circumstances under which she satisfied the

¹⁰ SVGHCV2001/0249 (unreported) delivered 20th January 2003.

Deputy Registrar¹¹ that she understood the contents of the affidavits. In the absence of the specified *jurat*, the Court cannot be sure that she is aware of what is contained in the affidavits. As will be demonstrated, her sworn account contradicted her pleaded case in parts.

[22] In her written submissions, she contended that the information stated in the Application and applicant's affidavits are 'her words dictated to her legal practitioner which were typed and explained to her.' She indicated further in her submissions that she 'was asked by the attestor if she knew what she was signing and she replied yes.' No evidence was led to this effect. It cannot be accepted through submissions. Ms. Greaves submitted further that her signature is exhibited on the documents she signed. She did testify to this effect but this is not enough.

[23] To retain the affidavits as part of her testimony (without the prescribed built-in safeguards of the referenced attestation certificate) could result in admission of statements crafted independently by someone other than Ms. Greaves. This would be highly prejudicial to Amos Gibson and contrary to the interests of justice. It would also be contrary to the overriding objective to do justice between the parties.

[24] In all the circumstances, I am not satisfied that Ms. Greaves has proven that she knew what was written in the affidavits. I consider that it is just to strike them out. I therefore order that the affidavits sworn to by Debra Maria Greaves and filed respectively on 20th May 2016 and 18th September 2017 be and are struck out. The Court will consider her oral evidence in arriving at a decision.

[25] Ms. Greaves testified that she lives at Dorsetshire Hill and does farming on Queens Drive. She averred that she moved there with her mother around 1974 when she was around 13 years old. She explained that she filed the present application on 20th May 2016. She stated that her brother (a deaf mute) Trevor Greaves, her daughter Loretta Smith, sister-in-law Regina Greaves, Christine Greaves, Purlinea Greaves and all of her grandchildren live there. She testified that her sister Evelyn Greaves used to live there but moved away after their mother died.

¹¹ Before whom the affidavits were sworn.

- [26] Ertha Gibson's and Carmen Chavlier's testimony was similar in some respects. They averred that they have known Debra Greaves respectively for 40 and 30 years. They both recalled that Ms. Greaves moved to Dorsetshire Hill with her mother and siblings over 30 years ago. Neither of them know the original owner of the land. Ms. Gibson stated that no one has ever questioned or challenged Ms. Greaves' ownership to the land.
- [27] They recounted that Ms. Greaves has lived there with her 4 children who were all born and raised there. They attested that Ms. Greaves carried out repairs to the house and is responsible for the upkeep of the land and maintenance of its boundaries. They said that she remains in possession in her own right and over the years has demonstrated her rights as owner by protecting the land from encroachments and trespassers. They testified that Ms. Greaves has been living there up to present unmolested and undisturbed. Ms. Chavlier added that Ms. Greaves is responsible for any expenses associated with it.
- [28] Ms. Gibson said that she lives 3 minutes away from the subject land. She admitted that Debra Greaves built a 'thing' on the land in Queens Drive and has been living there. She indicated that Debra Greaves goes back and forth from that location to the property at Dorsetshire Hill. She was unable to indicate how long ago this arrangement came about. She said that she did not pay attention to that. She conceded that the disputed land belongs to Amos Gibson.
- [29] Ms. Greaves acknowledged that her mother Evelyn Greaves aka 'Enie' lived there until her death in 2012. She said that her brother now lives in the house that her mother had occupied. She testified that her mother, her sisters and brothers were still living on the disputed lands when Ms. Clarke died. She accepted that she was not the only one living on the lands when the sad event took place. She agreed that her mother was viewed as the head of the family even then. She said that she could not remember if her mother or grandmother was paying rent for the land. She seemed to have changed her mind about that as the case progressed.
- [30] Debra Greaves admitted that she was living on the disputed land with Alice Clarke's permission. She said that she used to clean, wash, cook and so on for Ms. Clarke when no family members were around. She accepted that when Ms. Clarke took ill, she moved out of the area. She could not say to where Ms. Clarke moved. She denied moving from the disputed land long before her mother

died or at all, or living in a shack in Queens Drive. She insisted that since she filed her application she has been sleeping at Dorsetshire Hill every night.

- [31] She added that she was living on the disputed land long before Ms. Clarke died. Interestingly, Debra Greaves stated that she knew that Alice Clarke did not give the lands to her. Rather, she said that Alice Clarke permitted her to live there 'for whenever'. This testimony contradicts her case and undermines one of the factual bases on which she has founded her claim for adverse possession. In this regard, her admission suggests that she was Alice Clarke's licensee.
- [32] Debra Greaves claimed that she built a little shack on the disputed land for convenience. She said that her daughter Purlinea and fiancé live in that shack with her. She claimed that Purlinea did not build a house there in 2013 and does not have a house in the yard.
- [33] Purlinea Greaves testified that she built her own board house in 2013 and has lived there up to present with her boyfriend. This contradicts her mother's account in a significant way. She explained that she gave her interest in that house to her mother.
- [34] Loretta Smith is Debra Greaves' daughter. She testified that she built herself a board house on the disputed lands in 2000 and has lived there since. Like Purlinea she said that she verbally gifted her interest in the board house to her mother and do so again by way of her affidavit. For her part, Debra Greaves indicated that she did not know if she had authority or the right to remove Purlinea or Loretta from the land.
- [35] Regina Greaves gave almost identical testimony. She is Debra Maria Greaves' sister-in-law. She claimed to have built a board house on the land in 1998. She said that she has paid rent to Debra Greaves for the purpose of paying taxes. She also said that she helped Ms. Greaves cultivate a kitchen garden. She claimed that they have had exclusive possession for over 20 years. She admitted that her mother-in-law Enie paid rent to Alice Clarke. To the best of her recollection she said that Enie stopped paying rent when Alice Clarke died. Her recollection accords with Monica

Davis' regarding the payment of rent. It seems unlikely that Debra Greaves would not have had knowledge of the payment of rent.

- [36] Purlinea and her sister Loretta Smith alleged that as a family they have had exclusive possession of the subject lands. Purlinea fixed the timeline at over 12 years while Loretta said it was for over 20 years. They both averred that they never had a deed to the land and they encouraged their mother to make this application.
- [37] Purlinea also testified that Debra Greaves collected money from her to pay taxes. She recalled that this happened about 4 times. She said she contributed to the taxes in 2017 and the three preceding years. On being shown the tax receipt tendered by her mother¹², she indicated that when she stated that she gave her mother money four times she actually meant that she paid taxes on one occasion in February 2016 to cover those four years.
- [38] I do not accept that explanation. She was visibly uncomfortable when she was being probed on this subject. The receipt reflects a one time payment of \$33.30 for the years 2013, 2014, 2015 and 2016. Purlinea' Greaves' account is not credible so I reject it.
- [39] Her sister Loretta testified that their mother has been collecting taxes from her and her siblings from the time they became adults. She said that her mother also collected taxes from her aunt Christine Greaves and Regina Greaves. Regina Greaves denied paying any money to Debra Greaves for taxes. This is another material point of contradiction in Debra Greaves' case.
- [40] For her part, Debra Greaves testified that when she filed the application she had only paid the taxes reflected in the receipt¹² exhibited to her claim. Later in her testimony she indicated that she believed she had paid taxes for one or two years. Loretta Smith explained that she was now 39 years old and had been paying taxes to her mother since she was 17 years old. She claimed she has been paying about \$10 or \$13 per year in taxes for roughly 22 years. Her mother and sister made no such assertions. I do not believe her.

¹² Receipt #73482, dated February 3, 2016 marked 'D.M.M.1'.

- [41] Loretta testified further that she contacted Monica Davis on facebook to speak with her about the land. She said she asked her about paying rent. She recalled acknowledging that the land is 'people's land'. She explained that she contacted her because she knew that she was Amos' daughter and had learnt that she was the one in charge of the land. Monica Davis remembered the conversation. She said that the exchange took place on Facebook Messenger on 3rd February, 2016.
- [42] Loretta Smith averred that the person who allowed her grandmother to live there was the one who owned the land. She denied that the land belonged to Amos Gibson. Purlinea claimed that her grandmother Enie and her mother are the rightful owners of the land. This was never asserted by her mother. This testimony introduced another tension in Debra Greaves' case.
- [43] Debra Greaves indicated that she gave instructions for a survey plan to be made in respect of the land. She stated that she was claiming possession of all the land shown on the plan. She said that there are about six wood and galvanize structures on the land but no board shop. She explained that she built the original house, while her children, sister-in-law and brother built the other structures. She said that Regina built a house on the lands in 1998 and Loretta built one in 2000.
- [44] Ms. Greaves was shown survey plan G28/7. She said she did not know what lands it depicted. She admitted that she knows Amos Gibson and knew his grandmother Alice Clarke. She acknowledged knowing Keith Murphy who was also known as 'Keithy', and she accepted that he was Amos Gibson's father.
- [45] Monica Davis deposed that she is Amos Gibson's daughter. She explained that he lives and works in London, England and has done so since 1999. She testified that he appointed her as his lawful Attorney on Record by virtue of a General Power of Attorney. She produced a copy. She indicated that Keith Murphy was her paternal grandfather. She recounted that he bought the disputed land from Percy Marshall as evidenced by a Deed of Conveyance dated 17th November 1976 and registered as Deed Number 12 of 1957. She tendered a certified copy of the Deed which the Court accepts as proof that Keith Murphy is registered as the legal owner of the subject property.

- [46] Ms. Davis averred that Keith Murphy died in Aruba on the 12th day of January 1987. She tendered a document which she purported to be a true copy of the translated death certificate marked “**M.D.4**”. I invited the parties to file submissions as to the efficacy and admissibility of that document. Ms. Davis did so. Ms. Greaves made no submissions on that issue.
- [47] Ms. Davis submitted that section 32 of the Evidence Act makes provision for the admission into evidence of writings and all declarations and affidavits originating from a foreign jurisdiction. She argued that such documents must be proved before an authorized official such as a judge. She acknowledged that Keith Murphy’s death certificate was issued in Aruba and that it was not notarized and had no apostille affixed.
- [48] She accepted that a notarial certificate or apostille has executory value and would have provided the receiving jurisdiction with the confidence that the document is authentic and that the contents contained in that document are true. She submitted that section 32 of the Evidence Act does not address how the Court should treat evidence in the absence of a notarial certificate of apostille.
- [49] She argued that it is trite law that the admissibility of evidence is always matter of law for the Court. Ms. Davis contended that subject to the any exclusionary rules of evidence, the Court has an unfettered discretion with regards to the admissibility of evidence. She reasoned that the Dutch death certificate issued on 14th January 1987 in the name of Keith Howard Murphy bears an official seal. She submitted that her uncontroverted evidence is that Keith Murphy was resident in Aruba up until the date of his death. She argued that the Court should exercise its discretion in admitting the death certificate into evidence and make a finding that Keith Howard Murphy died in Aruba on 12th January 1987.
- [50] Ms. Davis submitted further that the Death Certificate is both relevant and probative of the fact that Keith Murphy is dead. She argued that the probative value far outweighs any prejudice to Ms. Greaves. She submitted that any hint of prejudice to Ms. Greaves can be diminished on two grounds namely:
1. the death certificate was disclosed to Ms. Greaves by way of standard disclosure of 19th September 2017 and there has been no challenge to its authenticity pursuant to Part 28.18 of the Civil Procedure Rules 2000 (‘the CPR’); and

2. At trial Ms. Greaves did not object to the death certificate being tendered into evidence as part of her examination in chief.

[51] Ms. Davis' submissions regarding the effect of CPR 28.18 address head on any objections which Ms. Greaves could potentially take to the admissibility of the referenced death certificate. Having not taken any objection to it, Ms. Greaves is deemed to have accepted that it is authentic. She has not challenged its contents. Reliance may accordingly be placed on the death certificate. I find therefore that Keith Murphy is deceased. This is supported by credible testimony from Yvonne Bonadie.

[52] Ms. Davis testified that she has always known the said lands to belong to her family. She stated that as far as she is aware everybody in the community of Dorsetshire Hill has always acknowledged that the said lands belonged to her father. She averred that he has always treated the land as his own.

[53] She recalled that her paternal great-grandmother Alice Clarke, (Keith Murphy's mother) owned a parcel of land across the road from the disputed lands. She explained that there were two houses on her great-grandmother's land - one which housed her great-grandmother and the other belonging to Keith Murphy. She recalled that she used to live in that second house with her father, her mother Alarkie Davis and siblings.

[54] She deposed that contrary to Ms. Greaves' claims, her father was the one who took care of her great-grandmother and saw to her needs. She said that Alice Clarke moved from Dorsetshire Hill to Queen's Drive to live with her daughter Lavinia Murphy when she took ill. She denied that Debra Greaves was Alice Clarke's caretaker. She stated that the most that Ms. Greaves used to do for her great-grandmother was some washing.

[55] She averred that Debra Greaves has not been truthful in her Application for a Declaration to Possessory Title to the disputed property. She averred further that Debra Greaves has knowingly

withheld relevant facts concerning the disputed property which ought to have been brought to the Court's attention.

[56] Ms. Davis recalled seeing Enie and her children living on the disputed property. She testified that as far as she is aware, Enie paid an annual rent of \$50.00 for the disputed property to Alice Clarke. She denied that Ms. Greaves' assertion (under cross-examination) that it was \$25.00. Ms. Debra Greaves did not include in her pleadings that anyone paid rent to Alice Clarke. Her belated assertion (through cross-examination) that rent of \$25.00 per annum was paid supports Mr. Gibson's claim in a material particular, (i.e. regarding the existence of a lease). This is possibly the biggest contradiction in Ms. Greaves' case.

[57] Ms. Davis said that she is aware that Enie paid rent for the disputed property to Lavinia Murphy after Alice Clarke died. She exhibited a copy of one of the rent receipts. It was dated 5th December 2000 and reflected a payment of \$50.00 in annual rent for the year 2000. It was signed 'Beverly Frederick. Debra Greaves did not declare in her application that her mother paid rent or that someone else might be interested in the land.

[58] She is required to do this pursuant to section 4 (c) of the Possessory Title's Act. She admitted knowledge that Amos Gibson might be entitled to law a claim. She was also required to disclose that her mother paid rent at some point in time. She failed to disclose either. This non-compliance with the law reveals that she was not being forthright with the Court when she filed her application. The Court is entitled to draw adverse inferences from this default and I do so.

[59] Ms. Davis produced a copy of her grandmother's death certificate. It revealed that she passed away in 1989. She recalled that in or around 1996, her father and his then common-law wife Theresa Baptiste ('Silma'), built a house on the Northern part of the disputed lands, partly out of concrete and partly out of timber. She said that her two sisters Le Anna Gibson and Daniella Gibson were born to her father and Silma whilst they lived there.

[60] She indicated that her father had the lands surveyed by authorized land surveyor Ivo Providence

in November 1998. When he migrated to England in or around 1999, Le Anna and Daniella remained in occupation of the said house on the Northern part of the lands.

[61] Ms. Davis stated that Lavinia Murphy died on 18th June 2005. She produced a copy of a death certificate. She said that sometime after Lavinia died, her daughter Yvonne Bonadie gave her the rent receipt book. She claimed that accompanied by her mother Alarkie Davis, she approached Enie, and requested rent for the disputed property from her. She said that Enie refused to pay rent to them. Ms. Davis did not indicate when this took place. It is accepted by the parties that Enie died in 2012. Therefore the request if one was made, would have taken place between 2005 and 2012.

[62] Ms. Davis testified that she has personally paid taxes for the property with money given to me by Alice Clarke. She exhibited copies of those payments. She said that around 2016 she discovered that someone had paid taxes in respect of the land. She claimed they were not paid by her or any of her family members. She explained that she made inquiries and eventually was able to regularize the account.

[63] Under cross-examination Ms. Davis insisted that she had the counterfoil of a receipt evidencing payment of rent by Debra Greaves' mother. She stated that when Enie refused to pay her and her mother rent, she got the impression from her that she intended to continue paying rent where she was paying it. She accepted that she had never served her any eviction notice or taken any steps to remove Debra Greaves from the property. She admitted that she never asked Debra Greaves for rent and has never received rent from her. She acknowledged that she did not know if Debra Greaves had ever paid rent to Lavinia Murphy.

[64] Theresa Baptiste lives at Dorsetshire Hill. She explained that she and Amos Gibson once shared a common-law relationship. She testified that she has never seen or heard of Debra Greaves or her family exercising ownership over the disputed property. She averred that she has always known the disputed property and the adjoining lands, which together form a larger parcel of land, to have belonged to Keith Murphy, who gave them to his son Amos Gibson.

[65] Ms. Baptiste said that she and Amos Gibson built a house on the said lands. She stated that at that time Debra Maria Greaves and her family were living on the Southern portion of the disputed lands. She explained that as far as she is aware Ms. Greaves and her family were renting the disputed property. She recalled that on one occasion shortly after she moved there with Mr. Gibson, Debra Greaves approached Amos in her presence and asked him if he would collect the rent money from her. She recalled that Amos Gibson told her to go to pay the money to whomever she rented the place from.

[66] She said that Amos lived there with her and their daughters Le Anna Gibson and Daniella Gibson on the Northern part of the said lands, until 1999 when the common-law relationship came to an end, and he departed. She indicated that she and her daughters have remained in occupation of the Northern portion of the said lands.

[67] Ms. Baptiste recounted that sometime in 2009, Debra Greaves' family attempted to dig out a foundation on the disputed property. She said that she stopped them from continuing the work that they had started, and told them that they could not dig out the foundation because they did not own the land. She said that she also told them that it was Amos Gibson's land. She said that sometime after Monica Davis came and spoke with Ms. Greaves' family and they did not continue with the digging of the foundation after that conversation.

[68] Debra Greaves denied that she or her family made any attempt to dig a foundation on the land in 2009, or that they were prevented from doing so. She stated that she did not know if Amos Gibson can make a claim for the land. She responded 'maybe so'. I prefer Ms. Baptiste's account to Ms. Greaves. Ms. Greaves and her witnesses contradicted one another in material respects. Therefore, where there is divergence in the several accounts, I accept the testimony of Monica Davis and her witnesses.

[69] Ms. Baptiste said that in recent times she has gone back and forth between the house in Dorsetshire Hill and Georgetown where she is currently in the process of building a house with her fiancé. She indicated that her daughters Le Anna and Daniella continue to live in the house on

Northern part of the said lands on a full-time basis, from where they have a clear view of the disputed property.

[70] She testified that as far as she is aware Debra Greaves moved away from the disputed property many years ago. She stated that Debra Greaves' children, one of her brothers and her sister-in-law currently live on the disputed property. She observed that the houses that Ms. Greaves' family live in are all board houses and that there are no wall structures on the disputed property.

[71] She accepted that there is a clear distinction between where Amos Gibson built and where Ms. Greaves and her family built. She admitted that neither she nor the daughters she had for Amos Gibson asked Ms. Greaves to leave the property.

[72] Julieth Rose Marie Greaves gave a similar account. She indicated that she has always known the disputed property and the adjoining lands, which together forms a larger parcel of land to belong to Amos Gibson. She testified that she has lived towards the North of the said lands since 1977. She said that she has never seen or heard of Debra Greaves or her family making any claim to ownership or exercising ownership over the disputed property.

[73] She recalled that Enie and her family moved onto the disputed property sometime in 1977. She said that Enie rented a house spot on the disputed property from Alice Clarke, Amos Gibson's grandmother. She averred that Enie used to pay a yearly rent to Alice Clarke. She explained that she was close friends with Enie's sister Rita Murphy who lived in England. She testified that Rita would send money to her via Western Union to give to Enie to pay rent. Debra Greaves did not deny that this happened. I accept that it did.

[74] Julieth Greaves denied that Debra Greaves was Alice Clarke's caretaker. She deposed that Ms. Greaves never took care of Alice Clarke. In fact, she denied that Debra Greaves was ever close to Alice Clarke. She insisted that Alice Clarke's grandson Amos Gibson and his then common-law wife Alarkie Davis took care of Alice Clarke until she died sometime in the 1980s.

- [75] Julieth Greaves said that when Alice Clarke passed away, Enie paid rent to Alice's daughter Lavinia Murphy until Lavinia's death. She said that she could not recall exactly when Lavinia died. However, she remembered that Enie died on 30th November 2012.
- [76] She testified that one of Debra Greaves' sisters Evelyn Greaves, used to live on the disputed property as well, but moved away from after Enie's death. She said that Evelyn had a board house on the disputed property that was on posts. She claimed that Evelyn moved her house to Belair in 2013, but left the flooring because her sister-in-law Regina Greaves was living under the house. She accepted that Regina still lives there in a little board shack.
- [77] Julieth Greaves indicated that Evelyn and Debra Greaves' brother Trevor also lives on the disputed land. She testified that he is physically challenged and is a deaf mute. She averred that Debra Greaves' daughters Salene Greaves, Purlinea Greaves and Loretta Smith continue to live on the disputed property. She said that Salene Greaves lives in a small board house built by her mother; that Purlinea lives in a plywood shack and Loretta Smith lives in a galvanize shack. She insisted that Debra Greaves does not live on the disputed property and had moved away approximately ten (10) years ago to live somewhere in Queen's Drive. I believe her.
- [78] Julieth Greaves stated that some years ago, one of Debra Greaves' family members tried to build something on the disputed property and were prevented from doing so by Amos Gibson's children. She explained that since then they built nothing else on the disputed property. She explained that she saw someone conducting a survey of the disputed land in January 2016. She said she spoke to Amos Gibson shortly after when she met him at a funeral.
- [79] Yvonne Bonadie is Amos Gibson's first cousin. She is Lavinia Murphy's daughter, Alice Clarke's grand-daughter and Keith Murphy's niece. She said that Keith Murphy died in 1987. She claimed that she knew that the disputed lands and adjoining lands belonged to her uncle Keith Murphy and that he had a title deed for the property.
- [80] She said that Evelyn Jean Greaves Murphy or 'Enie' used to pay rent for the disputed property to

Alice Clarke who was collecting the rent on Keith Murphy's behalf. She recalled that Enie used to pay \$50.00 rent religiously every New Year's Day to Alice Clarke for the disputed property. She testified that after Alice Clarke died Enie came to her mother's house to pay the rent for the disputed property every New Year's Day. She said that Debra Greaves used to accompany Enie to pay the rent. She was credible. She gave her testimony in a forthright, frank and convincing manner. I accept her account.

[81] Ms. Bonadie said that her mother kept rent receipt books and was assisted by her nieces Suenel Murphy and Beverly Frederick in writing out the receipts. She insisted that Enie paid rent up to about two years before Lavina Murphy's death in 2005. She recalled finding one of the receipt books after her mother's passing. She said she handed it over to Monica Davis. Ms. Bonadie said that Debra Greaves was not her grandmother's caretaker. She claimed that if Debra Greaves did any washing or chores for Alice Clarke, her grandmother had to pay her. She claimed that Debra Greaves had moved from the disputed property to Upper Cane Hall.

[82] Amos Gibson's daughter Le Anna Gibson testified that she lives at Dorsetshire Hill on the Northern part of the said lands. She claimed she has never seen or heard of Debra Greaves or her family making any claim to ownership or exercising ownership over the disputed property. She averred that the land belongs to her father.

[83] She said that after Enie died Debra Greaves and her sister Evelyn moved away from the disputed property. She averred that about two years ago, she saw Debra Greaves in the area and since then has seen her making temporary visits to the disputed property. She said that there are currently three wooden shacks and one galvanize shack on the land. She attested that the current occupiers of the disputed property are Debra Greaves' brother Trevor, Regina Greaves, Salene, Loretta and Purlinea also known as 'Sunshine'.

[84] Debra Greaves submitted that the land was previously owned by Keith Murphy. She contended that she has paid the taxes over the years; planted a kitchen garden; raised her children there; has been responsible for the upkeep of the land and maintenance of its boundaries; constructed

houses on it; protected it from trespassers and encroachment; and treated it as her own from 1982. She argued that she built a dirt house on it which she converted to a board house and that she has demonstrated her ownership to all adjoining land owners and the community in general.

[85] Debra Greaves said that no one has questioned her claim since 1982 when she took full care, control and possession of the land. She contended that she never paid rent to anyone after she moved onto it in 1974 at age 13. She submitted that her mother paid rent to Alice Clarke for the spot where her house was situated. She argued that no one has stated in any document before the court that any notice to quit was ever served on her during her thirty five years occupation of it.

[86] She contended that the issues are whether:

1. her application meets the requirements of the Act and whether Amos Gibson's lack of action after being told by Julieth Greaves about surveying the land, amounts to him recognizing her as owner of 8,465 sq. ft. of the land; and
2. Amos Gibson's submissions are sufficiently sound to prevent her application from being approved by the Court.

[87] Ms. Greaves cited the cases of **Pye v. Graham**¹³ and **Powell v Mc Farlane**¹⁴ in support. She contended that based on her witnesses testimony she deals with land as owner and has done so for a long time. She relied on the case of **Port of London Authority v Ashmore** (2009) and argued that in that case 'intention to possess' was shown by the nature of Ashmore's acts in 'using the land as an owner might do'. She submitted that the question is simply whether the defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner's consent.

[88] Ms. Greaves argued that she has fulfilled the requirements of the Possessory Titles Act by publishing the requisite notices and complying with the other statutory provisions. She submitted that any reasonable land owner after receiving the information that Julieth Greaves gave to Amos

¹³ [2002] 3 All E.R. 865.

¹⁴ (1977) 38 P & CR 452 at pg. 470 – 471.

Gibson at the funeral, that such landowner would have visited the land to see what was taking place there. She submitted that based on the evidence presented at trial, Amos Gibson did not do so. She reasoned that his behavior demonstrates that he recognized her as true owner of the disputed land.

[89] She submitted further that Monica Davis' receipt 'M.D. 6' in respect of the payment of rent, is questionable. She argued that it is the normal practice for the issuer of a receipt to have a duplicate or a recorded stub but not the receipt itself. She queried why would Monica Davis have a receipt that was issued to Enie Murphy who had stopped paying rent to Alice Clarke in 1989.

[90] Ms. Davis testified that she had only the counterfoil which was tendered into evidence. On examination of the 'receipt' the Court noticed that it resembled counterfoils which normally appear at the back of duplicated receipts or cheques. I accept that it is not the original but a legitimate counterfoil. I find that it demonstrates that on 5th December 2000 Enie Murphy paid annual rent of \$50.00 for the disputed lands for 2000. Debra Greaves submitted that the Court should note that Amos Gibson refused rent from Enie Greaves. This does not negative payment of rent by Enie Murphy to Lavinia Murphy.

[91] The amount of rent is significant because it reveals another untruth by Debra Greaves. The date of the payment also demonstrates that Debra Greaves did not have exclusive possession of the disputed lands at that time as she claimed. It also provides information from which the Court may legitimately infer that Enie Murphy paid rent up to her death in 2012 as alleged by Monica Davis and her witnesses. In any event, I accept their accounts regarding the payment of rent as being credible and probative.

[92] Debra Greaves argued that when Amos Gibson claimed that he stopped her and her family from constructing a building on the land, this is not true. Ms. Greaves contended that she and her mother lived in two separate houses. She argued that other family members who had interest in the property have transferred such interest to her. She contended that she and Amos Gibson have

exercised possession respectively of the Southern and Northern portions of the land. She submitted that he never tried to evict her, not even in a conversation.

[93] She contended that Loretta Smith's conversation with Monica Davis is private. I agree with her. She submitted that Loretta spoke on her own behalf and not on behalf of any other family member and certainly not the entire family. She argued too that it was an enquiry to clarify a rumour. I can find no fault with her logic and agree that this seems to have been a private conversation between two persons unrelated to Ms. Greaves position.

[94] She argued that she spends time away from her home farming land at Queen Drive. She submitted that being away from home for short periods of time does not disqualify her from being an occupier of the disputed land. I agree with that assertion. Ms. Greaves contended that she was on the land without Amos Gibson's consent and occupied it before he did. Ms. Greaves submitted that Amos Gibson had no intention of opposing the application but was influenced to do so by Julieth Greaves. There is no evidence of such influence. Ms. Greaves added that Amos Gibson has not presented any compelling arguments why her application should be dismissed.

[95] Monica Davis made legal submissions which are similar to those made by Debra Greaves. She cited two of the same legal authorities: **Pye v Graham** and **Powell v. McFarlane**. Those cases are considered to be the leading authorities on the concept of adverse possession. Slade J. and Browne-Wilkinson J respectively crafted and re-affirmed respectively an established formula on what constitutes 'possession'.

[96] They pointed out that 'possession' will be found in specific circumstances. In this regard, Slade J said:

'(1) 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 with the prime 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. (2) If the law is to attribute possession of land to a person who can establish no paper

possession, he must be shown to have both factual possession and the requisite intention to possess (animus possidendi).

(3) Factual possession signifies an appropriate degree of physical control. It must be single and exclusive possession..... 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, that no one else has done so.’¹⁵

[97] Ms. Davis submitted that this description was adopted by the Court of Appeal in this jurisdiction in that case of **Michael Findlay (duly appointed Attorney on record for Muriel Findlay Small) v Elroy Arthur**¹⁶ in which the Court stated that adverse possession requires a ‘coincidence of factual possession and intention to possess’. Ms. Davis contended that in other words without the requisite intention, in law there can be no adverse possession. She submitted that possession alone for the 12 year period will not suffice. She reasoned that it is therefore necessary for the factual possession and intention to possess to coincide in order for time to start running for the purposes of adverse possession.

[98] I accept that both parties have accurately outlined the correct legal principles on which the Court will assess an application for a declaration of possessory title to land. I will examine Ms. Greaves’ application with those lenses. At its height, Debra Greaves anchored her factual possession on two opposing scenarios. In the first, she contended that the property was given to her by Alice Clarke. In the second, she claimed that her acts of possession have exceeded 12 years.

Gift by Alice Clarke

[99] Ms. Greaves has presented no evidence that Alice Clarke is the registered owner of the land or that she had any beneficial interest which she could convey to anyone. The evidence is that when

¹⁵ At pages 875-876.

¹⁶ SVGHCVAP2010/0017, (Unreported).

she collected the rent, she was acting as an agent on behalf of her son Keith Murphy the registered owner, and after his demise presumably on behalf of his estate.

- [100] Debra Greaves has not debunked or contradicted that reality. I therefore accept it to so. Accordingly, Debra Greaves has not established that Alice Clarke had any legitimate legal or equitable estate in the subject lands which she could pass on to another. In those circumstances, there is no legal basis on which I can find that Alice Clarke transferred any interest in the subject lands to Debra Greaves. I find that she could not and that she did not.

Acts of possession

- [101] Debra Greaves' alternative basis for a finding of adverse possession rests on her assertions that she has had exclusive undisturbed possession of the disputed land for over 35 years. On close examination, the evidence revealed that Ms. Greaves was a minor when she started living on the subject lands. She moved there with her mother and the rest of the family when she was around 13 years old.
- [102] It follows that the first 5 years of her occupation of the land was as a child. She therefore did not have the requisite legal capacity to make any legal determination, or form the requisite intention to own the land. Ms. Greaves' testimony that she does not know if her mother or grandmother paid rent for the land does not help her case. It has also been established that rent was paid. As the applicant, the onus remained on her to prove each element of her case including her contention that she has a better claim to the property than anyone else.
- [103] Her witness Regina acknowledged that Debra Greaves' mother Enie paid rent. Ultimately, Debra Greaves admitted as much when she suggested to Monica Davis that the rent was only \$25.00, and when she filed her submissions accepting that rent was in fact paid. This admission created an irreparable fissure in her case.
- [104] Monica Davis and Yvonne Bonadie asserted that Enie paid rent to Alice Clarke up to the latter's death and subsequently to Lavinia Murphy right up to 2005. In the premises, there being no factual

contradiction from Debra Greaves I accepted Monica Davis' evidence regarding payment of rent. I find that Enie paid rent to Alice Clarke and subsequently to Lavinia Murphy for use of the disputed property.

[105] The evidence is that Enie, Evelyn Greaves, Debra Greaves and Enie's other children occupied the disputed property as a family from the 1970s when Enie moved there as a tenant. After Enie died Evelyn Greaves moved away. Debra Greaves remained with her children and grandchildren. Based on the factual matrix I am satisfied that Debra Greaves first occupied the premises as Enie's minor child and therefore her licensee.

[106] This relationship of licensee would have continued during Debra Greaves' minority. Thereafter, Enie continued to pay rent and therefore was suborned to a superior landlord and owner. Debra Greaves could not very well have asserted ownership claim to the property in face of such a tenancy, without terminating that relationship. She did not claim that she had done so. In fact, she did not seek to sever that relationship or exercise any rights of ownership while her mother was alive.

[107] I conclude that she recognized, acknowledged and deferred to the superior title which vested in Keith Murphy, whose interests were being represented by Alice Clarke and then Lavinia Murphy, albeit as executor de son tort after Keith Murphy's death. Debra Greaves' application for a declaration of possessory title was made a mere 11 years after Lavinia Murphy's death and only 4 years after her mother passed. I accept that Enie paid rent every New Year's Day as attested to by Amos Gibson's witnesses. Her last payment would have been less than 12 years before Debra Greaves made her application. The statutory 12 year adverse possession period had not elapsed. I therefore reject Debra Greaves' assertions that she has exercised exclusive and undisturbed possession of the disputed land in excess of 12 years. The weight of the evidence runs contrary to such a factual pattern.

[108] Debra Greaves' and her witnesses accounts were riddled with inconsistencies in several material respects. This cannot be ignored. They offered disparate recollections of material parts of the factual record. I do not believe that she has lived on the property without interruption as she has

alleged. I find that she was aware that Keith Murphy and Amos Gibson had an interest in the property. She excluded those details from the application and only mentioned them after the opposition was filed. She was not frank with the Court.

[109] I prefer the account provided by Ms. Davis and her witnesses. Debra Greaves has failed to establish a *prima facie* case that she has enjoyed adverse possession of the subject lands for the requisite period. I find that she has not. Her application for possessory title is therefore dismissed.

[110] The evidence leads me to conclude that Keith Murphy is the registered owner of the subject land. Title vested in his estate from the date he passed away. Keith Murphy's estate is declared to be the true owner of the subject land, by virtue of Deed of Conveyance No. 12 of 1957. Amos Gibson is entitled to prescribed costs of \$7500.00 pursuant to CPR 65.5(2) (b).

ORDER

[111] It is ordered:-

1. Debra Maria Greaves' application for a grant of declaration of possessory title to the land at Dorsetshire Hill described and delineated in Survey Order No. P65/2016 on survey plan G3115 (which was approved and lodged at the Lands and Survey Department on 9th February, 2016 by Chief Surveyor Keith Francis), is dismissed.
2. Keith Murphy's estate is declared to be the true owner of the subject land, by virtue of Deed of Conveyance No. 12 of 1957.
3. Debra Maria Greaves shall pay to Amos Gibson prescribed costs of \$7500.00 pursuant to CPR 65.5(2) (b).

[112] I am grateful counsel for their written submissions. Learned counsel for Amos Gibson provided electronic copies. Their compliance with the Court's order to submit electronic copies of the

affidavits and other documentation in MS WORD format is commended. This contributed significantly to the expeditious completion of this judgment.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar