

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

SVGHCV2016/0104

BETWEEN:

DARON ANDREWS

CALIMANT

and

RENRIK WILLIAMS

DEFENDANT

Appearances:

Mr. Sten Sergeant for the Claimant;
Ms. A. Morgan for the Defendant.

2017: Jan. 09

JUDGMENT

- [1] **Cottle, J.:** The claimant brought an action against the defendant seeking a declaration that the claimant was entitled to a parcel of land described in deed 2976/1990 dated 6th September 1990. The schedule to that deed described the land as follows:

"All that lot piece or parcel of land situate at Riley in the State of Saint Vincent and the Grenadines being one lot admeasuring twenty (20) poles and abutted and bounded on one side by lands of Cynthia Caruth on a second side by lands of George Dowers on a third side by lands in Feath Mc. Fee and on a fourth side by a public road or howsoever otherwise the same may be butted bounded and known distinguished or described together with all ways watercourses rights lights liberties privileges and easements thereto belonging or usually belonging thereto."

- [2] The deed describes itself as a deed of settlement and recites that by virtue of the deed, the settler, as administratrix of her late husband, assented and conveyed the land to herself for life and thereafter to the claimant in fee simple. The claimant annexed to the claim form a copy of the death certificate of the settler. On the land is a dwelling house occupied by the defendant who refuses to give up possession. Prior to 2012, the house had been occupied by one Carol Thomas, a tenant of the claimant.
- [3] The defendant avers that the land was owned by his grandmother Theodora Williams. He annexed to his claim form deed 2133 of 1973. This 'deed' is a declaration of possessory title. It recites that Theodora Williams swears that she is entitled to the lands by virtue of the Oaths Abolition Act Chapter 25 of the Laws of St. Vincent. The defendant also produced deed 890/2012. By virtue of that "Deed of Transfer" Theodora Williams recites that by virtue of her statutory declaration 2133 of 1973 with future intention of applying for possessory title, Theodora Williams transferred her rights in the land to the defendant.
- [4] By claim number SVGHPT2012/0034 Theodora Williams applied for a declaration of possessory title to the land. Daron Andrews, the present claimant, resisted the claim. Henry J refused to grant the declaration of possessory title to Theodora Williams. The court also refused to make a declaration in favor of Daron Andrews. The judge was not satisfied that the evidence before her established that the land in the schedule to the claimant's deed of settlement was the same as or formed part of the land for which Theodora Williams had sought a declaration of possessory title.
- [5] The present claimant now applies to the court to strike out the defence on the basis that the defence and counterclaim disclose no real grounds or constitute an abuse of the process of the court.
- [6] The defendant not only resists the application but has himself applied to have the claim struck out. The grounds are the same - that the claim discloses no real grounds and constitutes an abuse of the process of the court.
- [7] Both the claimant and the defendant advert to the earlier claim by Theodora Williams - along with the counterclaim by Daron Andrews - which was decided by Henry J. There has been no appeal

from the judgment of Henry J. Both the claimant and the defendant submit that the effect of the judgment of Henry J was to refuse the grant of a declaration of possessory title to the claimant and the defendant's predecessor in title respectively.

- [8] The applicable test to be used when considering an application to strike out pleadings had been well settled. Byron C. J *in Baldwin Spencer v AG of Antigua and Barbuda, Civil Appeal 20A of 1997* explained that pleadings should be struck out only in clear and obvious cases when it can be seen on the face of it that the impugned pleading is obviously unsustainable, cannot succeed or in some other way is in abuse of the process of the court.
- [9] It is important to recall just what Henry J decided in the earlier proceedings. At paragraph 18 of her judgment the learned Judge said:

"Neither Mr. Andrew nor Ms. Williams provided expert technical testimony to explain any similarities or differences in the plans.... Without such evidence, the court is unable to determine what if any part of plan G37/6 is captured in plan G53/26 or what if any part of the land described in the Deeds is contained in survey plan G 37/6. In addition plan G 53/26 is declared to have superseded plan G 37/6. Suffice it to say that Mr. Andrews has demonstrated that he has an interest in the property described in Deed of Settlement. If that property comprises the disputed land or any part of it he would be entitled to a declaration regarding his interest. However, too many questions remain unanswered and in view of these uncertainties it would (be) ill-advised and contrary to evidence and interest of justice to grant a declaration of possessory title to Daron Andrews in respect of the disputed land or portion he claims."

- [10] In the present case the claimant does not rely on a possessory title. He has a deed of settlement. Henry J has already found that this demonstrates that "he has an interest in the property" described in the deed. In the present claim there is no dispute as to the parcel of land in contest. It is the parcel on which a dwelling house stands. The defendant knows what parcel is in issue. He

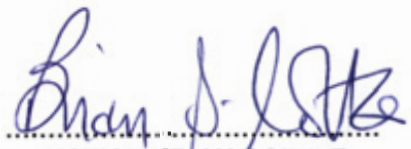
lives in the house. On the pleadings neither party expresses any doubt about the identity of the parcel in issue.

- [11] Henry J considered the entitlement of the defendant and his predecessor in title to the parcel. She found at paragraph 12 of her judgment.

"I reject the Williamses' account entirely. They had too many conflicts for their testimony to be truthful. In the premises, the entire factual basis on which Ms. Williams has made her application is eroded by these untruths. I find therefore that Ms. Williams has did not enjoy factual possession of the disputed land for the 12 years immediately prior to the date on which she made her application. For those reasons, it must fail and I so find."

- [12] This issue has been decided. The defendant is precluded from relitigating this issue. To allow the defence and counterclaim to stand would be clearly an abuse of process. The same cannot be said of the claimant's pleadings. Henry J did not decide that his title was not valid. She decided against making a declaration of possessory title in favor of the claimant. In my view she was correct to do so. The Possessory Titles Act Chapter 238 of the Laws of St. Vincent and the Grenadines at section 3 allows a person who claims to be in adverse possession of land to apply for a declaration of possessory title. Adverse possession is defined at section 2. Crucially the possession must be adverse to the paper title owner. The claimant is the paper title owner. He cannot possess adversely to himself. I therefore refuse the defendant's application to strike out. I grant the application to the claimant to strike out and enter judgment for the claimant in terms of the relief sought in the claim. I assess damages for trespass in the nominal amount of \$100. The defendant is ordered to quit and deliver up possession forthwith.

- [13] The defendant will pay the claimant the costs of this application in the sum of \$750.00.


JUSTICE BRIAN COTTLE
HIGH COURT JUDGE