

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

TITLE APPLICATION NO 137 OF 2013

BETWEEN

LUKE JOHN

Caveator

AND

VIRGINIA SEBASTIAN

Caveatee

Appearances: Mrs Kathy Buffong Royer for the Caveator

Miss Rose Ann Charles for the Caveatee

2015: September 9

2016: January 11

April 19

November 21

JUDGMENT

- [1] **STEPHENSON J.:** Virginia Sebastian (“the caveatee”) as the duly appointed personal representative of the estate of John Jean Baptiste on the 6 June 2013 applied for First Certificate of Title for a portion of land at Bioche known as Coubarie Estate in the parish of St Peter containing 156.25 acres bounded on the North by the land of Camille Gabriel, on the east by the lands of Clement E Fingal and the heirs of Brinette Sabaroche and Anse Mulatre Ravine, on the south by Ravine Anse Coubarie and on the west by the sea.
- [2] A plan of the land prepared by Balthazar Watt was duly attached to the application as is required by law¹.
- [3] The application for first certificate of title included three affidavits of long possession sworn to by the caveatee, Dorian Philogene and Peter Jno. Baptiste, also required by law.²
- [4] The ground of the Caveatee’s application for title to the land is that she and her predecessors in title have been in continuous and undisturbed possession of the said land over 30 years.
- [5] On the 27th September 2013 a caveat was lodged against issue of title by Mr Luke John. (“The caveator”).
- [6] The caveator claimed to be entitled to part of the land subject to the application for First Certificate of Title. More particularly, the caveator claimed to be in possession of a piece and parcel of land described as Point Crabier. The caveator contended that the said piece of land which he has claimed is not part of Coubarie Estate and that he has been in sole and undisturbed possession of that portion of land for over 12 years.
- [7] This matter went to trial and a total of seven witnesses gave evidence. A site visit was also conducted in an effort to assist the court to visualise the layout of the land.

¹Section 12(8) of the Title By Registration Act of Dominica Chapter 56:90 of the laws of Dominica

² Section 12(9) *ibid*

THE ISSUES

- [8] Whether the caveatee's possessory title to the disputed parcel of land had been extinguished by the caveator and whether her right to obtain a First Certificate of Title to the land has been statute barred by the alleged adverse possession of the caveator.
- [9] Whether the caveator's alleged use and occupation of Point Crabier is tantamount to adverse possession so as to confer on him a possessory title and bar the caveatee's right to obtain First Certificate of Title to the land in question.
- [10] I pause here to say that Counsel for the Caveator has identified other issues to be resolved by the court which I respectfully disagree are pertinent to the claim at bar and therefore will not discuss same in this judgment.³

THE EVIDENCE FOR THE CAVEATOR

- [11] The caveateor, Corriette Joseph and Michael Shillingford gave evidence on behalf of the caveator. Affidavits were filed on their behalf which formed part of their evidence before the court⁴. They were also cross examined by Miss Rose Ann Charles Counsel for the Caveatee.
- [12] The caveator told this court that he went into occupation of the unoccupied land at Point Cwabier sometime in or about 1995. That at that point in time, he and his family were homeless and desperate. He averred in his affidavit that he was in dire need of finding permanent habitation. That during that same year he was

³Counsel for the caveator in her written submissions contends that included in the issues for consideration before the court is whether the caveatee has established a case to be granted First Certificate of Title either by documentary evidence or possession. Further whether the caveatee has satisfied the court that she has a right to claim Point Crabier as owner and that she has been in undisturbed possession of the property continuously for a period of twelve years and whether or not the caveatee has by descent or will or deed acquired title to Point Crabier from a person who would have been entitled himself to have the land registered in accordance with the provision of the law. Further whether Point Crabier has been in sole and undisturbed possession of the Caveatee or any other person through whom she claims continuously for a period of thirty years that is from 1983.

⁴Affidavits in support of the Caveator's case were filed on the 30th May 2014

homeless and he was arrested and charged for vagrancy and possible child endangerment by the state which charges were dropped, however, against that background there was an urgent need to find and establish a fixed habitable location remained.

[13] The caveator said that the land he occupied started along the Portsmouth High Way (E O Leblanc Highway) and extended down to the sea. That the land is shaped like a triangle with the larger part being up close to the high way. He said that the land he is claiming is surrounded by cliffs along all sides apart from the part abutting the highway.

[14] The caveator told this court that when he first went into Point Crabier, the land was undeveloped; there was absolutely no one there. That the land was abandoned and there was no sign of it being in use by anyone, there were no cultivations and neither was there any structure or building on the land.

[15] The caveator averred that the main ridge of the land was flanked by a series of rubbish dumps to the North West which still exists and an area used as a public latrine at the top adjoining the road which he has eliminated by clearing the area.

[16] The caveator averred that he cleared the heavy undergrowth of the land, that he planted trees and built a shack on the land. He said he developed access to the road using a cutlass, chain saw and later machines.

[17] Mr. John said that the land and the surroundings were too harsh for immediate habitation by his family and they lived elsewhere whilst he occupied the land. He told the court that he sought shelter in a cave on the land. He also slept in the shack which he built on the property.

[18] Mr. John said that he cooked on the land and fished in the sea and the evidence of his being in occupation of the land was apparent.

[19] The caveator averred that he developed the land over the years by putting down a road approximately 500 feet long and 24 feet wide which he paid for

himself. That over the years he has parked his vehicle on Pont Cwabier whilst performing his labours. That prior to his cutting the road he said that he would go down the ravine on the northern side facing Bioche and circle around the land to the south heading towards Roseau. He said that he would start at the north and walk around to the south.

[20] The caveator told the court that prior to him cutting the road on the land he never saw the Caveatee on the land, that she came onto the land at that time and she contacted him about him cutting the road.

[21] Mr. Luke said that he saw the surveyors on the land sometime in 2010 -2011; however, he contends that he was in obvious occupation of the land when it was surveyed.

[22] Mr John averred that he recalled a few years ago that there was a dispute with one Mr. Henry Langlais and that when he was looking for food for his goats he noticed that there were no trespassing signs being placed above the road but none of the signs were placed on Point Crabier which was the part that he was occupying.

[23] Mr. John further also averred in his affidavit that the Point Crabier formed part of the Kings Three Chains with is well documented as Crown land around the perimeter of the island and therefore it belongs to the state.

[24] Mr. John told the court that he has never seen cows on the land that he was occupying.

[25] The caveator also told this court that he brought persons onto the property and apart from when he saw Miss Sebastian on the land he never saw any other person on the land.

[26] The caveator also gave evidence that he planted on the land which he occupied and reaped and sold the produce and made personal use of the money.

[27] Under cross examination, the caveator was challenged by Miss Rose Anne Charles Counsel representing the Caveatee on a number of issues. That it was impossible that he lived in the caves as the caveator claimed. He was adamant that he did. Learned Counsel also challenged that he did any planting on the land as he claimed again he was adamant that he planted a variety of trees, cashews custard apples I tried coconuts even yam and tannia. He later said that he was successful at planting pumpkin and watermelon crops.

[28] Learned Counsel Miss Charles challenged the caveator that he and his family never lived at Point Cwabier. The caveator told this court that he and his family lived all over the place including a cave at Macoucherie and eventually into his uncle's house in Salisbury and finally from 2006 at their current family home in Colihaut , Anse Ally Anne also called Plat Mapeer. That it is because of his occupation of Point Cwabier that brought them to the area.

[29] Learned Counsel Miss Rose Anne Charles for the Caveatee challenged the caveator that he had not been living or in occupation of the land at Point Cwabier as he has claimed. The Caveator was adamant that he was. He also admitted that he received the letter from the Caveatee to cease building the road after he had purchased the land where he now lives.

[30] The Caveator admitted that prior to purchasing the land which he now owns and lives on, he was in occupation for some three years before he bought the land from 2005 to 2006. It was put to him that that was when he started his occupation of the land at Point Crabier when he started occupying the land which he subsequently purchased. He denied this. It was put to him that that was around the time he tried going onto Point Crabier when he was stopped by the Caveatee.

Mr Cornette George

[31] Mr Cornette George gave evidence in support of the Caveator. He is the cousin of the Caveatee and he is from the area of Bioche. Mr George said that the disputed land is at the bottom of the cliff.

[32] He told this court that he never knew anyone in occupation of that land but the caveator and that he knew that the caveator was there in the late 1990's as he dropped him there and that it was during that time he recalled the caveator asking him questions as to who owned the land. He said he also saw the caveator walking from that area in the early morning and he, therefore, assumed that he slept there.

[33] Mr. George told this court that he knew when the caveator was cutting the road and that the caveator built a shack on the land after he cut the road. He said he knew when the road was cut as he was present on various days when the road was being cut.

[34] Mr. George also told this court that he moved, used roofing materials from Salisbury to Point Crabier on behalf of caveator in the early years of 2000. He could not give the exact time but said that it was sometime between 2003 to 2004. He also told the court that it has been some time since he has been to the cliff probably not since 2000 after he brought the roofing from Salisbury.

[35] Mr. George under cross examination told this court that he was familiar with the disputed land and that the cave on the land was above the disputed land.

Mr. Michael Shillingford

[36] Mr. Michael Shillingford's evidence is that the Caveator was in possession of the land at Point Crabier for over 12 years and that he did not know the boundary of the land but it was below the rubbish dump.

[37] Mr. Shillingford averred in his affidavit that he used his chain saw in about 2001 to assist the caveator to clear some trees and he assisted the caveator in carrying tools, plants and drums from Layou to Point Crabier.

[38] He said that he first went to Point Crabier in the 90's and he remembered that it was just before the Labour Party won the elections. It is common knowledge that the Labour Party won national elections in Dominica in 2000, therefore it is safe to conclude that he came to know Point Crabier in 1999 to 2000.

[39] He told the court that he used to visit the caveator there on Point Crabier and that they used to have cook outs there, first by the cave and later by the shack. He also said under cross examination that he used to be there alone, that there were no other people present.

[40] He also told us that the caveator lived everywhere and that he was in open possession at Point Crabier and anyone who came there would be able to see him. Mr. Shillingford also gave evidence that he also fetched items from Layou and Jimmit to Point Crabier for the caveator.

[41] He said he never saw the caveator's family on the land.

THE EVIDENCE FOR THE CAVEATEE

[42] The caveatee, Agnan St Louis, Virginia Sebastien, Clement Dumas and Dorian Philogene gave evidence on behalf of the caveatee. Affidavits were filed on their behalf which formed part of their evidence before the court.⁵ They were also cross examined by Mrs Kathy Buffong Royer Counsel for the Caveator.

⁵Affidavits of Agnan St Louis, Virginia Sebastien, and Clemant Dumas were filed on the 3 October 2014 with exhibits and the affidavit of Dorian Philogene was filed on the 9th October 2014.

Mrs Virginia Sebastien

[43] The Caveatee said that Point Crabier forms part of the estate of John Jean Baptiste who was her grandfather, this estate is called Coubaril Estate. She is the sole surviving administer of the said estate. It is the caveatee's case that this estate has been farmed by her forebears and her grandfather's heirs and that she and other heirs have gone onto the land regularly.

[44] The caveatee stated that over the years they, (the heirs of John Jean Baptiste) have also kept trespassers off of the land and that her sister Mary Sabaroche, who was also one of the administrators of John Jean Baptiste's estate prior to her death successfully challenged an attempt by one Henry Langlaise to obtain title to two acres of the estate land.

[45] The caveatee said that she got to know the caveator in 2010 when he attempted to build a road at Point Crabier, and, that when she saw the activity and she spoke to the Caveator and asked him to stop and that he asked her to give him a break and in spite of her request of him to stop he continued which resulted in her sending a cease and desist letter from her lawyer. The letter was exhibited to the affidavit.

[46] The caveatee averred that the caveator stopped building the road when the bulldozer went down a steep hill injuring the operator. Under cross examination the caveatee said that as far as she knows the caveator ceased building the road after he got the letter from her lawyer and as such when she made application for the First Certificate of Title she did not know that there was a dispute.

[47] The caveatee spoke of going to Coubaril estate as a child and later as an adult that she used to pass through the area that the caveator is laying claim to to go to her garden. She said that she did not see the caveator in that area only after he bought the land from Zetma George where he lives now.

[48] The caveatee said that in passing through the land she has never seen the clearings as claimed by the caveator or any watermelon or pumpkin or the shack which the caveator claimed he built.

[49] The caveatee said that she doesn't go to the area now but from her childhood and when her garden was up she used to traverse the area and that she is familiar with the area.

[50] The caveatee under cross examination denied that Luke John ever asked her about a deed to the land however, she did tell him about the existence of the Will.

Agnan St Louis

[51] Mr. St Louis told the court that he was born, raised and still lives in Colihaut. He spoke of his familiarity with the Coubaril Estate and with what goes on on the estate.

[52] He said that he, with the permission of the Caveatee he placed beehives on the Coubaril Estate and that he visits the area three to four times a week. He got permission from the Caveatee to place his beehives there between the years 2000 and 2001.

[53] Mr St Louis said that he sought the Caveatee's permission as it was well known in the area that the Estate was owned by her and her family. He told the court that he could see Point Crabier from where his beehives were situated.

[54] His evidence was that the caveator only came to the area around 2005 to 2006 when he bought land from Zetmar George and started building a house in the area.⁶ This witness also said that he never knew the caveator to be coming onto Point Crabier until 2010.⁷

⁶ See paragraph 6 of his Affidavit

⁷ See paragraph 10 of the Affidavit

[55] Mr St Louis told the court that in 2010 he noticed someone coming on to Coubaril Estate more particularly onto Point Crabier. He spoke of seeing heavy duty equipment coming onto the land and that a road was being cut. He said he informed the Caveatee and her husband who came to the area with him to see what was going on. That he subsequently learned that it was the caveator who was cutting the road. The witness said that the road was being cut in the area where his beehives were once located. That he moved the beehives from the area a few months before because too much sun on the hives at the time.

[56] Under cross examination the witness said that his beehives were on the verge of the road overlooking Point Crabier. He also spoke of being familiar with part of the boundaries of the Coubaril Estate.

Clement Dumas

[57] Mr Dumas is then nephew of the Caveatee. His evidence was that he was very familiar with the Coubaril Estate that he was born in the area and raised in the area.

[58] That he farms in the area and that he has grazed his cows on the road side in the area of the disputed land. He also told the court that he used to cut wood in the area and that he never saw the Caveator in occupation of the land.

[59] Mr Dumas told the court that in 2010 he observed a road being cut on the estate at Point Crabier and later learned that it was the caveator who was cutting the road. He said that he used to cut wood in the area where the road was being cut that the road was being cut on the top and the side.

[60] Under Cross examination the witness agreed that the assessments that he exhibited were for gardens up in the heights of Bioche, however, he says he also farmed on Coubaril Estate below the road.

Dorian Philogene

[61] This witness was born and raised in Colihaut and he has lived in Colihaut all his life. Mr. Philogene told the court that he was familiar with the Coubaril Estate and Point Crabier. He said that that the boundary on the Southern side of the estate is a ravine and on the northern side there is also a ravine and the sea is on the west.

[62] Mr. Philogene said the estate has always belonged to the Caveatee's family and that he never knew of the Government owning any part of the estate. That Point Crabier was never owned by the government.

[63] This witness said that he knew that the caveator bought land from Zetmar George and that he built his home on the land he bought. He also said that the land purchased by the caveator was some distance from Point Crabier.

[64] Mr. Philogene said that he does rock fishing from the cliff at Point Crabier and had to sometimes pass through Coubaril Estate to get there. He said that to get to the cliff he crossed the ravine at on Coubaril Estate and pass through Point Crabier.

[65] The witness also told the court that he fishes at sea from a boat and he could see Point Crabier from the sea and that he could see any activity up there. That he would have been able to see the shed if it was there and he would have been able to see the plot where the watermelon and pumpkin would grow , he said that he saw none.

[66] Mr. Philogene spoke of seeing the Caterpillar on Coubaril Estate and informing the Caveatee and visiting the scene with her, her husband and a police officer to stop the caterpillar operator to stop the cutting of the road.

[67] Mr. Philogene averred that Point Crabier was rocky and not suitable for agriculture and that he has never really seen any farm of produce being grown there. Further that there is no habitable cave on Point Crabier. Mr. Philogene

under cross examination said that he was present when the survey was done on the Coubaril Estate

Courts considerations

The dispute

[68] The dispute between the two parties herein can be shortly stated. The caveatee made application to the Registrar of Titles for a grant of first certificate of title for 156 acres of land referred to as Coubarie Estate under the Title by Registration Act in Dominica⁸. The caveatee claims that the land (the 156 acres) has been in the sole and undisturbed possession of she and her father through whom she claims, for a period of thirty years next before the date of the presentation of the request under this Act;

[69] The caveator claims to be in possession of a portion referred to as Point Crabier. He claims that this portion of land does not fall within the Coubarie estate and further and in the alternative he claimed a possessory title of Point Crabier in that he has been in sole and undisturbed possession of the portion of land for over 12 years and that he has developed the property and as such cannot be evicted from the said land.

The land

[70] The topography of the land claimed by the caveator is important; it is extremely rugged terrain extending from the main road⁹ down to the sea. Based on the evidence before the court, the land drops to the sea and is bounded by a ravine. The Court had the opportunity to visit the area of land in dispute and noted that it is heavily overgrown with no obvious evidence of occupation by anyone.

⁸ Chapter 56.90 of the Laws of Dominica Revised Edition

⁹ The E O Leblanc High Way that runs from Roseau to the town of Portsmouth

[71] The issue to be decided is quite simple and that is, whether the caveatee and her predecessors in title were dispossessed of the disputed property by the caveator.

[72] The case of *Powell v McFarlane*¹⁰ outlined the principles to be applied by the court in determining whether or not a person was in adverse possession of property. The House of Lords approved these principles in the celebrated case of *JA Pye (Oxford) Ltd et al v Graham et al*¹¹ where it was stated that:

"Legal possession required (i) a sufficient degree of physical custody and control (factual possession) and (ii) an intention to exercise such custody and control on one's own behalf and for one's own benefit (intention to possess). As regards factual possession, everything depended on the circumstances, but broadly, such possession was constituted where the alleged possessor had been dealing with the land as an occupying owner might have been expected to deal with it, and nobody else had done so. The necessary intent was one to possess, not to own and an intention to exclude the proper owner only so far as was reasonably possible."¹²

[73] The onus of proving that the holders of the possessory title have been dispossessed is on the party who alleges it and in this case that would be the caveator.

[74] It is for the caveator to lead a sufficiency of evidence to satisfy the court on a balance of probabilities that a declaration of possessory title should be issued to him.

¹⁰[1977] 38P x CRP p. 452.

¹¹[2002] 3 AER

¹²Ibid at pages 865 to 866

- [75] This is essentially a question of fact having regard to the nature, quality, and use to which the land could be put as well as all the surrounding circumstances which the evidence discloses.
- [76] In order to acquire prescriptive title to land under the Title By Registration Act¹³ a person asserting the same must establish not only that he was in peaceable, open and uninterrupted possession without the permission of the owner or persons lawfully entitled for a continuous period of 30 years but equally importantly, he acts of possession must be clear and unequivocal.
- [77] The caveator's case must stand or fall on his success in discharging the onus of proof that the law places on any person seeking to invoke purely statutory jurisdiction which in the courts consideration he has failed to do.
- [78] Applying the principles of law to the case at bar has the caveator established that he has adversely possessed the land at Point Crabier?
- [79] A careful analysis of the caveator's case via his testimony and that of his witnesses and I am not convinced on a balance of probabilities that the caveator was on the land at Point Cwabier as he claims.
- [80] It is the finding of this court that the witnesses were not all totally truthful. When subjected to close scrutiny, this court finds that the evidence of the witnesses for the caveator to be unconvincing. In fact, their evidence sought to exaggerate the user and extent of user of the caveator.
- [81] Judging from the combined testimony of the witnesses for the caveator whatever activities were carried out on the land appears to the court to have been sporadic and clearly not a continuous open and interrupted nature.
- [82] Taken in its entirety I accept the evidence of the caveatee and her witnesses in preference to that of the caveator and his witnesses.

¹³ Op cit

[83] The caveator stated that he was building a road on Point Crabier as evidence of an act of ownership on his part; however, this court finds it significant that He did not say that he continued to build the road after he received the cease and desist letter from the caveatee.

[84] There is no evidence before this court that the caveator continued building the road or did anything else after he was stopped by the caveatee. He did say which I do not accept that he did no further work after the bull dozer went down the steep hill. I find as a matter of fact that the work stopped when it was halted by the police in the presence of the caveatee and the witness Dorian Philogene. It is also noted that there was no response to the letter which was sent to the caveator disputing the caveatee's claim to ownership to the land in 2010. This operates to defeat the caveator's claim for adverse possession. Re: **Morrice v Evans and Another**¹⁴, in that case a claim to the ownership of a plot of land used as garden based on 12 years' adverse possession failed because of the claimants' acceptance of an assertion by the holder of the paper title of a right to restrict the claimants' activities on the land.

[85] It is also noted that there is no evidence before the court that the caveatee took further legal action to stop him from building the road therefore it could only be deduced that he obeyed the letter he received from the caveatee which in this court's view is an acknowledgement by the caveator that she was the owner of the land.

[86] On the totality of the evidence adduced in the case at bar the court does not accept that the activities and incursions as alleged by the caveator took place

[87] Having considered all of the evidence in this matter, it is concluded that the caveator has failed to establish that he has been in adverse possession of

¹⁴(1989) Times, 27 February

the land comprised in the caveatees application for first certificate of title for at least 12 years before the caveat was filed. In the circumstances, the caveat is hereby vacated and the caveatee is entitled to conclude her application for First Certificate of Title to the 156.25 acres of land known as Coubarie Estate at Bioche in the parish of St Peter.

[88] The caveator was unsuccessful in prosecuting the caveat and shall therefore pay the costs of the caveatee in the sum of \$3,500.00

M E Birnie Stephenson

M E B Stephenson
High Court Judge