

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE CLAIM NO. GDAHCV 2011/0178

BETWEEN:

[1] ELNORMA BAPTISTE-BAIN

(also known as Theresa Baptiste Administrator of the estate of Niclene Baptiste)

[2] ELNORMA BAPTISTE-BAIN (also known as Theresa Baptiste

by her lawful appointed attorney Junior Mitchell)

[3] MARY BAPTISTE

[4] ALLAN BAPTISTE

Claimants

and

[1] PETER DAN GUADELOUPE

[2] BERNICE VELMA PIERRE-CHASE

[3] FREDERICA GUADELOUPE-PREDOMME

Defendants

Appearances:

Mr. Anselm Clouden for the Claimants

Mr. Nigel Stewart, with him Mrs. Kindra Mathurine Stewart and Ms. Georgell George for the Defendants

2016: August 26

JUDGMENT

[1] **REMY, J.:** A portion of land situate at Prospect Hall, Carriacou, in the State of Grenada is at the centre of this claim. That portion of land (the Property) was originally owned by Abel Guadeloupe (Abel). By the Last Will and Testament (the Will) of Abel , the Property was devised to his four children namely Augustus Guadeloupe, Mathilda Pierre Guadeloupe also known as Mellina Guadeloupe, Wilstina Robert also known as Catherine Roberts, and Wilford Guadeloupe also known as Wilfred Guadeloupe.

[2] Probate of Abel's Will was on the 12th August 1974, granted to Augustus Guadeloupe. On the 11th December 1980, Augustus Guadeloupe executed a

Conveyance of the Property to Sebastian Baptiste. Sebastian Baptiste died on the 2nd day of May 1984.

[3] Abel's above-named children are all deceased. Wilfred Guadeloupe died on the 28th June 1991 leaving several surviving children. Wilstina Robert died on the 27th June 1995. Mathilda Pierre Guadeloupe died intestate on the 4th September 2003,

leaving eight lawful children including Virginia Guadeloupe and Velma Pierre Chase.

[4] The Claimants in this case are the beneficiaries of the estate of Sebastian Baptiste. By Fixed Date Claim filed on the 12th April 2011 against the Defendant Peter Dan Guadeloupe, a lawful child of Virginia Guadeloupe, the Claimants state that they are the fee simple owner of the Property and that they have been in possession and

occupation of the said property from the 11th December 1980. They state that Peter

Dan Guadeloupe trespassed on the Property by grazing animals and erecting a fence thereon. Additionally, that the said Peter Guadeloupe erected a chattel house on the Claimants' land. The

Claimants' claim is for possession of the Property, injunctive relief, damages for trespass, interest and costs.

[5] The above named Peter Dan Guadeloupe is now deceased, having died on the 17th November 2013.

[6] By Order of the High Court dated the 21st September 2012, Bernice Velma Pierre Chase (in her capacity as Personal Representative of the Estate of Mathilda also known as Mellina Guadeloupe, and as Personal Representative of the Estate of Wilstina Robert,) and Frederica Guadeloupe Preudhomme (in her capacity as Personal Representative of the Estate of Wilfred Guadeloupe} were joined as Defendants.

[7] The Defendants admit the execution of the Conveyance by Augustus Guadeloupe to Sebastian Baptiste. However, they state that Wilfred Guadeloupe, Wilstina Robert and Mathilda Guadeloupe never consented to a sale of their share of the Property and never signed any documents in relation thereto. They state that the said Conveyance was not effective to vest the entirety of the Property in Sebastian Baptiste. They add that, in the alternative that the said Conveyance was only effective to transfer to Sebastian Baptiste the undivided share and interest of Augustus Guadeloupe in the said Property and no more. The Defendants further state that Sebastian Baptiste and the Claimants were never in occupation of the Property. They seek an Order that the Conveyance between Augustus Guadeloupe and Sebastian Baptiste be cancelled. They Counterclaim that the Claimants' claim be dismissed; that the Claimants pay costs to the Defendants; they ask that the Court grant them such further or other relief as it deems appropriate.

Evidence

[8] Witness Statements were filed by Elnorma Baptiste, Junior Baptiste, Mary Baptiste and Allan Baptiste on behalf of the Claimants. Mary Baptiste and Allan Baptiste were not available to give evidence at the trial; consequently, their Witness Statements were struck off. Witness Statements were filed by Bernice Velma Pierre-Chase, Frederica Guadeloupe and Hesketh George on behalf of the Defendants. Frederica Guadeloupe was not available to give evidence at the trial and therefore her Witness Statement was struck off.

Issues

[9] The issues to be determined by the Court are as follows:-

(1) Whether the beneficiaries namely Wilford Guadeloupe, Mellina Pierre and Catherine Roberts consented to any sale of their undivided share or interest in the Property and or whether they signed any documents in relation thereto.

(2) Whether the Consent of the above named Wilford, Mellina and Catherine given to the Executor Augustus Guadeloupe was sufficient authority to effect the sale of the Property to the purchaser Sebastian Baptiste.

(3) Whether the conveyance of 11th December 1980 was effective to pass the entirety of the Property to Sebastian Baptiste.

(4) Whether the said Sebastian Baptiste and or the Claimants were ever in possession of the Property.

(5) Whether or not from the 1980's, Peter Dan Guadeloupe was the sole person in possession of the Property.

(6) Whether the Claimants' claim is barred pursuant to the Limitation of Actions Act.

[10] Issue #1 - Whether Wilford Guadeloupe, Mellina Pierre and Catherine Roberts consented to any sale of their undivided interest in the Property to Sebastian Baptiste, and/or whether they signed any documents in relation thereto.

[11] In the Defence and Counterclaim, it is denied that the Consent was signed by the beneficiaries, namely Wilford, Mellina and Catherine, or that they had any knowledge of the Consent or of the sale of the Property.

[12] Learned Counsel for the Defendants submits that "the other three beneficiaries did not execute the Consent document."

[13] The "Consent" recorded on the 15th day of December 1980 at the Deeds and Land Registry Grenada", is hereby reproduced:

"CONSENT FOR SALE OF DEVISED LAND

WHEREAS by his Will dated 14th October 1969 Abel Guadeloupe late of

Beausejour, Carriacou, Grenada did appoint us the undersigned as beneficiaries of certain portions of his Estate and Augustus Guadeloupe his Executor.

AND WHEREAS the said Augustus Guadeloupe did on 12th August 1974 obtain Probate of the said Will from the High Court of Justice, Grenada recorded on 17th September 1974 in Uber A 12 Page 211.

AND WHEREAS we do agree that our beneficial interests under the said Will should be converted by sale to cash to be equitably divided among us subject to expenses incurred by the Executor in course of Probate.

NOW THIS AGREEMENT WITNESSETH that we the undersigned being beneficially entitled under the said Will do hereby Consent to the sale by the Executor of the portions devised to us under the said Will the proceeds of sale to be divided among us as aforesaid.

IN WITNESS WHEREOF we have set our hands the day and year hereunder shown.

.....

.....

.....

The above Consent was signed by the following persons namely, Wilford Guadeloupe, Mellina Pierre (nee Guadeloupe), and Catherine Roberts, and was duly notarized.

[14] In order to put the above Consent in context, it is necessary to reproduce the material parts of the Will of the testator Abel Guadeloupe:

"I appoint my son Augustus Guadeloupe now residing at Trinidad as my sole Executor.

My lot of land at Prospect Hall, where my dwelling house was recently sited, is to go to Augustus Guadeloupe less one half acre each to my children Wilford, Mellina and Catherine also residing in Trinidad.

....."

[15] The second named Defendant 'ils. Velma Bernice Chase (Ms. Chase), one of the children of Mathilda Pierre Guadeloupe, gave evidence on behalf of the Defendants with respect to the Defendants' contention that the beneficiaries namely Wilford (also known as Wilfred}, Mellina (also known as Mathilda} and Catherine (also known as Wilstina), had no knowledge of the Consent or of the sale of the Property. At paragraph 21 of her Witness Statement, Ms. Chase states: "Before a division of the said property was carried out, Augustus Guadeloupe attempted to sell all of the property to one Sebastian Baptiste by a Deed dated 11th December 1980. In that Deed, the other children of Abel Guadeloupe who were devised a share of the said land, were not included. Howe!er, there is another document filed in the Deeds and Land Registry of Grenada wherein it is stated that the other children including my mother, my aunt and uncle, executed this document and in so doing, it is alleged that they consented to the sale of the entire property, which myself and the other Defendants herein strongly deny."

[16] At paragraph 22 of her Witness Statement, Ms. Chase states, "As it relates to my mother Mathilda Pierre, (also k1own as Mellina Guadeloupe), the signature on the said Consent document is not that of my mother. During her lifetime, my mother affixed her signature on several documents including affidavits which she sworn (sic) to on oath in Trinidad. J-aving compared the signature in these documents with the signature on the Consent document, it is clear that the signature on the Consent document is not that of my mother."

[17] Under cross-examination, when Learned Counsel for the Claimant Mr. Anselm Clouden asked Ms. Chase whether she ever saw the document called a "Deed of Consent", and whether she *ever* saw the signature of her aunt and uncle on that document, Ms. Chase responded "I have never seen. that." Mr. Clouden persisted;

"So *you've* never seen that document?" Ms. Chase responded with an emphatic "No, Sir."

[18] Again, in response to Mr. Clouden's question as to whether she knew of a document that her aunts and uncle executed giving her uncle (Augustus) 'full authority" to sell the Property, Ms. Chase responded "No, Sir." Learned Counsel persisted and put to her 'here's such a document in existence filed at the Registry of Deeds and Mortgages in Grenada; *ever* heard of it?" Ms. Chase's response was again an emphatic "No, Sir."

[19] Mr. Clouden then referred Ms. Chase to her evidence at paragraph 21 of her Witness Statement (referred to at paragraph 16 above) and suggested to her that when she had testified that she knew nothing of this Consent document, which her aunt and uncle had signed, that this was untrue. A visibly agitated Ms. Chase finally responded "I did not understand what you asked." In response to Mr. Clouden's next question, "Do you know of a Deed of Sale from Augustus Guadeloupe to Sebastian Baptiste?" Ms. Chase replied, "No, Ma'am." Mr. Clouden persisted and asked the witness, "so when you say in your witness statement that Augustus Guadeloupe attempted to sell all of the Property to Sebastian Baptiste that was untrue." After being asked to look over and examine paragraph 21 of her Witness Statement, Ms. Chase finally responded: "Yes, I agree that the statements are different. I misunderstood."

[20] With respect to the evidence of Ms. Chase, it is to be stated from the outset that, having heard and observed her at the trial, that Ms. Chase did not impress the Court as being a credible witness. Her evidence under cross-examination that she did not know of the existence of the Consent document clearly contradicts the evidence as contained in her Witness Statement. If, as she testified, Ms. Chase did not know of the existence of the document, she could not possibly have compared her mother's signature with that appearing on a document of which she was unaware.

[21] Ms. Chase's evidence as contained in her Witness Statement is that she knows that her aunt Wilstina aka Catherine Roberts was never able to read or write during her lifetime; in other words, that her aunt Wilstina was illiterate. She refers to a document, namely the Last Will and Testament of her aunt Wilstina on which a thumb print of Wilstina was placed instead of her signature.

[22] In the view of the Court, this in no way provides evidence or proof that Wilstina was illiterate or that she did not sign the Consent. The Consent is dated 1975; the Will of Wilstina was executed on the 27th day of April 1995. More than 20 years had elapsed between the signing of the Consent and the execution of the Will. In fact one of the witnesses to the Will is a Dr. Mohammed, and he signed the said Will at Ward 9, San Fernando General Hospital. The Will was signed two months before the death of Wilstina. It is therefore highly probable that Wilstina's inability to sign the Will was as a result of illness rather than illiteracy.

[23] With respect to Wilford Guadeloupe, the Court notes that nowhere in her Witness Statement does Ms. Chase challenge his signature on the Consent document. Further, no evidence has been adduced in support of the allegation that Wilford never consented to a sale of his share of the Property and/or that he did not sign the Consent.

[24] Based on the above, the Court finds that the Defendants have failed to prove, on balance of probabilities, that which they have pleaded namely, that the beneficiaries Wilford, Mathilda and Wilstina never consented to a sale of their share of the

Property and never signed any documents in relation thereto.

Issue #2 - Whether the Consent of the beneficiaries Wilford, Mathilda and Wilstina given to the executor Augustus Guadeloupe was sufficient authority to effect the sale of the Property to the purchaser Sebastian Baptiste.

[25] In their Defence, the Defendants deny that the document titled "Consent" was effective to transfer the share and interest of the other three beneficiaries in the Property to Sebastian Baptiste.

[26] It is not in dispute that Probate of Abel's Will was granted to Augustus Guadeloupe. It is also not in dispute that Augustus Guadeloupe was the sole Executor named under Abel's Will.

[27] The law is settled that "all property whether personal or real to which a deceased person was entitled for an interest not ceasing on his death, now *devolves* upon his personal representatives." - Halsbury's Laws of England, 4th edition re-issue, Vol 17 (2) page 186, para. 335.

[28] Section 2 of the Real Estate Devolution Act Cap. 247 of the Laws of Grenada states that 'the expression "personal representative" means an executor or executrix or administrator or administratrix.' Augustus Guadeloupe is therefore the personal representative of Abel Guadeloupe.

[29] Section 6 of the Real Estate Devolution Act states as follows:-

"Notwithstanding anything contained in this Act, real estate devolving to and becoming vested in the personal representatives of a deceased person shall not be sold or mortgaged or leased for a period exceeding one year by such personal representatives without the consent in writing of the persons beneficially entitled thereto or the authority of the High Court."

[30] In his Skeleton Arguments filed on the 10th June 2015 and again in his Closing

Submissions filed on the 19th June 2015, Learned Counsel for the Claimant Mr. Anselm Clouden submits that he relies on the authority of the above Section. Mr. Clouden submits that "it therefore stands to reason that section 6. and the words thereof clearly vest in the Personal

Representative as trustee, the authority to sell the property with the consent of the beneficiaries; that consent in writing was properly executed in common form and duly notarized."

[31] Mr. Clouden also submits that the above document titled "Consent for sale of Devised Land" gave written consent to Augustus Guadeloupe as Executor of the estate of Abel Guadeloupe to sell their beneficial interest in the property, which should be converted by sale to cash, to be equitably divided among them subject to expenses incurred by the Executor in the course of probate. The beneficiaries agreed to the conversion of their respective interest into cash which was to be distributed to them pro rata in accordance with their respective shares. Learned Counsel contends that the Court is invited to infer that since no action was taken by the beneficiaries against the executor for non payment of the proceeds of sale, that the presumption *Omnia praesumuntur rite et solemniter esse acta* (all things are presumed to have been done properly and with due formalities until it be proved to the contrary) should apply. It is the contention of Mr. Clouden that the Defendants have failed to establish that the beneficiaries did not receive their respective share in cash as stipulated in the said consent.

[32] Learned Counsel for the Defendants challenge the Consent document. In their Submissions filed on the 11th June 2015, they contend that, with respect to the said Consent:

(a) No authority was given to Augustus Guadeloupe to execute the said

conveyance for and on behalf of the other three beneficiaries.

(b) The purchase price and to whom the property is to be sold, are not recited.

(c) The Consent produced is not the original but instead is a duplicate

handwritten copy. As such, a comparison cannot be made as it relates to the signatures of the beneficiaries as it all appears on the consent and that of

their proper and true signatures.

[33] In their Closing Submissions filed on the 19th June 2015, Learned Counsel for the Defendants further submits that:

(a) The other three beneficiaries did not execute the Consent document.

(b) The said Consent document was not effective to deal with the beneficial interest of the of other three beneficiaries whatsoever, and was not effective to pass the beneficial interest of the other three beneficiaries in the said property, to Sebastian Baptiste. Further, the said Consent did not give Augustus Guadeloupe authority to convey the beneficial interest of the other three beneficiaries of and in the said property, to Sebastian Baptiste.

[34] The Court has already dealt with the submission of Learned Counsel with respect to the execution of the Consent document at paragraph 24 above.

[35] In elaborating on their submission that no authority was given to Augustus Guadeloupe to execute the conveyance for and on behalf of the other three beneficiaries, Learned Counsel for the Defendants contend that Section 6 of the Real Estate Devolution Act "only applies in certain circumstances." They contend that "the said Section does not apply where there is an absolute devise to certain beneficiaries, as in the instant case". Further, that the said section "applies to cases where the Executor in the course of administration (whether specified in the will or not) is required to sell the property, to satisfy some condition in the will, for example, the payment of debts, or if the Executor is bestowed with the Power to sell the property and to divide the proceeds of sale thereof to certain named Beneficiaries."

Learned Counsel go on to submit that "the main purpose of Section 6 is to help keep the Personal Representative in check when selling property devised to beneficiaries under a will that is being sold for the purposes of administration. He must obtain the consent in writing of all the beneficiaries, who have an interest in the subject property and at all times, to seek to act in the best interest of the beneficiaries."

[36] In the view of the Court, the language of Section 6 of the Real Estate Devolution Act does not contain any restrictions on the power of the personal representative to alienate real estate other than the obtaining of the consent of the beneficiaries. The Court has made a finding that, in the instant case, the Consent of the beneficiaries namely, Wilford, Mathilda and Wilstina was obtained to the sale of the Property. The Court notes further, that, significantly, in the latter part of their submissions (at paragraph 35 above), Learned Counsel for the Defendants concede that, for the purposes of Section 6 of the Real Estate Devolution Act, once there is consent by the beneficiaries, that the Personal Representative (in the instant case Augustus Guadeloupe) had the power to sell.

[37] Learned Counsel for the Defendants further attack the validity of the Consent document by submitting that "the consent produced is not the original but instead is a duplicate handwritten copy. As such, a comparison cannot be made as it relates to the signatures of the beneficiaries as it appears on the consent and that of their proper and true signatures." Learned Counsel Mr. Clouden contends that the Court should take judicial notice of the fact that the document entitled "Consent" was duly executed and recorded in the Deeds and Land Registry of Grenada under the provisions of Cap. 71A 3 and 72B of the Evidence Act 2010 continuous. I endorse that submission. Further, the Claimants were at liberty to make application prior to the trial for the production of the original document; they failed to do. They cannot now complain about their own omission.

[38] The Court respectfully finds little merit in the submission of Learned Counsel for the Defendants that the purchase price and to whom the Property is to be sold are not recited in the Consent document. Both the name of the Purchaser and the consideration for the conveyance are properly stipulated in the document of Conveyance, namely the Indenture dated the 15th December 1980. In any event, the Defendants have not pleaded that the absences of the name of the purchaser and/or the purchase price have the effect of invalidating the Consent document.

[39] Based on the above, the Court finds that the Consent of the beneficiaries given to the Executor Augustus Guadeloupe was sufficient authority to effect the sale of the Property to Sebastian Baptiste.

Issue #3 · Whether the Conveyance by Augustus Guadeloupe to Sebastian Baptiste was effective to vest the entirety of the Property in Sebastian Baptiste.

[40] The Defendants plead that Augustus Guadeloupe, at the time of the execution of the said Conveyance in favour of the said Sebastian Baptiste, was not entitled to or seised of the entirety of the said property in fee simple. Further, that Sebastian Baptiste, being the person through whom the Claimants claim to be owners of the said property, was not at the time of his death or at anytime whatsoever, the owner of the said property as the said Conveyance executed in his favour was not effective to vest the said property in the said Sebastian Baptiste and is therefore null and void for all intents and purposes in law.

[41] The salient PARTS of the document of Conveyance, namely the "Indenture" dated the 15th day of December 1980 between (a) "Augustus Guadeloupe of Beausejour, Carriacou in the State of Grenada (hereinafter called 'he Vendor') of the one part and (b) Sebastian (also called MAXMAN) Baptiste of Hillsborough, Carriacou aforesaid, (hereinafter called 'he Purchaser') of the other part", are as follows:-

(a) "With the consent of the beneficiaries, as provided under the Real Estate Devolution Ordinance, the Vendor has contracted and agreed with the Purchaser for the sale of the said hereditaments for the sum of \$5,625.00."

(b) The Vendor as Personal Representative of the Testator hereby assents and as Beneficial Owner for himself and the other Beneficiaries hereby conveys unto the Purchaser all that lot piece or parcel of land situate at Prospect Hall."

[42] Learned Counsel for the Defendants attack the document of Conveyance and submit that:-

(a) Augustus Guadeloupe, in addition to conveying as Personal Representative and as Beneficial owner for himself, purported to convey as Beneficial owner for the other three beneficiaries, all of whom were excluded from the Conveyance.

(b) There is no execution of the said Conveyance, by the other three beneficiaries.

(c) There is no execution of the said Conveyance, for an on behalf of the other three beneficiaries.

[43] The Court is of the view that what is of importance is that the Conveyance to Sebastian Baptiste was executed by Augustus Guadeloupe in his capacity as Personal Representative of Abel Guadeloupe. Additionally and importantly, the beneficiaries namely Wilford Guadeloupe, Mellina Pierre and Catherine Roberts had all consented to the sale of their interest in the Property. Further, no evidence has been produced before the Court that Sebastian Baptiste was not a bona fide purchaser for value in good faith of the Property.

[44] Based on the above, the Court finds that Augustus Guadeloupe, acting as Executor of the Estate of Abel Guadeloupe, was competent to convey the Property to Sebastian Baptiste. The document of Conveyance dated the 15th December 1980 was effective to transfer, and in fact did effectively transfer the entirety of the Property to the purchaser Sebastian Baptiste.

Issues #4 & 5, namely:

(a) Issue #4 · Whether Sebastian Baptiste and or the Claimants were ever in actual or physical possession of the Property.

(b) Issue #5 · Whether or not from the early 1980's, Peter Dan Guadeloupe was the sole person in possession of the Property.

The Court finds it convenient to deal with the above issues together.

[45] At paragraph 3 of their Statement of Claim, the Claimants plead:

"The Claimants are and have at all material times been the freehold owner and is (sic) entitled to possession of a lot of land situate at Prospect Hall in the Island of Carriacou in the State of Grenada ."

[46] The Defendants deny the Claimants' claim.. They aver that "neither Sebastian Baptiste. nor the Claimants have ever been in actual or physical possession of the Property or any part thereof." Further, that "from and since the early 1980's", Peter Dan Guadeloupe "acting on the instructions of ... Velma Pierre Chase and his siblings, has up to the present time, looked after the said property by keeping the said property cleared of vegetation and by rearing his animals thereon."

[47] Based on my findings at paragraph 44 above, the Claimants are the owners of and have title to the Property, having derived such title from Sebastian Baptiste. There is a presumption that the owner of the land with the paper title is in possession of the land- Megarry & Wade, 7th edition, page 1416, para. 35-016. It is therefore to be presumed that Sebastian Baptiste was in possession of the Property in December 1980 when he purchased and became the legal owner of the Property. It is not in dispute that Sebastian Baptiste was in Grenada between 1980 until his death in 1984. At the date of his death, Sebastian Baptiste left as his successors in title, his wife Niclene Baptiste and children, all of whom were in Grenada. Niclene Baptiste and her children were entitled to the Property, and in fact obtained legal title to the said Property by virtue of a Deed of Conveyance dated the 4th March 1992 between Niclene Baptiste of the one part and Niclene Baptiste and others of the other part and recorded in the Deeds and Land Registry of Grenada in Uber 6- 92 at page 523. Again, the presumption is in favour of Niclene Baptiste and her children being in possession of the Property after the death of Sebastian Baptiste.

[48] There is also a presumption that the owner of land remains in possession until he or she loses possession by the taking of possession by an adverse possessor. According to the learned writers Gray and Gray (Elements of Land Law - 5th edition

- page 1175, paragraph 9.1.35):

"No title to an estate (whether registered or unregistered) can ever be lost through mere neglect. The paper owner is under no strict obligation to make use of his land: his possession is not deemed to have been discontinued simply because his land is left empty, unoccupied or derelict. There is 'no concept in English law of the abandonment of title to land', a proposition now richly reinforced by the statutory principle that the lapse of time can never, in itself, extinguish a registered proprietor's title. There is accordingly, no necessity for a paper owner to assert any claim to his land unless and until someone else enters into adverse possession"

[49] The Court will address the issue of adverse possession later on in the Judgment.

[50] The Defendants bear the burden of rebutting the presumption that the Claimants, as the owners of the Property with the paper title, are in possession of the Property. They also have the burden of proving, on a balance of probabilities, that which they have pleaded, namely, that neither Sebastian Baptiste nor the Claimants have ever been in physical possession of the Property and that Peter Dan Guadeloupe has been in exclusive occupation of the Property 'from the early 1980's.'

[51] The Court will now examine the above issues in light of the evidence, the pleadings, as well as the submissions of Counsel.

[52] The evidence of the first-named Claimant Elnorma Baptiste Bain, (Ms. Bain) is that her father Sebastian Baptiste took possession of the Property immediately after the execution of the Conveyance. In her Witness Statement, Ms. Bain stated: "we used the land for the grazing of animals." She adds that, after the death of her father, her father's son, her half brother Gilbert Lawrence was in occupation of the Property during the period 1984 to 1988. He went daily to the Property to tend to the animals. Ms. Chase, her siblings and their mother Niclene Baptiste migrated to the

U.S.A in 1984. Ms. Chase goes on to state that Gilbert Lawrence migrated to the

U.S.A. in 1988. The Court accepts the evidence of Ms. Bain. Accordingly, based on that evidence, the Court makes a finding that Sebastian Baptiste and his successors in title were in actual possession of the Property from 1980 up until 1988.

[53] In their Closing submissions, Learned Counsel for the Defendants contend that, "... her (Ms. Bain's) evidence as it relates to the property and the activities conducted thereon, should be restricted to the period 1980 to 1984, that is, the period that she resided." Learned Counsel further contends, "... Except for what the said Elnorma Baptiste-Bain was told, she lacked the direct or the actual knowledge about the activities on the said property from 1984 onwards. Therefore, she is not qualified to deny the fact that from the (sic) 1984 (when she left Carriacou), the said Peter Dan Guadeloupe occupied the said property and did so up until the time of his death." In the view of the Court, this submission is a concession by Learned Counsel for the Defendants firstly, that Ms. Bain had "direct or ... actual knowledge about the activities on the Property" prior to 1984 and secondly, that someone other than Peter Dan Guadeloupe occupied

the Property prior to 1984. It is not unreasonable for an inference to be drawn from the submission of Learned Counsel that Ms. Bain would have had knowledge that her half brother Gilbert Lawrence was left on the Property when Ms. Bain, her mother and Ms. Bain's siblings migrated to the U.S.A. in 1984.

[54] The Defendants plead that, acting on the instructions of Bernice Velma Pierre

Chase and Peter Dan Guadeloupe's siblings, Peter Guadeloupe has, from and

since the early 1980's up to the present "looked after the said property by keeping the said property clear of vegetation and by rearing his animals thereon."

[55] In her Witness Statement, the second named Defendant Bernice Pierre Chase (Ms. Chase) stated that Abel died on 23rd August 1972. After the death of Abel, and "up until in or about the early 1980's", the Property remained vacant and unoccupied. From about "the early 1980's onwards", Peter Guadeloupe occupied the Property, by visiting the property, clearing it and rearing animals such as pigs, goats and sheep. He did this until about two weeks before his death. Sometime, in 2010, Peter Guadeloupe constructed a wooden building on the property in which he lived with his family; he also operated a small shop from the said building. Mil, Chase states that, after the death of Abel, she has only known Peter Guadeloupe to occupy the property; she has not known anyone else to have occupied or used the property.

[56] Under cross-examination, Ms. Chase became more specific about the date when Peter Guadeloupe commenced occupation of the Property. She testified that he was on the land with her permission; that she was with him in 1980; he had no structure on the land as yet while he was minding the sheep and goats. She told him that if he had nowhere to go, "he better go there."

[57] Implicit in the testimony of Ms. Chase is the assertion that Sebastian Baptiste never entered into occupation of the Property in 1980, as is the evidence of Ms. Bain, and that neither Sebastian Baptiste nor his successors in title were ever in occupation of the Property.

[58] I re-iterate my finding that Ms. Chase did not impress me as being a credible witness. I do not accept her evidence that Peter Guadeloupe was on the Property from and since 1980, or that he was there with her permission. As stated above, Sebastian Baptiste purchased the Property in 1980. In 1980, the beneficiaries Augustus, Wilfred, Wilstina and Mathilda were all alive. It therefore seems unlikely that any permission given to Peter Guadeloupe to "go and occupy the land" should come from Ms. Chase as she alleged under cross-examination. Further, her evidence under cross examination is at variance with the Defendants' pleadings in which the Defendants aver that "...Peter Guadeloupe states that from and since the early 1980's, he, acting on the instructions of the said Velma Pierre Chase AND HIS SIBLINGS (my emphasis), has up to the present time, looked after the said property by keeping the said property cleared of vegetation and by rearing his animals thereon." In any event, Ms. Chase was in no position to give permission to Peter Guadeloupe to "go and occupy the land."

[59] Mr. Hesketh George (Mr. George) also gave evidence on behalf of the Defendants. His evidence as contained in his Witness Statement is that he was well acquainted with the Property,

originally owned by Abel Guadeloupe. He added that he lives in close proximity and directly opposite the said property from the time of his birth in 1947 until the present time. He stated that Abel owned and lived on the land until his death sometime in . the 1970's and that from 'the early 1980's," Peter Guadeloupe, a grandson of Abel, started occupying the Property and treated the said property as family land in which he had a share and interest. Mr. George added that Peter Guadeloupe cultivated the property from and since the early 1980's to up until his death in the year 2013, by planting corn, peas, bananas, okras and other short-term crops and that he also reared goats, pigs and sheep on a portion of the property. He added that Peter Guadeloupe recently erected a wooden building on the property and operated a shop at the front portion of the said building.

[60] Under cross-examination, in response to the question "Did you know Peter Guadeloupe?" Mr. George stated, "I'm not familiar with the names you talking about". This clearly contradicts the evidence as contained in his Witness Statement, namely that Peter Guadeloupe was someone whom he knew "very well."

[61] The Court notes that the evidence of Mr. George with respect to Peter Guadeloupe's occupation of the Property as contained in his Witness Statement is almost identical to that of Ms. Chase. Further, the Court finds the imprecision of the date when Peter Guadeloupe commenced occupation of the Property as being '1rom the early 1980"s", as stated in the Witness Statements of both Mr. George and Ms. Chase, to be very telling.

[62] In light of the above, and having heard and observed Ms. Chase and Mr. George at the trial, the Court finds their evidence that Peter Dan Guadeloupe was in occupation of the Property "in the early 1980's" to be totally unreliable and give no weight to their evidence on that issue.

[63] The Court will also examine the above issues - issues 4 and 5 - in light of the pleadings. The Claimants plead that the Defendant Peter Guadeloupe trespassed on the Claimants' land by grazing his animals on the said land and erecting a fence and also a chattel house. They claim that, notwithstanding a notice served on the said Defendant through their Attorney-at-Law, the Defendant has refused and continues his acts of trespass on the Claimant's property, as a result of which the Claimants have been deprived of exclusive use and enjoyment thereof.

[64] In the Defence, Peter Guadeloupe admits receipt of the letter sent to him through the Claimants' Attorney-at-Law dated the 21st July 2008. This letter reads, in part, as follows:

" I am further instructed that in or about May or June, 2008 you trespassed upon the said parcel of land and unlawfully erected a fence on part thereof and you have been grazing your animals (sheep and goats) on the said parcel of land without the consent or permission, of my clients ..."

[65] It is significant that while Peter Guadeloupe, in the Defence, denies that his "acts amount to trespass," he does not specifically deny what is alleged in the letter

namely, that the alleged trespass took place "in or about May or June 2008." He does not deny that he entered the Property at the time specified in the Claimants' pleadings.

[66] It is also significant that at no point in time after receipt of the above letter did Peter Guadeloupe respond to the letter and deny that he was trespassing on the Property. The Court is of the view that Peter Guadeloupe's lack of response to the letter is very telling. Indeed, one would have expected that Peter Guadeloupe would have instructed his lawyers to immediately respond to the letter stating "This is my land; I have been on this land for over twenty years; I have been on this land from 'the early 1980's." Amazingly, there has been no response to the letter. It is also significant that, in the Defence, Peter Guadeloupe admits that he erected a chattel house on the Property within the last three months of the filing of the Statement of Claim, i.e. sometime in or around January 2011. It seems passing strange that Peter Guadeloupe, after allegedly having been in occupation of the Property from and since 1980 or 'the early 1980's", would only erect a building on the said Property three years after receiving the letter from the Claimant's lawyer, and more than 20 years after allegedly commencing the said occupation. It is also baffling that Peter Guadeloupe, faced with the above letter, took no legal action to assert a claim to the Property by adverse possession.

[67] The Court is of the view that, based on the Defendants' own pleadings and the evidence before the Court, it is difficult to draw any reasonable conclusion other than the fact that the year 2008 was the year when Peter Dan Guadeloupe entered into occupation of the Property. Significantly, in the Defence, what is pleaded is that Peter Guadeloupe "looked after" the Property. This suggests that Peter Guadeloupe was a mere caretaker of the Property; and that he looked after the Property on behalf of someone else, and was therefore not in actual possession of the Property in his own right. Peter Guadeloupe entered the Property without the consent of the owners, thereby trespassing on the Property. He erected a building thereon in or around 2010/2011, and lived with his family in that building and operated a shop at the front of the said building.

[68] Having regard to the evidence as a whole, the pleadings as well as the law and the submissions of Learned Counsel, the Court finds that the Defendants have failed to provide cogent evidence to satisfy the Court, on a balance of probabilities, that Peter Guadeloupe was in possession of the Property prior to 2008. They have failed to rebut the presumption that the paper title owner namely Sebastian Baptiste was in possession of the Property and that the Claimants, as his successors in title, continued in possession of the Property. The Court finds further that the Defendants have failed to prove, on a balance of probabilities, that which they have pleaded, namely that neither Sebastian Baptiste nor the Claimants were ever in actual or physical possession of the Property. They have also failed to prove, on a balance of probabilities, that Peter Guadeloupe was in possession of the Property from 'the early 1980's" as they have pleaded, or from 1980 as Ms. Chase has testified.

Issue #7 - Whether the Claimants' claim is barred pursuant to the Limitation of Actions Act.

[69] At paragraph 6 of their Defence and Counterclaim, the Defendants plead:

"Further and or in the alternative, if it is found as a fact that the Claimants and or their alleged predecessors in title have been in possession of the said property, (which is denied), the Defendant states that the Claimants claim is barred pursuant to Section 4 of the Limitation of Actions Act Chapter 174 of the 1990 Revised Laws of Grenada."

[70] Section 4 of the Limitation of Actions Act (the Act) enacts:

"No person shall make an entry or distress, or bring an action to *recover*

any land, but within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to some person through whom he or she claims, or, if the right has not accrued to any person through whom he or she claims, then within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to the person making or bringing it."

[71] The limitation period for land is twelve (12) years - as the period within which a claim with respect to land can be prosecuted. The period starts as soon as the true owner becomes entitled to commence legal proceedings against the person in possession, that is, when the person enters into adverse possession. Time begins to run only when there is adverse possession.

[72] The law is settled that, in order to establish adverse possession, a squatter must prove that he had both factual possession of the land (*factum possessionis*) and the requisite intention to possess (*animus possidendi*). The burden of proof is on the one seeking to establish adverse possession.

[73] The learned writer Sampson Owusu (Commonwealth Caribbean Land Law, page 277) states:

"It is clearly settled that time does not run against an owner of land simply because he is out of possession for the limitation period ... The statute (the Limitation Act) applies not to cases of want of actual possession by the plaintiff, but to cases where he has been out of it, and another in possession FOR **THE PRESCRIBED TIME**." (My emphasis).

[74] In similar vein, the learned writers Megarry and Wade (The Law of Real Property - 7th edition, page 1415, parag. 35-015) state:

"If the owner of land abandons possession or if he dies and the person next entitled (e.g. as devisee or remainder man) does not take possession, time will begin to run as soon as adverse possession is taken by another. What matters is not how the paper ceased to be in possession, but that some other person has taken possession that is adverse to his title. **UNTIL THAT HAPPENS, THERE IS NOBODY AGAINST WHOM THE OWNER IS FAILING TO ASSERT HIS RIGHTS.**" (Mi' emphasis).

[75] Learned Counsel for the Defendants submit that the Claimants' "right to bring the action would have accrued in the early 1980's, that is, when the said Peter Dan Guadeloupe commenced occupation of the said property. However, such action was not brought within 12 years, but was only commenced in April 2011, way outside the 12 year limitation period."

[76] The Defendants' assertion that the Claimants' claim is barred seems to be based on their contention that Peter Guadeloupe was in adverse possession of the Property from and since 'the early 1980's.' The Court has already made a finding with respect to that issue.

[77] In any event, the law is settled that "in order that a right of action should accrue, thereby triggering the commencement of the limitation period, the land concerned must be 'in the possession of some person in whose favour the period of limitation can run.'" - Gray and Gray, page 1159, paragraph 9.1.3. The Defendants' claim that the Claimants' right of action would have accrued "in the early 1980's", when Peter Dan Guadeloupe commenced occupation of the Property, is, in the view of the Court, unsustainable.

[78] In light of the above, the Defendants' contention that the Claimants' claim is statute barred therefore cannot stand. The Defendants' Counterclaim is hereby dismissed

Damages

[79] The Claimants claim damages for trespass. At paragraph 7 of their Statement of Claim, the Claimants state:

"By reasons of the matters aforesaid the Claimants have been deprived of exclusive use and enjoyment of the property and have thereby suffered damage a reasonable sum for the Defendant's occupation of the property is

\$120.00 per annum."

[80] The law is settled that trespass to land is a tort actionable per se. In the instant case, the Court has made a finding that Peter Guadeloupe trespassed on the Claimants' property from and since 2008. The Court is of the view that the Claimants are entitled to the sum of \$360.00 (i.e. for the period 2008 to 2011), based on the amount claimed by the Claimants; an award which the Court finds reasonable.

Conclusion

[81] Based on the totality of the evidence, the Court finds that the Claimants have proved, on a balance of probabilities, that they **are** the freehold owners and entitled to possession of the lot of land situate at Prospect Hall, Carriacou, the subject matter of this claim. The Claimants are entitled to the other relief set out in their claim, namely injunctive relief, damages for trespass, interest and costs.

[82] As stated at paragraph 78 above, the Defendant's Counterclaim is dismissed. Accordingly, the Defendants are not entitled to the relief set out in their Counterclaim.

The Court therefore orders:

- (i) The Claimants are entitled to possession of the Property situate at Prospect Hall.
- (ii) The Defendants Counterclaim is dismissed.
- (iii) The Defendants are to remove forthwith, all fencing and buildings from the Property.

(iv) An injunction is granted to restrain the Defendants whether by themselves or their servants or agents or otherwise from trespassing on the Property.

(v) The Defendants pay to the Claimants damages in the sum of \$360.00.

(vi) The Defendants pay to the Claimant prescribed costs in the sum of \$7,500.00 with interest thereon at the rate of 6% per annum from the date of judgment to the date of payment.

Jennifer A. Remy (Ag.)

High Court Judge