

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2010/0478

BETWEEN:

SYBIL COOMBS

CLAIMANT

and

JUSTIN CAESAR

DEFENDANT

Appearances:

Mr. Emery Robertson Snr. for the Applicant/Defendant

Mr. Andreas Coombs holding for Mr. Olin Dennie for the Respondent/Claimant

2016: Feb. 3

Mar. 23

DECISION

BACKGROUND

- [1] **Henry, J.:** Sybil Coombs brought action¹ against Justin Caesar to recover possession of a parcel of land located at Morgan Square, Barrouallie in the State of Saint Vincent and the Grenadines (“the subject land”). She also sought damages for trespass and such other relief as may seem just. Mr. Caesar denied that he occupied property belonging to Ms Coombs or that the subject land belonged to her. He contended instead

¹ By Fixed Date Claim Form filed on 21st December, 2010.

that it belonged to Hugh Quow deceased, who was registered as owner by Statutory Declaration.² He alleged further that Hugh Quow's son subsequently became owner and gave him permission to occupy it. Following a trial Cottle J. ordered Justin Caesar to deliver up possession of the subject land forthwith to Sybil Coombs, pay to her damages in the amount of \$100.00 and costs of \$7,500.00. Mr. Caesar has applied³ for a stay of execution of the judgment pending appeal. Ms Coombs opposes this application.

ISSUE

[2] The issue is whether Justin Caesar should be granted a stay of execution of the court's Judgment?

ANALYSIS

Issue - Should Justin Caesar should be granted a stay of execution of the court's Judgment?

[3] It is trite law that the court is empowered to grant a stay of execution of a judgment pending the outcome of an appeal. A prospective appellant must appeal the judgment within 42 days of the date of delivery.⁴ In the instant case, the deadline for filing the notice of appeal expired on 13th January, 2016. Mr. Caesar filed his Notice of Appeal 2 days before the deadline.⁵

[4] The legal principles which guide the court when considering an application for a stay of execution are well established. It is an accepted principle of law that an order granting a stay of execution is the exception rather than the general rule. The court is required consider the appellant's prospects of success. It may grant a stay if the prospects are realistic and not fanciful. The court must also take into account all the circumstances of the case, apply the balance of harm test and consider the likely prejudice to the successful party. The party applying for a stay "should provide cogent evidence that his appeal will be

² Registered as Deed No. 995 of 1961.

³ By Notice of Application filed on 22nd December, 2015.

⁴ See Civil Procedure Rules 2000 ("CPR") 62.5(1) (c) which provides: "The notice of appeal must be filed at the appropriate court office-

(a)...

(c) ...within 42 days of the date when judgment is delivered..."

⁵ On 11th January, 2016.

stifled or rendered nugatory unless a stay is granted.” These principles have been applied consistently in the courts and were reiterated by Blenman J.A. in **C-Mobile Services Limited v Huawei Technologies Co. Limited**.⁶

Grounds of Appeal – Likelihood of Success

- [5] Applying those principles to the instant case, I now proceed to examine each ground of appeal to assess its chances of success. In ground 1 Mr. Caesar states:

‘The Learned trial Judge failed to make any findings of fact in this case to support his decision in favour of the Claimant.’

Sybil Coombs alleges in her statement of claim that Justin Caesar entered on her land and began digging holes there. She also asserted that Mr. Caesar was given notice to cease his acts of trespass and quit and deliver up possession which he failed to do. In defence, Mr. Caesar denied entering on the said property. While he admitted receiving the letter directing him to cease acts of trespass, he challenges Sybil Coomb’s claim as owner. He also refutes receiving the letter demanding that he quit and deliver up vacant possession. Both parties filed witness statements. It is not clear from the judgment if any witnesses testified. The learned trial judge made no findings of fact in respect of the foregoing factual contentions.

- [6] He did however accept as fact that the disputed property was the subject of previous litigation in which a court of competent jurisdiction pronounced that Sybil Coombs has title to the subject land registered as Deed No. 3446 of 2008. Mr. Caesar describes the parcel of land he occupies as being registered as Deed No. 995 of 1961. The judgment makes no direct link between the two deeds. However, the learned judge concluded that Justin Caesar “... is at present in occupation of the parcel of land.’ and “The Claimant has brought the present claim seeking recovery of possession from the defendant.” In essence, the learned trial judge has implicitly made a finding that the property described in both deeds is the same

⁶ Territory of the British Virgin Islands High Court Commercial Appeal BVIHCMAP2014/0017 (delivered on 2nd October, 2014); NB v London Borough of Haringey [2011] EWHC 3544 (Fam) and Wenden Engineering Services Co Ltd. Lee Shing UEY Construction Co Ltd HCCT No. 90 of 1999 cited with approval and applied by Blenman JA. in the C-Mobile case.

parcel of land and the subject of the dispute. He also found as a fact that Justin Caesar knew that Sybil Coombs had obtained a declaration of possessory title, having been so notified by letter dated 21st August 2009. It is also worth noting that the learned trial judge did not specifically indicate what evidence he accepted or why. It is therefore not possible to ascertain what factors he took into account in arriving at those findings. However, his ultimate decision is grounded in the principle of *res judicata* as illustrated below. Accordingly, it did not require extensive consideration of the factual contentions.

[7] Based on his findings of fact, the learned trial judge declared that Justin Caesar cannot now challenge Ms. Coombs' title and claim title of the subject property as he failed to appeal the decision granting her possessory title. Although he did not expressly couch his factual conclusions as findings, they can be gleaned logically from the judgment. Those findings provide a sufficient basis on which to apply the relevant legal principles described later in this decision. Mr. Caesar's chances of success on this ground are accordingly low.

[8] In ground 2 of his Notice of Appeal Mr. Caesar states:

‘The Learned Trial Judge had no basis for holding that the title of Hugh Quow’s was destroyed by virtue of Possessory Title granted by Matthew J. Deed No. 3446 of 2008.’

This ground incorporates ground 1 in relation to the factual basis on which the court held that Hugh Quow’s “title” was destroyed. For the reasons provided before, that aspect of this ground is not likely to succeed. It also attacks the legal basis on which that finding was made. In this regard, the learned trial judge alluded to Mr. Caesar’s failure to appeal Matthew J.’s order, and declared that an un-appealed decision of the High Court cannot be challenged in fresh proceedings. Although not specifically described as such, this legal principle is expressed by the Latin maxim ‘*res judicata pro veritate accipitur*’ which precludes parties from re-litigating issues which have already been determined between them by a competent court. There is very little probability of Mr. Caesar succeeding on this point on appeal.

[9] At ground 3 Mr. Caesar complains:

‘The issue of Title having being raised by the defendant and pleaded at paragraphs 4,5,6,7,8,9,10,11,12,13,14,15 and 16 of the pleadings the Learned trial Judge failed to have

decided this issue as to who had the better title and completely overlooked the principle as stated in *Lows v Telsford & Another and Jones v Chapman* 1849 2 Exch 803.’

Contrary to Mr. Caesar’s assertion, the learned trial judge considered the principle from the cited cases, quoted it and accepted it as ‘... a good statement of the applicable legal position.’⁷

[10] Furthermore, he referred to dicta from the case of **Jannette Mills v Glennis Mills and Mauritz Mills**⁸ in which the court refrained from expressing an opinion as to the efficacy of a Statutory Declaration as evidence of title to land. Rather Mitchell J. in that case, opined that a Statutory Declaration may be used ‘... as evidence of **a claim to** possessory title to land.’ (emphasis added) In the instant case, Cottle J. stated: ‘... no authority has been shown to me which permits a person to merely declare themselves on oath to be the owner of a parcel of land and thereby acquire title.’ He concluded that: ‘... the effect of the order of Matthew J. was to destroy the title of Hugh Quow in so far as it existed.’ This statement contains a declaration that Sybil Coombs has the better title. Accordingly, ground 3 of the Notice of Appeal is not likely to succeed.

[11] Ground 4 refers to dicta of Mitchell J. referenced above, and in it Mr. Caesar contends that the learned trial judge failed to grasp what Mitchell J. had to say. I disagree. The learned trial judge rejected the contention or interpretation which was being suggested by Mr. Caesar. He succinctly concluded that the dicta were not authority for maintaining that a person becomes the owner of land merely by making a statutory declaration to that effect. There is little likelihood that this ground of appeal will succeed.

[12] In ground 5, Mr. Caesar accuses the learned trial judge of failing to address his mind to sections 3 and 5 of the Registration of Documents Act (“the Act”).⁹ He contends that by registering the Statutory Declaration in accordance with the provisions of the Act, Hugh Quow gave notice to the whole world (including Sybil

⁷ Paras. 3 and 4 of the impugned judgment.

⁸ Saint Vincent and the Grenadines High Court Claim SVGHCV1999/0129 (Mitchell, J.)

⁹ Cap. 132 of the Revised Laws of Saint Vincent and the Grenadines. 2009.

Coombs) that he was the lawful owner of the subject land. The learned trial judge made no mention of the Registration of Documents Act. The relevant portions of sections 3 and 5 provide respectively:

‘3. (1) The following documents shall be registered under this Act-

(a) documents relating to the title to, transfer of or incumbrance on, any real estate;

5. (1) Every document relating to real estate required to be registered under this Act shall, on registration, operate both at law and in equity according to the priority of time of registration and the right, title and interest of the person conveying, incumbering or otherwise dealing with such real estate against every other document subsequently registered with respect to such real estate.

(2) ...

(3) The registration of documents required to be registered under this Act shall be deemed due notice of their contents to all persons whomsoever claiming any estate or interest in, or incumbrance on, any real estate comprised in, connected with or affected by the document registered.’ (emphasis mine)

[13] By section 5(3) all persons have notice of the interests recorded in documents registered under the Act. Section 5(1) stipulates that the interests, right and title of the transferee are limited to those vested in and conveyed by the transferor. In other words, the transferor cannot transfer title if he has none, even if he registers a document stating that he does. By undertaking an assessment of the efficacy of the Statutory Declaration Cottle J. embarked on an indispensable exercise to determine what interest, right or title Hugh Quow had in the subject property. In this way, he considered the import of the Statutory Declaration and by extension the constituent elements of those provisions in the Act. Although, he did not mention the Act specifically, he addressed his mind to its import. This ground of appeal is therefore unlikely to meet with success.

[14] At ground 6 Mr. Caesar contends: ‘The Learned Trial Judge in coming to his conclusion that the Claimant has established his claim and is entitled to possession is ‘without basis for same as he has given no reasons for doing so.’ As indicated previously, the learned trial judge made certain findings of fact regarding the parties’ respective interests in the disputed land. Based on those findings he considered and

applied the applicable law and concluded as he did. The evidence and law support his findings. This ground adds nothing new and is unlikely to succeed.

[15] Ground 7 of the appeal repeats essentially the content of grounds 3, 5, 6. For the reasons provided earlier, this ground is also tenuous. In ground 8, Mr. Caesar contends that the learned trial judge did not consider paragraphs 6 to 16 of the defence which outline the period during which he and his predecessors were in continuous and exclusive possession of the disputed property. It is correct that the learned trial judge never considered this part of the Defence. He accordingly makes no findings of fact in relation to it. In this regard, the learned trial judge invoked the principle of *res judicata* and refused to re-open that issue which was determined by another judge. He is entitled to do so in circumstances where Mr. Caesar has neither appealed nor sought by his statement of case to have the impugned order set aside. This ground is also likely to fail.

[16] In ground 9, Mr. Caesar criticizes the learned trial judge for not considering which of the parties was in possession of the disputed land. The learned trial judge by referring to the judgment of Matthew J. acknowledged that possession was a live issue in the previous trial. Relying on the principle of *res judicata* he refused to re-examine that issue. This ground is therefore not likely to succeed.

[17] In ground 10, Mr. Caesar challenges the court's finding that 'a court of competent jurisdiction has pronounced that the Claimant has title.' He contends that the previous hearing was not *inter partes* and the making of the declaration was wrong and should be set aside. The Possessory Titles Act outlines the procedure to obtain an order setting aside a declaration of possessory title. It does not appear that Mr. Caesar sought to set aside the order in accordance with those provisions. He did not raise that issue in his defence or seek an order to set it aside. He did so in his written submissions. He did not appeal the decision within the stipulated 3 months following the making of the order. Cottle J. held that he knew of the order by August 2009. In this regard, he might have placed reliance on paragraph 1 of the defence. In any event, Mr. Caesar's belated attempt to seek an order setting aside the declaration of possessory title through the appeal is not likely to succeed.

[18] In ground 11, Mr. Caesar contends that the Registrar failed to publish the order granting the declaration of possessory title within 1 month as mandated by the Act. He argues that this failure deprived him any opportunity to appeal the order and that the court should activate its inherent jurisdiction to prevent a manifest injustice and set matters right. In his written submissions at the end of the trial Mr. Caesar indicated that the earliest time Gideon Quow could have become aware of the declaration of possessory title was 22nd June, 2010, more than 2 years after it was decreed. It is not apparent why this date is highlighted. Be that as it may, he appears not to have sought an order at that time, setting aside the declaration in the instant matter. He also did not do so in the instant claim. It is trite law that he may not amend his statement of case at this late stage to seek this relief. He does not appear to be pursuing this ground with any degree of conviction as he is not seeking an order from the appellate court to set aside the possessory title declaration. This ground is also not likely to succeed.

[19] In grounds 12 and 13, Mr. Caesar argues that the declaration of possessory title should be set aside respectively on the basis of fraud and by reason that it was obtained *ex parte*. The contention regarding the *ex parte* order has already been addressed. As regards the allegation of fraud, while Mr. Caesar asserts in his defence that:

‘any deed registered subsequent to Hugh Quow (sic) deed is deemed fraudulent and void as respects the same estate’;

He stops short of seeking an order to set it aside and he does not pursue that assertion in his witness statement. The witness statement of Gideon Quow alludes to the deception, however the judgment does not disclose if he was a witness. Even if he was, his witness statement proffers the referenced Statutory Declaration as a being a superior title to the possessory title declaration. The law as outlined in the judgment does not support such a finding. It is very unlikely that either ground 12 or 13 has any realistic chance of success.

[20] In ground 14, Mr. Caesar raises the twin objection that the learned trial judge did not address his mind to the Limitation Act Cap. 129 and the Registration of Documents Act. I have already dealt with the latter. Nothing new arises under this ground. In respect of the Limitation Act, neither party raised it as an issue

on their statement of case or in their submissions. It does not seem to have arisen and it was therefore unnecessary for the court to consider its provisions. This ground has no chance of succeeding.

[21] Ground 15 once again raises the issue of dispossession. It was considered already in relation to ground 8. Nothing further needs to be added. For reasons provided earlier, there is no merit in the ground. In his final ground of appeal, Mr. Caesar argues that Cottle J. did not seem to have before him evidence that Hugh Quow has a house on the land. There is no reference to this in the judgment. It is not clear if such evidence was considered by the court. The defence contains a statement to the effect that Mr. Caesar lives there, but no relief is sought on this basis. He does not indicate in this ground, what effect such evidence would have had on the outcome or how this possible omission assists him. I do not see how it does. Accordingly, I find that this ground is also not likely to succeed.

[22] Mr. Caesar advances no evidence which leads me to find that an appeal by him would be rendered nugatory if a stay is not granted. He has also failed to demonstrate that he has a realistic chance of succeeding on appeal. I remain mindful that granting a stay of execution is the exception rather than the general rule. I am unable to find that circumstances exist which would justify a stay of execution. On the contrary Ms Coombs would be denied the opportunity to re-enter and enjoy the property as contemplated by the judgment if a stay is granted. No reasons have been proffered to justify such denial. The application for a stay of execution is therefore refused.

ORDER

[23] It is accordingly ordered:

(1) Justin Caesar's application for a stay of execution is dismissed.

(2) Justin Caesar shall pay agreed costs of \$750.00 to Sybil Coombs.

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Esco L. Henry
HIGH COURT JUDGE