

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHPT2013/0008

**IN THE MATTER OF AN APPLICATION BY GEORGE DEROCHE FOR A
DECLARATION OF POSSESSORY TITLE OF LAND**

BETWEEN:

GEORGE DEROCHE

APPLICANT

-AND-

LENNOX ANTROBUS

RESPONDENT

Appearances: Mr Akin John for the Applicant, Mr Jonathan Lewis and Ms Ashelle Morgan for the Respondent.

2015: Nov. 5
2016: Jan. 14
Feb. 15

JUDGMENT

BACKGROUND

[1] **Henry, J.:** A large proportion of the legal battles waged in Saint Vincent and the Grenadines relate to family disputes over land ownership. This is perhaps attributable in some measure to the challenging reality of a land registration system which as yet does not record ownership of all lands. Inherent in this system are inevitable uncertainties regarding interests in land for which no paper

title exists. Cousins George DeRoche and Lennox Antrobus find themselves at opposite ends of such a conflict in this case. They each claim to be entitled to a declaration of possessory title of lands at Comptor, Canouan (“the disputed land”) which was occupied by their grandfather James Nathaniel DeRoche (“James N. DeRoche”) over 60 years ago. Mr DeRoche seeks a declaration over the entire parcel while Mr Antrobus claims partial ownership and declaration of possessory title of that portion. Mr Antrobus participated in the entire proceedings via video link.

ISSUES

[2] The issues are:

1. Whether George DeRoche is entitled to a declaration of possessory title of the subject land?
2. Whether Lennox Antrobus is entitled to a declaration:
 - a) of possessory title of a portion or a declaration
 - b) that he is part owner?
of the subject land?

ANALYSIS

Issue 1 – Is George DeRoche entitled to a declaration of possessory title of the subject land?

[3] In order to obtain a declaration of possessory title to land, an applicant must follow the procedures outlined in the Possessory Titles Act (“the Act”).¹ The Act sets out the legislative requirements governing the grant of such declarations. An applicant who proves adverse possession is entitled to a declaration of

¹ Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

possessory title. He does so by establishing that he has enjoyed exclusive and undisturbed factual possession of the subject land with the intention of owning it.²

As enunciated by Slade J. in **Powell v McFarlane and Another**³:

“...If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (“animus possidendi”).... Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, ... The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed...”.

Examination of the application, supporting documentation and evidence will determine if either party’s claim meets these specifications.

[4] The Act prescribes an application form which must include a description of the subject land and its estimated value.⁴ Mr DeRoche’s application⁵ is in the

² See section 2 of the Act which provides:

“adverse possession” is defined in section 2 of the Act to mean “factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Saint Vincent and the Grenadines for a continuous period of twelve years or more accompanied by the requisite intention to possess the said land as owner thereof.”

³ (1977) 38 P & CR 452 Ch D at 470 – 471.

⁴ Supra. at Form 1 of the First Schedule. See also sections 3 and 4 of the Act which provide respectively:

“3. Application for declaration of possessory title

(1) A person who claims to be in adverse possession of a piece or land in Saint Vincent and the Grenadines shall be entitled to make an application to the Court for a declaration of possessory title to the said land.

(2) ...

(3) ...

(4) ...

4. Content of application

prescribed form, however he omitted two paragraphs⁶ which would indicate respectively, the name of the registered owner and whether anyone else claims to be owner. He addresses one of these omissions in his affidavit by deposing that no other persons claim ownership of the subject land. His failure to indicate the owner's name constitutes non-compliance with the Act.

[5] George DeRoche's application contains a description of the subject land which consists of two distinct parcels having a combined area of 1.0649 acres. The subject land is depicted on survey plan Gr1240 which is exhibited in accordance with the Act.⁷ An estimated value of \$162,350.00 is ascribed to it. This figure is confirmed in the valuation report⁸ of licensed land surveyor C. Mc. Arthur Robertson also exhibited to the application. Provision of these details satisfies the referenced statutory mandate.⁹

An application shall be made in accordance with Form 1 of the First Schedule and shall state-

- (a) the description of the land, giving its extent, its boundaries and its estimated value;
 - (b) the facts upon which the applicant relies to establish **adverse possession**;
 - (c) whether to the applicant's knowledge, any other person claims or is capable of claiming to be the owner of the land for which the declaration is being sought; and
- the name, if any, of any person recorded in the Registry and entitled to ownership of the land immediately before the period of adverse possession began to run." (bold mine)

⁵ Filed on February 20, 2013.

⁶ Paragraphs 4 and 7.

⁷ See section 6 (1) which states:

"The application shall also be accompanied by a plan of the piece or parcel of land authenticated by the signature of the Chief Surveyor.

See also survey plan approved and lodged at the Survey Department on April 25, 2012 by Chief Surveyor Adolphus Ollivierre and exhibited as "GD1".

⁸ Dated 10th August, 2012 and filed on February 20, 2012.

⁹ Supra. at section 4 of the Act.

[6] Mr DeRoche claims that he has been and remains in exclusive and undisturbed possession of the subject land for over 18 years. He alleges¹⁰ that he assumed possession of the disputed lands in 1990 after his mother Jestina DeRoche relinquished possession through ill health. He asserts that she possessed it continuously for over 50 years, after the previous occupant, (his grandfather James N. DeRoche) passed away. These statements of fact satisfy the statutory requirement and complete Mr DeRoche's application.¹¹ It is signed by Mr DeRoche's legal practitioner as permitted by the Act.

[7] In further purported compliance with the legislative provisions,¹² Mr DeRoche caused notifications of his application to be published at the High Court Registry Office, the Canouan Magistrate's Court, in the Vincentian and News newspapers, and on a concrete structure on the land.¹³ As required by the Act, copies of notification were served on landowners of properties adjoining the disputed land.

¹⁰ At paragraph 3 of his application.

¹¹ Supra. at section 4 of the Act.

¹² See sections 7 and 8 of the Act which provide:

“7 (1) Upon filing an application, the applicant shall –

- (a) publish a notice in Form 2 of the First Schedule in two issues of at least two newspapers circulating in Saint Vincent and the Grenadines and the second issue shall be published not less than one month after the first issue; ...”
- (b) between the dates of the first and last publications in the newspapers, post a copy of that notice in a conspicuous place in the Registry and in a conspicuous place in the court of the magistrate in the district in which the piece or parcel of land is situated.

8 (1) The applicant shall, within twenty-one days after filing the application, cause a copy of the notice referred to in section 7 to be –

- (a) served on all landowners or occupiers of property adjoining the piece or parcel of land to which the application relates; or
- (b) posted in a conspicuous place on the piece or parcel of land if the owner or occupier of land adjoining the piece or parcel of land to which the notice relates is unknown or cannot be found.”

¹³ On February 21, 2013; April 12, 2013; March 22, 2013; May 3, 2013 and February 28, 2013 respectively.

¹⁴ The Registry publication predated the first newspaper notification and is therefore not fully compliant with the Act. Likewise, service on adjoining landowners was not made within 21 days after the application was filed. Service therefore fell outside the stipulated timeframe.¹²

[8] Notwithstanding those deviations from the statutory timelines, the notices were issued almost three years ago. I am satisfied that they would have come to the attention of the target audience¹⁵ well in advance of the 2016 trial date, and provided ample opportunity for filing of objections or other concerns in a timely manner. I am therefore of the considered opinion that they constitute substantial compliance, and are merely procedural irregularities which do not affect the substantial justice of the proceedings. Accordingly, the application is not thereby invalidated.¹⁶ I so find.

[9] Mr DeRoche filed four affidavits – one sworn to by him, and the others by Bertram Dopwell, Lawrence George and Felix DeRoche. Lennox Antrobus entered appearance¹⁷ opposing the grant to George DeRoche. He filed his claim a month later.¹⁸ He subsequently filed his own affidavit and two supporting affidavits of James Phileus DeRoche (“James P. DeRoche”) and Victor DeRoche

¹⁴ The notifications were served on February 28, 2013. See Affidavit of Service filed on March 18, 2013. See also section 8 of the Act.

¹⁵ The general public.

¹⁶ Section 20 of the Act which states:

“No petition, order,... or other proceedings under this Act shall be invalid by reason of any informality or technical irregularity therein, or any mistake not affecting the substantial justice of the proceedings.”

¹⁷ Filed on May 29, 2013.

¹⁸ June 28, 2013.

respectively.¹⁹ The affidavits were accepted as the deponents' evidence in chief and they were all cross-examined.

[10] A retired electrician, George DeRoche testified that he grew up in Canouan where he lived with his mother, Jestina DeRoche, sister Louise and step-sister Marion on the disputed land. He deposed that his grandfather owned the property and gave it to Jestina DeRoche, who never obtained paper title. He stated that he went out to sea in the 1960s and on returning took care of his mother. He testified further that he renovated the existing structure on the land by erecting a concrete dwelling house in or about 1990. He oversaw the property from that time and immediately went into exclusive and undisturbed possession until the present time. He repeats the description of the land set out in his application and avers that he has not withheld facts which should be disclosed.

[11] Under cross-examination, Mr DeRoche denied that his mother went into possession of the disputed lands after his grandfather's death. He explained that his mother lived there before his grandfather's death and that the contrary statement²⁰ in his application is incorrect. He described his mother's house as one made of wattle and daub. He recalled that it was positioned in the middle of the disputed lands, away from the main road. He also identified the structure on the survey plan as the house he built in place of the wattle and daub building. He agreed that it is positioned on the spot formerly occupied by his mother's wattle and daub house. In this regard, the court notes that the structure is located on the extreme east section of the land, almost equidistant from the northern and southern boundaries.

¹⁹ On January 13, 2014.

²⁰ See paragraph 3 of the application.

[12] Mr DeRoche acknowledged that when he returned to Canouan in the 1990s, no one was living on the land and no one has lived there since his mother passed away. He disputes that it is covered in trees and shrubs. He admitted that neither he nor anyone else has ever worked the said lands since he was a boy; or any time after he returned to the island; no one has been in charge of the property or occupied it since his mother's death; and he has never paid taxes in respect of it. The question therefore arises, why would George DeRoche effect repairs to or rebuild a house which seems to have been abandoned after Jestina DeRoche stopped living there? No answers were forthcoming from the witnesses. I rather doubt that George DeRoche undertook any substantial renovations to the house.

[13] When asked why he applied for a declaration of possessory title, Mr DeRoche responded that:

1. his sister, Marion and he grew up on the property;
2. his mother used to take care of them and afterwards he became the bread winner from the early 50s until his mother died;
3. he used to supply his mother's every need and want, she was his dependent while he was in England and he is her only surviving child; and
4. he felt it was unfair for Lennox Antrobus to get a part of the subject land because his mother Theresa Antrobus had already gotten another parcel.

He testified that he started maintaining the disputed land after his mother's death, by keeping the house clear, but stopped when Lennox Antrobus surveyed it. This contradicts the statement in his application where he dates his caretaking duties from 1990.

[14] Lawrence George, Mr Dopwell and Felix DeRoche all grew up in Canouan. Mr George never migrated and he resides there to this day. Mr Dopwell deposed that

he went to live with Jestina DeRoche when he was a toddler, and was raised by her. He left Canouan in 1964 at age 13, but returns regularly to visit. Felix DeRoche moved to Trinidad in 1967. He returned to live on Canouan in 1970 but left again for Trinidad and Tobago in 1972, eventually moving to the United States of America three years later. He has been a regular visitor to Canouan since 1979, making at least 2 to 3 trips each year.

[15] Felix DeRoche recalls that when he first knew her, Jestina DeRoche (“Aunt Jessie”) lived on the disputed lands in a wattle and daub house with her children including George DeRoche. He deposed that she was the only child of James N. DeRoche’s who lived on the disputed lands. He, Mr Dopwell and Mr George testified that Jestina DeRoche worked the lands and planted a variety of crops including peas and corn. Felix DeRoche explained that Aunt Jessie began developing Alzheimer’s in the late 1980s or early 1990s and was moved to another property owned by her daughter Louise where she lived the rest of her days.

[16] Felix DeRoche, Mr Dopwell and Mr George deposed that George DeRoche returned to Canouan in or about 1989 and carried out repairs to Jestina DeRoche’s house. James P. DeRoche and Victor DeRoche denied knowledge that George DeRoche conducted repairs to the building. Felix DeRoche credits George DeRoche with erecting a concrete structure to replace the wattle and daub building previously occupied by Aunt Jessie. He remembers that people were living on the subject land after Aunt Jessie moved to her daughter’s property but he could not say if it was for an extended period of time. On this score, his account is different from George DeRoche’s and is not corroborated by any other witness.

[17] Having regard to the fact that Felix DeRoche does not live on Canouan and visits infrequently, it is possible that he is mistaken. In view of George DeRoche’s denial

that anyone has occupied the house since his mother vacated the premises, I accept his version as he is her son, he lives on Canouan and would be in a better position to know if the house was occupied. I therefore find that the house has remained unoccupied since 1990 when Jestina DeRoche moved out. I also find that repairs undertaken by Mr DeRoche were insignificant and inadequate to create an interest in the property.

[18] Mr DeRoche's witnesses provided conflicting testimony as to whether he cultivated the disputed lands after he returned to Canouan. In their affidavits, Messieurs Dopwell and George attested that George DeRoche has cultivated the disputed lands from 1989 up to the present time. However, under cross-examination, Mr Dopwell admitted that he is not aware that George DeRoche has cultivated the lands. He acknowledged that the statement in his affidavit to this effect, is incorrect. Lawrence George also recanted under cross-examination and stated that he did not know if George DeRoche has ever cultivated the said lands. Under further cross-examination, he insisted that George DeRoche planted guava trees and sugar apple trees but admitted he did not see him doing so. Felix DeRoche testified that George DeRoche never cultivated the disputed lands.

[19] Mr George's testimony on the matter of cultivation by George DeRoche differs from George DeRoche's account and that of his other witnesses. I do not find him to be a credible witness. He appeared very uncomfortable when questioned specifically about those matters. I do not believe him. To the extent that Mr George DeRoche's application is based on his cultivation of the subject property, that factual limb is totally discredited. I therefore find that George DeRoche did not cultivate any portion of the disputed land during the 12 year period immediately preceding his application.

[20] Mr George explained that the land currently has a lot of bush on it. Mr Dopwell testified that on his most recent visit to Canouan, approximately 5 years ago he observed that the disputed lands “*was in bush and trees*”. He admitted that he has no knowledge of what was taking place on the lands since Jestina DeRoche died. Felix DeRoche testified that a track was cut through the property in or about 2002 but later that year when he visited, the track was not visible through the trees and bushes which had overrun it. Dopwell, George and Felix DeRoche, unlike George DeRoche, do not deny that the subject property is covered in shrubbery and trees. James P. DeRoche and Victor DeRoche also indicated that the lands have been abandoned since Jestina DeRoche moved away and I believe them. The evidence overwhelmingly demonstrates that the disputed lands have not been maintained by George DeRoche as he claims and I so find.

[21] George DeRoche pursues this application for possessory title in his own right based on over 18 year’s adverse possession of the subject property. He relies on his mother’s and grandfather’s alleged possession and ownership for a period in excess of 50 years as another basis for his application. He has provided no documentary proof of such ownership by either ancestor. In fact, he avers that his mother had no such paper title. The acts of ownership which he asserts are in relation to renovations made to the structure on the property and his efforts in overseeing the property from 1990 or 1994. His witnesses confirm that renovations were undertaken, but their testimony regarding cultivation was recanted.

[22] Lennox Antrobus contends that George DeRoche withheld material facts from the court which he should have disclosed. In this regard, he submits that George DeRoche should have informed the court that Jestina DeRoche occupied only the middle $\frac{1}{3}$ section of the disputed lands, while her brother James F. DeRoche occupied the bottom or lower $\frac{1}{3}$ section and her sister Theresa Antrobus née

DeRoche occupied the upper $\frac{1}{3}$ section. He claims that he is entitled to his mother's interest in the said property. This is echoed by his witnesses James P. DeRoche and Victor DeRoche. This seems to be borne out by the location of the building on the survey plan, smack in the middle of over one acre of land and away from the main road. I accept their testimony over George DeRoche's and his witnesses.

- [23] The only evidence which suggests that George DeRoche undertook any activity on the subject land relates to him conducting repairs to his mother's house. Those actions allegedly took place just after his mother moved away but while she was alive. As explained by George DeRoche, he was not at that time exerting acts of ownership which were independent from his mother's. Accordingly, his acts such as they were, could only be referable to his mother's interest in the disputed land and not his. In any event, no credible evidence has been presented to the court of George DeRoche exercising control or acts of ownership over the disputed land. There is insufficient credible evidence on which this court can find that George DeRoche enjoyed exclusive and undisturbed control over the disputed lands for any period and certainly not for 12 years immediately preceding the filing of his application. I find as a fact that he has not been in adverse possession of the disputed lands for the requisite 12 year period. His application for declaration of possessory title is accordingly dismissed.

Issue 2 – Is Lennox Antrobus is entitled to a declaration:

- a) **of possessory title; or**
- b) **that he is part owner;
of the subject land?**

Declaration of possessory title

[24] Lennox Antrobus seeks an order declaring him partial owner of the disputed lands and a declaration of possessory title, presumably of the aforementioned portion. However, under cross-examination he was adamant that he is not seeking title to the disputed lands. Rather, he claimed that his uncle Frederick DeRoche asked him to extract Letters of Administration to James N. DeRoche's estate and he proceeded to do so in 2002²¹ as his uncle's lawful attorney. Mr Antrobus' action in bringing this claim appears to be motivated by a desire to ensure that George DeRoche's application does not succeed. Mr Antrobus submits that if it does, the beneficiaries of James N. DeRoche's estate would be deprived of their interest in the disputed lands which form part of the estate. That estate is still unadministered

[25] The court notes that Lennox Antrobus brings this claim in his personal capacity and not as beneficiary or legal personal representative of James N. DeRoche's estate or as agent of other beneficiaries. Accordingly, the court will restrict its consideration to the legal basis on which his claim is brought. No consideration will be given to Mr Antrobus' purported status as agent of those beneficiaries. For Mr Antrobus to obtain a declaration of possessory title, he must prove that he has been in adverse possession of the subject lands for 12 years or more.

[26] Mr Antrobus does not advance any acts of ownership on which he relies in support of his claim. Instead, he alleges that his interest arises from his earlier involvement as lawful attorney for his uncle Frederick DeRoche on whose behalf he extracted Letters of Administration to James N. DeRoche's estate. Frederick DeRoche has since passed away.

²¹ By Grant number 59 of 2002 dated March 25, 2002.

[27] James DeRoche's and Victor DeRoche's testimonies were almost identical in all material respects to Lennox Antrobus'. They were both clear that Lennox Antrobus never cultivated any part of the subject lands. Neither Lennox Antrobus nor his witnesses gave evidence of Lennox Antrobus occupying the disputed lands or conducting any acts of ownership over it. There is not one scintilla of evidence in the entire case to suggest that he did so. There is no factual basis on which I can conclude that Lennox Antrobus was at any time in adverse possession of the said lands. His claim for a declaration of possessory title to part of the disputed lands is dismissed.

Declaration of part ownership

[28] Lennox Antrobus' claim that he is entitled to a declaration of part ownership of the disputed lands appears to stem from the family's historical dealings with it as recounted by him and his witnesses. The court accepts the testimony of Lennox Antrobus, James P. DeRoche and Victor DeRoche that the disputed lands were owned by James N. DeRoche and occupied by his children: Jestina DeRoche, Theresa Antrobus née DeRoche and Frederick DeRoche for an extended period. The circumstances of their use of the land might have created interests for them and their respective estates. Such interests would devolve by will or under the applicable intestate laws. There is no evidence before the court as to whether Jestina DeRoche's, Theresa Antrobus née DeRoche's or Frederick DeRoche's respective estates have been admitted to probate or who are their respective beneficiaries.

[29] Mr Antrobus asserts that the disputed lands have always belonged to James N. DeRoche and on his death form part of his estate. He testified that James F. DeRoche was James N. DeRoche's last surviving offspring. Before his demise, James F. DeRoche sought to regularize his father's affairs by administering his

estate. Lennox Antrobus produced a copy of the Letters of Administration²² as well as documentation leading to the grant.²³ On the one hand, the interests in the disputed land may fall to be determined through James N. DeRoche's intestacy and on the other hand as part of the estates of Jestina DeRoche, Theresa Antrobus née DeRoche and Frederick DeRoche, or a combination of those scenarios.

[30] George DeRoche makes submissions based on provisions in the Limitation Act. I do not believe it is necessary to consider them. There is not enough information before the court to decide one way or the other. In all the circumstances, Mr Antrobus has not advanced adequate factual or legal basis on which his claim to partial ownership of the land is made out. His claim to be declared part owner of the disputed land is accordingly dismissed.

[31] This case highlights peripheral issues of succession to unregistered legal interests in land in the state of Saint Vincent and the Grenadines. It seems that too many families find themselves in similar predicaments because they fail to secure possessory titles or otherwise ensure that long recognized occupation of lands by ancestors are memorialized and resolved through alternative dispute mechanisms including family conferences and documented in a legal record. Conceivably the parties in this case might benefit from just such an intervention.

ORDER

[32] It is ordered:

1. George DeRoche's application for a declaration of possessory title of property situated at Comptor, Canouan in the State of Saint Vincent and the Grenadines, delineated and described in survey

²² Grant Number 59 of 2002, dated March 25, 2002 and exhibited as "L.A. 2".

²³ Including General Power of Attorney between Frederick De Roche and Lennox Antrobus No. 60 of 1999 exhibited as "L.A. 1"; and Estate Duty Affidavit and Accounts for the Commissioner filed on 16/6/00.

plan Gr1240, approved and lodged at the Lands and Survey Department on April 25th, 2012 by Chief Surveyor Adolphus Ollivierre is dismissed.

2. Lennox Antrobus' claim for a declaration of possessory title of property situated at Comptor, Canouan in the State of Saint Vincent and the Grenadines, delineated and described in survey plan Gr1240, approved and lodged at the Lands and Survey Department on April 25th, 2012 by Chief Surveyor Adolphus Ollivierre is dismissed.
3. Lennox Antrobus' claim for a declaration that he is partial owner of property situated at Comptor, Canouan in the State of Saint Vincent and the Grenadines, delineated and described in survey plan Gr1240, approved and lodged at the Lands and Survey Department on April 25th, 2012 by Chief Surveyor Adolphus Ollivierre is dismissed.
4. Each party shall bear his own costs.

[33] I wish to thank counsel for their written submissions.

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Esco L. Henry
HIGH COURT JUDGE