

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2011/0412

BETWEEN:

**[1] CONDACE BENJAMIN
[2] GERALDINE BRIDGES**

Claimants

and

AVERY ALEXIS HENRY

Defendant

Appearances:

Mr. John Fuller for the Claimants

Mrs. Laurie Freeland Roberts for the Defendant

2015: January 12
March 23

JUDGEMENT

- [1] **Cottle, J.:** The claimants and their predecessors in title have occupied a parcel of land in St. John's, Antigua since 1955 or thereabouts. The land they occupy is part of parcel 34 of Block 66 1692 E of the St. John's Registration section. The defendant is the registered proprietor of parcel 34. The claimants have issued the present claim seeking a declaration that the registration of the proprietorship of parcel 34 by the defendant's predecessor in title was obtained by fraud. They wish the court to order that the registration of the northern part of parcel 34 be in the name of the

Estate of Percival Thomas, deceased. They do not say what is to become of the balance of parcel 34.

- [2] Parcel 34 is approximately 2,753.70 square feet in size. The claimants seek 1663.35 sq ft. They will also need an easement of 175.85 sq ft as access. The remainder is just over 900 sq ft.
- [3] The claimants pleaded case is that Percival Thomas purchased the property they now claim from one Ms. Quallis in 1955 and built a house on it. He lived there with his wife and 8 children until his death in 1976. Since that time two of his sons, beneficiaries to his estate, have resided on the property. The claimants can produce no deed or receipt showing the claimed purchase. Nor can they demonstrate any proof of ownership of the property by Ms. Quallis before 1955.
- [5] The claimants say they discovered, in September 2005, that the property was registered in the name of the defendant. They say that prior to this they had received no notification of any claim to ownership of the land they occupied. They researched the matter and learned that the defendant's father had applied for and obtained prescriptive title to the land since 1992. They aver that this application was fraudulent in that the applicant had falsely sworn that he had sole exclusive and undisturbed occupation of the land thereby deceiving the Registrar of Lands to register him as proprietor. The claimants also aver that the applicant had failed to notify Percival Thomas or his heirs of the application of title.
- [6] In his pleaded defence, the defendant swears that the parcel was owned by his great uncle Stanley Lloyd, who leased it to three individuals, including Ms. Quallis. Ms. Quallis paid rent and occupied a chattel house on the property. In 1995 she moved to Otto's New Town with her grandson Clement Francis.
- [7] In 1978 the defendant's father completed a claim form under the Cadastral Survey Project. The adjudication record reflects the land was registered in the name of the estate of Stanley Lloyd. The father of the defendant subsequently applied for prescriptive title in his own name in 1992. In 1994 he transferred the property to the defendant and himself as joint tenants. He died in 2002.

- [8] The defendant, now the sole registered owner, approached the occupants of the property. The other occupants informed the defendant of the lease arrangements under which they occupied. The claimants denied knowledge of any arrangements. Instead they issued a claim, which the defendant contested. After case management and disclosure of documents the claimants' case was discontinued.
- [9] The defendant then served the claimants notice to quit. The claimants have refused to quit. They issued the present claim. The defendant filed a counter claim.

The Evidence

- [10] Condace Benjamin filed a witness statement. She swore that she is a daughter of Percival Thomas, having been born in 1946. Her family moved to the property in question in 1955. She resided there until she left in 1973 to live with her present husband. Some of her siblings still reside on the property including her brother George who is now 53, having lived there all his life. No notice was served on the family in 1992 or any other time. No rents were paid to anyone.
- [11] She also testified that searches were made at the Land Registry to locate the documents filed by the defendant's father in support of his application for prescriptive title but the file cannot be found.
- [12] Cecile Hill was called as a witness she is the Registrar of Lands. Without the file in question the Registrar was only able to testify as to the statutory requirements for the grant of prescriptive title. Those would have to be satisfied before the grant.
- [13] The Registrar would have had to be satisfied that notice on occupiers of the land and adjacent occupiers had been served.
- [14] The affidavit in support would have had to state that the applicant was in occupation of the property. The Registrar also testified that the minimum size of a parcel permitted for registration

was 0.05 of an acre. To accede to the claimants claim would result in parcels significantly smaller than the minimum.

- [15] Willa Meyer provided a witness statement to the effect that the claimants' family had occupied the property since about 1969 to her knowledge.
- [16] Geraldine Bridges is a sibling of Condace Benjamin. She was born in 1944. She moved into the property in 1955 and resided there until she left in 1992 after her main age.
- [17] George Thomas is another of the children of Percival Thomas. He lives on the property. He has lived there since his birth in 1960. He knows of no notice of application for prescriptive title. He pays no rent and has never done so.
- [18] The defendant gave evidence. He had one witness, the grandson of Ms. Quallis, Clement Francis.
- [19] Mr. Francis was not able to travel to Antigua for the trial and his evidence was not considered. The defendant gave evidence along the lines of his pleadings. Importantly he testified that his father had completed a claim form for the property during the Cadastral Survey Project. That claim was published. No objection was received to the claim and the interest in the land was accordingly registered.

Discussion

- [20] Antigua and Barbuda established an entire procedure for the registration of interests in real property. Under the Cadastral Survey Project, all lands in the state were adjudicated upon according to the Land Adjudication Act. After adjudication, the Land Registrar was established. The Registered Land Act cap 374 and the Land Adjudication Act cap 234 of the Laws of Antigua and Barbuda comprise a complete regime.
- [21] Part III of the Land Adjudication Act sets out the procedure for claiming an interest in land. Provision is made for objections and appeals after which the Land Register was finalized.

- [22] The claimants made no claim to ownership of the property during the project. It is common ground that the claimants have been occupying the property since 1955. Both sides accept that the defendant is the registered proprietor. For the claimants to be able to convince the court that his registration ought to be disturbed they must show that such registration was obtained by fraud.
- [23] It had been repeatedly emphasized that an averment of fraud is a serious one. Sufficient and credible evidence must be adduced.
- [24] Derry v Peek (1889) 14 App Cas 337 makes the point that fraud is shown when a false representation is demonstrated to have been made knowingly or without belief in its truth or recklessly uncaring whether it be true or not.
- [25] A party wishing to rely on an allegation of fraud must plead the exact nature of the fraud they allege. This was emphasized in Irena Elcock v Darius Wiltshire DOMHCV2009/0292. The claimant specified three things as constituting fraud. I reproduce the pleadings verbatim:-
- "Particulars of the Fraud of the Defendant's Predecessor in Title
- (a) falsely swearing that he had sole, undisturbed and exclusive occupation of the said parcel.
- (b) deliberately misleading the Registrar of Lands as to his purported rights to the said parcel.
- (c) failing to serve the said Percival Thomas or his heirs at law in occupation of the said portion of the parcel, with a copy of his application of prescriptive title to the said parcel or to otherwise notify him and/or his heirs at law in actual occupation of a portion of the said parcel of the said proceedings."
- [26] The claimants' evidence is that the parcel was purchased by their father and the family has resided on the land since the purchase in 1955. No documentary evidence in support of this purchase was adduced. When cross examined, both claimants agreed that no claim was made by the family during the Cadastral Survey Project. It is to be noted that the size of the parcel allegedly purchased, is far below the minimum size permitted for subdivision of parcels. Additionally it is

common ground that there were two other persons who occupied areas of parcel 34. These two persons and their successors in title accept that they were tenants of Stanley Lloyd.

[27] I conclude that the evidence fails to satisfy me that the claimants were in fact in sole undisturbed and exclusive possession of the parcel in issue.

[28] The suggestion that the father of the defendant deliberately misled the Registrar of Lands is without any evidential foundation. The file and affidavits cannot be found. This state of affairs has been contributed to by the lateness of the claimants' claim to this land.

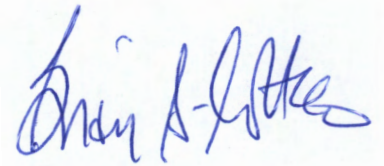
[29] Similarly there was no credible evidence or any documents to suggest that Percival Thomas and his heirs at law were not served with the application for prescriptive title. The Registrar of Lands gave evidence. She referred to section 137 of the Registered Land Act which sets out the procedure to be followed on an application for prescriptive title:-

- (1) "On application by any person for registration as proprietor under section 135 the application shall be advertised by the Registrar at the expense of the applicant in such manner as the Registrar may direct.
- (2) The Registrar shall have give notice of any such application to the proprietor of the land affected and to any other person who may, in his opinion, be affected thereby.
- (3) After one month has elapsed from the date of giving notice under subsection (2) the Registrar, on being satisfied that the applicant has acquired the ownership of the land claimed, may allow the application and register him as proprietor of the land claimed, subject to any interests on the register which have not been extinguished by the possession."

[30] In the absence of the evidence to the contrary and applying the maxim omnia praesumuntur rite esse acta, I find that the claimants have failed to satisfy me of this allegation of fraud.

[31] In the alternative the claimants seek to be registered as proprietors of the land in question under the Registered Land Act on the basis of over 20 years of uninterrupted possession to the exclusion of everyone else.

- [32] In order to acquire ownership of land by prescription, the possession must be without the permission of the person lawfully entitled to the land. In other words the claimants must show actual possession of the land and animus possedendi.
- [33] The case of Pollard v Dick 1977 2 OECS LR239 makes this clear. In ANUHCV2002/0590 Anthea James et al v Eva Fortune, the Court rejected a defendant's claim to occupy lands that she considered were family lands. Similarly the present claimants occupy on the basis and belief that the lands belonged to their father. The facts of Anthea James case are almost on all fours with the present claim. I find that the claimants lacked the requisite mental element to constitute adverse possession for the purposes of acquiring prescriptive title.
- [34] The claim is dismissed and judgement is entered for the defendant on the counter claim. The claimants are to vacate parcel 34 within 30 days. The claimants' will pay the defendants prescribed costs in the sum of \$7,500.00.



Brian Cottle
High Court Judge