

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2010/0656

BETWEEN:

VERONICA DAVIS

Claimant

AND

**[1] LEONARD JAMES
[2] VINCENT BROWNE**

Defendants

Appearances:

Mrs. A. Roberts-Nicholas for the Claimant

Mr. C. Cumberbatch for the 2nd Defendant

2015: February 13

On written submission

[1] **Cottle, J.:** The claimant is the registered proprietor of parcel 134 of Block 64 1892F in the Sutherlands Registration section. The defendants occupy a part of this parcel. They have buildings on the land. The buildings are chattel buildings. The 2nd defendant admits that he owns and occupies a wooden house on the land but says that he occupies land adjacent to the claimant's land.

[2] The Court ordered a survey. The report and annexed plan revealed that the house is located within the boundaries of parcel 134 of which the claimant is the registered owner. Despite this, the 2nd defendant avers that prior to registration, there were two distinct parcels which have now been

subsumed into parcel 134. He says that long before the registration, he and his predecessors in title had occupied the parcel on which his house now stands. They had done so for more than 40 years "peacefully and without any adverse claim."

- [3] Annexed to the claim form was a copy of the land register. It reveals that the claimant was the registered proprietor and the size of the parcel as 0.3 acres. Rendell Neal licensed land surveyor, appointed by Remy J, produced a report. He located a certificate of title for parcel 134 dated 1945 which showed the parcel as being 10,000 sq ft in size with an unallocated portion of land immediately north of the parcel. It is on this unallocated portion of land that the 2nd defendant's house now rests.
- [4] Mr. O'Neal could find no evidence that this residual portion of land had been claimed by the claimant in the time that the cadastral exercise was being conducted. There was also no evidence that the 2nd defendant had ever made any claim.
- [5] In 1978 the Land Adjudication Act came into force in Antigua and Barbuda. It established a comprehensive regime to register rights and interest in all lands in Antigua and Barbuda. Arrangements were made for adjudication of any disputes after which the adjudication record was deemed final.
- [6] Ethel Rice applied and was registered as the proprietor of parcel 134. It included not only the 10,000 sq ft said to comprise parcel 134 in the 1945 certificate of title but also an additional 3 900 sq ft being the previously unallocated portion north of the original parcel.
- [7] No challenge was made to the registration of Ethel Rice, the claimant's predecessor in title.
- [8] The 2nd defendant argues that he has acquired a right to the part of parcel 134 he occupies by reason of his long open peaceful occupation. Section 135(1) of the Registered Land Act provides as follows:-

"The ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of twelve years: Provided that no person shall so acquire the ownership of Crown land."

[9] As I understand the submission of counsel for the 2nd defendant, the conjoint effect of these two sections of legislation is to confer a right on the 2nd defendant to acquire title by prescription to the parcel in question and at the same time bar the claimant from any action for recovery.

[10] In order for the defendant to avail himself of the benefit of any rights acquired by prescription he must show not only long possession with animus possiderdi, he must also show that his possession is adverse. In the present case, the contention of the claimant is that the 2nd defendant and his predecessor in title, paid rent to Ethel Rice. If this is so then his possession cannot be said to be adverse. The 2nd defendant denies that he or his deceased aunt before him paid any rent. He did not offer any basis on which they came to occupy. I find it likely that his aunt did come into occupation as a tenant.

[11] The effect of the Land Adjudication Act.

[12] In a system with registered land, the world is expected to be able to rely on the fact of registration as evidencing ownership of land. As Robotham CJ put it in Skelton v Skelton 37 W1R 177

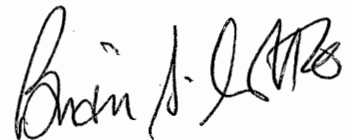
"I am of the view that the Respondent not having exercised his right to petition the adjudication officer, and not having exercised his right of appeal to the Court of Appeal, nor sought an extension of time within which to appeal, and lastly... not having done anything for a period of nine years, cannot now impeach the finding of the adjudication officer by an ingenious action for rectification in the High Court."

[13] Saunders J reached a similar conclusion in Jean Baptiste Petit Frère v Catherine Paul SLU HCV1996/0845

"the Land Adjudication Process provides an entire judicial regime including a comprehensive appeals process, for the ascertainment of legal rights... Litigants are not entitled to

ignore this regime and then, years after the fact, invoke the jurisdiction of the High Court to re-litigate what had already been finally decided."

- [14] This is the position that the 2nd defendant would have this court adopt. He did not avail himself of the process allowed under the Adjudication Act.
- [15] It would not be right to permit him to relitigate this issue of the entitlement to parcel 134 after so long when many relevant witnesses including those who made the initial claim for registration, have died.
- [16] The claimant is the registered proprietor. I see no reason not to permit her to rely on that fact as establishing her right to possession. I therefore find for the claimant.
- [17] The defendants are to give up possession forthwith. Damages for trespass are awarded to the claimant in a nominal amount of \$100.00 as no evidence was led to permit any determination of an assessed amount.
- [18] The 2nd defendant will pay the claimant's prescribed costs.



Brian Cottle

High Court Judge