

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

HIGH COURT OF JUSTICE

SUIT NO GDAHCV 2013/0075

BETWEEN:

ROGER ALEXIS

Claimant

and

**BERYL MITCHELL
HAYLEY MITCHELL**

Defendants

Appearances:

Mr. Alban John and Ms. Thandiwe Lyle for the Applicant
Mrs. Winnifred Duncan Phillip for the Claimant/Respondent

2013: December 5
2014: February 5

DECISION

- [1] **MOHAMMED, J.:** On 30th September, 2013 (“the application”) Gabriel Dubisette (“the Applicant”) applied to the Court for permission to be joined as a Defendant in these proceedings, to defend the Claim brought by the Claimant. The basis for his application is he is one of the legal personal representatives of the Estate of Anna T. Dubisette (“the Deceased’s Estate”) and the lot of land which in his view touches and concerns the subject matter of the substantive claim between the Claimant and Defendants forms part of the Deceased’s Estate.

- [2] In the substantive action the Claimant is seeking possession of a building situate at Grand Anse, St. George's, Grenada. He claims that the building was constructed by his father Jerome Davidson ("Jerome Davidson") who permitted the First and Second Defendants to occupy the building. In November 2011 Jerome Davidson conveyed the land on which the building is situated to the Claimant and although he has permitted Jerome Davidson to reside in the upstairs portion of the building, on 31st December 2012 the Defendants took possession of the building without the permission of the Claimant.
- [3] In their Defence, the Defendants have denied that they have recently entered on the property. They challenged the Claimant's title of the land on which the building is situated and Jerome Davidson's construction of and/or contribution to the construction of the building. The First Defendant contends that Jerome Davidson did not have any title to the land on which the building was constructed and that the time of the construction of the building Jerome Davidson was not employed and did not contribute to the construction of the building. The First Defendant asserts that she and Jerome Davidson was in a common-law relationship from 1981 and that she constructed the building at her own expense where she lived with him, the Second Defendant and her other son Marvin from 1984 until the time she left Grenada in 1996. She also alleges that she operated a shop from the said building.
- [4] The Defendants also deny that the Second Defendant's occupation of the building has been with the permission of Jerome Davidson. They also contend that the Second Defendant renovated the ground floor apartment of the building in 2010. They have counterclaimed that the First Defendant has an irrevocable proprietary licence to the property.
- [5] The Claimant/ Respondent has opposed the application on the following grounds: the prayer for relief in the substantive matter is for possession of the building and damages for trespass and that the issue between the Claimant and Defendants is who constructed or contributed to the construction of the building and the

proposed Defendant is not connected to this issue; there is no cause of action against the Defendant; the proposed Defendant cannot provide a Defence in relation to the Claim; there is no relief claimed that the Court can order against the proposed Defendant; there is no issue of liability between the Claimant and the proposed Defendant; and it would be highly prejudicial to the Claimant if the proposed Defendant is joined since the Claimant's title to the land is based on long possession.

- [6] While CPR 19.3 makes provision for the Court to add a party to an existing matter it does not set out any factors which the Court must consider in so doing. The authors of **Blackstone Civil Practice 2003** at paragraph 14.3 were of the view that:

“The Court is given a wide discretion under CPR to order that a person be added, removed or substituted as a party to a claim, provided that (in the case of adding a party), the limitation period has not expired. This power must be exercised upon application by a party or by a person who wishes to intervene to become a party, or by the Court acting on its own initiative”.

- [7] In interpreting this rule in **The Incorporated Trustees of the Seventh Day Adventist Church v Jester Emmons and ors.**¹ this Court stated that:

“There is no criteria set out which the court is to take into account when deciding whether to add a new party, but it is not unreasonable to approach such an application taking into account the nature of the pleaded case, the evidence presented in support of the application and the overriding objective of the CPR.”

- [8] In the UK the Courts have exercised this wide discretion with varying results. In **Douihech v Findlay**² the Court was of the view that there must be a cause of action against all those joined. In **Individual Homes Ltd v Macbean Investments Ltd**³ a bank was joined as a party to enable it to recover the costs of complying with a

¹ GDAHCV 2012/0062

² [1990]1WLR 269

³ (2002) The Times, 14 November 2002

witness summons and in **Gurtner v Circuit and Another**⁴ Lord Denning joined the Motor Insurance Bureau as a Respondent since he was of the view that:

“It seems to me that when two parties are in dispute in an action in law, and the determination of that dispute will directly affect a third person in his legal rights or his pocket, in that he will be bound to foot the bill, then the court in its discretion, may allow him to be added as a party on such terms as it thinks fit⁵.”

[9] In light of the wide discretion given to the Court, I dismiss the application for the following reasons:

- (a) No cause of action against the proposed Defendant. The issues between the parties arising from the pleadings is the ownership of the building, who contributed to its construction and whether there were any acts of trespass. It was not alleged in the pleadings that the proposed Defendant or his predecessors in title contributed to the construction of the building or committed any acts of trespass.
- (b) Title of the land not in dispute between the parties. The Claimant has stated that his title to the land is based on his November 2011 deed and long possession. While the First Defendant has challenged Jerome Davidson's ownership of the land she has acknowledged that she was not the owner of the land. Although she puts the Claimant's ownership of the land in issue she has not pleaded who is the owner of the land.
- (c) Prejudice to the Claimant. I agree with the proposed Defendant that the building affixes to the land. The Claimant has not disputed that the genesis of his ownership of the land is by virtue of long possession. Prior to the proposed Defendant's application there was no evidence that the Claimant's title to the land was challenged. In this jurisdiction it was settled in **Arnold Celestine v Carlton Baptiste**⁶ that sections 4, 12 and 27 of the Limitation Act

⁴ [1968] 2 QB 587

⁵ At page 595

⁶ HCVAP 2008/011 decision of George-Creque

do not permit a person who is an adverse possessor to bring a claim against the paper owner of land but only permits a person who has dispossessed a paper owner to rely on a defence of adverse possession against the paper owner whom has been dispossessed. In light of the existing law, the Claimant who relies on long possession for having dispossessed the proposed Defendant's predecessors in title has no cause of action against the proposed Defendant and therefore it would be highly prejudicial for the proposed Defendant to be joined as a Defendant just to challenge the Claimant's title. Indeed if the proposed Defendant takes issue with the Claimant's title it is still open to him to bring his own action challenging the Claimant's title.

Order

- [10] The application is dismissed. The costs of the application is assessed in the sum of \$750.00.

Margaret Y. Mohammed
High Court Judge