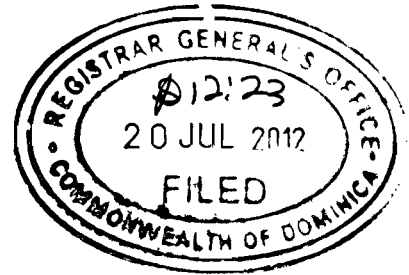


**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF Dominica
CLAIM NO. DOMHCV2007/0400**



BETWEEN:

ALBERT GUYE

Claimant

and

DAVID GEORGE

Defendant

Before:

The Hon. Justice Brian Cottle

Appearances:

Mr. Michael Bruney for the Claimant

Mrs. Gina Dyer-Munro for the Defendant

2011: December 7th, 19th
2012: July 20th

JUDGMENT

- [1] **COTTLE J:** This claim concerns a dispute as to ownership of a small strip of land in the Pottersville Housing Scheme area of Roseau. The claimant is the registered proprietor of lot 748. The registration of his ownership and the issue to him of a certificate of title occurred in 1996. In 2004 he began carrying on a tyre repair service on lot S. 748
- [2] The defendant is the successor in title of John George who held a certificate of title for lot S. 750. This lot is adjacent to the lot owned by the claimant. On lot 750 there is a tyre repair business of long standing. In fact for many years the claimant had been employed at the tyre repair business on lot 750. He operated as manager at the time he purchased lot 748. The contested strip of land

forms part of the land comprised in the claimant's certificate of title. This strip is being occupied by the tyre repair business being operated by the defendant.

- [3] The claimant seeks possession of this strip with consequential relief. The defendant seeks a declaration entitling him to remain in possession of the strip on the basis that he and his predecessors in title have been in occupation for more than 30 years and is entitled to the protection of the Real Property Limitation Act. As an alternative the defendant avers that the claimant is estopped from asserting his entitlement to the strip of land by reason of his conduct.

The Law

- [4] Section 8 of the Titles by Registration Act chap 56:50 provides for a certificate of title to be indefeasible. This indefeasibility is subject to cases where the title of the registered proprietor has been superseded by title obtained under the Real Properties Limitation Act. Section 2 of the Real Property Limitation Act reads:

" After the commencement of this act no person shall make an entry or distress, or bring an action or suit, to recover any land or rent, but within twelve years next after the time at which the right to make the entry or distress, or to bring the action suit, has first accrued to some person through whom he claims: or if the right has not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make the entry or distress, or to bring the action or suit, has first accrued to the person making or bringing the same"

- [5] By his pleadings the defendant seems to be doing two things. He seeks to set up Section 2 of the Real Property Limitation Act and he also seeks to claim ownership of the disputed strip by his adverse possession over 30 years.

The Evidence

- [6] The claimant purchased his lot in 1996 at that time he was manager of the business now run by the defendant. He continued in that position until 2004 when differences arose between the parties. He then left that business and established his own rival enterprise on the adjoining lot. The claimant says that he knew at the time of his purchase that the defendant business occupied a part of his land but as he had no immediate plans for the use of the land and given that he was the manager, he was content to permit the encroachment rent free because no permanent structures were erected on the part of the land encroached upon.
- [7] In his witness statement the claimant says that before 1979 there was a walkway between the buildings which were on the lots. Both buildings were destroyed by Hurricane David in 1979. He speaks of a conversation between the defendant's father, John George and the then owners of lot 748. Permission was sought and granted to build a shed. The claimant says he helped build this shed which covered the area which is now the area in dispute.

- [8] When he was cross-examined the claimant explains that he meant that a roof was built which covered the area in dispute. Counsel for the defendant urges the court to reject the evidence of the claimant as being unreliable for several reasons. He could not recall details of his dealings with the property or from whom he purchased. Therefore, suggests counsel, he should not be trusted on his recollection of a conversation in the 1980's.
- [9] The defendant says that the shop has been in the same location since 1975. The boundary has been in place since the late 1970's. At first this was a fence made of corrugated galvanized sheets. This fence was later replaced by a wire fence in the same position. The claimant helped erect the wire fence. No neighbouring owner objected to the placement of the fence avers the defendant. The defendant called several witnesses to attest to the fact that the defendants have occupied the contested parcel for over 30 years.
- [10] As an alternative the defendants also say that the claimants ought to be estopped, by reason of his conduct, from asserting any right to the disputed parcel. Though this is pleaded, no evidence was led to show any inducement or assurance by the claimant, upon which the defendant relied to his detriment. The point was not pursued by counsel for the defendant in her closing submissions with any vigour- and rightly so in my opinion. Without a proper evidential foundation the plea of estoppel must fail.
- [11] From the evidence it appears clear to me that the defendant has been in possession of the disputed strip for a period of more than 12 years. The question which falls for determination is what is the legal effects of this in the circumstances. As far as the claimant is concerned there were not more than 12 years which elapsed between the time the claimant got his certificate of title to disputed land, and the institution of this claim. I accept that the defendant and his predecessors in title have operated the tyre repair business on the disputed strip since at least 1980.
- [12] As I understand the case from the defendant, the operation of section 2 of the Real Properties Limitation Act has the effect of extinguishing the title of the registered proprietor. For the purpose of this case I am content to treat the possession of the defendant and his predecessors in title as adverse but that is not conclusive of this claim. The indisputable fact is that the claimant has a Certificate of Title. That means that his title to the disputed strip is indefeasible except, inter alia, "on the ground that his title has been superseded by a title acquired under the Real Properties Limitation Act". The question here is whether the defendant had acquired title under the Real Properties Limitation Act.
- [13] This issue received the attention of the High Court here in Dominica in the case of Castaways Development Ltd v Jerry Brisbane DOMHCV591/1995. In that case Pemberton J concluded that the effect of Section 2 of the Real Property Limitation Act operates to extinguish the rights of a true owner to bring an action to recover possession of his land. It does not operate to extinguish his title. If the interloper leaves and the true owner is able to peacefully retake his land his title subsists.

- [14] It would have been open to the defendants to apply to the Registrar for a certificate of title in their own name under Section 34 of the Titles by Registration Act on the basis of their long adverse possession. They failed to do so. They therefore do not have a title acquired under Real Properties Limitation Act and the fullest rights of the registered proprietor must be given effect to in the circumstances.
- [15] I pause to note that the defendant has made a counterclaim. This counterclaim cannot be entertained. The reason is well explained by the Court of Appeal in the case of George v Rosalie Estate 13 WIR 401. Applying the reasoning of Archer P the current defendant would have been a person qualifying for title by adverse possession but until he applied for and obtained his own certificate of title he would be powerless to defeat the registered proprietor of the land. That position is fortified by an examination of the judgment of the Privy Council in the Dominica case of Attorney General of Dominica v Shillingford 14 WIR 528.
- [16] Counsel for the defendant urges the court that while Section 3 of the Titles by Registration Act as explained in George v Rosalie Estate may prohibit the defendant from maintaining the counterclaim, he should still be able to rely on Section 2 of the Real Property Limitation Act as a shield if not a sword. The difficulty with that argument is that it makes nonsense of the indefeasibility conferred on the holder of a certificate of title. I interpret the position to be that an owner of land who does not hold a certificate of title is prevented from bringing an action to evict a squatter after 12 years of adverse possession.
- [17] However if he holds a certificate of title he can rely on the indefeasibility conferred by his certificate of title unless the squatter obtains the title under the Real Property Limitation Act by applying for such a title under the provision of S. 34 of the Titles by Registration Act.
- [18] In the present case I therefore conclude that the claimant is entitled to rely on his certificate of title and is entitled to possession of the disputed strip. A declaration is made that the defendant is not entitled to enter or remain on the land comprised in the claimant's certificate of title.
- [19] The defendant is ordered to remove the structures erected on the claimant's land and a permanent injunction is granted restraining the defendant and his successors in title from entering or crossing the claimant's land. Nominal damages for trespassing are awarded in the sum of \$100.00. the defendant is permitted 30 days to remove his structure after which the claimant shall be at liberty to remove them at the expense of the defendant. The defendant will pay the claimant's costs in the sum of \$7,500.00 being prescribed costs.



Brian Cottle

High Court Judge