

**THE EASTERN CARIBBEAN SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
(HIGH COURT OF JUSTICE)
(CIVIL)**

GRENADA

SUIT NO. GDAHCV 2004/0047

BETWEEN:

CLARENCE FERGUSON

Complainant

-and-

**STRESSMAN THOMAS
EDZIL THOMAS
GUY ALEXANDER**

Defendants

Appearances:

Mr. O. Gill and Mr. N. Burke for the Claimant
Mrs. V. Francis-Banfield for the first named Defendant

.....
2006: October 27
2007: August 27
and
2011: August 31
.....

JUDGMENT

- [1]. **BENJAMIN, J:** This suit was brought in the name of Clarence Ferguson who subsequently died on December 18, 2006. By Order of Court dated the 24th day of August, 2007 Ruggles

Ferguson, the son and personal representative of the estate of the said Clarence Ferguson was substituted as Claimant. The suit was originally commenced by the said Ruggles Ferguson in his capacity as the dully constituted attorney for the said Clarence Ferguson.

- [2]. The second-named Defendant withdrew from the proceedings ahead of the trial and he took no part in defending the matter. The Claimant elected not to pursue any remedies against the second named Defendant. The third named Defendant died before trial and no substitution was made. Again, no remedies were sought against the third-named Defendant by the Claimant. Accordingly, the claim proceeded solely against the first-named Defendant, Stressman Thomas.
- [3]. The subject-matter of the proceedings is property situate at Palmiste in the parish of St. John ownership of which is claimed by the Claimant as being comprised in the conveyance dated the 17th day of April, 2002 recorded in the Deeds and Lands Register of Grenada in Liber 6-2003 at page 734. In the said deed the property was conveyed pursuant to a partition order dated the 16th day of January 1961.
- [4]. The Claimant seeks the following relief against the first-named Defendant:
 - 1. "An injunction restraining the first-named Defendant whether by himself, his servants and/or agents from trespassing, exercising acts of ownership over, or in any way interfering with the said property.
 - 2. Damages for trespass
 - 3. Such further or other relief as to this Honourable Court may seem just.
 - 4. Costs".

[5]. The first-named Defendant in the Amended Defence has asserted ownership of the disputed property as forming part of the estate known as "Poterie Estate" which lies in boundary with Palmiste Estate. In addition, the Amended Defence has pleaded that the Claimant's right, if any, have been extinguished by the operation of sections 4, 17 and 27 of the Limitation of Actions Act, Chapter 173. The first-named Defendant has counterclaimed against the Claimant for the following orders:

1. An injunction restraining the Claimant whether by himself his agents and/or servants or howsoever from entering on the said lot of land and from exercising any acts of ownership thereon.
2. A Declaration that the Defendants are the owners of the said lot of land.
3. Such further or other relief as this Honourable Court deems just.
4. Costs.

BACKGROUND

[6]. The claim was filed as a result of alleged acts of trespass by the first named Defendant and his servants and/or agents entering upon the said property on January 11, 12 and 13, 2004. The entry was made for the purpose of conducting a survey, in furtherance of which boundary poles and other marks were placed on the land.

[7]. In the Amended Defence, the first-named Defendant admitted that he and the third-named Defendant, a land surveyor, did enter on the said property to carry out a survey. The first-named Defendant claims ownership of the disputed lot of land.

[8]. The conveyance to Clarence Ferguson was made pursuant to an order for partition in the

proceedings involving the beneficiaries of the will of Ruggles Low Ferguson, deceased, who was the father of Clarence Fergusson, whose entitlement was one undivided fourth part or share of the plantation or estate called "Palmiste" situate in the parish of St. John. The property conveyed was described as containing sixty-nine (69) acres and three (3) roods as delineated on plan dated October 23, 1961 by W. Bertrand, a licensed land surveyor.

THE CLAIMANT'S CASE

- [9]. The case for the Claimant was founded upon the testimonies of Ruggles Ferguson, Whitney Thomas, Carlyle Glean and Terrence Smith and supported by the Indenture of conveyance dated the 17th day of April, 2002.
- [10]. Ruggles Ferguson stated that Clarence Ferguson had been the owner of and in continuous and undisturbed possession of the said property for over forty (40) years subsequent to the order of Court dated the 16th day of January 1962. This witness recalled that another witness, Whitney Thomas, had been in charge of the property, along with one Clarence Regis also known as "Sherry", and had tended his cows on the land. Whitney Thomas confirmed that he had been going on the land for the previous fifteen (15) years to care for his cows as well as to hunt, dig yams and pick coconuts all with the permission of "Mr. Fergy", the father of Ruggles Ferguson.
- [11]. In his witness statement, Ruggles Ferguson stated that for several years up to the year 2000 Clarence Ferguson had contracted with companies including Caribbean Consolidated Contractors Ltd. for the removal of stones from the said property including the portion of land claimed by the first-named Defendant without any objection being raised by the first-named Defendant. This assertion of fact was never challenged by the first-named Defendant.

- [12]. Whitney Thomas said the he had been going on the said property with the permission of Clarence Ferguson to rear his cows. He recalled that one John Thomas also reared cows on the land.
- [13]. It is Whitney Thomas who provided the first hand evidence of the entry of the first-named Defendant, and Stressman, Thomas onto the property in January, 2004. He said he went to Palmiste to take care of his cows. In the course of a conversation, the first-named Defendant, told him that he had land there and pointed to the Claimant's land. At the time, the first-named Defendant and Mr. Guy Alexander were standing in the White Gate area close to the Claimant's land. Whitney Thomas went on to recall seeing the two men and others go onto the Claimant's land. He observed the first-named Defendant giving directions, trees being cut down with a chain saw and clearings being made on the land. He also saw Mr. Alexander establishing a line and poles being planted.
- [14]. The witness identified the land where the poles were planted as the area from which stones had been taken a few years earlier.
- [15]. Carlyle Glean is a civil engineer by profession and has resided at Palmiste since 1994 on land purchased from Donald Ferguson, the brother of Clarence Ferguson. This witness testified that in January 2004 he visited the property along with Ruggles Ferguson, Terrence Smith and Whitney Thomas when iron poles were removed. Mr. Glean stated that he was familiar with the boundaries of the land as he was present at a survey conducted by Mr. Godwin Alexis between 1998 and 2001. In addition, he stated that he has passed the property on a daily basis since the 1970's and he has never observed the first-named Defendant on the property.
- [16]. Terrence Smith is a civil and sanitary engineer and asserts familiarity with the property from 1985. He confirmed arrangements made with two companies for the quarrying of rocks from a twelve (12) acre area to the south-west end of the property between 1999 and 2002.

However, during cross-examination he was unable to say what area comprises White Gate or whether it is comprised in the said property identified in the Claimant's conveyance.

[17]. On January, 12, 2004, Terrence Smith observed Mr. Guy Alexander conducting a survey on the southern boundary of the property and had a conversation with him. Subsequently, on Sunday morning in January 2004, Mr. Smith assisted in removing poles pointed out by Whitney Thomas in the area where Mr. Guy Alexander was carrying out the survey.

[18]. In the final paragraph of his witness statement Mr. Smith stated that the places where the poles were planted was in the general vicinity of the area allocated for the removal of stones. Also, in December 2002, he had arranged on behalf of the Claimant to have erected the same area a sign announcing a future housing development.

FIRST-NAMED DEFENDANT'S CASE

[19]. The Amended Defence averred that the disputed portion of land is not owned by the Claimant but has been in the possession of the first-named Defendant's family and forms part of a larger portion of land comprised of forty-two (42) acres formerly owned by his grandparents, John Wesley Thomas and Welly Thomas.

[20]. The first-named Defendant pleaded title based on five (5) separate Indentures of conveyance dated: December 22, 1876; July 11, 1893; November 1, 1889; January 17, 1884; and February 6, 1880 situate at La Poterie in the parish of St. John. A sixth Deed dated May 15, 1908 was presented to the Court and referred to in the submissions of Counsel for the first-named Defendant; however, this document was never made part of the record at trial.

[21]. In his witness statement, the first-named Defendant endeavoured to trace his family history from his grandparents, John Wesley Thomas who died on August 24, 1923 and Nelly

Thomas who pre-deceased her husband. There were five children four whom predeceased, the father of the first-named Defendant, Garnet Thomas, who died on December 7, 1954. The first-named Defendant was one of his father's three sons and he was born on November 28, 1929.

- [22]. The first-named Defendant claimed his father left a will but this was not supported by any document. He also asserted during cross-examination that he had letters of administration to his grandfather's estate, but, no documents were presented to the Court. Further, he accepted that his grandfather's property had not been vested in favour of any beneficiaries. The net result is that neither the first-named Defendant nor anyone alive was possessed of documentary title to the property claimed by the first-named Defendant.
- [23]. In his Defence, it was averred that John Wesley Thomas occupied the land in dispute after the death of his wife Nelly Thomas, and that after his death, his five (5) children occupied and cultivated the estate. The first-named Defendant pleaded that he is in possession of the lot of land in dispute which forms part of the estate known as 'Poterie Estate' which bounds the Claimant's land situate at Palmiste Estate.
- [24.] In his witness statement, the first-named Defendant stated that his father and uncles cultivated the land and as a child, along with his two brothers, he planted yams and cane. He also said that he used to harvest timber from the land to build boats after his father died. Reference was also made to one Ignatius Wharwood being in charge of the land.
- [25]. In both his witness statement and in his testimony under cross-examination, the first-named Defendant drew a distinction between "Palmiste Estate" which he acknowledged as having been partitioned from the estate of Ruggles Low Fergusson in 1961 and "Poterie Estate" which he asserted to be bounded to the north by but not part of Palmiste Estate. In his witness statement he asserted that the survey was being carried out by Mr. Guy Alexander on a portion of land known as "White Gate" which he claimed to be part of Poterie Estate

owned by his family. In this vein, he insisted that in January 2004, he was in his father's garden which didn't form part of the sixty-nine (69) acres of land owned by the Claimant.

[26]. As a witness for the Defence, John Thomas stated that for over thirteen years he worked and cultivated a piece of land at Poterie Estate owned by Edzel Thomas and his family along with one Wharwood and one Nick. He recalled having cows on the land and that wood from the trees was used to make boats.

[27]. Nicholas Mark also claimed to be familiar with the disputed land. He stated that he cut wood for boats and for a bakery along with one Wharwood at the request of the first-named Defendant and Mr. Edzel Thomas. This witness confirmed that John Thomas cultivated crops and reared cows on the land. It is of significance that the last sentence of the witness statement of Nicholas Mark reads:

"I know the Claimant's land it is away from the land which the defendants own."

This latter statement was in answer to the sole question put to him in cross-examination. This statement accorded with that of the first-named Defendant in his witness statement when he said:

"As far as I know Poterie Estate is no part of Palmiste Estate. The lands which the second name (sic) defendant and myself are occupying, does not form part of the claimant's land."

THE LAW

[28]. At common law, possession of land per se confers a good title on the possessor against all except a person who has a better legal right to possession (**see: Asher v. Whitlock** (1865) LR 1 Q.B.1). In the event of possession being interrupted, the possessor can bring suit to assert his possession and need not prove that he has paper title.

[29]. In the present case, the Claimant asserts title embodied in a deed. In this regard, it is salutary to refer to the following dictum of Slade, J. In **Powell v. Mc. Farlane** (1977) 38 P & CR 452 at pp. 470-471:

"It will be convenient to begin by restating a few basic principles relating to the concept of possession under English Law"

1. *In the absence of evidence to the contrary, the owner of land by paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owners or to persons who can establish a title as claiming through the paper owner.*
2. *If the law is to attribute possession to a person who can establish no paper title, he must be shown to have both factual possession and the requisite intention to possess ("animus possedendi").*
3. *Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive control....."*

[30]. The first-named defendant has no paper title but he asserts that he has worked and cultivated the land. He therefore seeks to assert adverse possession to displace the presumption in favour of the Claimant as the owner of the land with the paper title. (see: **Powell v. Mc Farlane** supra, at p.470 and **Buckinghamshire County Council v. Moran** [1990] Ch. 623 at p.636.

THE EVIDENCE

[31]. The Claimant's paper title has not been disputed by the first-named Defendant. Also, the first-named Defendant has admitted that he accompanied Mr. Guy Alexander to the land for the purpose of conducting a survey. It has not been disputed that trees were cut, clearings were made and poles were planted on the land.

- [32]. The evidence of Whitney Thomas and of Terrence Smith as to what they observed being done on the land has not been challenged. On a subsequent visit to the land, evidence of iron poles being planted was observed by Ruggles Ferguson, Whitney Thomas, Terrence Smith and Carlyle Glean. These observations have not been controverted.
- [33]. There is unchallenged evidence from Ruggles Ferguson, Whitney Thomas, Terrence Smith and Carlyle Glean that the disputed land on which the survey was being conducted was being utilized for a number of activities. Firstly, a sign was erected without objection from the first-named Defendant. Secondly, Whitney Thomas was rearing cattle, hunting, digging yams and picking coconuts on the land with the permission of the deceased Clarence Ferguson for over fifteen (15) years. Thirdly, the Claimant acting through Terrence Smith authorized the removal of stones from in the vicinity of the disputed area of land.
- [34]. In contrast, the first-named Defendant has failed to show consistent possession, occupation and use of the disputed land. Indeed, there is some confusion as to what precise land he is referring to when he asserts that the land he is claiming is part of Poterie Estate and not Palmiste Estate. The witnesses, Nicholas Mark and John Thomas, did nothing to advance the claim by the first-named Defendant.

CONCLUSION

- [35]. In the premises, the first-named defendant has failed to displace the presumption of ownership in favour of the Claimant. The Claimant is therefore entitled to judgment for trespass. Following upon this, the counterclaim by the first-named Defendant for a declaration as to ownership of the property must fail.

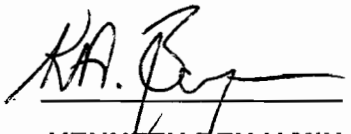
DAMAGES

[36]. As the owner in lawful possession, the Claimant has proved the trespass and is entitled to recover damages although he may not have suffered any actual loss. There is evidence of some injury to the property but the value of such damage has not been led in evidence. Accordingly, the Claimant is entitled to more than nominal damages. I would award the sum of the \$5,000 as general damages.

ORDER

[36]. It is ordered that judgment be entered by the Claimant in the following terms:

1. The first-named Defendant is hereby permanently restrained from trespassing exercising acts of ownership or in any way interfering with the lot of land situate at Palmiste in the parish of St. John in Grenada containing 69 acres 2 roods and 20 poles.
2. Judgment for the Claimant in the sum of \$5,000.00
3. Costs to the Claimant in the sum of \$14,000.00
4. The counterclaim shall stand dismissed with no order as to costs.


KENNETH BENJAMIN
HIGH COURT JUDGE