

BRITISH VIRGIN ISLANDS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No. BVIHCV2010/0017

BETWEEN

SAMUEL A. LETTSOME

Claimant

-AND-

LANDFORD LETTSOME

Defendant

Appearances:

Ms. Sheryl Rosan for the Claimant

Ms. Anthea Smith for the Defendant

2010: February 05

2010: February 24, 26

JUDGMENT

[1] HARIPRASHAD-CHARLES J: On 14th March, 1997, Moore J. ordered, among other things, that the Defendant deliver up to the Claimant, possession of Parcel 99 for the Long Look Registration Section 34288 ("Parcel 99") in Civil Suit No. 30 of 1994 ("the judgment"). The Defendant appealed the judgment of the learned judge but did not pursue the appeal. On 11 January 1999, the Court of Appeal dismissed his appeal. To date, the judgment has not been enforced. On 12 January 2010, the Claimant filed this new claim seeking the following orders:

- (i) Leave to issue Writ of Possession to the Defendant for Long Look Registration Section 3428B Parcel 99 pursuant to CPR Part 45.4;

- (ii) An Order that the Writ of Possession be enforced against all other persons residing on the property; and
- (iii) Such further or other Order as the Honourable Court deems just.

[2] At this hearing, the Defendant took a limitation point that “twelve years have passed by and nothing was done to enforce the judgment”. Therefore, says the Defendant, he cannot be evicted now. He relies on section 4(4) of the Limitation Act¹ which states that “*an action shall not be brought upon any judgment after the expiration of twelve years from the date on which judgment becomes enforceable.*”

[3] Learned Counsel Ms. Rosan, who appeared for the Claimant, argues that the Defendant’s appeal operates as a stay and therefore time began to run from 11 January 1999 and not from 14 March 1997.

[4] It is significant to note that at the time of these hearings, the new Civil Procedure Rules 2000 (“CPR 2000”) were not yet in force². Prior to that, the Rules which governed the Court were the Rules of the Supreme Court 1970³ (“RSC”) and the Court of Appeal Rules, 1968. So, it is to those rules that I seek guidance to determine the issue at hand.

[5] Order 42 of the RSC deals with Judgments and Orders. Rule 3 states:

- (1) A judgment or order of the Court or of the Registrar takes effect from the day of its date.
- (2) Such a judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court or the Registrar, as the case may be, orders it to be dated as of some other earlier or later day, in which case it shall be dated as of that other day.”⁴

¹ Cap. 43 of the Revised Laws of the Virgin Islands, 1991.

² These Rules are deemed to have come into effect in each of the Member States and Territories of the Eastern Caribbean Supreme Court on 31st December 2000 – see commencement.

³ See Volume VIII Subsidiary Legislation of the Laws of the Virgin Islands, Revised Edition 1991.

⁴ See CPR 42.8 which provides that “a judgment or order takes effect from the day it is given or made, unless the Court specifies that it is to take effect on a different date.”

- [6] The Court of Appeal Rules, 1968⁵ governs the practice and procedure relating to appeals. Section 30 (1) reads:

“An appeal shall not operate as a stay of execution or of proceedings under the judgment appealed from, except so far as the court below or the Court may order, and no intermediate act or proceedings shall be invalidated, except so far as the Court may direct”.

- [7] Contrary to Ms. Rosan’s submissions, an appeal does not automatically operate as a stay of execution. The evidence before the Court is that the Defendant did not apply for a stay nor was a stay ordered by the court. In those circumstances, time begins to run from the date that the judgment was delivered; that is, from 14 March 1997. I also refer to Parts 42.8 and 62.19(a) of the CPR, not as authority, but simply to demonstrate that the current Rules are no different from the old Rules.

- [8] On the evidence, it appears to me that the Claimant made no effort to have the judgment of Moore J. enforced. It is a perfect example of a Claimant who lost his right to his land because he slept on that right. Belatedly, he petitions this Court for a Writ of Possession to evict the Defendant, who has been in factual possession of Parcel 99 for almost thirteen years. In *Powell v McFarlane*⁶ which was endorsed by the House of Lords in *Pye v Graham*⁷, Slade J said:

“Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. ...Everything must depend on the particular circumstances, but

⁵ See Volume VIII Subsidiary Legislation of the Laws of the Virgin Islands, Revised Edition 1991 made February 15, 1968 under section 17 of the Supreme Court Order, 1967 (U.K.) –S.I. 1967 No. 223) and made applicable with adaptations and modifications, to the Virgin Islands under subsection (3) of section 6 of the subsection (3) of section 6 of the Virgin Islands (Courts) Order 1967 (U.K. –S.I. 1967 No. 231..

⁶ (1979) 38 P & CR 452

⁷ [2003] 1 A.C. 419.

broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so".

- [9] In light of the fore-going, I find that the judgment became enforceable on 14 March 1997, almost thirteen years ago. Therefore, pursuant to section 4(4) of the Limitation Act, no action could be brought to enforce the judgment after 13 March 2009.

Conclusion

- [10] The Claimant's application filed on 27 January 2010 seeking to enforce the judgment delivered on 14 March 1997 is hereby dismissed with costs of \$750.00 to the Defendant.

Indra Hariprashad-Charles
High Court Judge