

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 203 OF 1999

BETWEEN:

McCONNIE YAMMIE AND COMPANY LIMITED

Plaintiff

and

ST. CLAIR PHILLIPS

Defendant

Appearances:

Olin Dennie for the Plaintiff

Arthur Williams for the Defendant

2000: November 9, 15, 28

JUDGMENT

[1] MITCHELL, J: This was a land dispute involving a house and land at Junction in St Vincent. The Plaintiff claimed that the Defendant was a licensee of the premises in question, while the Defendant claimed the property by right of a devise under the will of his predecessor in title who had previously registered a possessory title in her favour.

[2] The case began with a specially endorsed writ issued out of the High Court Registry on or about 20 April 1999. I say "on or about" because the original file having been misplaced, and in consequence there was no copy of the writ with the filing date on it available for my inspection, and the trial having proceeded with the assistance of the loan of an office copy of the record of the pleadings in the matter from counsel for the Plaintiff, I can only go by the date of the Statement of Claim on the printed record. By the Statement of Claim the Plaintiff claimed that it

became the lawful owner of the parcel of land in dispute by deed No 2415 of 1992; that the Plaintiff's predecessor in title, McConnie Yammie, had purchased the property by a deed of conveyance No 1818 of 1973; that having purchased the property McConnie Yammie had paid the property taxes, mortgaged the property to the Royal Bank of Canada, had had the property subsequently reconveyed to him, and had subsequently mortgaged the property again which mortgage at the time of the writ was still subsisting; that McConnie Yammie had during his lifetime given permission to his cousin Jestina Simon also known as Jestina Yammie to occupy the property and that McConnie Yammie had contributed generously to her upkeep; that McConnie Yammie had died on 20 March 1993 having transferred the property to the Plaintiff; that after the death of McConnie Yammie his widow had continued to allow Jestina Yammie to occupy the property and had also continued to contribute generously to her maintenance and upkeep; that the Defendant had been living on the property with Jestina Yammie when the Plaintiff had by letter dated 18 May 1998 given Jestina Yammie notice to quit and deliver up possession of the property; that Jestina Yammie had died on 17 July 1998; and that by notice dated 12 September 1998 the Defendant had had a notice to quit served on him personally; and the Plaintiff claimed a declaration that it was the lawful owner and entitled to possession of the property, an order that the Defendant deliver up possession of the property to the Plaintiff, damages for trespass, etc.

- [3] By a Defence dated 28 October 1999, the Defendant denied that McConnie Yammie and the Plaintiff had been entitled to the property; that on 8 December 1972 Jestina Yammie had purchased the parcel of land in dispute from Uris Charles and had paid a down payment of \$4,000.00 and been given a receipt; that since the date of purchase Jestina Yammie had taken possession and constructed a dwelling house on it and lived in it until her death on 17 July 1998; that on 6 March 1998 Jestina Yammie had executed a "statutory declaration" for the parcel of land which declaration is registered as deed No 741 of 1998; that the Defendant had lived with Jestina Yammie for over 30 years firstly at Carapan and for the past

26 years on the property in dispute; that during her lifetime Jestina Yammie had depended solely on the Defendant for her upkeep; that during her lifetime Jestina Yammie had paid no rent to anyone nor had she acknowledged the title of anyone to the property; that Jestina Yammie had made her last Will on 24 January 1998 whereby she appointed the Defendant her sole Executor; that by the said Will she had devised the property to the Defendant; that the Defendant has been the owner of the property since the death of Jestina Yammie; and the Defendant counter-claimed for a declaration that the Plaintiff's title had been extinguished by virtue of section 19 of the **Limitation Act, Cap 20**; and for an order that he is the fee simple owner of the property, etc.

[4] By a Reply and Defence to Counterclaim dated 21 February 2000, the Plaintiff denied that the land had been purchased by Jestina Yammie or that she had taken possession of it or constructed the dwelling house on it; that the dwelling house had been constructed by McConnie Yammie who had invited his cousin Jestina Yammie who had at that time been living in an old wooden house at Carapan to occupy it; that McConnie Yammie had occupied a bedroom in the dwelling house where he had kept his books and clothes; that William Yammie his son had also lived in the house for which he had during his lifetime paid the taxes and for which the Plaintiff still pays the taxes; that Jestina Yammie's and the Defendant's occupation of the property as family members of McConnie Yammie must be treated differently from occupation by a stranger and that such occupation was not adverse to the "paper owner."

[5] At the trial, the evidence for the Plaintiff was given by Victoria Yammie the widow of McConnie Yammie and a director of the Plaintiff company, Alfredo MacDonald who had built the house on the property for McConnie Yammie, and Cyril Simmonds who had worked for the Plaintiff company the past 35 years. The evidence for the Defendant was produced by the Defendant himself. A number of documents were put in evidence by both parties. The facts as I find them are as follows.

[6] Jestina Yammie and McConnie Yammie were cousins. In about the year 1972, Jestina Yammie was a physically handicapped agricultural worker, while McConnie Yammie was a merchant in Kingstown with an expanding business in the retail sector. Jestina Yammie was at that time living in a small wooden house at the village of Carapan. On 8 December 1972, she paid Uris Charles of Brighton in St Vincent the sum of \$4,000.00 on account of the full purchase price of \$7,000.00 on a $\frac{3}{4}$ acre parcel of land at Belvedere Junction, and Uris Charles issued her a receipt which was put in evidence at the trial. There is no evidence as to whether she paid the balance of the purchase price to Uris Charles. On 30 August 1973 one Uris Fraser of Brighton, who was none other than Uris Charles, by then residing in Trinidad, conveyed the same parcel of land to McConnie Yammie for the same price of \$7,000.00 that appears on Jestina Yammie's receipt. The deed recites no root of title. There is no evidence before the court as to whether Jestina Yammie made any arrangement with McConnie Yammie for him to purchase the property instead of her, nor is there any explanation as to why Uris Charles used the name Uris James in executing the deed. Counsel for the Defendant asks the court to find that the change of name following so closely upon each other in the two transactions concerning the same piece of land suggests dishonesty. In the West Indies there is, however, nothing unusual for a person to carry two or more names quite innocently. The deed that Uris Charles gave to the McConnie Yammie is in the invariable form that one sees in St Vincent. It recites no root of title whatsoever. Uris Charles may have come by the land, as is common in St Vincent, by squatting on it. There being no root of title for her to recite in her deed to McConnie Yammie, there was no need for her to be careful which name she used. The failure of the vendor to recite any root of title, or we can assume for the purchaser to make any enquiry as to the vendor's root of title, makes the deed in question quite useless for most commercial purposes. However, I accept the assurance of counsel that the practice is commonplace amongst conveyancers in St Vincent and is accepted by banks and other institutions.

[7] Jestina Yammie was a dependent of McConnie Yammie. For many years, both before and after the purchase of the property in dispute, she helped him around the supermarket and did his laundry for him, and at his request brought up his son by a woman who was unwilling to take care of him. In return, McConnie Yammie supported her with groceries at the very least. After McConnie Yammie purchased the property and obtained his deed he arranged with Alfredo MacDonald to build a relatively large building on the property. It seems that Jestina Yammie and her commonlaw husband gave some free assistance in the construction of the building and in securing the building materials on the site. Both parties have now died, and, as we will see, had fallen out in their last years, so that it is difficult at this distance in time to ascertain with any certainty what exactly the arrangements were that were made between them back in 1973. Alfredo MacDonald is a 58 year old builder who regularly did work for McConnie Yammie. He worked on the building of McConnie Yammie's supermarket in the year 1964; then, he built another building for him at the Crossroad; and after that a supermarket for him at Stubbs; and then, the building on the property in dispute at Junction in the year 1973. The house at Junction was a 4 bed-room concrete and wood structure, with 2 bathrooms, dining room, living room, porch, and kitchen. It took about 4 months to build. I am satisfied from Alfredo MacDonald's evidence that he was paid by McConnie Yammie to build the structure and that the building materials were paid for by McConnie Yammie. It also seems that Jestina Yammie helped together with her boyfriend Ernest Quammie in the construction of the building. Whether they assisted in the usual St Vincent and West Indian way of "self-help" amongst family members, which gives no interest in the building, or as co-owners with an interest in the property, is difficult to tell, there was no one who was an adult at the time to give evidence on Jestina Yammie's behalf. The Defendant's position was that Jestina Yammie supervised the construction by Alfredo MacDonald, as she at all times considered herself the owner of the property and the one in charge, and that McConnie Yammie had nothing to do with the property or the construction of the house. The Defendant testified that Jestina Yammie and Ernest Quammie worked

with Alfredo MacDonald on the house and employed other workmen and paid them. He had been a 10 year old primary school boy at the time in question, and his evidence on the point is self serving and unreliable. But, I am inclined to believe him that Jestina Yammie and Ernest Quammie did work on the house. The question is, in what capacity? Alfredo MacDonald testified that Jestina Yammie and Ernest Quammie merely visited the site from time to time and they never worked on the construction. In cross-examination he reluctantly admitted that he had seen Ernest Quammie carrying and securing materials for the construction. He also confirmed that immediately the construction was completed, Jestina Yammie, her common-law husband Ernest Quammie, the Defendant, and William Yammie, an infant son of McConnie Yammie who was like the Defendant brought up by Jestina Yammie, and McConnie Yammie himself, all moved into the 4 bedroom house. The question is what inference is the court to draw from these events after the passage of this amount of time?

- [8] Though the Defendant strenuously denied it, I am satisfied that McConnie Yammie lived in the house after it was built and his occupation of the premises continued after he married and moved out in February 1975 to live with his wife first at her parent's home at New Montrose and later at the matrimonial home that he constructed at Dorsetshire Hill. For many years after his marriage he left his personal possessions in his bedroom in the house. Because the Defendant later occupied the same bedroom, he was unwilling to accept that it was McConnie Yammie's bedroom. In the early years McConnie Yammie appears to have worked very long hours and would occasionally sleep overnight in a room that he kept for that purpose at the supermarket. He did not always sleep at the home in dispute or later at his wife's parent's home. I find that if he worked very late, he might sometimes spend the night at the supermarket. That does not mean that he had given up his bedroom at the house in dispute. After the marriage in 1975, he left his personal things in his bedroom of the house in dispute, though there is no evidence he ever went back to sleep there. The relationship between McConnie Yammie and his cousin Jestina Yammie remained excellent for many years after

the marriage. There does not appear to have been anything underhand or deceitful in their relationship. Jestina Yammie appears to have been permitted by McConnie Yammie to occupy the house for all the remainder of her life without any suggestion that he was entitled to evict her until something happened in the about 1988. I do not accept that Jestina Yammie considered that she had any interest in the property during the early years of her occupation of it.

[9] What exactly it was that caused the relationship between Jestina Yammie and McConnie Yammie to break down is not known. It may have been that it came to his knowledge that Jestina Yammie had begun to make a claim that she had an interest in the property. Put in evidence were her two wills, the first of 1989 and the second of 1991, which latter is the one that the Defendant proved, in which she claimed a "share or interest" in the property in dispute. The evidence was that the relationship between her and McConnie Yammie broke down around the time of this original will of 1989. Up to the time that she filed her "statutory declaration" of 6 March 1998 in the Registry of Deeds she appears to have claimed no more than an interest in the property. In her "statutory declaration" she claims that she had been in continuous and exclusive occupation of the premises from the time she bought it in 1972 and constructed the house on it without acknowledging the title of any one. She thus claimed title by adverse possession of the property, just 4 months before her death on 17 July 1998. There is no evidence that she had ever claimed the property to be hers prior to the date of the "statutory declaration." The first reliable evidence of her claiming any interest at all in the property, other than the self-serving testimony of the Defendant, is her first will of 1989.

[10] A statutory declaration is a declaration made in a form authorised by a statute. This statute is usually entitled a **Statutory Declarations Act**. There is no **Statutory Declarations Act** in St Vincent nor any other Act authorising a "statutory declaration." From the reference in the document itself in evidence in this case the authority for this "statutory declaration" is stated to be the 1926 **Declarations in Lieu of Oaths Act, Cap 157** of the 1991 Edition of the Laws of St

Vincent. Nowhere in this Act does it authorise the making of a statutory declaration. This Act is no more than the familiar Act known by a variety of titles that was passed throughout the region and that permitted persons who for religious reasons preferred not to take an oath to make a declaration instead, and for that declaration, or affirmation, as it is sometimes called, to be punishable as perjury if it should be found to be false. Other than the coincidental use of the word "declaration" in the titles of the two Acts, there is no connection between this Act and a **Statutory Declarations Act**. A statutory declaration not authorised by a statute is a document at best of dubious provenance. I accept the assurance of Counsel that for many years the practice in St Vincent has been for solicitors to prepare and file such declarations. The Registry of Deeds accepts these documents for filing. The more usual common-law "possessory deed" whereby the squatter by a deed between himself as grantor and himself as grantee purports to vest in himself the fee simple to the land he has been squatting on, is not found in St Vincent.

- [11] To return to the facts, prior to this statutory declaration of March 1998 it is clear that Jestina Yammie was at worst a licensee occupying the premises with the permission of McConnie Yammie, and at best a licensee coupled with an interest. She was at no time prior to her "declaration" in adverse possession of the premises. McConnie Yammie not only lived in the house before his marriage, but he continued to keep some of his personal possessions in the house, visited the house from time to time, lodged his son William Yammie with Jestina Yammie, until she sent him away sometime around the year 1990 allegedly because he had become unruly, paid the yearly taxes on the property, mortgaged it from time to time, repaired the building from time to time over the years as required; and supplied the occupants his dependents with groceries as they needed. Jestina Yammie, I accept did agricultural work and peddled sweets and tarts, but I also accept that McConnie Yammie supplied her with groceries and other necessities and perhaps cash as well, not least because she was looking after his young relative, the Defendant, and his son William Yammie at his request and as a

favour to him. After McConnie Yammie died on 20 March 1993, having previously transferred the property to the Plaintiff company by a deed dated 20 June 1992, relations between his widow and Jestina Yammie did not improve. The widow as director of the Plaintiff company had a notice to quit dated 18 May 1998 served on Jestina Yammie. She died on 17 July 1998 without vacating, which is not surprising as by that time she had given herself her "statutory declaration" of title to the property. The Defendant having inherited the property as he considered from Jestina Yammie, did not vacate either, and on 12 September 1998 a notice to quit was served on him. That having had no effect, the writ in this case was the next step.

[12] Taking all the evidence into account, I am satisfied that Jestina Yammie had no beneficial interest in the property in dispute. I find that her original attempt to purchase the property did not go through, and for reasons that are now unknown to us, she allowed her more prosperous cousin to go ahead and purchase the property and to construct entirely at his expense the building on it. There is no evidence one way or the other that she got her deposit back. Her retaining the receipt all these year from 1972 until her death is a telling piece of evidence from which one might infer that she did not get her money back and that she considered the receipt an important document worth preserving. However, there are other equally likely reasons why she might have kept the receipt even though she had got her money back. We will never know if she kept it for sentimental reasons, or simply had it amongst some old papers that she overlooked, and brought it out again and used it after she fell out with McConnie Yammie. There is a preponderance of evidence that suggests that McConnie Yammie purchased the property with Jestina Yammie's full concurrence, and that he was the sole owner of it. McConnie Yammie was a successful business man; I do not believe that he would have taken title to the land and built what must have been for the time an expensive house on it if he had believed that anyone, including his cousin, had a financial interest in the property. If the vendor had accepted the money from Jestina Yammie and then sold it all over again for \$7,000.00, not that there is any

evidence or suggestion of this, then Jestina Yammie would have a quarrel with the Vendor, not with McConnie Yammie. There is nothing to suggest, except the inference the Defendant wishes the court to draw, that McConnie Yammie was the sort of person who would have gone behind his cousin's back and bought off the vendor by secretly paying the balance that was owing, and surreptitiously obtaining title to the property that Jestina Yammie was purchasing. Jestina Yammie occupied the property without her claiming to have any ownership interest in it until she began to do so in the last decade of her life. I find the date of her first will when she first began to claim an interest in the property, being after she and McConnie Yammie had fallen out, a telling date. I am not satisfied that Jestina Yammie ever spent a penny on the construction or maintenance of the building that would give her an interest in the property. I find no evidence that there was a resulting trust between herself and McConnie Yammie. I am satisfied that she was always a mere licensee of the property at least up to the year 1988. The law on licensees is settled law, and there is no need to repeat it here. I am satisfied that Jestina Yammie made her first and second wills, in which she claimed an interest in the property, and her deed when she claimed ownership of the property, as a result of her falling out with McConnie Yammie in about the year 1988. She was indulging in the national pastime of St Vincent of claiming first an interest in and then squatter's rights over someone else's property. The action of the Plaintiff in having the writ issued before the requisite 12-year limitation had passed has stopped time running so that the property has not been lost to the Plaintiff.

- [13] Given the above findings, there will be judgment for the Plaintiff for a declaration that the property in dispute belongs to the Plaintiff, an order that the Defendant deliver up possession to the Plaintiff, damages in the nominal sum of \$1,000.00 for trespass, and costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge