

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV1990/0399

BETWEEN:

WILHELMINA Mc LAREN
(ADMINISTRATRIX OF THE ESTATE OF
EMMANUEL Mc LAREN (DECEASED))

Claimant

AND

LEROY DAVIDSON

Defendant

Ms. Karen Samuel for the Claimant
Mr. Ruggles Ferguson for the Defendant

2005: November 15
2006: May 5

JUDGMENT

- [1] **BAPTISTE, J:** This is a claim for possession of land. The Claimant is Wilhelmina Mc Laren, administratrix of the estate of Emmanuel Mc Laren. Mrs. Mc Laren's pleaded case is that Emmanuel Mc Laren was at all material times entitled to possession of approximately half an acre of land at Windward in Carriacou. Emmanuel was so entitled by virtue of an indenture made 10th October, 1960, between John Mc Laren and himself. On or about 10th August, 1990, Leroy Davidson wrongfully entered and took possession of the land and has thereafter wrongfully remained in possession.
- [2] In his pleaded defence and counterclaim Leroy Davidson denies Mrs. Mc Laren's case and also relies on sections 4 and 27 of the Limitation of Actions Act of Grenada, Cap 173. Leroy Davidson avers that he has been in full, free and undisturbed possession of the land since in or around 1946 and has at all material times remained and continues to remain in

possession thereof. Prior to his possession of the said land it was owned by Shepherd Davidson, who died on November 23, 1922, and after his death Shepherd's wife, Annie Davidson, was the beneficial owner until her death on January 18, 1946. Leroy Davidson seeks to set aside the conveyance of 10th October, 1960 and also seeks further or other relief.

[3] Mrs. Mc Laren was married to Emmanuel Mc Laren in 1957. Emmanuel died in 1971. In 1974 Mrs. Mc Laren obtained a grant of letters of administration in the estate of her late husband. At the time of his death in 1971 Emmanuel was the owner of a piece of land at Windward in Carriacou, as evidenced by a deed dated 10th October, 1960, made between John Mc Laren and himself and recorded in the Deeds and Land Registry. John Mc Laren was Emmanuel's father.

[4] In her witness statement Mrs. Mc Laren stated that shortly after the land was purchased they (she and her husband) built a wooden house on the land. In cross-examination she stated that it was an upstairs and downstairs house. Mrs. Mc Laren also stated in her witness statement that they also fenced the land. At the date of her husband's death they were living on the land. She eventually sold this house to one Cosnell Joseph. In his witness statement Leroy Davidson deposed that shortly after Hurricane Janet (1955) Emmanuel Mc Laren moved onto the property and started to build a two-storey house. He challenged Emmanuel's right to be on the land, but not having money to hire a lawyer and in order to avoid physical confrontation, he backed off. Shortly after Emmanuel died, Mrs. Mc Laren sold the house to Cosnell Joseph. It was then moved to Beausejour. Mr. Davidson also states in his evidence that Emmanuel Mc Laren and his wife lived in the house.

[5] It is clear that the evidence of Leroy Davidson supports the fact of possession and occupation on the part of Emmanuel and his wife. From the time Emmanuel obtained his deed in October 1960 he was in ownership and occupation of the land in question, until he died in 1971. I find as a fact that Emmanuel and his wife built their home on the land and resided there together until his death in 1971. Sometime after 1971, Mrs. Mc Laren sold the house to one Cosnell Joseph. The evidence of Leroy Davidson supports the fact of

occupation and possession on the part of Emmanuel and his wife and is entirely inconsistent with and destroys the averment in the pleading that Leroy Davidson was in full, free and undisturbed possession of the land from 1946. It is clear that from 1960 to at least 1971 Leroy Davidson was certainly not in occupation or possession of the land. Occupation and possession were by Emmanuel and his wife.

[6] Mrs. Mc Laren deposed in her witness statement that before the land was bought from John Mc Laren, the only person she knew who used to live on that spot of land was Garnet Davidson, Annie Davidson's son. John Mc Laren had given Shepherd Davidson, Garnet's father, the spot for Garnet to put his house on it. Garnet died and his wife went back to Venezuela. In seeking to set aside the 1960 indenture, Leroy Davidson's evidence is that John Mc Laren never owned or was in possession of the property. Leroy Davidson deposed that Garnet Davidson had a house on the property and Garnet's house was there first. Garnet eventually sold the house, which was moved to another property.

[7] While both Mrs. Mc Laren and Leroy Davidson attest to the fact that Garnet Davidson was on the land before, it was worth noting that Mrs. Mc Laren explains how he came to be on the land, while Leroy Davidson does not offer an explanation in that regard. I accept Mrs. Mc Laren's account as to how Garnet Davidson came to be on the land. Mrs. Mc Laren impresses me as having a better recollection and knowledge of the historical facts pertaining to the presence of Garnet Davidson on the land. I find that the land was in the possession of John Mc Laren and infer that it was owned by him. In the premises the indenture of 10th October, 1960, between John Mc Laren and Emmanuel Mc Laren is valid.

[8] In **Powell v Mc Farlane** [1977] 38 P&CR 452 at 470, Slade J said:

"In the absence of evidence to the contrary, the owner of land with the 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 owner or to persons who can establish a title as claiming through the paper owner. If the law is to attribute possession of land to a person who can establish no proper title to possession he must be shown to have both factual possession and the requisite intention to possess (animus possidendi)."

[9] Emmanuel was the owner of the land. He had his paper title in the form of his indenture. Not only did he have paper title, he was in actual and factual possession of the land until

his death in 1971. The law also ascribes possession to Mrs. Mc Laren as claiming through Emmanuel, the paper owner, she being the administratrix of his estate.

- [10] As indicated earlier, Leroy Davidson relies also on sections 4 and 27 of the Limitation of Actions Act of Grenada. Section 4 states:

“No person shall make an entry or distress, or bring an action to recover any land, but within twelve years next after the time at which the time to make the entry or distress, or to bring the action, 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, has first accrued to the person making or bringing it.”

Section 27 states:

“At the determination of the period limited by this Act to any person for making an entry or distress or bringing an action, the right and title of that person to the land for the recovery whereof the entry, distress, or action, might have been made or brought within that period shall be extinguished.”

- [11] Mrs. Mc Laren averred in her pleadings that on or about 10th August, 1990, the Defendant wrongfully entered and took possession of the land and has wrongfully remained in possession. I have already found that from 10th October, 1960, Emmanuel was the owner in possession of the land until his death on 19th June, 1971, and resided there with his wife. Mrs. Mc Laren's evidence is that when they bought the land they planted a lot of fruits, provisions and everything on it. Mrs. Mc Laren also deposed that sometime after her husband's death she went to America and stayed for around a year. She came back to her house for a year, after which her daughter sent back for her. Knowing that she was going to be away for a while as her daughter wanted her to take care of her children, she sold the house to one Cosnell Joseph. While she was living in New York, her brother-in-law and sister, Dunstan and Eva Patrice looked after the land for her. She used to come back to Carriacou every few years for vacation

- [12] Mrs. Mc Laren confirmed in cross-examination that she spent a year in the United States shortly after her husband died. She returned to Carriacou for two years and went back to the United States to take care of her grandchildren. She spent 5 or 6 years in the United

States before she came back again and then left. Mrs. Mc Laren also stated that after her husband died she sold the house to Cosnell Joseph and went to live with her brother Augustine, right next door. The house was moved to Beausejour. Mrs. Mc Laren also deposed that she has paid taxes on the land since 1960.

[13] Leroy Davidson stated in his witness statement that shortly after Emmanuel died, the Claimant sold the house to one Cosnell and went to live with her brother Augustine. After some time, she travelled to the United States. When the house was sold and Mrs. Mc Laren moved out of the property, he (Leroy Davidson) moved to regain possession of the property. He picked the fruits on the land and reared animals. Leroy Davidson also deposed that he and his wife later began planting crops on the lands – corn, peas, cassava and okras. Every year they worked and planted the land. Leroy Davidson stated that from the time they took over the land and began working it, nobody interfered with them. In 1990 they fenced the land. The fence is a combination of wall, galvanized, wood and board. There is also a gate at the entrance which is kept locked when he and his wife are not there. In cross-examination Maria Davidson stated that the fence was placed after this action started.

[14] Some significant events occurred after Emmanuel's death in 1971. They were: (1) Mrs. Mc Laren's initial visit to the United States for about a year shortly after Emmanuel's death; (2) Mrs. Mc Laren's return to her Carriacou home for about two years; (3) the sale of the house to Cosnell; (4) Mrs. Mc Laren taking up residence with her brother and (5) her return to the United States to take care of her grandchildren. The exact dates of the events are not clear. Mrs. Mc Laren however stated that she was in the United States in 1974. I infer that Mrs. Mc Laren returned to the United States in 1974.

[15] Emmanuel had paper title to the land. From 1960 when he acquired his deed to when he died in June 1971, he was the owner in possession of the land. Mrs. Mc Laren is claiming as the administratrix of Emmanuel's estate. Did Mrs. Mc Laren lose possession of the land at any stage after 1971? Did Leroy Davidson acquire possession of the land? Was his possession adverse to that of Mrs. Mc Laren?

[16] In **J A Pye (Oxford) Ltd. and Another v Graham** [2002] 3 All ER 865 at 885, Lord Hope stated at paragraph 70:

“Once possession has begun, as in the case of the owner of land with a paper title who has entered into occupation of it, his possession is deemed to continue. But it can be transferred from one person to another and it can also be lost when it is given up or discontinued. When that happens, possession can be acquired by someone else. The acquisition of possession requires both an intention to take or occupy the land (*animus*) and some act of the body (*corpus*) which gives effect to that intention. Occupation of the land alone is not enough, nor is an intention to occupy which is not put into effect by action.”

[17] In the instant case Leroy Davidson has established no paper title to the land. If the law is to attribute possession to him, he must be shown to have both factual possession and the intention to possess, *animus possidendi*. That would have to relate to the period after the death of Emmanuel in June 1971. Factual possession signifies an appropriate degree of physical control. The question of what constitutes a significant degree of exclusive physical control depends on the circumstances. Broadly, 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. (Per Slade J in **Powell v Mc Farlane** [1971] 38 P&CR 452 at 470-471.) As to the *animus possidendi*, it relates to the “intention in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor so far as is reasonably practicable and so far as the process of the law will allow.” (Per Slade J at 471-472.)

[18] The evidence of Leroy Davidson and his wife Maria Davidson establish that Leroy Davidson occupied the disputed land and made full use of it as the owner would have and in such a way as to exclude the owner. They planted corn, peas, cassava and okras on the land. They picked mangoes and coconuts. Every year they worked and planted the land. They reared pigs and sheep on the land. From the time they began working the land nobody interfered with them. The evidence is compelling that Leroy Davidson has established the two elements necessary for legal possession, both factual possession and the intention to possess.

[19] I am of the view that after Mrs. Mc Laren sold the house and moved to the United States, she did not keep in touch with what was happening on the land. Although she said that Eva and Dunstan Patrice used to look after the land for her when she was in the United States, it is obvious that they did not do a good job in that regard, for it was about August 1990 that Eva informed her that Leroy Davidson was on the land. Further, although Mrs. Mc Laren stated that she returned to Carriacou on vacation every few years, it is clear that she was unaware of the activities of Leroy Davidson on the land. Mrs. Mc Laren had effectively lost possession of the land and Leroy Davidson had established adverse possession by the time Mrs. Mc Laren filed her claim in November 1990. The only thing Mrs. Mc Laren did on the property after Emmanuel's death was to build a tombstone. That was done a few months after his death.

[20] The right of action to recover land is barred and the right and title to land is extinguished whenever twelve years have elapsed from the time when any right of action accrued. In his witness statement Leroy Davidson stated that he moved to regain possession of the property when Mrs. Mc Laren sold the house and moved out of the property. The inference is very strong that Leroy Davidson began his occupation of the property sometime after Emmanuel's death in June 1971 and 1974. So between June 1971 and 1974 he had commenced his occupation of the property. A right of action therefore lay against him. The claim was filed in November 1990, therefore, more than twelve years had elapsed from the time the right of action accrued. The conjoint effect of sections 4 and 27 of the Limitations of Actions Act Cap 173 was that the right of action was barred and the right and title of Mrs. Mc Laren to the land had been extinguished when the claim was filed in November 1990. In the premises the claim is dismissed with costs of \$7,500.00.

Davidson Kelvin Baptiste
High Court Judge