

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 27 OF 2005

BETWEEN:

BELVEDERE HOLDINGS LIMITED

Claimant

v

VELTHIA MATTHEWS

Defendant

Appearances: Mr. Kay Bacchus-Browne for the Claimant
Mr. A. Williams and Ms. R. Browne for the Defendant

2007: January 29
May 15
2008: January 28

JUDGMENT

[1] **THOM, J:** This is a claim for damages for trespass.

[2] The Claimant claims to be the owner of 17,000 square feet of land situate at Brighton as described in Deed No. 1064 of 1991. The Claimant contends that on or about the 22nd or 23rd day of December 2004 the Defendant trespassed on the said 17,000 square feet of land.

[3] The Defendant in her defence contends that the said 17,000 square feet of land forms part of the property of Alston Samuel deceased. The Defendant further contends that she has been in possession of the said lands and has worked same for the past fourteen (14) years without any interruption from Alston Samuel or any one. Any interest which the Claimant may have had has since extinguished by virtue of the Limitation Act Cap. 90.

[4] Mr. Joel Pitt the Governing Director of the Claimant and Mr. Ivo Providence gave evidence on behalf of the Claimant. The Defendant gave evidence on her own behalf and called two witnesses being Mr. Grafton McDowell and Mr. Samuel Young.

[5] The evidence led on behalf of the Claimant is that by Deed No. 1064 of 1991 the Claimant became the owner of 9 $\frac{3}{4}$ lots of land at Brighton. The schedule to the Deed describes the land as follows:

“All that piece or parcel of land situate at Brighton in the Parish of Saint George in the State of Saint Vincent and the Grenadines containing NINE HUNDRED (sic) AND THREE QUARTERS LOTS (9 $\frac{3}{4}$ lots) more or less and is butted and bounded on or towards the North partly by Alston Samuel, a cul-de-sac, Elizabeth Child and David Abbott on or towards the South by a By-way Road and a drain adjoining Government lands on or towards the East by a By-way Road on or towards the West by lands in the possession of Benjamin Charles but formerly owned by Olive Charles or howsoever otherwise the same may be butted and bounded known distinguished or described Together With all ways watercourses, rights, lights, liberties, privileges, easements and appurtenances thereto belonging or held used occupied enjoyed therewith or reputed to belong or be appurtenant thereto.”

[6] Alston Samuel and his wife June Samuel by Deed of Conveyance No. 1830 of 1981 purchased four lots of land from one Alvin Sayers. The schedule to the said Deed describes the land as follows:

“ALL THAT LOT PIECE OR PARCEL OF LAND situate at Brighton in the Parish of Saint George in Saint Vincent and the Grenadines being Four lots (4) more or less and is butted and bounded on the North by lands of Elizabeth Child on the South by remaining lands of Alvin Sayers on the West by lands of Hammy Charles and on the East by the remaining lands of Alvin Sayers or howsoever otherwise the same may be butted bounded known distinguished or described together with all ways watercourses rights lights liberties privileges and easements thereto reputed to belong or to be appurtenant thereto.”

[7] At the time a lot was estimated to be 3,750 square feet, the four (4) lots being approximately 15,000 square feet. The land referred to in Deed No. 1830 of 1981 was surveyed at the request of Mr. Alston Samuel by Mr. Adolphus Ollivierre in March 1992 and approved on 20th May as shown on survey plan G 19/12. Mr. Alston Samuel was

present when the survey was conducted. This survey shows the extent of Mr. Alston Samuel's property.

[8] Mr. Pitt and the Defendant were friends and he introduced the Defendant to Mr. Samuel. The Defendant was not present when the survey was conducted. The Defendant commenced living with Alston Samuel around 1994 after Mr. Samuel's wife migrated to the United States of America and the marriage broke down.

[9] Between 1992 and 1993 Mr. Samuel and his wife began to trespass on the land in dispute and the Claimant brought an action against Mr. Samuel and his wife.

[10] In 2004 the Defendant sought to file a Possessory Deed No. 1800 of 2004 claiming that she was occupying the land for some fourteen (14) years.

[11] On or about the 22nd and 23rd December 2004, the Defendant caused the said land to be cleared and commenced cultivation of plantains on the said land.

[12] The evidence led on behalf of the Defendant is that in 1980 Mr. Alston Samuel and his wife June Samuel purchased a parcel of land at Brighton from one Alvin Sayers. The parcel of land amounted to four (4) lots as described in Deed No. 1830 of 1981 and dated 27th August 1980. Mr. Joel Pitt the Managing Director of the Claimant acted as the solicitor for the purchasers. At the time of the purchase the land was not surveyed but it was measured by one Samuel Young and boundary marks were put in. Mr. Alston Samuel occupied the parcel of land from the date of purchase and in 1990 Mr. Samuel and the Defendant built a dwelling house on part of the said land and the remainder was cultivated with coconut trees, orange trees, plantains, peas and vegetables. When the house was being constructed Samuel Young pointed out the boundaries to Grafton McDowell who was hired to fence the land. The fence is still in place. The Defendant resided in the house from 1990 until presently and has cultivated the said land without any interruption from Mr. Joel Pitt the Managing Director of the Claimant or any one.

[13] The issue to be determined by the Court is whether the Defendant trespassed on land belonging to the Claimant .

[14] Trespass to land has been described in Halsbury's Laws of England 4th Edition at paragraph 1384 as follows:

"Unlawful Entry: Every unlawful entry by one person on land in the possession of another is a trespass for which an action lies, even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it, or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another or if he discharges water upon another's land, or sends filth or any injurious substance which has been collected by him on his own land onto another's land."

[15] An owner of land, or a person who is in possession of land can maintain an action for trespass against all persons except a person who can show that he or she has a better right to possession.

[16] The Claimant through its Governing Director Mr. Joel Pitt tendered Deed of Conveyance No. 1064 of 1991 showing that the Claimant is the owner of the said land.

[17] The Defendant does not deny occupying the land in dispute. The Defendant contends that the said lands forms part of the four (4) lots of land purchased by Alston Samuel from Alvin Sayers in 1980 as described in Deed No. 1830 of 1982. The Defendant also contends that she has been in uninterrupted exclusive possession of the said land for a period of 14 years thus any interests which the Claimant may have had in the said land has extinguished.

[18] The effect of Section 17 and Schedule 1 of the Limitation Act Chapter 90 is that the right of action to recover the land is barred whenever 12 years have elapsed from the time when a right of action accrued. The right of action is accrued only when the land is in adverse possession of a person other than the true owner. Time begins to run at the time when adverse possession is taken of the land.

[19] The principles to be applied by the Court in determining whether a person was in adverse possession were outlined in the case of **Powell v McFarlane**. These principles were approved by the House of Lords in **JA Pye (Oxford) Ltd. And Another v Graham and Another** [2002] 3 AER p. 864 and 866 as follows:

“Legal possession required (i) a sufficient degree of physical custody and control (factual possession) and (ii) an intention to exercise such custody and control on one’s own behalf and for one’s own benefit (intention to possess). As regards factual possession, everything depended on the circumstances, but broadly such possession was constituted where the alleged possessor had been dealing with the land as an occupying owner might have been expected to deal with it, and nobody else had done so. The necessary intent was one to possess, not to own and an intention to exclude the proper owner only so far as was reasonably possible.”

[20] The onus of proving that the owner has been dispossessed is on the party who alleges it. In this case it is the Defendant.

[21] Having examined the evidence carefully and having visited the locus I believe the evidence of the Claimant. I do not believe the testimony of the Defendant. The Defendant in her defence stated at paragraph 8 that she has been cultivating the land for the past fourteen (14) years and in paragraphs 6 and 7 of her witness statement she stated that the house was built in 1990 and when the house was constructed Samuel Young pointed out the boundaries to Grafton McDowell. The land was fenced and the remainder of the land was cultivated. However, under cross-examination the Defendant testified that she has been cultivating the land for twenty-three years.

[22] I believe the testimony of Mr. Pitt that Alston Samuel trespassed on the land in dispute between the period 1992-1993 that is after the house was built and the Claimant instituted civil litigation against Alston Samuel and the trespass ceased. The Defendant acknowledged under cross-examination that there was civil litigation between Alston Samuel and the Claimant in relation to the land in dispute. I also do not believe the Defendant’s testimony that Mr. Ollivierre only surveyed part of Alston Samuel’s land amounting to 15,281square feet and did not survey the remaining 17,000 square feet. It

must be noted that the Plan G19/12 which was surveyed by Mr. Ollivierre makes no mention of any of the boundaries being remaining lands of Alston Samuel. The plan describes the southern boundary to be "Remaining lands of Heirs of Alvin Sayers". The disputed land is to the South of the land where the house is situated. The Claimant contends that the land was conveyed to it by the Heirs of Alvin Sayers. Further, it was not disputed that 1 lot of land is approximately 3,750 square feet. It was also not disputed that Alston Samuel purchased four (4) lots more or less. The land surveyed amounted to 15,281 square feet which is consistent with the approximate size of four (4) lots.

[23] I also found the witness Samuel Young to be an unreliable witness. He is an aged man. He gave his age as 97 years. However, under cross-examination it became apparent that he could not recall his age. He recalls measuring the land purchased by Alston Samuel but he did not know the amount of land that was purchased.

[24] I am satisfied on the evidence that the land in dispute forms part of the land described in Deed No. 1064 of 1991. The land does not form part of the land described in Deed No. 1830 of 1981. I also find that the Defendant was not in uninterrupted exclusive possession of the said land for a period of twelve (12) years.

[25] Judgment is entered for the Claimant. It is ordered that:

- (1) An injunction is hereby granted restraining the Defendant, her servants and her agents from entering on any part of the land described in Deed Number 1064 of 1991.
- (2) Damages to be assessed.
- (3) Costs to be prescribed costs.

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Gertel Thom
HIGH COURT JUDGE