

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 37 OF 2005



BETWEEN:

EGAN DUBLIN

Claimant

v

PEARL WARREN

First Defendant

CARLYLE HACKSHAW

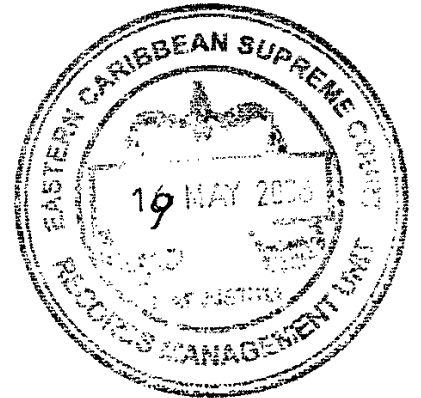
Second Defendant

Appearances: Mr. C. Dougan Q.C. for the Claimant
Mr. P.R. Campbell and Mr. M. Peters for the Defendants

2008: March 3;
May 14

RULING

[1] THOM, J: This is a claim for possession of land.



BACKGROUND

[2] The Claimant is the son of Lawrence and Leslyn Mercury both deceased. Leslyn Mercury was the sister of Helon Dublin deceased. The First Defendant is the common law wife of the Second Defendant. The Second Defendant is the nephew of Agatha Nedd deceased who was the sister of the said Helon Dublin.

[3] Helon Dublin was the owner of a parcel of land at South Rivers measuring 3,476 square feet. There was a one bedroom house on the land (hereinafter referred to as the "disputed property"). . Apparently, at his death Helon Dublin had no issues but he was survived by

two sisters, Leslyn Mercury and Agatha Nedd. Leslyn Mercury died in 1969 and Agatha Nedd died in 1976 – 1977. Some time after Helon Dublin died the house was occupied by Veda Harry and Elmo Charles and then the Defendants. The Defendants have renovated the house and they reside there with their children.

[4] The Claimant alleged that his mother became the owner of the disputed property after Helon Dublin died and he inherited the disputed property from her. He gave notice to the Defendants to quit and deliver up possession in 1997 and when they failed to do so he instituted civil proceedings against the Second Defendant in 1998. He also served notice to quit on the Defendants in 2004. They failed to deliver up possession and he instituted these proceedings in which he seeks inter alia a declaration that he is the owner of the disputed property and damages for trespass.

[5] The Defendants in their defence alleged that the disputed property was not owned by Leslyn Mercury but after the death of Helon Dublin, his sister Agatha Nedd became the owner. After the death of Helon Dublin the Second Defendant lived with Agatha Nedd at the disputed property. Agatha Nedd died in 1976 and the Second Defendant has been in uninterrupted possession of the disputed property ever since. A few years after he moved to the disputed property the First Defendant joined him. The Defendants contend that the Second Defendant has been in undisturbed possession of the disputed property for a period in excess of twelve years prior to the institution of these proceedings and therefore the Claimant's claim is statute barred. The Second Defendant in his counterclaim seeks a declaration that he is beneficially entitled to ownership and possession of the disputed property.

EVIDENCE

[6] The Claimant gave evidence on his own behalf and called two witnesses being Veda Harry and Claudius Harry. The Defendants gave evidence on their own behalf and called three witnesses being Fitzroy Pereira, Cecelia Medica and Germaine Warren.

Egan Dublin

[7] The Claimant Egan Dublin in his evidence-in-chief stated that he is the owner of the disputed property by virtue of Deed of Assent No. 3238 of 1997. The disputed property was previously owned by his mother Leslyn Mercury (deceased). After the death of Leslyn Mercury, his father was the caretaker of the disputed property while he resided in the United Kingdom where he had migrated in 1960. In 1997 he applied for and was granted Letters of Administration to the estate of his mother. The disputed property was vested in him by Deed of Assent No. 3228 of 1997. In February 1998 the Second Defendant falsely declared that he was in undisturbed possession of the said premises for over twenty years. On February 10, 1998 an injunction was granted against the Second Defendant in Suit No. 80 of 1998 restraining the Second Defendant from trespassing on the disputed property and the Second Defendant was ordered to remove all building materials from the disputed property. On June 7 2004, he served notice to quit on the Defendants. The Defendants have failed to vacate the disputed property.

[8] Under cross-examination the witness agreed that after he migrated to the United Kingdom in 1960 he first returned to Saint Vincent and the Grenadines in 1989. When he returned in 1989 the Defendants were in possession of the disputed property. He was not in Saint Vincent and the Grenadines when the Defendants went into possession. When he approached the Second Defendant about the disputed property the Second Defendant was very hostile. Under re-examination the witness stated that the Second Defendant had agreed to buy the disputed property but a price was not agreed.

Veda Harry

[9] This witness stated in examination in chief that around 1975 she rented an apartment on the disputed property from Lawrence Mercury. Before she occupied the apartment it was occupied by a Pastor Edwards and his wife. While she was in occupation of the apartment one Elmo James who was employed by Lawrence Mercury was permitted to live in the back of the disputed property. When her son was five years old (he was 29 years old

when she made her witness statement on February 24, 2006) she built a house adjacent to the disputed property and she moved to her house. After she removed from the disputed property the First Defendant and her five children moved into the disputed property. About two months after the Second Defendant joined the First Defendant.

- [10] Under cross-examination the witness did not agree that two of the Defendants' children were born while the Defendants were living at the disputed property. The witness also disagreed that the Second Defendant was living at the disputed property and the First Defendant joined him.

Claudius Harry

- [11] This witness stated in evidence in chief that he was the brother-in-law of the Claimant he having married the Claimant's sister. He was a frequent visitor of his in-laws Lawrence and Leslyn Mercury. He became in charge of the disputed property after the death of Leslyn Mercury. During the 1970's the First Defendant sought his permission to live at the disputed property after Lawrence Mercury had agreed for her to live there. At that time Elmo Dublin (Elmo James) lived at the disputed premises. He agreed and a few months after the First Defendant moved to the disputed property the Second Defendant moved in and lived with her.

- [12] Cross-examination of this witness was declined.

Pearl Warren (First Defendant)

- [13] This witness stated in her evidence in chief that she was the common-law wife of the Second Defendant. She bore him five children. The first three children were born while she was living at her mother's house. The third child was born on July 1, 1979. At that time the Second Defendant had moved into the disputed property which belonged to Agatha Nedd. Before Agatha Nedd died the Second Defendant was a seaman. He made one trip to sea after her death. After Agatha Nedd died the Second Defendant moved into

the disputed property. In January 1983 she moved into the disputed property to live with the Second Defendant. When she moved into the disputed property one Jimpie (Elmo James) was occupying the back portion. The house was a one-bedroom house. Their last two children were born at the disputed property. Their birth certificates were put in evidence. The Second Defendant subsequently renovated the house and made it into a three-bedroom house and had electricity and water supply connected to the house.

- [14] Under cross-examination the witness testified that the Second Defendant permitted her to stay in the apartment. She never paid rent to anyone. Veda Harry was living just above the house. Jimpie (Elmo James/Dublin) died after she moved into the apartment. She could not recall when he died. The Second Defendant was a seaman for about twenty to thirty years. She could not recall when he first went to sea. When he went to sea she lived alone with the children.

Carlyle Hackshaw (Second Defendant)

- [15] This witness stated in evidence in chief that the disputed premises previously belonged to his uncle Helon Hackshaw (Helon Dublin) deceased. On the death of his uncle the disputed property devolved to Agatha Nedd who occupied the disputed property along with himself until her death in 1977. Since then he has been in undisturbed peaceful possession of the disputed property paying the taxes thereafter. He worked as a seaman intermittently over a period of years. He made a declaration of possessory title. He did not agree to buy the disputed property from the Claimant in 1989.
- [16] Under cross-examination the witness testified that he never paid the Claimant for the disputed property. He went to live on the disputed property about 1977-1978. When he went there Elmo Dublin was living there. He first went to sea in 1975. He sailed for seven years and then he stopped. During that period he returned to Saint Vincent and the Grenadines on several occasions. He denied that he was at the disputed property at the will of the First Defendant. He did not deny that the First Defendant went to live at the

disputed property in 1983. He lived with Agatha Nedd before she died. He went to live at the disputed premises after she died.

Fitzroy Pereira

[17] This witness stated in evidence-in-chief that he is the uncle of the Second Defendant and the nephew of Agatha Nedd. Helon Dublin lived at the disputed property until he died. After his death Agatha Nedd took over the disputed property. He was resident in the United Kingdom and when he returned to Saint Vincent and the Grenadines in 1989 he met the First and Second Defendants and their children living at the disputed property and they have remained there until the present time.

[18] Under cross-examination the witness stated that he did not know if the Claimant was the owner of the disputed property.

Germaine Warner

[19] This witness stated in evidence-in-chief that she was the fourth child of the Defendants. Her birth certificate was put in evidence showing that she was born in 1979. She stated that from the time she knew herself she has been living at the disputed property with her parents and her siblings. Her parents renovated the house to a three bedroom house and she added a fourth bedroom to the house.

[20] Under cross-examination the witness testified that she did not know the disputed property belonged to the Claimant's mother.

Cecelia Medica

[21] This witness testified in evidence in chief that she is the daughter of the First and Second Defendants. Her mother and four children went to live with her father at the disputed

property when she was fifteen (15) years old. The last two children were born while her parents were living at the disputed property.

- [22] Under cross-examination the witness testified that she could not recall the year that her father went to live at the disputed property. She reiterated that her father was living at the disputed property before her mother went to live there.

ISSUE

- [23] The issue to be determined is whether the Claimant's interest if any in the disputed property has been extinguished and his right of recovery thereto has been statute barred.

SUBMISSIONS

- [24] Learned Queen's Counsel for the Claimant submitted that the evidence on behalf of the Claimant was credible and urged the Court to accept that evidence. Learned Queen's Counsel also submitted that there were several inconsistencies in the evidence on behalf of the Defendants and referred the Court to the case of *Gordon Charles (Also known as Augustus James Alexis) Administrator in the Estate of Lorna Alexis Deceased by His Attorney Raymond Scott v Claire Holas* Civil Suit No. 151 of 1996 (Grenada).
- [25] Learned Counsel for the Defendants submitted that the evidence shows that the Second Defendant was in adverse possession of the disputed property since 1977. However, even if the Court found the evidence on behalf of the Claimant to be reliable the Claimant's claim fails because while possession by a licensee cannot constitute adverse possession, the person who has given the license must have had legal authority to so do and referred the Court to the case of *Riley v Braithwaite and Another* (1979) 37 W.I.R. p. 66. There is no evidence that Lawrence Mercury or Claudius Harry had legal authority to give the First Defendant a license to occupy the disputed property.
- [26] Learned Queen's Counsel also submitted that the notices to quit in 1997 and 2004 did not have the effect of interrupting the running of time for limitation purposes. Learned Counsel

referred the Court to the cases of Florence Louise Belfon v Lester McIntosh et al Civil Appeal No. 13 of 1994; and Mount Carmel Investment v Peter Thurlow Ltd (1988) 3 A.E.R. p. 219.

- [27] Learned Queen's Counsel further submitted that while the First Defendant testified that while the Defendants occupied the disputed property part of the disputed property was occupied by one Jimpie (Elrno James/Dublin) who died subsequently and there is no evidence indicating when he died, the issue of exclusive possession did not arise on the pleadings and that the Claimant could not raise any doubts as to the exclusivity or otherwise of the Defendant's possession of the disputed property.

Findings of Facts

- [28] Having seen the witnesses and having reviewed their evidence, I found the evidence led on behalf of the Claimant to be credible. The Claimant was very candid in his answers in cross-examination. The testimony of Veda Harry was not contradicted under cross-examination. The witness Claudius Harry was not cross-examined. While there is a difference in the testimony of Veda Harry and Claudius Harry in relation to the time when the First Defendant moved into the house, I did not find this to in any way affect the credibility of either witness. I accepted the testimony of Veda Harry on this issue.

- [29] On the other hand, I found the evidence of the Defendants to be contradictory in several respects. In the Second Defendant's witness statement at paragraph 2 he stated as follows:

"...On the death of the said Helon Hackshaw, the property devolved to his sister Agatha Nedd deceased who occupied the disputed premises along with myself until her death in 1977. Since Agatha Nedd's death I have been in undisturbed, unmolested and peaceful possession of the disputed premises..."

- [30] However under cross-examination he stated very clearly that he moved to the premises after Agatha Nedd died. The witness testified:

"I went there about 1977 – 1978 ...Agatha Nedd died around 1976 ...I lived with Agatha Nedd before she died I went to live in my uncle's house after she died."

May 15 08 02:01

[31] I also found it incredible that the Second Defendant could not recall whether the First Defendant with whom he has five children was working in 1980. I also do not believe his testimony that no one lived in the house before he went to live there in 1977. He had earlier admitted that Elmo Jones was living at the disputed property when he went to live there.

[32] The First Defendant testified under cross-examination that the Second Defendant was a seaman for twenty to thirty years, but the Defendant testified that he was a seaman for seven years. The First Defendant also testified that she went to live at the disputed property in January 1983 and when the Second Defendant went to sea she lived at the disputed property with her children. However in paragraph 4 of her witness statement she stated:

"... Carlyle used to work as a seaman with National Bulk but that was mainly when his aunt Agatha was alive. After she died Carlyle made just one more trip and he got his finger damages and he never went back on the sea at all. That was before I moved in with Carlyle at his Aunt's place."

[33] I found the following facts:

- (a) The disputed property was originally owned by Helon Dublin. At his death he was survived by his sisters Leslyn Mercury and Agatha Nedd.
- (b) After Helon Dublin died Leslyn Mercury took control of the disputed property and after her death the disputed property was managed by her husband and son-in-law Claudius Harry.
- (c) The disputed property was rented to some persons. In 1975 Lawrence Mercury rented the property to Veda Harry and she lived there until approximately 1981-1982. During that period Elmo James/Dublin occupied the back portion of the disputed property.
- (d) After Veda Harry left, around 1983 Lawrence Mercury and Claudius Harry permitted the First Defendant to occupy the disputed property. Elmo

James/Dublin continued to occupy the back portion of the disputed property. He died subsequently. It is not clear when he died.

- (e) The Second Defendant moved into the disputed property shortly after the First Defendant moved into the disputed property.
- (f) The Defendants made substantial renovations and they continue to reside on the disputed property to the present time.

LAW

[34] The relevant provisions dealing with limitation of actions to recover land are sections 17 and Schedule 1 of the Limitation Act Cap. 90. Section 17 reads as follows:

- *1. No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.
- 2.
- 3.
- 4.
- 5. Part 1 of the Schedule contains provisions for determining the date of accrual of rights of action to recover land in the cases therein mentioned."

[35] While paragraphs 1, 2 and 8 (1) and (2) of Schedule 1 read as follows:

- *1. Where the person bringing an action to recover land, or some person through whom he claims, has been in possession of the land, and has while entitled to the land been dispossessed or has discontinued his possession, the right of action shall be treated as having accrued on the date of dispossession or discontinuance.
- 2. Where any person brings an action to recover any land of a deceased person (whether under a will or on intestacy) and the deceased person:
 - (a) was on the date of his death in possession of the land or, in the case of a rent charge created by will or taking effect upon his death, in possession of the land charged; and
 - (b) was the last person entitled to the land to be in possession of it, the right of action shall be treated as having accrued on the date of his death.
- 8(1) No right of action to recover land shall be treated as accruing unless the land is in possession of some person in whose favour the period of

limitation can run (referred to below in this paragraph as "adverse possession"); and where the preceding provisions of this schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing, unless and until adverse possession is taken of the land.

- (2) Where a right of action to recover land has accrued and after its accrual, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be treated as accruing and no fresh right of action shall be treated as accruing unless and until the land is again taken into adverse possession."

[36] The effect of the above mentioned provisions is that the right of action to recover the land is barred whenever twelve 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.

[37] 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 (1977) 38 P p. 452. These principles were approved by the House of Lords in JA Pye (Oxford) Ltd and another v Graham and another [2002] 3 AER p. 865.

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

[39] I will now deal with the submissions made on behalf of the Defendants, being licence to occupy, notice to quit and exclusive possession.

Licence

[40] As stated earlier I found that the First Defendant was given permission by Mr. Lawrence Mercury and Mr. Claudius Harry to occupy the disputed property.

[41] I agree with the submissions of Learned Queen's Counsel for the Defendants that possession would not be adverse if it is enjoyed under a licence granted by the owner or a person with legal authority to so do, see the case of *Hughes v Griffin* [1969] 1 W.L.R. p. 23. Permission granted by a person other than the owner who has no legal authority to do so is of no effect in relation to adverse possession – see *Riley's* case referred to earlier. I agree with Learned Queen's Counsel for the Defendants that there is no evidence before the Court that either Mr. Lawrence Mercury or Mr. Claudius Harry had any legal authority to give permission to the First Defendant to occupy the disputed property.

Notice to Quit

[42] I agree with the submission of Learned Queen's Counsel for the Defendants that the notices to quit which were served in 1997 and 2004 did not have the effect of interrupting the running of time for limitation purposes, see the *Florence Belfon* case and the *Mount Carmel* case.

Exclusive Possession

[43] Learned Queen's Counsel submitted that the issue of exclusive possession was not raised in the Claimant's pleadings. I respectfully disagree. The Claimant in his reply to the defence and counterclaim stated at paragraphs (1), (2) and (3) as follows:

- “1. The Claimant joins issue with the Defendants on their Defence and says in reply to their counterclaim that it is based on unsubstantiated allegations and is totally unjustifiable.
2. The Claimant repeats paragraphs 1 – 17 of his statement of claim and says that the Second Defendant's allegations in paragraph 11 of his Defence of adverse possession is false and an abuse of process.
3. The Second Defendant also cannot rely on the provisions of the Limitations Act Chapter 90 since the Claimant will show by evidence that his cause of action accrued to him against the Second Defendant only in recent times.”

[44] A party is permitted to give details of allegations raised in their statement of case in their witness statements – see Barrow JA in *East Caribbean Flour Mills v Ken Boyea and*

Hudson Williams Civil Appeal No. 12 of 2006 (SVG) case. The Claimant's witness Veda Harry stated in paragraphs 4, 5 and 7 as follows:

- "4. During my occupation of the said apartment, Elmo James a man who worked for Lawrence Mercury was allowed to live in the back apartment.
5. When my first son who is now 29 years old was 5 years old, I built a house adjacent to the said apartment at South Rivers and moved out of Mr. Mercury's apartment.
7. Pearl moved into the said apartment with her five (5) children...."

[45] While Mr. Claudius Harry, the other witness for the Claimant, stated in his witness statement at paragraphs 5 and 6 as follows:

- "5. During the 1970's after the death of my mother-in-law Leslyn Mercury, the First Defendant come to my home at Peruvian Vale along with a small child and told me that her boyfriend Carlyle (the Second Defendant) told her to ask me to allow them to live in the said property because they had nowhere else to live. She also informed me that she had asked Mr. Lawrence Mercury and he agreed but told her to ask me. I allowed her to live in one of the apartments of the said property.
6. During this time there was a gentleman by the name of Elmo Dublin otherwise known as "Jimpie" occupying another apartment within the said property at the time."

[46] I find that when the Claimant's statement of case is read conjointly with his witness statements the Claimant raised the issue that the Defendants were not in exclusive possession of the disputed property throughout their possession of the disputed property.

[47] In order for there to be adverse possession the person claiming to be in adverse possession, except in the case of joint possession must be in exclusive possession.

[48] The uncontradicted evidence is that when the Defendants went to live at the disputed property Elmo James/Dublin was living in the back portion of the house. The Claimant's witnesses Veda Harry and Claudius Harry stated this in their witness statement referred to earlier. The First Defendant also stated this at paragraph 5 of her witness statement which reads as follows:

"5. When I moved into the house to meet Carlyle it had just one bedroom which was parted off in two. A fellow Jimpie occupied part of the bedroom which had a back door..."

[49] Also the Second Defendant admitted in cross-examination that when he went to live at the disputed property Elmo Dublin was living there.

[50] It is also not disputed that Elmo James/Dublin, "Jimpie" has died. However there is no evidence of the date when he died or ceased to live at the disputed property. The First Defendant under cross-examination stated that Elmo James died after she went to live at the apartment. She could not recall when he died. The First Defendant testified under cross-examination as follows:

"It was a wall house, one bedroom. I was living in one part. A guy name Elmo was living in the back. I never paid rent. My boyfriend allowed me to stay there. The other person who lived in the other part died. I do not recall when he died. No one else lived there. We repaired it because it was leaking."

[51] I have no doubt that when the Defendants renovated the house Elmo James was no longer there or he had already died. However, there is no evidence when the Defendants renovated the house. The First Defendant in paragraph 5 of her witness statement stated as follows:

"5. When I moved into the house to meet Carlyle it had just one bedroom which was parted off in two...The house also had a hall and the kitchen was a separate board kitchen and there was an outside pit latrine. The flooring was board and the partition was board and the roof was a flat throw-off roof which was leaking. The walls of the house were concrete. It was a very old house. The windows were not good. The premises had no electricity nor water. Carlyle afterwards built around the old house with new block walls, and a new roof entirely, new windows, new doors; we put on two additional bedrooms and made the house into a three bedroom house, with living room. We also built a sewerage toilet and bath and we connected lights and water to the house."

[52] While the witness for the Defendants Cecelia Medica stated at paragraph 5 as follows:

"5. The house was a very small house on a small piece of land, but my parents built over the house to create three bedrooms, and then my sister Germaine put on another bedroom for herself."

Also the civil suit in which the Claimant was granted an ex parte injunction which required the Defendants to remove all building materials from the disputed property was filed in 1998. These proceedings were instituted in 2005.

[53] The onus was on the Second Defendant to prove a balance of probabilities that he was in exclusive possession of the disputed property for a period of twelve years. This he failed to do. I find that the Claimant has proved on a balance of probabilities that he is the owner of the disputed property.

[54] Judgment is entered for the Claimant. The Counterclaim is dismissed.

[55] It is ordered that :

- (a) A declaration is hereby granted that the Claimant is the owner of the parcel of land described in Deed No. 3238 of 1997.
- (b) The Defendants do vacate the said property on or before the 31st day of December 2008.
- (c) The Defendants do pay the Claimant costs in the sum of \$5,000.00 pursuant to Case Management Order dated 28th April 2006.


.....
Gertel Thom
HIGH COURT JUDGE