

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 23 OF 2011

IN THE MATTER OF AN APPLICATION BY REUBEN JOHN FOR A DECLARATION OF
POSSESSORY TITLE TO LAND

BETWEEN:

REUBEN JOHN

Applicant

v

DORIS WYLLIE
CYNTHIA JOHN

First Respondent
Second Respondent

Appearances: Mr. Joseph Delves for the Applicant.
Mrs. Kay Bacchus-Browne for the First Respondent.
Ms. Rochelle Forde for the Second Respondent.

2013: April 30
December 11

JUDGMENT

- [1] **THOM, J:** On 28th March 2011 Mr. Reuben John made an application pursuant to the Possessory Titles Act ("the Act") for a declaration of Possessory Title to a parcel of land situate at Evesham measuring approximately 1.872 acres ("the disputed land").
- [2] Mr. Reuben John alleges that his father Mr. Westfield John was in possession of the disputed land since 1965. The disputed land was originally owned by Ms. Nellie Wyllie who died in 1994. From the date of her death his father continued in exclusive possession of the disputed land which was rented out. His father died on October 6, 2010.

- [3] The application was supported by his affidavit dated 15th February 2011 and the affidavit of Mr. Michael John dated 1st February 2011 and the affidavit of Mr. Brian Richardson dated the 16th day of February 2011.
- [4] On April 8, 2011 and May 13, 2011 Notice of the Application was published in the News Newspaper and the Searchlight Newspaper in accordance with section 7 of the Act.
- [5] On the 5th May 2011 Mrs. Doris Wyllie entered an appearance in opposition to the application of Mr. Reuben John pursuant to section 7 of the Act. Mrs. Doris Wyllie alleges that herself and her husband Mr. Rawle Wyllie (now deceased) have been in occupation of the disputed land since 1965. They paid rent to Ms. Nellie Wyllie through her agent Ms. Mathilda Robertson and then to Mr. Westfield John until 2003. Mr. Reuben John and his predecessor Mr. Westfield John were never in possession of the disputed land.
- [6] On September 6, 2011 Mrs. Cynthia John filed an entry of appearance in opposition to the application of Mr. Reuben John. Mrs. Cynthia John alleges that Mr. Westfield John was the owner of the land, he having acquired it by adverse possession and it forms part of the residue of his estate in his will dated 9th May 2010.
- [7] Mr. Michael Wyllie filed an affidavit pursuant to Section 15 of the Act. Section 15 provides in effect that persons who have information in relation to a parcel of land over which a declaration for possessory title is being sought may file an affidavit and the Court may summon such person to attend the hearing of the application.

ISSUES

- [8] (i) Whether Mr. Reuben John and/or his predecessor Mr. Westfield John were in adverse possession of the disputed land for a period of twelve years or more.
- (ii) Whether the disputed land forms part of the estate of Mr. Westfield John.

EVIDENCE

- [9] At the hearing Mr. Reuben John testified and he called two witnesses being Mr. Michael John his brother and Mr. Brian Richardson who is an adjoining owner of the disputed land. Mrs. Doris Wyllie testified and she called two witnesses being her daughters Ms. Cheryl Wyllie and Ms. Judy-Ann Prescod. Mrs. Cynthia John testified and called two witnesses being her sons Mr. Fenton John and Mr. Alexis John. Mr. Michael Wyllie also testified.
- [10] The evidence on behalf of Mr. Reuben John is that the disputed land forms part of a larger portion of land which was originally owned by Ms. Nellie Wyllie who migrated from St. Vincent around 1931 to Trinidad and Tobago where she was resident until she died in 1994. When Ms. Nellie Wyllie left St. Vincent his grandmother Ms. Mathilda Robertson occupied the larger portion of land including the disputed land. From around 1965 when his grandmother was advanced in age his father Mr. Westfield John took control of the larger portion of land. He maintained it and cultivated crops on it. In mid-1960 a portion of the disputed land was rented to Ms. Geraldine Wyllie for agricultural purposes, while the other portion was rented to Mr. Rawle and Mrs. Doris Wyllie for a house spot. After the death of Ms. Geraldine Wyllie in the 1980's Mr. Rawle and Mrs. Doris Wyllie rented the agricultural portion also. Mr. Westfield John collected rent from the Wyllie's and issued receipts on behalf of Ms. Nellie Wyllie until 1994. Thereafter with the exception of one receipt in 1997 he issued receipts in his own name. He kept the rent; he paid the taxes and treated the disputed land as his own. When Mr. Westfield John took control of the disputed land in 1994 he never recognized any person as the owner. In 2002 he made a declaration of possessory title over the larger parcel of land including the disputed land. Also in 2002 Mr. Westfield John by Deed of Gift No. 1318 of 2002 conveyed the land to himself and to Mr. Reuben John as joint tenants. Mr. Westfield John's title to 7 ½ acres of the larger portion of land was unsuccessfully challenged by Ms. Juliette Gonsalves in suits Nos. 31 and 32 of 2008. From 2002 to present the taxes have been paid in the name of Mr. Westfield John and Mr. Reuben John.

- [11] A letter for the outstanding rent from 2005 was sent to Mrs. Doris Wyllie on 30th June 2009. Mr. Westfield John was recognized as the owner of the land on Survey Plan No. G 37/136. This plan was prepared at the instance of Mr. Adonis George an adjoining land owner. Also when there was a boundary dispute with Mr. Brian Richardson involving the disputed land, Mr. Westfield John resolved the dispute by causing Mr. Brian Richardson to adjust his boundaries.
- [12] Both Mr. Michael John and Mr. Brian Richardson's evidence supported the evidence of Mr. Rueben John. Mr. Brian Richardson also testified of two instances where Mr. Westfield John resolved boundary disputes during the construction of a wall and later during the erection of a chain-link fence. Mr. Richardson testified under cross-examination that the boundary disputes occurred in the early 1990's when he was constructing his house.

EVIDENCE ON BEHALF OF MRS. DORIS WYLLIE

- [13] The evidence on behalf of Mrs. Doris Wyllie is that the disputed land was a portion of a larger parcel of land owned by Ms. Nellie Wyllie who was the aunt of her husband Mr. Rawle Wyllie. Mrs. Nellie Wyllie rented part of the disputed land to Ms. Geraldine Wyllie, the mother of Mr. Rawle Wyllie. Ms. Geraldine Wyllie paid the rent to Ms. Mathilda Robertson who signed the receipts as "Attorney for Nellie Wyllie". A receipt for the year ending 1968 was exhibited which showed Ms. Mathilda Robertson signed as Attorney for Ms. Nellie Wyllie. Herself and husband rented a house spot from Ms. Nellie Wyllie on the disputed land and paid the rent to Ms. Mathilda Robertson who signed the receipts in the same manner. When Ms. Geraldine Wyllie died they occupied the portion of land she had occupied and they continued to pay the rent. Some years later Mr. Westfield John collected the rent instead of Ms. Mathilda Robertson and he also signed the receipts as "Attorney for Nellie Wyllie." Receipts for 1987 and 1997 were exhibited showing that Mr. Westfield John signed as "Attorney for Nellie Wyllie."

- [14] Neither Mr. Westfield John nor Mr. Reuben John ever occupied the land. Mr. Westfield John fraudulently swore a statutory declaration of a Possessory Title on the 12th day of April 2002 for seven and one half acres of land. The last payment of rent to Mr. Westfield John as agent for Ms. Nellie Wyllie was in 2003. When Mr. Westfield John sought to increase the rent in 2004 she objected to the increase. Neither Mr. Westfield John nor Ms. Mathilda Robertson ever occupied the disputed land.
- [15] Mrs. Doris Wyllie further testified that when she received the notice for increase of the rent she went to see Mr. Westfield John and enquired the reason for the increase and he responded that "Is the people them in Trinidad who told me to raise the rent." Mrs. Cynthia John was present and said, "Don't worry with him, he damn lie, is his son down there Grenville who told him to raise the rent."
- [16] In 2004 acting on advice from her son and Attorney-at-Law Mr. Arthur Williams she refused to pay any further rent to Mr. Westfield John.
- [17] Mr. Michael Wyllie the son of Mrs. Doris Wyllie submitted an affidavit in accordance with Section 15 of the Act. His affidavit in large part consists of submissions. He did however state that the disputed land was originally owned by Mr. John Durrant who died leaving a will in which he made dispositions to his wife and children one of whom was Ms. Nellie Wyllie. The estate was never distributed and over the years Ms. Nellie Wyllie assumed control. His grandparents Mr. Norman and Mrs. Geraldine Wyllie have been in occupation of the agricultural land from since the 1930's while his parents have been in occupation of the house spot since around 1962. Ms. Mathilda Robertson was Ms. Nellie Wyllie's helper. When Ms. Nellie Wyllie migrated to Trinidad and Tobago she permitted Ms. Mathilda Robertson to use the larger portion of the land to upkeep her family.
- [18] After Ms. Mathilda Robertson died in 1976, Mr. Westfield John occupied the larger portion land and was the agent for Ms. Nellie Wyllie. This is evidenced by letter dated 9th August 1985 (which was exhibited) from Solicitor Mr. Ronald Jack acting on behalf of Mr.

Westfield John agent for Ms. Nellie Wyllie to Ms. Geraldine Wyllie. A similar letter was also sent to Ms. Doris Wyllie and Mr. Rawle Wyllie.

[19] In 1990 Ms. Nellie Wyllie by Deed of Gift No. 365/1990 conveyed to Mr. Grenville John the brother of Reuben John 8,900 square feet of the land.

[20] Mrs. Doris Wyllie paid taxes for the disputed land in 2005 dating back to 1992. Receipts were exhibited for these years, and also for the years 2006 to 2008.

EVIDENCE ON BEHALF OF MRS. CYNTHIA JOHN

[21] Mr. Westfield John occupied the disputed land along with an adjoining portion of land belonging to Ms. Nellie Wyllie. From early 1976 when Ms. Mathilda Robertson's health began to fail Mr. Westfield John collected the rent from the tenants. Even before Ms. Nellie Wyllie died in 1994, Mr. Westfield John was in possession of the disputed land as owner. Mrs. Doris Wyllie acknowledged him as landlord and paid the rent until 2004. Receipts from 1997 to 2004 were exhibited. Mr. Westfield John kept the rent and used it as he saw fit as he regarded himself as owner of the disputed land. He never accounted to any person including Ms. Nellie Wyllie. Mrs. Doris Wyllie acknowledged Mr. Westfield John as owner and requested him to sell her a house spot. Persons in the area recognized him as owner of the land. From 1994 to the date of his death in 2010 Mr. Westfield John was the sole person who exercised acts of ownership over the land. After Ms. Nellie Wyllie departed St. Vincent she performed no acts of ownership over the land and she left Mr. Westfield John to deal with the land as he wished.

SUBMISSIONS

[22] Learned Counsel Mr. Delves referred the Court to the finding of facts made by Justice Monica Joseph in Claims Nos. 31 and 32 of 2008 where Mr. Westfield John's application for possessory title to two portions of the land was successful and urged the Court to adopt those findings. Mr. Delves submitted that Mr. Reuben John's application was not

challenged by a representative of the estate of Ms. Nellie Wyllie nor the estate of Mr. John Durrant. Mrs. Doris Wyllie in her opposition has not made a claim of ownership of the land. Mrs. Doris Wyllie admitted that she paid rent for the disputed land in 2004. Mr. Westfield John was the landlord of Mrs. Doris Wyllie. The Wyllie's were not put into possession by Ms. Nellie Wyllie but by Ms. Mathilda Robertson. In support of this contention, Mr. Delves referred to Ms. Nellie Wyllie's letter to Mr. Westfield John dated April 19, 1992 in which she referred to Mr. Rawle Wyllie as a scamp. Mr. Delves also referred to the evidence of Mrs. Doris Wyllie under cross-examination where she agreed that when Mr. Rawle Wyllie went to Trinidad to ask Ms. Nellie Wyllie about renting the disputed land she told him to ask Mathilda. The receipts from 1997 to 2004, a total of 16 receipts show that Mr. Westfield John did not sign as Attorney of Nellie Wyllie. Payment of rent to a person or his agent is prima facie evidence of a tenancy and both the landlord and the tenant are estopped from denying the title. Mr. Delves relied on the passage in **Hill and Redman's Landlord and Tenant**. The collection of rent amounts to possession for the purpose of adverse possession. Thus the possession of the Wyllie's is the possession of Mr. Reuben John and his predecessor for the purpose of adverse possession. Mr. Delves relied on the cases of **Bligh v Martin**¹, **Smirk v Lyndale**² and **Hindle and Another v Hicks Brothers Manufacturing**³, and **Megarry and Wade Land Law**⁴. The Wyllie's were not laboring under any mistake of fact since they were aware that Ms. Nellie Wyllie died in 1994 and they continued to pay rent to Mr. Westfield John until 2004.

- [23] Mr. Delves further submitted that Mrs. Doris Wyllie has not shown a better title in anyone superior to Mr. Reuben John who has made a claim of ownership of the land. If the third party who has a superior title makes no claim to the land or is debarred from making it then the tenant remains estopped, see **Industrial Properties et al v Associated Electrical Industries Ltd. et al**⁵.

¹ [1968] 1 WLR 804

² [1974] 2 AER 8

³ [1974] 2 AER 825

⁴ Stevens & Sons Ltd. 1984, 5th Ed.

⁵ [1977] 2 AER 293

[24] Mr. Delves further submitted that Mr. Reuben John is entitled to a declaration of possessory title of the disputed land as a result of the following acts of his predecessor Mr. Westfield John:

- (a) His predecessor Mr. Westfield John treated all the lands formerly owned by Mr. John Durrant as his own.
- (b) He kept the rent for the disputed land.
- (c) In 2002 he made a formal declaration of ownership. The filing of that declaration was an unequivocal act claiming adverse possession.
- (d) He paid the taxes.
- (e) He increased the rent by letter dated 5th August 2004.
- (f) In 2009 he gave Mrs. Doris Wyllie notice to quit.
- (g) He lodged complaint at the Planning Unit against Ms. Maltina Adonis when she sought to construct a wall which encroached on the disputed land.
- (h) He resolved the boundary dispute involving Mr. Brian Richardson.

[25] Mrs. Kay Bacchus-Browne submitted that Mrs. Doris Wyllie was in physical possession of the disputed land since around 1961. Mrs. Kay Bacchus-Browne further submitted that the following facts show that Mr. Reuben John is not entitled to a declaration of Possessory Title:

- (a) Mr. Westfield John's application for possessory title in 2008 excluded the disputed land. No logical reason was given why it was not included. It would not have cost much more to apply for an additionally 1.8 acres of land. If Mr. Westfield John was ill the fact that he needed to sue quickly contradicted the excuse given.
- (b) Mr. Westfield John did not expressly include the 1.8 acres of land in his will. If he knew he possessed it, he would have devised it like he did with all of his lands.

- (c) The Declaration of Possessory Title in 2002 did not include the disputed land. The declaration is false since he did not possess the disputed land in 1965.
- (d) There was no physical act of possession by either Mr. Westfield John or Mr. Reuben John.
- (e) Payment of taxes is not an act of physical possession; it goes toward intention to possess.
- (f) Solving one boundary dispute is not an unequivocal act of possession.
- (g) Collecting rent as an agent and not paying it over to the landlord is not an act of possession.
- (h) Mrs. Doris Wyllie never paid rent to Mr. Westfield John as landlord. Her letter to him when he attempted to raise the rent shows that she did not regard him as landlord.
- (i) Mrs. Doris Wyllie was not sued for rent even though she stopped paying rent since 2003.
- (j) Madam Justice Joseph had found in Claim No. 31 of 2008 that Ms. Nellie Wyllie was the owner of the land up to her death in 1994, but Mr. Westfield John was in actual possession of the land the subject matter of Claim No. 31 of 2008. In this case he was never in possession.
- (k) After Ms. Nellie Wyllie's death in 1994 he openly acknowledged he was acting as agent. Mr. Reuben John has not produced any receipts to show that prior to 1997 he did not issue the receipts as agent. After 1997 he

surreptitiously dropped the word "Attorney" from the receipts. However, he did not exercise ownership over the land.

[26] Ms. Rochelle Forde submitted that based on the evidence, from about 1970 after Ms. Mathilda Robertson's health began to fail Mr. Westfield John took charge of the disputed land. At the time of Ms. Nellie Wyllie's death Mr. Westfield John was in full possession as owner. Mrs. Doris Wyllie was always a tenant and as such she was not entitled to deny the title of Mr. Westfield John - Rosalind Ramroop v John Ishmael⁶. The fact that Mr. Westfield John signed the receipts in his name showed that he was acting as owner. Ms. Forde relied on the following as evidence of Mr. Westfield John's possession of the disputed land:

- (a) He collected the rent and used it as he saw fit.
- (b) He settled boundary disputes between adjoining land owner Mr. Brian Richardson at the request of Mrs. Doris Wyllie.
- (c) From the death of Ms. Nellie Wyllie in 1994 to his death in 2010 no other person performed acts of ownership. From the time Ms. Nellie Wyllie left St. Vincent she performed no acts of ownership. She left Mr. Westfield John to deal with the land as he wished. Mr. Westfield John was in adverse possession of the land in excess of 15 years.
- (d) Mr. Westfield John was granted Possessory Title in relation to the other portion of land.

[27] Ms. Forde also submitted that Mrs. Doris Wyllie does not have locus standi in the matter. She is not claiming an interest in the land. Further, she is not an executor or administrator or personal representative of the estate of John Durrant, nor does she satisfy the requirements of section 9 (1) of the Act and she was not a person within section 15 since she filed a claim. When Mr. Westfield John changed the manner in which he signed the receipts Mrs. Doris Wyllie had notice of his act of ownership.

⁶ [2010] UK PC 14

[28] Ms. Forde further submitted that the nonpayment of rent by Mrs. Doris Wyllie after 2004 is not evidence that she did not acknowledge Mr. Westfield John as her landlord but simply that she had become a dishonest tenant. Ms. Forde referred to the cases of Industrial Property and Hindle v Hick Brothers and submitted that no-one has come forward to make a better claim to the land than Mr. Westfield John. Ms. Forde referred to the statement of Roxburgh J in Hindle case that:

"The Court is not entitled to investigate the equitable title in the absence of persons who may be interested in it."

[29] Ms. Forde also submitted that the decision of Justice Joseph in Claims Nos. 31 and 32 of 2008 should be applied in this case since Mr. Westfield John in his declaration for possessory title in 2002 included the disputed land. Ms. Forde referred the Court to the following passage from the judgment:

"55. ...Nellie Wyllie was in possession up to 1994 through Westfield John to whom she had given permission to be on the two parcels. From her death the personal representatives of her estate did not take possession of the two parcels and time began to run against the estate of Nellie Whllie from 1994."

"57. ...There was a dispossession of Nellie Wyllie's estate from 17th August 1994, the time the right of action accrued, which right of action was lost twelve years from 18th August 1994 i.e. 18th August 2006."

[30] Ms. Forde further submitted that the disputed land forms part of the residue of Mr. Westfield John's estate. The Deed of Gift No. 1318 of 2002 is defective. Mr. Reuben John was never in possession of the disputed land adverse or otherwise.

FINDINGS

REUBEN JOHN

[31] Section 3 of the Possessory Titles Act makes provision for a person who claims to be in adverse possession of land to make an application to the Court for a declaration of possessory title to the land. Adverse possession is defined in Section 2 of the Act as follows:

“Adverse possession” means factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Saint Vincent and the Grenadines for a continuous period of twelve years or more accompanied by the requisite intention to possess the said land as owner thereof.”

[32] In order for the Court to make a declaration of possessory title over the disputed land in favour of Mr. Reuben John, the onus was on Mr. Reuben John to show that he was in adverse possession of the disputed land for a continuous period of twelve years. Mr. Reuben John was required to show that he was in factual possession of the disputed land and that he had the intention to possess the disputed land as owner.

[33] It is not disputed by Mr. Reuben John that Mrs. Doris Wyllie and her husband have been in occupation of a portion of the disputed land from around 1965 and that on the death of Ms. Geraldine Wyllie they occupied all of the disputed land. When the affidavit of Mr. Reuben John and the affidavits of his witnesses are examined carefully there is no evidence that Mr. Reuben John was ever in factual possession of the disputed land. He never exercised any acts of ownership over the disputed land. I agree taxes were paid in his name and Mr. Westfield John. Mr. Reuben John relied on the possession of Mr. Westfield John as outlined in his submissions at paragraph 24 herein as being his possession for the purposes of the Possessory Title Act. Mr. Westfield John died testate leaving several heirs including Mr. Reuben John and Mrs. Cynthia John. If the court was to find that Mr. Westfield John had at the time of his death acquired title to the disputed land by adverse possession, in view of the above related facts that would not be a basis upon which the Court could make a declaration of possessory title of the disputed land solely to Mr. Reuben John.

[34] In his affidavit evidence Mr. Reuben John alluded to Deed of Gift No. 1318 of 2002 by which he alleges Mr. Westfield John conveyed the disputed land to himself and Reuben John. This was not pursued at the hearing and quite rightly so since it was very clear on the evidence that in 2002 Mr. Westfield John was not the owner of the disputed land. Having regard to the evidence I find that Mr. Reuben John has not discharged the burden placed on him to satisfy the Court on a balance of probabilities that he was in adverse possession of the disputed land for a period of twelve years.

MRS. DORIS WYLLIE

[35] While Mrs. Doris Wyllie opposes a grant of a declaration of possessory title to Mr. Reuben John, Mrs. Doris Wyllie does not claim to be entitled to a declaration of possessory title in relation to the disputed land. Mrs. Doris Wyllie accepted that as late as 2004 she paid rent for her occupation of the disputed land. I will therefore make no order in relation to Mrs. Doris Wyllie.

MRS. CYNTHIA JOHN

[36] Mrs. Cynthia John who is the Executor and a beneficiary of the estate of Mr. Westfield John including the residue of his estate claims that at his death Mr. Westfield John was the owner of the disputed land by adverse possession and the disputed land formed part of the residue of his estate.

[37] While Mrs. Cynthia John did not make an application for possessory title under the Act, (Section 3(3) provides that an application may be made by an executor, administrator, trustee or other persons of a fiduciary relationship for the estate) but rather she entered an opposition to Mr. Reuben John's claim, section 13 of the Act provides in effect that where there are opposing claims the court may make a declaration of possessory title in favor of any of the parties.

[38] The legal authorities show that a person in possession has against the whole world except the true owner an interest in the land that is capable of being devised or conveyed – see **Asher and Wife v Whitlock** (1865-66) L.R. 1 Q.B.1. It follows that where a person has acquired title to land by adverse possession he could devise the land in his will.

[39] The onus is on Mrs. Cynthia John to prove that Mr. Westfield John was in adverse possession of the disputed land for a continuous period of twelve years.

[40] The parties urged the Court to adopt the findings of fact made by Justice Monica Joseph in Claims Nos. 31 and 32 of 2008. It is not disputed that Claims Nos. 31 and 32 relate to the larger portion of land and did not include the disputed land. The larger portion of land was occupied by Ms. Mathilda Robertson and then by Mr. Westfield John. Justice Monica Joseph found that Ms. Nellie Wyllie was in possession of the larger portion of land at her death in 1994 and Mr. Westfield John's adverse possession commenced after her death since the representative of her estate failed to take possession of the land. Having regard to the evidence in the present case the evidence of the receipts for rent issued by Mr. Westfield John as Attorney for Nellie Wyllie, the last such receipt being issued on the 28th February 1997 and Mr. Reuben John nor Mrs. Cynthia John having not produced any receipt earlier to that date where Mr. Westfield John issued the receipt in his own name, I find that Ms. Nellie Wyllie continued to be in possession of the disputed land until her death in 1994. I do not accept the evidence of Mrs. Cynthia John that after Ms. Nellie Wyllie left St. Vincent in 1931 she performed no acts of ownership over the land. Ms. Nellie Wyllie was in communication with Mr. Westfield John as is evidenced by her letter dated April 21, 1992 addressed to Mr. Westfield John where she gave instructions relating to the land. Also in 1989 Ms. Nellie Wyllie conveyed a portion of the land to Mr. Grenville John the son of Mr. Westfield John.

[41] It is not disputed that Mr. Westfield John was never in physical occupation of the disputed land. It is agreed that a portion of the disputed land was occupied by Ms. Doris Wyllie and her husband from around 1963 and they occupied the entire disputed land after the death of Ms. Geraldine Wyllie, and Mrs. Wyllie is presently in occupation of the disputed land. Ms. Cynthia John's case is that Mr. Westfield John was in possession for the purpose of adverse possession since he collected rent from Mrs. Doris Wyllie and her husband.

[42] In the case of *Bligh v Martin* on which Ms. Forde relies, the plaintiff collected rent from the defendant for a parcel of land at which time neither of them were aware that the defendant was the owner of the land. The court held among other things that:

"(2) That the plaintiff, having been in receipt of rent from the defendant during the grazing tenancy, remained throughout that period in adverse possession of the land for the purposes of section 10(3)(b), of the

Limitations Act, 1939, despite the fact that the defendant had himself been in possession thereof during that period under a lease or licence granted by the plaintiff."

[43] Section 10(3) of the U.K. Limitation Act 1939 reads as follows:

- "(3) For the purpose of this section –
- (a) possession of any land subject to a rentcharge by a person (other than the person entitled to the rentcharge) who does not pay the rent shall be deemed to be adverse possession of the rent charge; and
 - (b) receipt of rent under a lease by a person wrongfully claiming in accordance with sub-section (3) of the last foregoing section, the land in reversion shall be deemed to be adverse possession of the land."

[44] Section 9(3) of the U.K. Act reads as follows:

- "(3) Where any person is in possession of land by virtue of a lease in writing by which a rent of not less than twenty shillings is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no rent is subsequently received by the person rightfully so entitled, the right of action of the last-named person to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease."

[45] Paragraphs 5, 6 and 8 of the Schedule to the Limitation Act of St. Vincent is based on the U.K. Limitation Act 1980 and is in similar terms to sections 9 and 10 of the U.K. 1939 Act. The court in *Bligh* explained the effect of section 10(3) as being that where the tenant is in possession and a person wrongfully collects the rent, the adverse possession of that person commences from the first receipt of rent.

[46] In Megarry and Wade *The Law of Real Property*⁷ the effects of the provisions of the U.K. 1980 Act which are in similar terms is explained as follows:

"Adverse receipt of rent. A landlord's title may, indeed, be barred if adverse possession is taken not of the land but of the rent from it. The rule is that if a tenant who holds under a written lease pays a rent of at least £10 per annum for 12 years to some person who wrongfully claims the reversion, this bars the

⁷ pp 1038-1039

landlord's rights altogether. Adverse receipt of rent by a third party is equivalent to adverse possession of the reversion by him, and after 12 years it will extinguish the reversion, even if the true owner of it is also the tenant who paid the rent.

Yearly or periodic tenants. A tenant under a yearly or other periodic tenancy who does not hold under a lease in writing is in a stronger position than other tenants. Time runs from the end of the first year or other period of the tenancy, subject to extension by payment of rent or written acknowledgment. An oral tenancy will thus in time ripen into ownership if the rent is not paid. If there is a lease in writing, time runs from the determination of the tenancy."

[47] The principle is illustrated in the case of *Hayward and Another v Challoner*⁸. In *Hayward's* case a small parcel of land was let to a rector on a yearly tenancy. No rent was paid after 1942. In 1955 the plaintiff bought lands including the parcel of land that was let to the rector. In 1966 the plaintiff instituted proceedings to recover the land. In dismissing the appeal of the claim for possession, the court held that there having been a periodic oral tenancy to the rector, he ceased to be tenant when the period covered by the last payment of rent expired and the subsequent possession became adverse possession. The plaintiff's right of action to recover the land was therefore barred since the land was adversely possessed for more than twelve years.

[48] It is not disputed that Mr. Westfield John collected rent from Mrs. Doris Wyllie from about 1976 until November 2004. The receipts exhibited to 1997 (no receipts were exhibited by either side for the years 1994, 1995 and 1996) show that Mr. Westfield John and his mother Mrs. Mathilda Robertson before him issued receipts for the rent as Attorney for Ms. Nellie Wyllie. In the absence of any receipts for the years 1994-996, I find that Mr. Westfield John issued receipts for the rent of the disputed land in his own name from November 1997.

[49] Having found earlier that Mr. Westfield John commenced receiving the rent in his own name from 1997 and there is no evidence of any other persons exercising acts of ownership over the disputed land, I find that he was in adverse possession of the disputed land from that period. However, the evidence shows that his adverse possession by

⁸ [1967] 3 AER 122

receipt of the rent did not continue for a period of twelve consecutive years. It is not disputed that Mrs. Doris Wyllie was a tenant from year to year. Her tenancy was an oral tenancy. Mrs. Doris Wyllie last paid rent to him on 30th November 2004 for the year ending 30th November 2005 (the receipt was exhibited). All of the acts of ownership of Mr. Westfield John referred to by Mr. Delves with the exception of the payment of taxes occurred before 2004 when Mrs. Doris Wyllie last paid rent to Mr. Westfield John. His Notice to Quit in December 2009 was of no moment as extra-judicial protests do not constitute acts of ownership. Sir Vincent Floissac stated the principle in **Florence Louise Belfon v Lester McIntosh** as follows:

“The respondent’s extra-judicial protests, objections and demands do not in law constitute acts of ownership (i.e. acts which evince an intention to assert ownership) or acts of possession (i.e. acts which evince an intention to assume, retain or regain possession) or acts which legally interrupt, disturb or otherwise affect the quality of adverse possession.”

[50] In view of the above I find that Mr. Westfield John did not acquire title to the disputed land by adverse possession since he was not in factual possession of the disputed land for a continuous period of twelve years.


[51] In conclusion I find that Mr. Reuben John is not entitled to a declaration of possessory title since he has failed to prove on a balance of probabilities that he was in adverse possession of the disputed land for a continuous period of twelve years. I also find that Mrs. Cynthia John is not entitled to a declaration of possessory title since Mr. Westfield John through whom she claims, was not in adverse possession of the disputed land for a continuous period of twelve years.

[52] It is ordered:

- (i) The Application for declaration of possessory title of Mr. Reuben John is hereby dismissed.

- (ii) The claim of Mrs. Cynthia John is hereby dismissed.

(iii) There shall be no order as to costs.


Gertel Thom
HIGH COURT JUDGE