

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2012/0001

BETWEEN:

RHODAN GORDON

Claimant

and

ENNIS ANN THOMAS

Defendant

Appearances:

Mrs. Celia Edwards, Q.C. and Mr. Deloni Edwards for the Claimant
Mr. Alban John, Ms. Thandiwe Lyle and Mrs. Patricia John for the Defendant

2014: September 22; 23;
October 27.

DECISION

- [1] **MOHAMMED, J.:** It is common for first time visitors to Grenada to describe it as paradise but, unknown to many of them, there is indeed a place called "Paradise" in the parish of St. Andrew's in Grenada. The subject matter of this judgment concerns a house spot situated at "Douglas" Paradise ("the property"). The Claimant instituted this action against the Defendant, as agent for Lucille Hutchinson ("Lucille"), seeking an order for possession of the property, mesne profits at \$20.00 per year from 1997 to possession and costs.
- [2] The Claimant contends that he is the owner of the property and since the 1960s he has been in possession. He authorized his mother, Louisa Gordon ("Louisa") to rent out the property and use the rent for her upkeep. Accordingly, in the 1960's

Louisa rented out the property to the Defendant's great grandmother Ophelia Mark (referred to by some as Amelia Edwards) ("Ophelia") for \$20.00 per year, and after Ophelia died she rented it to Lucille. The Claimant also contends that the Defendant as agent of Lucille has not paid rent since 1996 and has committed acts of waste to the property by cutting down grapefruit trees. The Claimant further contends that in 2010 the Defendant attempted to dispossess him by serving on him a notice stating that she intended to survey the property¹. Thereafter, the Claimant served a notice to quit ("the notice to quit") on the Defendant, which expired on 30th June 2011. Despite the notice to quit the Defendant has refused to vacate the property.

[3] The Defendant denies that the Claimant owns the property. She admits that Ophelia lived on the property until death and that Lucille lived there until 2007. She denies that that Ophelia paid rent for the property or that she accounted to anyone for her occupation of it. She contends that after Ophelia died, Lucille continued to live on the property together with her daughter Cynthia Thomas, (until she migrated to Trinidad), and the Defendant until 2007. The Defendant also denies that Lucille paid rent to anyone or that she occupies the property as agent for Lucille. Instead, she asserts that she occupies the property in her own right and had no cause to pay rent to anyone since she was never anyone's tenant. She admits to serving the letter dated 18th February 2010 which stated her intention to survey the property and to receiving the notice to quit but denies that it was served on Lucille. She has denied committing any acts of waste to the property. Instead she has counterclaimed that the Claimant's agent Michelle Lalgie has trespassed on the property, harassed her and has committed acts of waste and damage to crops and fruit trees on the property.

[4] The Defendant also pleaded a Defence of adverse possession. She asserts that if the Claimant's case is that Ophelia and Lucille were his tenants then time started to run for him to institute the instant action in 1996, which was the last payment of

¹ Letter dated 18th February 2010- page 18 of the Trial Bundle filed 15th January, 2014

rent which he asserted. She has counterclaimed that on the basis of the long uninterrupted possession by her predecessors, Ophelia and Lucille, and in her own right, the Claimant's action for possession is statute barred by virtue of the Limitations of Actions Act².

- [5] At the trial, the Claimant's witnesses were Michelle Lalgie, Bernadine Best, Elfreda Robertson and Neary Johnson. The Defendant gave evidence on her own behalf and called Dr. Dirk Burkhardt and Alexander Radgman as her witnesses.
- [6] The issues arising for determination from the pleaded case are:
- a) Has the Claimant proven that he owns the property?
 - b) Did the Defendant and/or her predecessors extinguish the Claimant's title?

Has the Claimant proven he owns the property?

- [7] The Claimant submitted that he is the beneficial owner of the property since it was devised to him by his father Spencer Gordon, as evidenced by his will³. He also pleaded the boundaries of the larger parcel of land in a plan dated 1991, which was commissioned by him⁴. He has admitted that he has no deed vesting the property in him but that a grant of letters of administration with will annexed *de bonis non* was issued by the Registrar of the Supreme Court of Grenada on 6th September 2005 appointing Romain Gordon as the administrator of the estate of Spencer Gordon⁵. The Claimant did not set out in his pleadings any reason the property has not been vested in him as yet.
- [8] The Defendant submitted that she does not know how Ophelia or Lucille came onto the property but that this is where she has lived since she was three years

² Chapter 173 of the Laws of Grenada.

³ Pages 14-16 of the Trial Bundle filed 15th January 2014

⁴ Page 17 of the Trial Bundle filed 15th January 2014

⁵ Page 13 of the Trial Bundle filed 15th January 2014

old. She admitted that although she migrated to Venezuela between 1979 to 1997 she still visited the property every year. The Defendant relied on her evidence and the evidence of her witness Alexander Radgman to support her contention that her predecessors owned the property and not the Claimant.

[9] It is not in dispute that neither party produced any deed to prove their ownership of the property. Having considered the evidence presented by both parties I find that while the Claimant does not have the legal title of the property vested in him, he has proven that he is beneficially entitled to it for the following reasons. Firstly, there was no evidence presented by the Defendant challenging the will of Spencer Gordon, the grant of letters of administration or the survey plan which the Claimant had done pursuant to the will.

[10] Secondly, the Claimant's witness Elfreda Robertson's evidence on the issue of ownership was credible. She stated that she knew that lands at Douglas belonged to the Claimant's parents since his parents and her parents were friends. Her father worked for the Claimant's father grooming his animals and putting "shoes" on their feet. She also stated that after the Claimant's father Spencer Gordon died, everyone in the small community at the time knew how Spencer Gordon's estate was distributed and that the property was given to the Claimant. Although under cross-examination she acknowledged that she has not seen any document which showed that the Claimant owned the property, I accept her evidence since she shared a close relationship with the Gordons.

[11] Thirdly, the Defendant stated categorically that she did not know how Ophelia or Lucille got on the property and she never heard them state that anyone other than themselves owned the property. However, I find this position adopted by the Defendant not to be plausible since there was no evidence that the Defendant attempted to find out from Ophelia or Lucille how they came onto the property. She has not asserted that they paid a house or land tax. She has simply made a broad and general assertion without any proper basis.

[12] Fourthly, the evidence of the Defendant's witness Alexander Radgman was unreliable on this issue. Alexander Ragdman, who is 79 years old, stated that he lived in Paradise all his life and he knew Ophelia living on the property in the 1940's and after she died Lucille remained there with her daughter Cynthia Thomas, her grandchildren and great grandchildren. However, in the 1940's he was only 5-10 years old and, in my view, he was not in a position, at such a tender age, to know if Ophelia owned the property.

[13] I therefore find that the Claimant is beneficially entitled to the property, he has established that he is entitled to ownership through the will of Spencer Gordon and as such he is entitled to pursue the action for possession against the Defendant.

Did the Defendant and/or her predecessors extinguish the Claimant's title?

[14] The Defendant's alternative Defence is that her predecessors, Ophelia and Lucille, and now her, have been in undisturbed possession of the property for a long time and their acts of adverse possession have extinguished the Claimant's claim to possession. She denied that Ophelia or Lucille paid rent. She admitted that she did not pay any rent since she was unaware that the property was tenanted. She asserted that they planted fruit trees, shrubs and a hedge.

[15] The Claimant has disputed the claim of undisturbed possession. He has contended that Ophelia and Lucille were his tenants and therefore they were put into possession of the property by him through his mother Louisa; that Lucille acknowledged this in 2010 when she placed her mark on a document confirming this; the Defendant represented herself as agent for his tenant Lucille; even if she was not Lucille's agent, she has not been in continuous undisturbed possession of the property since she only resumed possession in 2010, the same year she took steps to have the property surveyed. He has denied that Ophelia, Lucille or the Defendant has planted any trees or hedges on the property.

- [16] Sections 4, 5 and 27 of the Limitation Act⁶ enable a person who has the paper title to land to institute an action to recover possession of his land within 12 years from being dispossessed. These sections contemplate that the paper owner must have become dispossessed of the land by adverse possession.
- [17] In interpreting the equivalent sections of the UK Limitations of Actions Act to sections 4 and 5 of the Limitations Act of Grenada, Lord Browne-Wilkinson in **JA Pye (Oxford) Ltd. & Ors v Graham and Another**⁷ stated:
- “It is to be noted that the right of action to recover the land is barred whenever twelve years have elapsed from the time when any right of action accrued: it does not have to be a period immediately before the action.”
- [18] The defence of adverse possession is not new to this jurisdiction. There are countless judgments written on this issue. It therefore is not in dispute that the law is settled on this issue and that each matter turns on the evidence at the trial. Where a Defendant asserts a defence of adverse possession of land the burden shifts to the Defendant to prove the elements of his/her adverse possession.
- [19] In **Powell v Mc Farlane**⁸ Slade J described the legal requirements for establishing a defence of adverse possession as:
1. “(1) In the absence of evidence to the contrary, the owner of land with 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.
 - (2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (“animus possedendi”).
- [20] I have already found that the Claimant has established his claim of ownership through the title of his father Spencer Gordon. It is therefore for the Defendant to

⁶ Chapter 173 of the Laws of Grenada

⁷ [2002] 3 WLR 221, 229

⁸ [1977] 38 P&CR 452 at 470

establish the fact of possession and the necessary intention to possess. On factual possession Slade J in **Powell** went on to say this⁹:

“Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances of the case in particular, the nature of the land and the manner in which land of that nature is commonly used or enjoyed. Everything must depend on the particular circumstances, but broadly, I think 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”.

[21] There are two aspects of factual possession upon which the Defendant relies; the factual possession began by Ophelia and Lucille which continued with possession in her own right. The Claimant alleges that the Defendant’s predecessors Ophelia and Lucille occupied the property as his tenants. He did not allege that he rented the land to the Defendant since he has grounded his claim against the Defendant as “agent for Lucille”. The Defendant denied that neither Ophelia, Lucille nor she paid rent. She also specifically asserted in her defence that if the Claimant’s case is Ophelia and Lucille were his tenants, and the action was brought against her as “agent for Lucille” then time started to run for him to institute the action under the sections 4, 7 and 27 of the Limitations of Act from 1996, which was the last date of payment of rent. The Defendant vehemently denied that she acted “as agent for Lucille”. While I accept the Defendant’s submission that there was no evidence presented by the Claimant to show that the Defendant had any power of attorney from Lucille, I find this position taken by the Defendant to be disingenuous to say the least since the documentary evidence contradicts this position. The Defendant admitted that in 2008 to 2009 she rented the house, not the land, to Larry Williams. In the first paragraph of the letter dated 2nd November 2008¹⁰ to Larry Williams the Defendant stated:

⁹ At page 470-471

¹⁰ Page 30 of the Trial Bundle filed 15th January 2014

"This is to remind you that, you have not been keeping in accordance to the verbal agreement which made between yourself and I on behalf of my grandmother Ms. Lucille Hutchinson."

- [22] In the letter to Larry Williams dated 28th January 2009¹¹ where she informed him of an increase in the rent effective 1st March 2009 she signs the letter as "*Ann Thomas For Lucille Hutchinson*" and in the letter dated 18th February 2010¹² to Roden Gordon and Mr. Denis which informed them of the survey to take place on 23rd February 2010, the Defendant signs the letter as "*Ennis-Ann Thomas Grand Daughter for Lucille Hutchinson*". It was clear to me that the Defendant represented herself to third parties as agent for Lucille.
- [23] However, I was not persuaded by the evidence presented by the Claimant that he established that Ophelia or Lucille were his tenants for the following reasons.
- [24] Firstly, there was no direct evidence from the Claimant on this alleged authorization to his mother Louisa to rent the property since he did not give this evidence.
- [25] Secondly, there was no documentary evidence to support the contention that Ophelia or in particular, Lucille paid rent to support the oral evidence by the Claimant's witness Bernadine Best and Neary Johnson. Both Neary Johnson and Bernadine Best insisted that they saw receipts yet there was no evidence of any receipts, receipt book or payment of rent which the Claimant claimed was rented from the 1960's to 1996, some 36 years. While I accept that the receipts would have been in possession of Lucille, there was not even any explanation to account for the failure to produce a single receipt against the backdrop of the evidence of Bernadine Best, who stated that in 1991 she handed over a bag full of receipts to Romain Gordon, the brother of the Claimant.

¹¹ Page 31 of Trial Bundle filed 15th January 2014

¹² Page 18 of Trial Bundle filed 15th January 2014

- [26] Thirdly, the evidence of Michelle Lalgie on the payment of rent was at best hearsay since she said she did not know when Ophelia or Lucille initially started to live on the property, all she knew was what she heard Lucille, who was her great aunt's friend, telling her great aunt that she was paying rent for the property.
- [27] Fourthly, I attach no weight to a document dated 10th August 2010¹³ to demonstrate that Lucille had acknowledged that she was a tenant of the Claimant and therefore did not own the property. Elfreda Robertson and Michelle Lalgie both admitted that Lucille could not read nor write. At the time the document was executed Michelle Lalgie confirmed that Lucille did not have her attorney present. Further, Dr. Burkhardt, who examined Lucille about one month after the marking of that document on 19th September 2010, found that Lucille was suffering from dementia. He was of the view that due to Lucille's mental state that she was unable to conduct business on her own and required a guardian to make decisions on her behalf. In my view, Lucille was aged, illiterate and did not have the benefit of legal advice for her to fully appreciate the contents of such a document.
- [28] However, despite the finding that neither Ophelia nor Lucille were the Claimant's tenants, this does not detract from the fact that they were in physical possession of the property from the 1960's to 2007.
- [29] The Defendant also asserted possession in her own right. However, she failed to convince me that she was in continuous undisturbed possession of the property in her own right since her explanations were not plausible. She stated that she lived with Lucille since she was three years old in 1961 until she migrated to Venezuela in 1979. Yet during the time she lived in Venezuela from 1979-1997 she returned to the property each year where she stayed until she finally returned to Grenada in 1997, where she lived on the property continuously. She admitted that the house was a small two bedroom chattel house and that when she migrated she left Lucille and her daughter Abigail Thomas living there. She also admitted that

¹³ Page 35 of Trial Bundle filed 15th January 2014

Abigail, her boyfriend and her child lived there from around 1991-1992 but they left in 2006. There was no other evidence to contradict the size of the house as stated by the Defendant. If I accept the Defendant's position on the size of the house then her explanation that she stayed there when she visited and after she returned in 1997 is incredible since during that time based on her evidence there were at least three other adults living in the house, namely Lucille, Abigail and her boyfriend.

[30] Further the Defendant admitted that in 2007 she placed Lucille in Cadrona home for the aged. She admitted that she rented the house on the property to Larry Williams. The letters dated 2nd November 2008 and 28th January 2009 confirms the Defendant's rental of the house. The Defendant's address stated at the top of the said letters was Grand Anse but she denied that she lived there. She stated that the address in the said letters were her work address and that she would stay in St. George's during the week and return to the house which she rented to stay on the weekends. I do not accept this explanation since there was no evidence that she made any arrangement with Larry Williams to stay there on weekends. Indeed, if she rented a small two-bedroom house to Larry Williams there was no explanation from the Defendant which part of the house she was using when she went there on weekends. I therefore do not accept that even when the house was rented to Larry Williams the Defendant was in occupation of the property in her own right.

[31] The Defendant's evidence established a timeline of 2006 Abigail and her boyfriend moved out, in 2007 Lucille was placed in the Cadrona Home, between 2008 and 2009 the house was rented to Larry Williams. In my view, this timeline is consistent with the evidence from the Claimant's witnesses who lived in close proximity to the property, namely Michelle Lalgie and Elfreda Robertson. They both stated that they did not see the Defendant living there until 2010. In my view, this is credible since based on the letters to Larry Williams in late 2008 and early 2009, clearly the Defendant was encountering problems in collecting rent and as

such it is reasonable to conclude that she may have asked him to leave. Both Michelle Lalgie and Elfreda Robertson acknowledged that the Defendant visited Lucille while she was living in Venezuela but they did not know her to be living on the property until 2010. Both of them were clear that the only other persons to live on the property with Lucille after Ophelia's death was Abigail, her boyfriend and her child

[32] In the circumstances, although I have found that Ophelia and later Lucille were in continuous possession of the property from the 1960s to 2007, I find that the Defendant ceased being in possession of the property in 1979 and was in possession of the property in her own right from 2010.

[33] The other element the Defendant had to prove in a defence of adverse possession is the intention to possess. Slade J in **Powell v Mc Farlane**¹⁴ described the "necessary intention to possess" as:

"3. '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 processes of the law will allow'".

[34] In this jurisdiction Alleyne J, adopting the learning from Halsbury's 4th edition Vol. 28, para 769 in **Lett v Davis and Jones**¹⁵:

"To constitute dispossession, acts must have been done which were inconsistent with the enjoyment of the soil by the person entitled for the purposes for which he had a right to use it and with the intention of establishing dominion and not merely with the intention of using that land until prevented from doing so."

[35] I have not been satisfied that although Ophelia and Lucille occupied the property continuously from the 1960's until 2007 that they did anything to demonstrate that they intended to establish dominion over it to the exclusion of anyone. The evidence was they lived on a small chattel house on the land. There was no

¹⁴ [1977] 38 P&CR 452 at page 470

¹⁵ Civil suit 403 of 1994 at para 1

evidence that they attempted to change it from a chattel house to a more permanent structure. They never placed any permanent structures on the property. They never surveyed the land, paid taxes, or even had a Statutory Declaration prepared stating that they were in uninterrupted possession of it for a long period.

[36] The Defendant asserted that her predecessors Ophelia and Lucille and her daughter Abigail planted fruit trees, flowers and hedges around the house on the property. However under cross-examination she admitted that she could not find any evidence where she stated that the hedges which were chopped down by Michelle Lalgie were planted by Ophelia or Lucille as fencing for the land. Further, the Defendant's witness Alexander Radgman said he gave Lucille a cherry tree but he admitted under cross-examination that he did not see her plant it.

[37] Even the Defendant's intention to establish dominion on the property can be traced to her notice to the persons in adjoining property to survey the property¹⁶. The Defendant stated that she was aware that in 2007 Gellineau Gordon instituted proceedings in the Magistrate Court to have Lucille removed from the property for non-payment of rent. She acknowledged that the action was withdrawn. She also stated that the Claimant visited her in March 2010 on the property when she was informed that it belonged to him and that Romain Gordon was the executor and that Michelle Lagie was doing administrative work for him. She stated that she understood the Claimant to be referring to land in boundary with the property. She also stated the Claimant did not ask for rent but they spoke about Lucille. She admitted that in July 2010 she received a letter from the Claimant's attorney requesting her to vacate the property.

[38] While I accept that the Claimant did not give evidence to challenge the conversation he had with the Defendant in March 2010, in light of the Defendant's evidence I accept the fact of the conversation. However I do not accept the

¹⁶ Letter dated 18th February 2010- page 18 of Trial Bundle filed 15th January 2014.

Defendant's interpretation or understanding of that conversation since her actions contradict that position. The Defendant knew that Ophelia and Lucille were living on the property and that they had no documentary proof of ownership. She knew that in 2007, while Lucille was alive but living at the Cadrona Home, that proceedings were instituted in the Magistrate's Court for possession of the property. It is therefore plausible to me that the Defendant knew that at least by 2007 that the ownership of the property was in issue. It is therefore not entirely coincidental that after the Defendant served the notice of her intention to survey that one of the persons on whom she served the notice turned up on her step and stated that he owned the property.

[39] In the circumstances, I have concluded that the Defendant only formulated the intention to possess the property in 2010. As such the action was not statute barred since the element of intention to dispose the owner to successfully mount a defence for adverse possession only arose in 2010. In my view, the right to bring the action did not accrue in 1996, which was the date of the last payment of rent but in 2010, which was when the Defendant demonstrated her intention to dispossess the Claimant.

Conclusion

[40] The Claimant is the owner of the property. Although Ophelia and Lucille were not the Claimant's tenants, they were in possession of the property from 1967 to 2007 but they did not do anything on the property to demonstrate that they intended to dispossess the Claimant of the property. The Defendant has failed to establish in her own right she was in continuous undisturbed possession of the property. Indeed the Court finds that she was in possession from around early 2010 when her first act to demonstrate her intention to dispossess the Claimant was in February 2010.

Order

[41] Possession of the property is granted to the Claimant.

[42] The Defendant's counterclaim is dismissed.

[43] The Defendant to pay the Claimant costs of the action in the sum of \$7,500.00.

Margaret Y. Mohammed
High Court Judge