

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2005/0354

BETWEEN:

KENNIE TANNIS

(Appointed Legal Personal Representative of the Estate of Maurice Tannis, deceased and substituted pursuant to an Order of Court made the 6th day of July, 2012)

CLAIMANT

-AND-

PATRICK BUNYAN

DEFENDANT

Appearances: Mr Samuel E. Commissiong, Counsel for the Claimant, Mr Emery Robertson Snr., Counsel for the Defendant..

2015: Apr. 14
Jun. 10

JUDGMENT

BACKGROUND

[1] **Henry, J.:** The dispute in this case surrounds competing claims by Mr Maurice Tannis deceased and Mr Patrick Bunyan over ownership of land (“subject land”) located in picturesque Port Elizabeth, Bequia. Mr Maurice Tannis passed awayⁱ after initiating this claim. His son Kennie Tannis was substituted as claimant in his place.ⁱⁱ Kennie Tannis and Patrick Bunyan are both residents of Bequia. Mr Bunyan also has a residence in the United States of America. Mr Tannis and Mr Bunyan agree that the subject land had previously belonged to Walter Tannis

deceased who migrated to the USA many years ago. Mr Kennie Tannis contends that his father is the owner of the said landⁱⁱⁱ or alternatively that he acquired title to it by adverse possession based on occupation for a cumulative period of 33 years. Kennie Tannis seeks a declaration that he is the owner of the land, damages for trespass and for destruction of property.

- [2] Mr Patrick Bunyan maintains that he bought the land from one Marie Mack to whom Walter Tannis left it by will. He contends that his registered Deed of Conveyance establishes his ownership of the land. Mr Bunyan has counterclaimed for a declaration that he is the owner of the subject land, damages from the Tannises for trespass and an order setting aside Maurice Tannis' Statutory Declaration. He also seeks damages for loss occasioned by this suit which he submits resulted in the delayed completion of his commercial development of the subject land.

ISSUES

- [3] The issues which arise for consideration are:
- (1) Whether Maurice Tannis is the fee simple owner of the said land?
 - (2) Whether Patrick Bunyan is the owner of the subject property? And;
 - (3) Whether Maurice Tannis' estate or Patrick Bunyan is entitled to damages?

ANALYSIS

Issue 1 – Is Maurice Tannis the fee simple owner of the said land?

- [4] The Tannises claim that Maurice Tannis^{iv} is “the owner of a parcel of land situate at Port Elizabeth, Bequia described in deed No. 481 of 1995.”^v Mr Kennie Tannis deposed that the land is the “subject matter of a Declaration of Possessory Title dated 16th February 1993” which was given a “registered number 481 of 1995.” He testified that the land has been in his father's possession for more than 34 years,^{vi} and that he “made a possessory title to it.”^{vii} The Tannises maintain^{viii} that they rely on Mr Maurice Tannis' adverse possession of the land

for a period of over 12 years, to defeat any claim Mr Bunyan and his predecessors in title might have to the land.

- [5] Essentially, Maurice Tannis contends on the one hand that he is the legal owner of the said land and on the other hand, he maintains that the paper owner's right and interest in the land has been extinguished by adverse possession. His respective claims are mutually exclusive and not maintainable in law, since he cannot be simultaneously in adverse possession of the very title he is asserting.^{ix} Kennie Tannis submits that the claim to ownership by adverse possession is made pursuant to sections 17(5) and (6) of the Limitation Act.^x Those provisions are reproduced below. Sub-section (1) is included for context:

“17. Time limit for actions to recover land

- (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.
- (5) Part I of the Schedule contains provisions for determining the date of accrual of rights of action to recover land in the cases therein mentioned.
- (6) Part II of the Schedule contains provisions modifying the provision of this section of their application to actions brought by, or by a person claiming through, the Crown.”

- [6] These provisions preclude an owner of land from successfully maintaining a claim to recover it 12 or more years after another person has entered into adverse possession of it. They also outline how the 12 year period is to be ascertained and calculated. Contrary to Mr Tannis' submissions, these statutory provisions cannot effect a transfer of title of property from a paper owner to a squatter who has established adverse possession for twelve years. Rather, the Act confers on

such squatter, protection from interference by the dispossessed person.^{xi} Therefore, Maurice Tannis cannot initiate a claim seeking title to the land by adverse possession. In other words, he cannot in law rely on adverse possession of the land to ground his claim for a declaration that he is the fee simple owner of the subject land. Likewise, his assertion that he is the fee simple owner, based as it is on the self-serving Statutory Declaration is ineffective to convey title to him as it does no more than record his account of how long he has occupied the land. It is not a legitimate or legally effective avenue for effecting a conveyance of interests or rights in land. Mr Tannis' claim must fail. I therefore dismiss Maurice Tannis' claim for a declaration that he is the fee simple owner of the hereditaments described in Statutory Declaration No. 481 of 1995 and set out in registered survey plan number GR6/135. I make no such order in favour of his estate.

Issue 2 – Is Patrick Bunyan the owner of the said land?

[7] Patrick Bunyan claims that he bought the subject property from Marie Mack who inherited it from the previous owner Walter Tannis. He asserts that Marie Mack extracted Letters of Administration to Walter Tannis' estate, conveyed the property to herself by Deed of Assent^{xii} and subsequently to him by Deed of Conveyance.^{xiii} Mr Bunyan maintains that he immediately went onto the said land and exercised acts of ownership over it including employing and dispatching a gardener to trim and clear the land. He deposed that he conducted a survey and investigations on the land preparatory to commencing construction of a commercial building and that he had received financial approval from a financial institution for the development when Maurice Tannis initiated these proceedings. As a result, he gave an undertaking to the court not to carry out any further physical works until authorized by the court to do so.

[8] In defence to this claim, Maurice Tannis relies on the assertion that he is the fee simple owner of the land by adverse possession and that Patrick Bunyan had actual or constructive notice of this adverse possession.^{xiv} In essence, he is contending that his title as squatter is superior to that of the paper owner. He has stopped short in his pleadings and evidence of raising the shield that Mr Bunyan's claim against him is statute-barred. He has made the cardinal error of not specifically pleading limitation as a bar to Mr Bunyan's claim. He therefore cannot rely on it to defeat Mr Bunyan's claim.^{xv} The effect of Mr Bunyan's registration of the Deed of Conveyance transferring the property from Marie Mack to him is to establish him as the registered owner of all legal and equitable interests, rights and title to the land described in it.^{xvi}

[9] The subject land is described in the Schedule to Deed of Conveyance No. 1043 of 2002 as follows:

“ALL THAT LOT PIECE OR PARCEL OF LAND situate at Port Elizabeth Bequia in the State of Saint Vincent and the Grenadines being One (1) Lot more or less and being abutted and bounded on the North by the land of Joseph Tannis on the South by the land of Hilton Lewis on the East by the land of Mary Leach and on the West by the land of Maurice Tannis or HOWSOEVER OTHERWISE the same may be butted bounded known distinguished or described TOGETHER with all ways waters watercourses rights lights liberties privileges and appurtenances thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto.”

In the absence of a viable defence by Maurice Tannis and having regard to the fact of registration of the said Deed, it is indisputable that Mr Bunyan is the true owner of the subject land. It is accordingly declared that Patrick Bunyan is the

registered owner of the property described in the said Deed with all rights, interests and title to it.

Issue No. 3 – Is Maurice Tannis’ estate or Patrick Bunyan entitled to damages?

[10] Based on the foregoing, it is immediately apparent that there is no basis on which Maurice Tannis’ estate may recover damages from Patrick Bunyan. His claim for damages for trespass and for destruction of property is therefore dismissed. On the other hand, Patrick Bunyan having being declared the owner of the subject land and having being forced to defend himself against an unmeritorious action by Maurice Tannis, is entitled to recover damages from Maurice Tannis’ estate in respect of such loss he might have sustained arising out of the delayed start of his commercial enterprise. But for Maurice Tannis’ insistence that he owned the subject land coupled with the initiation of this suit, Mr Bunyan would quite likely have proceeded with the timely construction of his building on the subject land in or about 2005 without needing to make financial adjustments.

[11] During the course of these proceedings, Mr Tannis applied to the court for an interim injunction^{xvii} to restrain Mr Bunyan from trespassing on the subject land. Mr Bunyan gave an undertaking to the court not to do anything on the land unless the court gives him permission to do so. Usually the applicant for an interlocutory injunction provides an undertaking in damages to indemnify the respondent for any losses he may incur if the applicant is unsuccessful in the substantive claim. Mr Tannis would in the normal course of events have had to provide such an undertaking if the interim injunction was granted. He was not required to give such an undertaking because the application was not heard. However, his lawsuit had the effect of interfering with Mr Bunyan’s enjoyment and use of his property. Therefore, the absence of such undertaking does not absolve him from liability for Mr Bunyan’s losses which reasonably and

foreseeably arose from the Tannises' interference with his enjoyment and use of the subject land. Mr Bunyan is entitled to recover damages for that loss.

[12] Mr Maurice Tannis initiated this suit and his estate persisted with the claim in the face of Mr Bunyan's strident assertions by that he had acquired title to the subject property by Deed. By giving an undertaking not to deal with the property, Mr Bunyan was effectively enjoined in similar circumstances as if an interim injunction had been granted by the court. Mr Bunyan filed an application^{xviii} to have that undertaking discharged. For reasons which are not apparent on the face of the record, that application was not dealt with. Mr Tannis has failed in his bid to establish right of ownership to the land. In seeking to prove such interest, his actions and insistence on such right prevented Mr Bunyan from enjoying and using his property. In the premises, Mr Bunyan would have suffered consequential financial losses arising from the delayed start of his project. As owner of the subject land, he is entitled as far as achievable monetarily, to be restored to the position he would have been in if this suit had not been initiated.^{xix} He is entitled to recover an amount representing general damages for those losses reasonably incurred by the delay occasioned by this claim and which hindered the commencement of his project. The measure of his loss is directly related and limited to the architectural plans and approved financials which existed at that time and referenced in his claim. I so find.

ORDERS

[13] It is accordingly ordered:

1. Kennie Tannis' claim as legal personal representative of the estate of Maurice Tannis, for a declaration that Maurice Tannis' estate is the fee simple of the subject land located at Port Elizabeth Bequia and described in Statutory Declaration 481 of 1995 is dismissed.

2. Kennie Tannis' claim as legal personal representative of the estate of Maurice Tannis, for damages for trespass and destruction of property is dismissed.
3. Statutory Declaration No. 481 of 1995 is hereby cancelled and the Registrar is directed to make the necessary notation in the Register of Deeds.
4. Judgment is entered for the Defendant Mr Patrick Bunyan on his counterclaim.
5. It is declared that Patrick Bunyan is the registered owner of the subject property situated at Port Elizabeth, Bequia as described in the Deed No. 1043 of 2002 with all rights, interests and title to it.
6. Kennie Tannis as legal personal representative of the estate of Maurice Tannis shall pay damages to Patrick Bunyan as assessed on application to be made by Mr Patrick Bunyan, such application to be made within 3 months of today's date, that is on or before September 10, 2015.
7. Kennie Tannis as legal personal representative of the estate of Maurice Tannis shall pay to Patrick Bunyan prescribed costs of \$7,500.00 pursuant to Rule 65.5 (2) (b) of the Civil Procedure Rules 2000.

.....
Esco L. Henry
HIGH COURT JUDGE

ⁱ On September 27, 2009.

ⁱⁱ By Order of court dated July 6, 2012.

ⁱⁱⁱ By virtue of Deed No. 481 of 1995 (i.e. a Statutory Declaration).

^{iv} And his estate by extension.

^v See paragraph 1 of the Claim Form and paragraphs 2 and 3 of the Statement of Claim filed on July 21, 2005.

^{vi} See paragraphs 1 and 12 of Kennie Tannis' Affidavit filed on October 19, 2012.

^{vii} Under cross-examination.

^{viii} In their Reply to Mr Bunyan's Defence filed on July 7, 2006.

^{ix} See **Arnold Celestine (Administrator of the estate of O'Ferril Celestine) v Carlton Baptiste GDAHCVAP2008/011 per George-Creque J.A. (as she then was) at para. 12** where she said:

"To claim to be in possession of land "as of right", whilst at the same time claiming to be in adverse possession of it, is simply incomprehensible, given the legal connotation of each. If an owner is in possession "as of right" (i.e. with the paper title) then the question of that owner being in adverse possession to his own paper title simply cannot arise as a matter of law. It goes without saying that the obverse position is this: Adverse possession can only arise where it is recognized by the "adverse possessor" that the paper title is vested in someone else. In essence, the adverse possessor seeks to say that he has dispossessed the paper owner."

^x Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines, 2009. See paragraph 1 of his Submissions filed on May 6, 2015.

^{xi} Ibid. at paras. 15 and 16 of the **Arnold Celestine case per George-Creque J.A. (as she then was)** where she explained a similar provision of the Grenada Limitation Act:

"... these provisions are directed at the right of the paper owner to bring a claim for recovery of land and limit the time frame within which the paper owner may do so. This contemplates that the paper owner must have become dispossessed of the land—by the adverse possessor. What these provisions do not permit or contemplate is the situation where, as here, the adverse possessor brings a claim against the paper owner and then sets up the limitation bar as against the paper owner as a basis upon which the adverse possessor becomes entitled to ownership of the land.

I can do no better than adopt the explanation contained in the treatise by Cheshire (Modern Law of Real Property, 12th Ed. p.901) which I take the liberty of reproducing:

'...the sole, though substantial privilege acquired by a squatter is immunity from interference ... by the person dispossessed. In other words, the statutory effect of twelve years' adverse possession is merely negative...;'

There is no transfer, statutory or otherwise, to the squatter of the very title held by the dispossessed person.”

See also dicta of Lord Radcliffe in **Fairweather v St. Marylebone Property Co. Ltd. [1963] AC 510 at 535 cited by George-Creque J.A. (as she then was) in the Arnold Celestine case at para. 16** as follows:

“ He is not at any stage of his possession a successor to the title of the man he has dispossessed. He comes in and remains in always by right of possession, which in due course becomes incapable of disturbance as time exhausts the one or more periods allowed by statute for successful intervention. His title, therefore, is never derived through but arises always in spite of the dispossessed owner.”

^{xii} Number 1032 of 2002 dated March 27, 2002.

^{xiii} No. 1043 of 2002 dated March 28, 2002.

^{xiv} See paragraph 9, 11 and 12 of his Defence to Counterclaim, paragraphs 1 and 2 of his Reply and paragraph 2 of his statement of claim which state in parts respectively:

“Defence to Counterclaim

9. The Claimant repeats paragraphs 1 – 8 of his Reply and asserts them as his Counterclaim in these proceedings. He makes no admission nor denial of the particulars of loss because he does not know if the same are true. He will be required to prove them at the hearing of this case.

11. The Claimant will also contend that the Defendant had actual notice that the said land was not unencumbered. For on at least two occasions when he tried to enter upon the disputed land, the Claimant asked him to leave or be ejected. He chose to leave.

12. Further and in the alternative, the Defendant after he returned to Saint Vincent and The Grenadines sometime in 2000 (or before) would have seen the Claimant and/or his agents engaged in the cultivation of the said land. This too is actual notice of a claim to the said land; alternatively, it would be constructive notice if the Defendant willfully blinded his eyes to existing facts as were visible to any normal observer.

Reply

1. The Claimant asserts his allegation stated in paragraph 2 of the statement of Claim and states that any activity that was carried on upon the disputed land was done with the consent of the Claimant or his duly authorized agents. It is not a relevant consideration that the disputed land formed part of the estate of any testator. What the law requires is that the Claimant must assert and prove adverse possession of the disputed land for a continuous period of at least 12 years or more immediately preceding the institution of these proceedings. This is what the Claimant has asserted.
2. ... The Claimant had and continued to have adverse possession of the disputed land notwithstanding the matters alleged in the said paragraphs.

Statement of Case

2. The Claimant is the fee simple owner of a parcel of land admeasuring 4.394 square feet and is more particularly delineated on the registered Survey Plan numbered Gr6/135....The Deed by which he evidences is claim to the said land is also annexed to the Claim Form.”

^{xv} See **Kettleman and other v Hansel Properties Ltd. [1988] 1 All E. R. 38 at per Ralph Gibson L.J.** where he stated:

“If, ... no plea of limitation is raised in the defence the plaintiff is entitled to assume that the defendant does not wish to rely on a time-bar but prefers the court to adjudicate on the issues raised in the dispute between the parties....

If a defendant decides not to plead a limitation defence and to fight the case on the merits he should not be permitted to fall back on plea of limitation as a second line of defence at the end of the trial when it is apparent that he is likely to lose on the merits.”

See also **Chapple v Durston (1830) C. & J. 1.**

^{xvi} Pursuant to section 5 (1) of the Registration of Documents Act Cap 132 of the Revised Laws of Saint Vincent and the Grenadines 2009 which provides:

“5 (1) Every document relating to real estate required to be registered under this Act shall, on registration, operate both at law and in equity according to the priority of time of registration and the right, title and interest of the person conveying, incumbering or otherwise dealing with such real estate against every other document subsequently registered with respect to such other real estate.”

^{xvii} By Notice of Application on May 11, 2012

^{xviii} On May 11, 2012.

^{xix} McGregor on Damages, 12th ed. Page 6.