

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2004/0224

BETWEEN:

REYNOLD ROSE

of Belmont in the State of Saint Vincent and the Grenadines but currently residing in the United States of America by his lawful Attorney on record

LEROY ROSE

CLAIMANT

-AND-

CLARE POWELL

of Arnos Vale in the State of Saint Vincent and the Grenadines but currently residing in England

DEFENDANT

JUDGMENT

Appearances: Appearances: Mr. Olin B. Dennie for the Claimant, Mr Grant Connell for the Defendant.

2015: Jun. 18

Jul. 13

BACKGROUND

[1] **Henry, J.:** Mr Reynold Rose and Ms Clare Powell are neighbours. They live at Arnos Vale on adjoining lands they bought from one Mr Casson. Ms Powell

purchased her lands in 1983¹ while Mr Rose bought his in 1989.² Before Mr Rose purchased his lot, Ms Powell went into occupation of her property and constructed a house on it. She then enclosed it with a perimeter wall. It turns out that Ms Powell constructed part of her dwelling house on Mr Rose's land and she does not dispute this. She concedes that the encroachment amounts to 5,166.50 square feet. Mr Rose brought this suit³ seeking a declaration that Ms Powell has unlawfully built part of her house on his land, damages for trespass and an order that Ms Powell pay him \$54,248.25 as restitution for the value of the land.

[2] Ms Powell contends that she has been in continuous and unmolested possession of the disputed lands since 1984. She argues that Mr Rose's rights, title and interest in the land have been extinguished by virtue of section 17 of the Limitation Act ("the Act").⁴ She brought a counterclaim seeking declarations that Mr Rose's interests, rights and title to the subject land have been extinguished and that she is the fee simple owner. She also seeks an injunction restraining Mr Rose from trespassing on the said land. She has since discontinued her counterclaim.⁵ Mr Rose now applies⁶ for judgment in the sum of \$54,248.25 based on Ms Powell's admission that she encroached on his land. Ms Powell resists that application.

ISSUE

[3] The issue is whether Mr Rose is entitled to judgment on admissions.

¹ By Deed of Conveyance 1605 of 1983.

² By Deed of Conveyance Number 2046 of 1989 dated January 13, 1989.

³ In April 2004.

⁴ Cap. 90 of the Revised Laws of Saint Vincent and the Grenadines, 1990.

⁵ By Notice of Discontinuance filed on May 26, 2015.

⁶ By Notice of Application filed on June 2, 2015.

ANALYSIS

Issue – Is Mr Rose entitled to judgment on admissions in the sum of \$54, 248.25?

[4] Mr Rose contends that Ms Powell in her Defence, has admitted the encroachment and also the value of the land claimed in his statement of claim.⁷ He submits that he is therefore entitled to restitution for that value in the sum of \$54,248.25. His application is made pursuant to Part 14.1 (2) and 14.4 (1) of the Civil Procedure Rules 2000 (“CPR”) which provide respectively⁸:

“14.1 (1) A party may admit the truth of the whole or any part of any other party’s case.

(2) A party may do this by giving notice in writing (such as in a statement of case or by letter) before or after the issue of proceedings.

14.4 (1) If a party makes an admission under rule 14.1 (2) (admission by notice in writing), any other party may apply for judgment on the admission.

(2) The terms of the judgment must be such as it appears to the court the applicant is entitled to on the admission.”

[5] These rules give the court discretion to enter judgment against a party who has admitted the claim brought against her. The court may enter judgment if it is satisfied that based on the admissions, the other party is entitled to the judgment sought. In exercising its discretion, the court must give effect to the overriding objective to deal with cases justly.⁹

⁷ At paragraphs 1, 2 and 3.

⁸ Rules 14.1 (1) and 14.4(2) are included for context.

⁹ See CPR 1.1(1) and 1.2 which provide respectively:

“1.1 (1) The overriding objective of these rules is to enable the court to deal with cases justly.

*1.2 The court must give effect to the overriding objective when it –
(a) exercises any discretion given to it by the Rules; or
interprets any rule.”*

[6] It is necessary to examine the relevant pleadings to determine if Ms Powell in fact made an admission of Mr Rose's claim. At paragraphs 1 to 3 of his statement of claim, Mr Rose pleaded:

- "1. The Claimant is by virtue of a Deed of Conveyance dated the 13th day of January 1989 and registered at the Registry, High Court of Justice as deed Number 2046 of 1989 the lawful owner of Lot Number 22 at Arnos Vale in the State of Saint Vincent and the Grenadines being by admeasurement 11,998 Square Feet. (hereinafter referred to as the Claimant's land)*
- 2. The Defendant is the owner of Lot Number 23 which is by admeasurement 10,371 Square Feet and is adjacent to the Claimant's land.*
- 3. The Defendant in the course of the construction of her dwelling house on lot Number 23 has lawfully encroached on a part of the Claimant's land which by a preliminary survey is by admeasurement 5,166.50 Square Feet and is valued at \$54,248.25 or \$10.50 per Square Foot."*

[7] Mr Rose explained¹⁰ how he discovered the encroachment:

- "4. The Claimant in the course of the construction of his dwelling house on the Claimant's land some four years ago discovered the encroachment by the defendant on Lot Number 22 and wrote to the defendant seeking payment for the said parcel of land."*

[8] In response Ms Powell stated:¹¹

¹⁰ See paragraph 4 of his statement of claim.

“(1) Paragraph 1,2 and 3 of the Claimant’s Statement of Claim are admitted.

(2) The defendant contends that she constructed her dwelling house in 1984 on the lands described as lot number 23 as detailed in schedule (sic) to deed number 1605/1983.

(3) The defendant enclosed the said property in 1984 with a 4ft concrete wall which exists to date.

(4) The Defendant has been in continuous and unmolested possession of said enclosed parcel of land since 1984.

(5) Save that in or about 2000 the Claimant began construction of his property on Lot number (22) and noticed an encroachment sixteen (16) years after the Defendant had constructed the said wall enclosing her property on Lot (23) Paragraph 4 of the Claimant’s Statement of Claim is denied.

(6) On the hearing of this matter the Defendant will contend that the rights, title and interest of the Claimant in the disputed land are extinguished by virtue of section 17 of the Limitation Act Cap 90 of the Laws of Saint Vincent and the Grenadines Revised Edition 1990.”

[9] In paragraph 1 of her Defence, Ms Powell has admitted encroaching on Mr Rose’s land. However, in the succeeding paragraphs she raises the shield of adverse possession. She thereby asserts that she occupied the subject land continuously and undisturbed for a period of over 12 years. She contends that any rights, interest or title in the land to which Mr Rose was entitled have been extinguished

¹¹ See paragraph 1 of her Defence.

by operation of the Act. Her admission is accordingly qualified by this reliance on the statutory bar of limitation provided by section 17 of the Act.

[10] Section 17 (1) of the Act provides:

“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.”

“land” is defined as follows:¹²

“includes any corporeal hereditaments, rent charges and any legal or equitable estate or interest therein, including an interest in the proceeds of the sale of land held on trust for sale, but except as provided above in this definition does not include any incorporeal hereditaments.”

In summary, the Act prevents an owner of land from bringing a claim for recovery of the land more than 12 years after the date when the action first accrued. In other words, such action is barred after that time.

[11] It seems to me that Mr Rose can succeed in his application for judgment on admissions, only if Ms Powell’s admission was unconditional and unequivocal.¹³ If however, Ms Powell provides an explanation which affords her a viable defence, her admission is conditional and cannot be relied on by Mr Rose to ground his application for judgment.

¹² See section 2 (1) of the Act.

¹³ See **Fresh N Clean (Wales) Ltd v Miah [2005] All ER 368** where it was held that CPR 14 provided a discretionary clause which allowed the court to decide whether and to what extent it should allow judgment to be entered based on an admission.”

The court in the **Fresh N Clean case** did not allow the claimant to enter judgment based on the third defendant’s affidavit, on the basis that there had not been sufficient admission by the second defendant to satisfy granting judgment.

[12] Having looked at the pleadings, I am not satisfied that Ms Powell's acknowledgement that she encroached on Mr Rose's land is an unequivocal admission. While she conceded that the property belongs to Mr Rose and is registered in his name, she shelters under the statutory defence of limitation. In her witness statement filed on April 13, 2006 she explained that she bought her land in 1983 and Mr Rose bought his six years later. Ms Powell deposed also that she constructed a wall around her property in 1984 and has lived there occupying the enclosed portion, including the subject land for over 20 years. She states that Mr Rose began the construction of his house in 2002, and in 2004 got his lawyers to write her stating that she had encroached on his land. Ms Powell does not indicate what if any response she provided to that letter. Mr Rose did not file any witness statement in this case. In his statement of claim he refers to that letter being sent but does not indicate if he got any response.

[13] If Ms Powell's account of her occupation of the subject land is factual, her occupation of the land would have continued for 21 years by the time the claim was initiated by Mr Rose. Under section 17 (1) of the Act, it would provide an arguable defence to the claim against her. In view of the defence mounted by Ms Powell, the interests of justice demand that she be given an opportunity to defend the claim. I am not satisfied that her "admission" is unqualified. It would not be just to ignore her viable defence and enter judgment on her qualified admission. I therefore make no order for judgment on her admission.

[14] Mr Rose submits further that he exhibited a letter to his statement of claim to which Ms Powell has not responded. He submits further that this failure to respond is tantamount to an admission. The letter is dated April 14, 2004. It contains the same assertion as set out in paragraphs 1 – 3 of the statement of claim. Ms Powell has addressed them fulsomely in her defence.¹⁴ The letter does not contain a separate or different allegation which requires a further response.

¹⁴ At paragraphs (1) – (5).

In any event, Ms Powell mentioned the letter at paragraph 10 of her witness statement and neither admits nor denies its contents. Her silence cannot amount to an admission. There is no merit in this submission.

[15] Mr Rose contends also that Ms Powell's acknowledgement stops time running against him.¹⁵ He submits that the effect of this acknowledgement is to negative any defence she would have by virtue of the Act. The fallacy in this submission is self-evident. Even if Ms Powell's silence is an acknowledgement of Mr Rose's title to the land which stops time from running, over 20 years would have elapsed at the time the "admission" was alleged to have been implicitly made in the pleadings. Ms Powell has set up the defence of limitation in those same pleadings. Mr Rose's action would have long accrued and would be time-barred on that date. This submission does not assist Mr Rose. His application is baseless and must fail.

ORDER

[16] It is accordingly ordered that:

1. Mr Reynold Rose's application for judgment on admissions is dismissed.
2. Reynold Rose shall pay costs of \$350.00 to Clare Powell pursuant to CPR 65.4.
3. The claim shall proceed hereafter in accordance with the Civil Procedure Rules 2000 ("CPR"). The learned Registrar is directed to set this matter down for pre-trial review. The Registrar is to serve notices of pre-trial

¹⁵ See paragraph 4 of his Skeleton arguments filed on June 22, 2015.

4. review on both parties in accordance with CPR 27.10 (2) with proof of service.

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Esco L. Henry
HIGH COURT JUDGE