

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2006/0018

BETWEEN

DENNIS HADAWAY

of Vermont

CLAIMANT

and

AARON BUSHAY

of Vermont

and

ROBIN PUNNETT

of Queensbury

DEFENDANTS

Appearances:

Mr. Andreas Coombs holding papers for Mr. Carlyle Dougan Q.C. for the claimant. Ms. Samantha Robertson for the first defendant.

Mr. Sten Sargeant for the second defendant.

2016: Jun. 16

2017: Jun. 13

Jul. 24

Judgment

BACKGROUND

[1] **Henry, J.:** Mr. Dennis Hadaway claims to be the owner of one acre of land at Queensbury. He alleged that he bought a parcel of land from Mr. Robin Punnett in 1981 and subsequently discovered that it amounted to only ½ acre. He alleged that he did not get a deed establishing his ownership but, instead registered a Declaration of Title in 2002 - No. 623/2002. He claimed that after he bought his land, he acted as agent for his cousin Aaron Bushay in the purchase of just over 4 acres of land from Mr. Punnett. That parcel was adjacent to his.

[2] Mr. Hadaway complained that Mr. Bushay trespassed onto his land in 2002. He alleged that he spoke with Mr. Bushay who acknowledged that the lands belonged to him (Hadaway) and promised not to repeat the trespass. Mr. Hadaway asserted that he had occupied and possessed the land for over 20 years prior to the alleged trespass.

[3] Mr. Hadaway brought this claim against Mr. Bushay and Mr. Punnett for possession of the ½ acre on which he alleged that Mr. Bushay had trespassed; a declaration that Mr. Punnett sold him the ½ acre in 1981 and an injunction restraining Mr. Bushay from entering, cultivating or in any way interfering with the disputed parcel of land.

[4] Mr. Bushay pleaded that he bought his property from Mr. Punnett's mother and authorized Mr. Hadaway to plant crops on it. He denied trespassing. He asserted that the disputed lands have always been his as reflected by his Deed of Conveyance No. 874 of 1986. He filed an ancillary claim for a declaration that he is rightly in possession of those lands; cancellation of Mr. Hadaway's declaration of title; an injunction restraining Mr. Hadaway from trespassing on those lands and accounts of all dealings by Mr. Hadaway.

[5] Mr. Punnett acknowledged that he sold lands to Mr. Hadaway and maintained that he (Hadaway) received all the lands that he bought. He also admitted that Mr. Hadaway bought lands from him on Mr. Bushay's behalf. He denied knowledge of the alleged trespass or related allegations.

ISSUES

[6] The issues are:

1. Who owns the disputed ½ acre of land at Queensbury?
2. To what remedy is Mr. Hadaway, Mr. Bushay or Mr. Punnett entitled?

ANALYSIS

Issue 1- Who owns the disputed ½ acre of land at Queensbury?

[7] The property registered by Deed of Conveyance 874 of 1986 comprises 4 acres, 1 rood, 17 poles, including the disputed 1/2 acre. The Deed of Conveyance was executed by Eileen Punnett as vendor. Eileen Punnett was Robin Punnett's mother. The documentary evidence reflects that the property was not sold by Mr. Punnett but by his mother. None of the parties explained why they kept referring to Mr. Punnett as the vendor. It is conceivable that he assisted his mother or served as her agent at some point. In any event, it was accepted by all parties that Mr. Hadaway concluded the purchase on behalf of Mr. Bushay who was in England at the time.

[8] Mr. Hadaway testified that in 1981, he bought land for himself from Mr. Punnett for \$6500.00. He insisted that it was 1 acre. He did not receive a deed. He indicated that Mr. Punnett pointed out the boundaries to his land at the time of purchase. He alleged that in 1981 when he surveyed it, he discovered that it was only ½ acre. He stated that Mr. Punnett told him that he was putting him in charge of ½ acre and would make up the difference in the other half acre down to the bottom.

[9] He testified that in 2002, he made a statutory declaration of title for the ½ acre disputed land. He did not produce such a declaration or documentary evidence of its existence. Mr. Hadaway stated that he planted 3 pear trees, an orange tree, a breadfruit tree and a quantity of bananas on the land. Mr. Hadaway denied that the trees were planted pursuant to the agency arrangement between them, whereby he was authorized to oversee the land. Under cross-examination, he admitted that he was in charge of Mr. Bushay's land for a short period in 1986, after which Mr. Bushay's sister - Ellie Bushay took over and worked the lands.

[10] Mr. Hadaway stated that his survey plan A243 reflects that the land he bought is butted and bounded on the north and north-east by a road which divides lands of CER Williams, on the south by lands of one Bushay and by a road. No surveyor was called as a witness to corroborate his testimony. Neither he nor any other party produced the survey plan in evidence. Mr. Punnett was also asked questions about it.

[11] Mr. Hadaway testified that Mr. Punnett gave him a plan in respect of the acre of land he claimed was sold to him. This testimony was not foreshadowed in his witness statement or his statement of claim. Remarkably, he did not put this aspect of his case to Mr. Punnett in cross-examination. He acknowledged however that Mr. Bushay has been working this disputed ½ acre from 2002 up to present.

[12] Mr. Hadaway admitted purchasing 4 acres, 1 rood, 17 poles of land at Queensbury as Mr. Bushay's agent. He stated that he has always been aware of the boundaries of that parcel but asserted that he was not present when one Clifford Williams measured the land. The implication is that he was unaware of the extent of the measurements. Notwithstanding, as agent for Mr. Bushay the law fixes him with constructive notice of those measurements in that scenario where he was Mr. Bushay's agent.

[13] He recounted that in February 2002 he entered his land and noticed that it was burnt with Gramaxone, cleared of all the grass and had a quantity of eddoes planted on it. He said he spoke to Mr. Bushay who admitted that he trespassed on his land and promised not to repeat it. He added that Mr. Punnett spoke to Mr. Bushay in his presence and confirmed that the lands belonged to him. Afterwards, he (Hadaway) caused his lawyer to write to Mr. Bushay about the trespass by letter dated 10th April 2002. It does not appear that Mr. Hadaway tried to get Mr. Punnett to rectify the transfer to him or give him a written acknowledgment to that effect.

[14] He claimed that he started working the land from the time he acquired it in 1981 and that he worked it for over 20 years from that time. In apparent contradiction, he testified that he has been travelling all the time and never settled down. He concluded his testimony by saying that he does not believe that the disputed land belongs to Mr. Bushay and to his knowledge it was not part of Mr. Bushay's land because it is a separate piece over the stream while Mr. Bushay's land is to the stream. He had no witnesses.

[15] Mr. Punnett gave evidence from his home by a deposition recorded by the learned registrar.¹ It was represented to the court that he had suffered a stroke and was physically challenged. It

¹ On March 3, 2017.

appears that his speech was also affected. The court did not have the benefit of observing Mr. Punnett. Accordingly, the weight attached to his evidence is determined by the existence of and reference to other credible supporting testimony of other witnesses.

[16] His witness summary was received as his evidence in chief. He said that he sold Mr. Hadaway ½ acre of land in or around 1981 in accordance with what was agreed. He added that it was not more or less. He was cross-examined by Mr. Hadaway's and Mr. Bushay's lawyers. Mr. Punnett acknowledged selling Mr. Hadaway more than one parcel of land over the years. He recalled selling him lands close Mr. Bushay's property. He could not remember how much. Having regard to the passage of time, this is not surprising. His witness summary was filed in June 2008, 11 years ago.

[17] On being shown survey plan A234, he testified that Mr. Hadaway owns land to the left and right while Mr. Bushay owned the land in the centre. He acknowledged requesting a surveyor to cut off the 4 acres of land for Mr. Bushay. This is compelling evidence of the boundary demarcation of the lands sold to Mr. Bushay.

[18] Chief Surveyor Mr. Keith Francis provided expert testimony. He averred that he is a licensed land surveyor in practice for over 28 years. He explained that he visited the site accompanied by Mr. Bushay who pointed out the area of land. He indicated that he did not

conduct a survey. He testified further that he referred to Deed of Conveyance 874 of 1986, Statutory Declaration 623/2002 and a copy of the survey plan (A243) referenced in Mr. Hadaway's statutory declaration.

[19] Mr. Francis averred that after familiarizing himself with the situation, he concluded that the area described in Mr. Hadaway's declaration is a portion of the land described in Mr. Bushay's deed. This is accepted by all parties. He also noted a few discrepancies in both documents. He opined that although Mr. Bushay's deed does not refer to a plan, he concluded that it was prepared from survey plan A243. One of the discrepancies he noticed was that the plan depicts the northern boundary as a road, while the deed describes it as a stream.

[20] Mr. Francis opined that this could have arisen because the person preparing the deed might not be familiar with the 'hook' symbol on the plan (near the word stream). He explained that the 'hook' symbol denotes that the lands on both sides of the stream comprise one contiguous parcel. He indicated that to an untrained person it would appear from the survey plan that Mr. Bushay's northern boundary is the stream when in fact it is the road. He explained that the stream acted as a natural separation of the two pieces. He testified that the area quoted on the plan is the total area of the land on both sides of the stream.

[21] Commenting on the declaration, Mr. Francis remarked that the schedule states that the southern boundary is 'lands of one Bushay'. He indicated that based on what was pointed out to him, he realized that Mr. Bushay's northern boundary is a stream. Another discrepancy that he noted was that the schedule describes the western boundary as a road, when in reality it is a stream. He opined that this may have been caused by the fact that the feature was not labeled on the plan. He explained that the original plan lodged at the Surveys Department depicts that feature in blue ink.

[22] Mr. Francis concluded that in his opinion, Mr. Hadaway's declaratory title describes land which is comprised in Mr. Bushay's deed. Under cross-examination, he conceded that it was possible for the owner to sell the two pieces (4 acre plot and ½ acre parcel) separately. He accepted that in such case the northern boundary would be described as 'by a stream'.

[23] Mr. Francis testified that Mr. Hadaway was not present when he first visited the subject lands. He therefore made arrangements to return on a later date to receive input from Mr. Hadaway who agreed to be present with his lawyer. He said that he returned on the agreed date, but Mr. Hadaway and his lawyer did not show up. For his part, Mr. Hadaway said that no one notified him when the lands were being surveyed for Mr. Bushay in 2010. He later said that he and his lawyer went to the site but did not meet Mr. Francis.

[24] Mr. Hadaway suggested that Mr. Francis seemed to have contradicted himself when he stated that it was possible for both parcels to be sold separately and if so the description of the northern boundary would be by a stream as in Deed of Conveyance No. 874 of 1986. I found no such contradiction in Mr Francis' testimony.

[25] Mr. Hadaway averred that although the evidence suggests that the 4 acre parcel of land was one contiguous plot, separated by a stream, Mr. Punnett sold the two parcels separately, by first

selling the disputed parcel to him in 1981 and later the big parcel to the south of the stream to Mr. Bushay in 1986. He submitted that Mr. Punnett acknowledged this. I found no such acknowledgement in Mr. Punnett's testimony. Mr. Hadaway contended that the description in the schedule of Deed of Conveyance No. 874 of 1986 clearly showed that the parcel of land sold to Mr. Bushay was bounded on the north by a stream, which Mr. Francis admitted would be the correct description if the parcel of land to the south of the stream was sold separately.

[26] Mr. Francis presented his evidence in a forthcoming and unhesitating manner. Mr. Hadaway was not credible. His testimony was contradictory on several points and evasive. I therefore prefer and accept Mr. Francis' account.

[27] The outcome of this case rests largely on the credibility of the witnesses. Mr. Hadaway claims the disputed parcel based on his assertion that he bought one acre of land. He belatedly revealed that Mr. Punnett agreed to make up the shortfall in his acquisition by apportioning a half acre parcel for him towards the bottom of the land. He did not testify when and how this was done. He did not particularize this in his pleadings nor develop it in his testimony. The parties accept that Mr. Bushay purchased over 4 acres, five years later through his agent Dennis Hadaway. Mr. Punnett could not remember how much land he sold to Mr. Bushay while he was being cross-examined but he stated it clearly in his witness summary.

[28] Each party has a duty to particularize his claim fully, to enable the other party to know the full extent of the case against him.² If he fails to do so, he will not be permitted to rely on any such pertinent unpleaded details. To allow him to do so would facilitate legal ambushes of the kind which the CPR was designed to abolish.

[29] Mr. Hadaway's testimony that Mr. Punnett agreed to allot him a further ½ acre to make up the shortfall in the lands sold is incredible and suspect. He has failed to adequately plead and prove this aspect of his case. I have concluded that it is a recent fabrication designed to deceive, appearing as it did over 10 years after he instituted his claim and filed his witness statement. Apart from his purported statutory declaration and oral testimony there is no credible proof that he bought

² CPR 8.7, 8.7A, 10.5 and 10.7 and *East Caribbean Flour Mills v Ormiston K. Boyea* SVGHC VAP2006/00.12

the disputed land from Mr. Bushay. I therefore accept Mr. Punnett's account that he sold Mr. Hadaway ½ *acre* and not 1 acre as Mr. Hadaway claimed.

[30] Mr. Hadaway submitted that a Statutory Declaration of exclusive, uninterrupted possession of land for a period of twelve years does not vest legal title to the land in the person making the declaration. He cited **Alfred Neverson v Brenda Neverson** ³ as authority. He contended however that the Registration of Documents Act ('the Act')⁴ provides for registration of documents evidencing title to land and that such registration has the effect of providing notice to all persons claiming an interest or estate in such property.

[31] He submitted that in the absence of a written deed, the law recognizes the purchaser as the equitable owner of the land until a deed is made out in his name. He argued that this is the effect of the decision in **Industrial Properties Ltd v Associated Electrical Industries Ltd**. ⁵

specifically the pronouncements by Lord Denning as articulated in Halsbury's Laws of England⁶, as follows:

'The date for completion specified in the contract for sale of land does not affect the equitable relation of vendor and purchaser. Before this date the purchaser is already equitable owner subject to his completing the purchase. The date marks the time when the purchaser becomes entitled to the rents and profits, and the vendor to interest on the unpaid purchase money. If no date is fixed by the contract, the date for completion is the time when the vendor has made out his title and when, therefore, the purchaser could safely take possession.

Where the vendor has entered into a subsequent contract for sale, the first purchaser, provided his contract is specifically enforceable, has the better title, and can assert it in a claim for specific performance against the vendor and the second purchaser, unless the latter has obtained the legal estate without notice.'⁷

³ SVGHCV2009/0017.

⁴ Cap. 132 of the Revised Laws of Saint Vincent and the Grenadines, 2009, sections 3(1)(a) and 5(3).

⁵ [1977] 2 All ER 293.

⁶ Vol. 47 (2014).

⁷ Ibid. para. 215.

[32] Mr. Hadaway submitted that his cultivation of the land until 2002 is another fact that was not challenged in evidence by Mr. Bushay and Mr. Punnett. Mr. Punnett was not asked about this and Mr. Bushay did not get to testify.

[33] Mr. Hadaway submitted further that Mr. Bushay was never a part of the negotiations when he purchased the disputed parcel of land from Mr. Punnett in 1981 and when Mr. Punnett showed him the land he was purchasing. He argued that this is another fact that was not challenged by Mr. Bushay and Mr. Punnett in evidence.

[34] He contended further that Mr. Bushay was never a part of the negotiations when he purchased the parcel of land to the south of the stream from Mr. Punnett on Mr. Bushay's behalf and when Mr. Punnett showed him that land. He argued that this was also not challenged in evidence. He seemed to have ignored that he had a duty to act in good faith on the instructions he received. He submitted further that Mr. Bushay was unable to read, and never established whether Deed of Conveyance No. 874 of 1986 was ever read to him and did not indicate if he understood its contents. The defence filed by Mr. Bushay refutes Mr. Hadaway's claim in its entirety.

[35] Mr. Hadaway accepted that while Statutory Declaration No. 623 of 2002 did not confer legal title in the disputed land to him, it served as a statement or a notice of his equitable ownership of the disputed land. He reasoned that it could be said that section 3 (1) (a) of the Act

may be applicable, because the statutory declaration was a document relating to the transfer of the disputed parcel to him but not relating to the legal title of the said land. That provision mandates registration of all documents relating to title, transfer of and incumbrance on any real estate. Since a statutory declaration does not create title to land, there is no requirement for it to be registered.

[36] Mr. Hadaway submitted further that pursuant to section 5 (3) of the Act, the statutory declaration essentially served as notice to the world, of his equitable ownership of the disputed parcel of land. That provision provides that registration of documents under the Act is notice of their contents to all persons. Based on the foregoing, even if he had registered the Statutory Declaration as alleged, it provided notice to the world that he claimed an interest in the land. It did not convey any beneficial or legal interest to him.

[37] Mr. Hadaway contended that in the interest of justice and in pursuance of the overriding objective, the court is empowered to make any order that is just in this case. He submitted that in light of the evidence it should order that he is entitled to possession of the disputed parcel because he is the equitable owner. He argued that the court should order Mr. Bushay to convey title of the disputed land to him.

[38] He submitted further that in order to decide who actually purchased the disputed parcel of land, it is important to determine the intentions of the respective parties to the contract for sale. He argued that the importance of intention as an element of a contract was illustrated by Bingham L.J. in **Fylde Aero Club v Blackpool Borough Council**⁸ where he said:

'Having examined what the parties said and did, the court must be able to conclude with confidence both that the parties intended to create contractual relations and that the agreement was to the effect contended for.'⁹

[39] Mr. Hadaway submitted that in applying the principle illuminated by Bingham L.J., the court ought to conclude that Mr. Punnett intended to sell the disputed parcel of land to him, did so in 1981 and sold the other parcel of land to the south of the stream to Mr. Bushay in 1986. He argued that alternatively, if the court finds that the disputed parcel of land was sold to Mr. Bushay, then he is entitled to receive from Mr. Punnett, an award of damages equal to the current value of the disputed parcel of land, because he sold the disputed land and transferred the legal title to Mr. Bushay after he had already collected money from him for the same land. This contention ignores the fact that Mr. Punnett was not the owner of the disputed land and that the owner Eileen Punnett is not a party to the present proceedings.

[40] Mr. Bushay contended that Mr. Hadaway has placed much reliance on the statutory declaration. He argued that the authorities suggest that this reliance is wholly misplaced. He submitted that the case of **Nancy Jaleel v Michael John**¹⁰ is authority for the proposition that a statutory declaration

⁸ [1990] 3 All ER 25

⁹ Ibid. p. 31

does not have the legal effect of vesting title in land. He also relied on **Gordon Charles v Claire Holas 11** in which it was held that:

'A statutory declaration is nothing more than a written document containing allegations of fact solemnly declared in form of law. It may have certain limited evidential value but it is not an alternative method of conveying title to land.'

[41] Mr. Bushay submitted that Dennis Hadaway cannot rely on the statutory declaration as the basis of his claim to be owner of the disputed land. He argued that the case of **Ernest Mattis v Leticia Neverson et al 12** outlined the relevant law. He contended that that case also held that a transfer or assignment of interest in real property must be evidenced by a memorandum in writing by the person against whom it is enforced, in order to be effective or create a cause of action in favour of the transferee.

[42] Mr. Punnett submitted that it is trite law that a person entitled to possession can retake it, using no more force than is necessary. He contended that Mr. Hadaway has not acknowledged that the disputed land belongs to either him or Mr. Punnett nor has he alleged that he is in possession of it. He reasoned that based on those facts, Mr. Hadaway cannot as a matter of law, rely upon the Limitation Act to recover what he claims to be his land.

[43] Mr. Punnett submitted further that, once he was out of possession from 2002 as he claimed, Mr. Hadaway can only get back into possession on the strength of his title as owner. He argued that Mr. Hadaway would be unable to establish a better title than Mr. Bushay's because his statutory declaration would be wholly inadequate.

[44] Mr. Punnett reasoned that since the expert evidence has confirmed that the area claimed by Mr. Hadaway is contained in Mr. Bushay's deed, that is the end of the matter. He concluded that the Court should find as a matter of law that of the two, Mr. Bushay is the party with the better paper

11 Civil Suit No. 151/199. 6

12 SVGHCV2009/026.4

title and has a *prima facie* right to possession. He contended that this is a presumption in law that requires no evidence from Mr. Bushay at all.

[45] The parties have all quite properly acknowledged that a statutory declaration is ineffective to create legal title to land. They have also accepted that survey plan A243 demarcates among other things, the boundaries of the disputed land. Chief Surveyor Mr. Francis' statement that the area of land depicted on the plan reflects the combined area of the land on both sides of the stream was not disputed. It was also common ground among the parties that the disputed land comprises a ½ acre on one side of the stream.

[46] The court notes that Mr. Hadaway acknowledged buying that identical lot of land for Mr. Bushay, 5 years after he allegedly acquired it from Mr. Punnett in 1981. The obvious question is: if it belonged to him, why negotiate a purchase of that same parcel for Mr. Bushay? It is illogical and contrary to his claim that he owned it then. Even more remarkable, is his admission that he secured a Deed of Conveyance for Mr. Bushay, when he did not have one for himself. That deed shows that Mr. Bushay bought over 4 acres of land.

[47] Just as incredible is Mr. Hadaway's assertion that he did not attend when the measurement was being done for Mr. Bushay. In light of the issues he allegedly experienced when purchasing his acre 5 years before, one would have expected him to act more responsibly as a reasonable person in those circumstances, to ensure that no further difficulties arose for him concerning the land he acquired or was purchasing on Mr. Bushay's account.

[48] Even more mind-boggling is his admission that he waited for some 16 years before registering a statutory declaration attesting to his interest in the disputed land. The fact that he did not tender the statutory declaration in evidence is inexplicable and does nothing to assist his case. Furthermore, Deed of Conveyance 874 of 1986 between Eileen Punnett and Aaron Bushay purported to convey that parcel to Mr. Bushay, by mathematical computation of the land on both sides of the stream.

[49] Mr. Francis' testimony that the land on survey plan A243 depicts that property in its entirety is credible and corroborative of Mr. Bushay's claim to that parcel of land. Mr. Hadaway admitted purchasing over 4 acres of land on Mr. Bushay's behalf. The Deed issued in respect of that purchase was 'registered at the Registry of Deeds. It must therefore be given its full effect pursuant to the provisions of the Act.

[50] The Act stipulates that deeds registered under its provisions convey to the named transferee (in order of priority of registration) all rights, title and interests which the transferor purported to transfer. Mr. Bushay has not presented a Deed of Conveyance which supersedes Mr. Bushay's. In light of the compelling evidence that Mr. Bushay acquired title to the over 4 acres described in the referenced deed, the court must give effect to it.

[51] Mr. Punnett submitted that the Court should find that Mr. Hadaway's evidence is unreliable and does not accord with his pleaded case. He submitted further that the court should accept his testimony and the expert evidence of Licensed Land Surveyor Mr. Keith Francis, as being from a neutral party and truthful. I agree. Mr. Hadaway's account is just too far-fetched to accept. I reject it in its entirety. He has therefore failed to prove that he owns the disputed land as alleged in his pleadings and testimony.

[52] Furthermore, the law is not on his side. In this regard, he cannot at one and the same time claim to be owner of the subject property and raise the shield of adverse possession. As outlined elsewhere in this judgment, adverse possession does not create a right of action. Similarly, he has presented no document in which Mrs. Punnett or Mr. Punnett purported to sell him the disputed land. More fundamentally, that property belonged to Mrs. Punnett in 1986. There is no evidence that Mr. Punnett was authorized to dispose of it to satisfy a personal undertaking he made to Mr.

Hadaway. I therefore find that Mr. Bushay is the legal owner of the disputed parcel of land and is entitled to the beneficial interests to it.

Adverse Possession

[53] Mr. Bushay interpreted Mr. Hadaway's allegations to 20 years possession of the disputed land as a 'claim' to adverse possession of the land. Mr. Punnett argued that he has not leveled a claim of adverse possession against him.

[54] Mr. Hadaway did not and could not make such a claim in law because the doctrine of adverse possession operates as a defence and not as a cause of action¹³. I therefore find that adverse possession does not arise for consideration.

Other Causes of Action

[55] Mr. Punnett submitted that Mr. Hadaway seeks against him a 'Declaration that he (Punnett) sold the said piece of land to Mr. Hadaway in 1981 and that Mr. Hadaway has been in undisputed possession of it for over 20 years. He contended that Mr. Hadaway has not sued him for breach of contract or for specific performance to compel him execute to a conveyance of the property. Mr. Punnett argued that Mr. Hadaway is not asking for any relief other than a declaration of a finding of primary fact that he paid for the land and has been in occupation of it since 1981. He submitted further that Mr. Hadaway has raised no issue of law against him, and has not included the omnibus clause for further or such other relief as the court sees fit.

[56] It is well-established that a litigant must formulate a legal cause of action against a defendant in order to obtain relief from the court. Mr. Hadaway has made no such legitimate claim against Mr. Punnett. His claim against Robin Punnett is not based on any recognizable cause of action. It is ill conceived. He has also not established his claim against Aaron Bushay. For those reasons, Dennis Hadaway's claims against Aaron Bushay and Robin Punnett are dismissed.

Issue 2 • To what remedy, is Mr. Hadaway, Mr. Bushay or Mr. Punnett entitled?

[57] Having regard to the foregoing findings, Mr. Hadaway has failed to establish that he is the owner of the disputed lands or that he has acquired any interest in them by adverse possession. His claim is accordingly dismissed. I make no declaration that Mr. Punnett sold him the disputed ½ acre of land and grant no injunction restraining Mr. Bushay from entering or otherwise dealing with the disputed land.

¹³ Arnold Celestine v Carlton Baptiste HCVAP2008/2011.

[58] It has been established that Mr. Aaron Bushay is the legal and beneficial owner of the land described in deed of Conveyance No. 874 of 1986 (including the disputed ½ acre portion) with all the rights and interests attendant thereto under the Act. He did not present any evidence to demonstrate that Mr. Hadaway is likely to venture onto the disputed land and cause serious injury to his use and enjoyment, which would not be capable of compensation by damages. In the circumstances, I am satisfied that no permanent injunction is necessary against Mr. Hadaway.

[59] Mr. Bushay seeks cancellation of Declaration of Title number 623 of 2002. Mr. Hadaway represented that it was registered and purports to vest title of the disputed land in him. In view of the earlier finding as to ownership, the statutory declaration if it exists, conflicts with Mr. Bushay's title and could potentially spawn a further dispute among future generations. This would be undesirable.

[60] The court is authorized to cancel or rectify such deeds¹⁴. It is just in the circumstances to cancel that record if it was created as alleged. Mr. Dennis Hadaway is required to surrender to the Registrar of Deeds on or before 4th August, 2017 the original and every copy of Statutory Declaration or Declaration of Title No. 623 of 2002 that is in his, his servants' and agents' possession and control. The Registrar of Deeds is directed to forthwith cancel such Declaration of Title No. 623 of 2002, if it exists.

[61] Mr. Bushay is seeking a complete record of Dennis Hadaway's dealings 'as described in Deed of Conveyance bearing registration number 623 of 2002.' Mr. Bushay gave no evidence of what that 'relief contemplates. Further, No such Deed of Conveyance was before the court. Mr. Bushay's prayer for a full account is therefore unintelligible, not made out and is denied.

[62] The successful parties in a claim are entitled to recover their costs. Mr. Bushay and Mr. Punnett are the winners. Mr. Dennis Hadaway is required to pay their costs.

¹⁴ Section 17 of the Act.

Miscellaneous

[63] Mr. Hadaway made a number of submissions which for completeness, it is useful to set out and address. He submitted that a look at survey plan A243 reveals certain things about the positioning of the disputed parcel. Since the survey plan was not adduced into evidence, only limited use could be made of it for the purpose of arriving at a determination in this case. The court out of necessity had to restrict its consideration to the statements made by the witnesses who referred to the survey plan.

[64] Mr. Hadaway contended that neither Mr. Bushay nor Mr. Punnett denied that Mr. Punnett told Mr. Bushay that he had sold the disputed parcel of land to him. This is not entirely true. Mr. Punnett did refute this in his witness statement. He said:

'The Second defendant did not become involved in any dispute with the Claimant or First Defendant nor speak with the first Defendant concerning this issue.'

[65] Mr. Hadaway submitted too that Mr. Bushay did not deny speaking with him after the alleged trespass, admitting that he had trespassed and promising not to repeat the trespass. The court considered the evidence of the witnesses contextually. In this regard, it did not overlook the fact that Mr. Bushay did not give testimony.

[66] In arriving at the truth, the court had to rely largely on Mr. Hadaway's, Mr. Punnett's and Mr. Francis' written and oral evidence and the documents tendered and admitted. Considered in

its totality, the evidence revealed that Mr. Hadaway's account was not credible. Furthermore, when the legal principles are applied to the facts, the outcome was inescapable.

[67] Mr. Hadaway contended that it is clear from all the circumstances that the intention between him and Mr. Punnett was for the disputed parcel to be sold to him. He contended that Mr. Bushay was not privy to the direct negotiations which transpired between him and Mr. Punnett for purchase of the 4 acres. He reasoned that if he and Mr. Punnett asserted that the negotiations were restricted to the south of the stream, Mr. Bushay would be bound by his actions unless he asserted that he had acted in excess of his authority. He reasoned that since Mr. Bushay made no such assertions in evidence or anywhere in his pleadings this was not in issue.

[68] I found Mr. Hadaway's contention on this point very troubling. If he purported to negotiate contrary to instructions received from Mr. Bushay, this would be an admission that he acted without Mr. Bushay's authority. A fundamental element of agency demands fidelity to the principal's directives, irrespective of the agent's personal contrary interests. It would be morally and legally objectionable for him to do otherwise. He has not advanced his claim by making such a submission.

[69] Mr. Hadaway contended that it should be noted that Deed of Conveyance No. 874 of 1986 was endorsed on the back page as being prepared by a Barrister-at-Law. He implied but stopped short of suggesting that the Barrister would be familiar with the 'hook' sign referenced by Mr. Francis. I make no such conclusion or inference.

[70] He submitted further that Mr. Keith Francis' opinion in respect of the competency of the maker of Deed of Conveyance No. 874 of 1986 has to be disregarded as the deed was prepared by a Barrister-at-Law and the presumption would be that the Barrister is a qualified and competent person to prepare a deed of conveyance, and so without further evidence, Mr. Francis is not in a position to impugn the competence of the Barrister-at-Law who prepared the said deed. He argued that Mr. Francis could not speak to the intention of the parties, and therefore could not say whether the description reflected an intention to sell the parcel of land to the south of the stream separately.

[71] Mr. Hadaway interpreted Mr. Francis' statement about the preparation of the deed to impute incompetence. I did not. I understood him to be merely making an observation that persons who are not trained as surveyors do not necessarily understand what the 'hook' sign denotes. That was a perfectly reasonable non-judgmental and factual comment, devoid of criticism of the drafter of the deed. In light of the foregoing, Mr. Hadaway has not proved his case on a balance of probabilities.

ORDER

[72] It is accordingly declared and ordered:

1. Dennis Hadaway's claim is dismissed.

2. Aaron Bushay is the legal and beneficial owner of the property described in Deed of Conveyance No. 874 of 1986, including the disputed parcel of land.
3. Mr. Dennis Hadaway shall surrender to the Registrar of Deeds on or before 4th August 2017, the original and every copy of the referenced Declaration of Title or Statutory Declaration No. 623 of 2002 that is in his, his servants' and/or agents' possession and control.
4. The Registrar of Deeds is directed to forthwith cancel the referenced Declaration of Title or Statutory Declaration No. 623 of 2002.
5. Dennis Hadaway shall pay to Aaron Bushay and Robin Punnett each, prescribed costs of \$7500.00 pursuant to CPR 65.5 (2) (b).

[73] I wish to thank counsel for their written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar