

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0087

BETWEEN:

GEORGE ASH

CLAIMANT

AND

LESLIE ASH

FIRST DEFENDANT

THE HOUSING AND LAND DEVELOPMENT CORPORATION

SECOND DEFENDANT

Appearances:

Mr. Ronald Marks for the Claimant

Mr. Carlos James for the First Defendant

No appearance for or on behalf of the Second Defendant

2019: January 15
March 13

JUDGMENT

Byer, J.:

- [1] This was a most unfortunate case in which two brothers faced off against each other in court and then split the family right down the middle with them both enlisting the assistance of a sibling to their cause.
- [2] Despite this court having sent this matter to mediation at an early stage, it was unsuccessful due to the entrenched position of both of the parties as to their version of events and therefore their entitlement.
- [3] At first blush, it appeared that this was simply a matter of who the court believed as to how this house had come into existence but when the pleadings of the case were in fact considered and the evidence that was elicited at trial was analyzed, I am in agreement that the issues identified by the

First defendant in their written submissions at the close of the trial encapsulated what this court has to consider.

- [4] The issues as identified by the First defendant were therefore as follows:
1. Whether the claimant is entitled to possession of the disputed property
 2. Whether the Second defendant can place on its records the name of the claimant as the person in possession of the lands.
 3. Whether the Second defendant can be ordered to offer the lands to the claimant for purchase and or to cancel the purported sale agreement in the name of First defendant.
- [5] In order however to address its mind as to how these issues could be resolved, a brief background of the events needs to be identified.

Background

- [6] The dispute between the parties is over the ownership of a property located at Barrouallie on the Leeward side of St. Vincent. The Ash family resided on the Wallilabou estate that is located on the North Western side of the Island. The mother of the parties worked on the estate and their father was a fisherman. The claimant also worked on the estate from a young age beginning in the 1960's.
- [7] **Sometime in the early 1960's the family home was destroyed by fire. The Ash's did not construct a new home on the land where the first house stood. Instead they moved to a different parcel of land on the same estate and constructed a bamboo house reinforced with concrete (what came to be referred to as the "wattle and daub" house).** The family resided there for several years. The house eventually deteriorated and a concrete structure was constructed around it over time with the use of self-help and assistance from neighbors and friends. The mother of the family passed away during the building of the new house. The father died sometime after the concrete structure was made habitable. The house is still under construction. It is not in dispute that both parties lived on **the disputed land with their parents. The First defendant's girlfriend and children also resided there** for some years. The claimant found work in Union Island and the First defendant at some point left the house and was living by his fiancée Jennifer in Layou. Sometime later, the First defendant moved back to the home with his now wife Jennifer. In 2016, the claimant discovered that the First defendant had informed the Second defendant that he was the one in possession and exclusively entitled to ownership of the property. He entered into a purchase contract with the Second defendant. This was the genesis of the breakdown of the relationship between the claimant and the First defendant. The claimant wrote to the Second defendant protesting the sale. He later brought action against them both seeking, inter alia, possession of the disputed land.

The Issues

Whether the Claimant is entitled to possession of the disputed property

[8] The evidence of the claimant in this regard was as contained in his witness statement. At paragraphs 7 to 8 and again at 10 to 12 the Claimant relayed the version as to his right to possession of the house that had by all accounts been a family home and to substantiate the prayer of relief as against the Second defendant to allow him to purchase the said land. He had this to say:

“7. I took possession of the said parcel of land and with the assistance of a few friends, we removed the arrowroot and started to dig a foundation as I wanted to construct my own house.

8. As time went on I had put my foundation and a wooden house on my parcel of land, I carried out this construction myself and at times with the help of my friends. At that time my parents and siblings were still without a home as they could not afford to rebuild their house. I therefore gave them permission to come and live at my home. At the time the First defendant was a little boy. I assisted my parents in sending him to primary and secondary school from my earnings as I saw it as my duty.

10. Around 28thDecember, 1993 I went to work in Union Island in the Grenadines. As time went on, I carried out renovations and upgraded the house to a concrete house. I did this by building up the concrete house around the wooden house. During this time my parents were still alive and lived at my home. My mother died in 1998 and my father died in 2006.

11. While I was in Union Island I would give or send money to the First defendant so that the work could be carried out on my house. I did so because I trusted him and I saw nothing wrong with him overseeing the work while I was not there as I still allowed him to stay there off and on. The construction was completed while I was still working in the Grenadines.

12. By then the First defendant was allowed by me to live at the house as I was based mainly in the Grenadines and would only come to the mainland for short periods. During the time he lived there the First defendant had the benefit of raising his family at my house.”

[9] On cross examination he also told this court that he left the mainland and went to Union Island in 1993 and remained there for 18 to 19 years. However during that period, he told the court, he was not there during what he called the upgrade of the house which he said started in 1994 but that he was the one who hired the contractor and it was his money that paid for the upgrade. He said that during this time the First defendant did not live in the house although his parents, his other siblings and the children and girlfriend of the First defendant did.

[10] He further admitted on cross examination that he never registered the house for tax purposes because it was a bamboo and concrete house and it was unfinished, that he did not put utilities there and did not know in whose name the connections were.

[11] The claimant also relied on the evidence of his brother Sydney Ash. This brother told the court at paragraphs 3, 5, 7, 8 and 19 what his take was on the way in which the occupation of the house transpired. He said this:

“3. I am aware that the claimant who is older than me went to the Manager of the Estate to get a parcel of land for his own. He built a house on the land he was given and then took us in to live with him. This is the house and land now in dispute.

*5. The First defendant was the first to leave home; he left around 1975/1976. I am aware that he **returned to the claimant’s house around the year 1995 when a business he had with his Barbadian lady friend fell through and she packed up and moved back to Barbados.***

7. The claimant lived continuously in his house until he got a job in the Grenadines. Once he was on the mainland the claimant stayed at his house.

*8. When the claimant was in the Grenadines, the First defendant was back and forth between Layou and the **claimant’s house and the relationship between the claimant and the First defendant was still good and the claimant allowed the First defendant to live at his house where the First defendant raised his children.***

*19. The claimant has worked for many years in the Grenadines saving his money and improving **his house, now that he is retired he should be in his own house enjoying what he worked for.”***

[12] When he was cross examined, he admitted that at the time that the land was acquired and the house was rebuilt he was around 8 years old and all he knew is that they moved into the house but that he left the house in 1990 when he got married, and moved to the other side of the island.

[13] He also admitted that when he left in 1990 there was no electricity or running water in the area at the time. When the house was being built around the bamboo and concrete house, he used to come up and visit as his parents still lived there and all he knew was that George said he sent the money but that he did not know many details as he did not ask. Both George and Leslie were back and forth in the house but that George lived in Union Island. Up to 2016, he told this court that George was still living in Union Island and was merely back and forth and that Leslie in fact by that time lived in the house with his new wife after he had lived in Layou for over 13 years while his former girlfriend and his children lived in the house.

[14] The First defendant of course had a different version of events. The First defendant maintained that the claimant was the one who was the occasional visitor and that he was the one who retained more of a connection to the house in Barrouallie. He stated:

“7. Over the years, I resided in the wattle and daub house with my parents and four other siblings. We all left the wattle and daub house around the 80’s and my parents remained in the house. Since my brother left the old wattle and daub family home in the 80’s he has not returned to Barrouallie as a resident. Occasionally, he visited Barrouallie to see our parents, but his visits would sometimes be two years apart.

8. My sister, Gloria, and my younger brother, Mandeville, remained in Barrouallie. My sister lived on an adjoining parcel of land while Mandeville constructed a house close to same.

9. About 1982, I spent a year with my first wife between Barrouallie and Kingstown. In 1983, after the marriage came to an end, I immediately returned to the family home in Barrouallie to take care of my parents. I repaired the roof and the outside of the old wattle and daub house to better accommodate my parents as the house was leaking and the bamboo had deteriorated.”

[15] In fact he made it clear that he was the one who contracted with the contractor to make the conversion of the house and that he was the one financially responsible for the same.

“10. About 1992, I contacted Bertrum Griffith, our neighbour and a builder by profession, to construct a concrete three-bedroom dwelling house around the old wattle and daub house occupied by myself and my parents. Mr. Griffith and Elvis Toussaint started and constructed the said house while we remained in the old wattle and daub house. I paid them in part and they also assisted with its construction.

11. My brother, George Ash, neither assisted nor contributed financially towards the construction of the said house. At the time of construction, he resided in Union Island where he spent most of his adult life. To my knowledge George has been living in Union Island for over 20 years.

14. I would often encourage my brother, George, to visit the family in Barrouallie as he hardly visited or communicated with us. Occasionally, whenever he visited, I invited him to stay with us. He has never spent more than a few days in Barrouallie or at the said house.”

[16] The First defendant made it clear that he was the one paying property taxes, water and electricity and put into evidence the receipts and correspondence from the respective institutions substantiating the same¹. Finally the First defendant brought to the court the agreement that he

¹ Exhibits LA 1 , LA2 and LA3 attached to the witness statement of the First defendant filed 27/4/18

had entered into with the Government of Saint Vincent and the Grenadines to purchase the land upon which the house stood².

- [17] On cross examination the First defendant vehemently denied that he had moved away from the house for any length of time or that he had in fact been living in Layou with his now present wife for over 10 years. He told this court that when his former girlfriend Michelle was living in the house that she had done so to look after his children for him. He also told this court that he never took money from George. He maintained that he always lived in the house, while George lived in Union island to the point that he was a registered voter in Union island. Despite being pressed on cross examination, the First defendant maintained that he had not left the house for any extended period of time on a permanent basis, that he was always back and forth and that it was his house and that he had done all that he had with the house on his own.
- [18] The First defendant also brought his brother Relmore Ash who is the youngest sibling and although he seemed convinced of the ownership of the house by his brother Leslie, he seemed very disinterested in the details as to how things materialized with the house and who had been in occupation of the same. One thing he did clarify for the court was that George, when he was on mainland, would stay at the house but that he lived in Union island and that Leslie at some point moved out of the house moving back and forth between there and Layou.
- [19] The final witness for the First defendant was Bertrum Griffith who was contracted to make the conversion of the house. He told the court that it was Leslie who contracted him, but he was unsure as to where the money came from when he got paid.
- [20] The Second defendant took no action in the matter and as such there was no evidence or even pleadings on their behalf in this matter.
- [21] So that was the evidence in a nutshell from the parties. From that, the court accepts on a balance of probabilities the following:
- i. The original family home having been destroyed by fire the claimant a young man of 18 already working on the Walliabou estate approached the agent of the estate to get a parcel of land to assist in housing his family.
 - ii. That the claimant assisted but was not wholly responsible for having the bamboo and concrete house constructed (by his own admission his mother was working on the estate and his father was a fisherman - both gainfully employed)
 - iii. That the bamboo and concrete house served as the family home for many years until it required renovation
 - iv. That the family up until the claimant left for Union Island in 1992 were all very close and that the decision to do the renovations was made.

² Exhibit LA4 attached to the witness statement of the First Defendant filed 27/4/18

- v. That it was the First defendant who remained on the mainland and who made the arrangements for the contractor Mr. Griffith to undertake the renovations. That when Mr. Griffith was paid that both brothers would have made some contribution, it was the family home.
- vi. That the claimant having left the home to reside in Union Island never came back to take up residence in the house, save for times when he visited.
- vii. That the First defendant lived between Layou and Barrouallie moving between his children and his new partner.
- viii. That the First defendant took up permanent residence in the house with his new wife before the return of the claimant and has been in the house until the present day.

Court's Considerations and Analysis

[22] On the basis of the accepted facts by this court, I find that the possession of this property is in fact vested in the First defendant.

[23] He has no paper title to the land and the house that is now affixed to the land must form part of the same.

[24] However it is now well accepted that the person in occupation is prima facie entitled to possession. In fact the learned authors of the book Law of Real Property by Megarry and Wade stated "*possession by itself gives a good title against all the world, except someone having a better legal right to possession*".³

[25] Thus the question must be for this court whether the claimant in these circumstances establishes a better claim than the First defendant to the house. For the court, the answer is a resounding no.

[26] This court accepting that the First defendant is in fact in occupation of the house must be satisfied that the claimant in fact had a better title if he was to adopt a position to dispossess the First defendant. In the case of *Claribelle Connell v Trelton Connell*⁴ the Court of Appeal by Benjamin JA made it clear that where there is a factual finding of long occupation by one party, the party seeking to dispossess that individual has the burden to prove "*a better title to occupy*".⁵

[27] In the case at bar, I do not accept that the claimant has been able to do any such thing. The **claimant's case is based purely on what this court** considers to have been a transient or fleeting occupation of the house post his 1992 move to Union Island. In the words of Benjamin JA in the

³ 3rd ed at page 997

⁴ Civ App No 25 of 2004 per Benjamin JA

⁵ Op Cit at paragraph 9

Claribelle Connell case any monies that the claimant spent on the family home were *“even if true...equivocal as the same could be ascribed to the devotion of a grateful and dutiful ...son”*.⁶ Indeed although I also accept that there were periods in which the First defendant had also left the house, I do not accept that they were meant to be anything other than temporary discontinuance not meant to disrupt his physical or de facto entitlement to possession.

[28] That being said, I find that the claimant is not entitled to possession of the house at Barrouallie.

Whether the Second defendant can place on its records the name of the Claimant as the person in possession of the lands

[29] Having found that the claimant is not entitled to possession of the house, the above mentioned issue is now otiose and can only be answered in the negative.

Whether the Second defendant can be ordered to offer the lands to the Claimant for purchase and/or cancel the purported sale agreement in the name of the First defendant

[30] In the event that I am wrong and the evidence is sufficient to establish the entitlement of the claimant to possession of the house this issue would still be a live one.

[31] The claimant has based its argument to seek this relief on the doctrine of promissory estoppel. This doctrine has been defined as follows: *“when one party by his words or conduct made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced.”*⁷

[32] In this instant case, this court is slow to see how the Second defendant can be cast in this role of having made any promise to the claimant and to which they should be bound.

[33] Mention has been made by the claimant of the agent of the Walliabou estate in the 1960s putting him in occupation of a parcel of land. There has been no evidence that the Second defendant is the successor to any such estate or would have been the body held responsible if indeed such an act had been undertaken.

⁶ OP cit paragraph 13

⁷ Halsbury Laws of England paragraph 385 Vol 47 (2014)

[34] Indeed I am satisfied that these lands on the estate (once they were established as crown lands) would have fallen under the ambit of the Lands and Surveys Department as is provided for in the Crown Lands Act CAP319 and the subsidiary legislation thereto of the Crown Lands (Sales) Regulations and in particular Regulations 3 and 4.⁸

[35] Thus even if the claimant had proven his right to possession, this court would not have been in a position to compel the Second defendant to undertake any act in relation to the land, their mandate, in fact not extending to any such act on their part. In fact, the agreement for sale with the First defendant was not made with the Second defendant but rather with the department of Government tasked with the management of crown lands, the Lands and Surveys Department.

[36] I therefore find that there is no order that this court can make against the Second defendant.

⁸Regulations 3: Procedure –

1. Every application for the sale of Crown land shall be made, in the form set out in the First Schedule, to the Minister.
2. If the application is made in the proper form, it shall be assigned a number and the particulars thereof shall be entered in a register kept for the purpose, including the number of the application, the name and address of the applicant, the district in which the land is situate and the boundaries of the land involved.
3. The Chief Surveyor shall examine the application and if he is satisfied that the Crown land in respect of which the application is made complies with regulation 2, he may direct the applicant to deposit in the Treasury the sum of four hundred dollars for the survey of the land. [Subregulation (3) amended by SRO 28 of 2001.]
4. On the applicant producing the receipt of payment into the Treasury of the survey fee, the Chief Surveyor shall arrange a survey of the land and depute a surveyor who may assign a date and time when the survey of the land shall be made.
5. The surveyor deputed under subregulation (4) shall give notice of the date and time of his visit to the applicant, and to the neighbouring owners and occupiers of the Crown land, to be present at the time of the visit and inspection, and it shall be open to the applicant to point out the demarcation of the land specified in the application by indicating the boundaries or otherwise.
6. Every applicant shall render all necessary assistance to the surveyor in the matter of the survey, and the applicant shall also ensure the presence of as many neighbouring owners or occupiers of land as may be available to be present at the time of the survey.
7. The names of all persons present at the time of the survey shall be noted by the surveyor, who shall also record any objection raised about the demarcation of the land.

Regulations 4: Condition of the Application –

1. The Chief Surveyor shall, on receipt of the survey report, examine the same and make his recommendations thereon, indicating also the sale price that may be fixed for the land and forward the same to the Minister.
2. The Minister may, on receipt of the report from the Chief Surveyor, make a final decision about the advisability of the sale having regard to the public interest and obtain the decision of Cabinet thereon and on the sale price to be fixed for the sale of the land.
3. Where a final decision has been taken for the sale of the land and the sale price thereon has been fixed, the Minister shall inform the applicant and direct him to deposit the sale price of the land to the authorised authority within such period as may be specified but not exceeding six months:

Provided that the Minister may, in certain circumstances, direct that the applicant could pay in installments provided that not less than one-third of the sale price shall be paid within the said period, and the remainder shall be paid in four equal annual installments, the first installment being payable before the expiration of one year after the date of the initial deposit and the subsequent installments being payable annually before the expiry of one year after each installment thereafter.

Regulations 4: Regulations –

1. The Governor-General may make regulations in respect of-
 - a. the survey of Crown boundaries;
 - b. the management, sale and letting of Crown lands and the protection of the boundaries thereof;
 - c. the prevention of squatting, encroachment and trespass upon such lands, and injury to the woods and forests thereon;
 - d. the occupation, allotment and survey of such lands;
 - e. the issue of grants and fees payable respectively thereon.
2. Any person who commits a breach of such regulations is guilty of an offence and liable to a fine of two hundred and fifty dollars.
3. The administration and disposal of Crown Lands shall be vested in and exercised by the Governor-General subject to any regulation duly made under the authority of subsection (1).

The order of the court is therefore as follows:

1. The claim is dismissed in its entirety with costs to the First named defendant on an unvalued claim pursuant to Part 65.5 CPR 2000.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar