

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2021/0184

BETWEEN:

THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND NEVIS

Claimant

And

GRETSON ISAAC

Defendant

Before: The Hon. Mr. Justice Trevor M. Ward QC

Appearances: -

Mrs. Simone Bullen-Thompson, Solicitor General, for the Claimant.

Mr. John Cato for the Defendant.

2022: June 30th
August 30th

JUDGMENT

WARD, J.:

Introduction

- [1] In the heyday of the Sugar Industry in St. Kitts, Kittstodarts was owned by, and was the location of, the St. Kitts Sugar Manufacturing Corporation ("SSMC"). After the sugar industry was privatised, the lands were occupied by several persons. In or about 2009, the defendant, Gretson Isaac, entered into possession of the property which is the subject of this claim. In 2009, Cabinet approved the sale of residential properties consisting of Crown lands, including the disputed property. Government's policy was that persons already in occupation would be offered the right of first refusal on the

purchase of the property being offered for sale. This facility was offered to the defendant in 2009. To date, however, he has not acted on the offer and remains in occupation of the property, which has since been sold to a purchaser.

- [2] By a Fixed Date Claim filed on 11th November 2021, the claimant, the Attorney General of Saint Christopher and Nevis, claims from the defendant, possession of the property situated at #5 Kittstodarts, St. Kitts, (“the property”), mesne profits calculated at the rate of EC\$1000.00 per month from 6th August 2021, interest and costs. The claimant pleads that the defendant is in occupation of the property at the licence and leisure of the government, but that the which licence has since been terminated by Notice to Quit dated 23rd July 2021.
- [3] By his defence and counterclaim, the defendant claims to be entitled to possession of the property by virtue of the Law of Property Act and the Limitation Act because he has been in possession of the property since 2009, when it was allocated to him by Mr. Halva Hendrickson, then head of the Privatisation and Commercialisation Unit. Having entered into possession, the defendant claims to have effected improvements to the property and paid monies to the owners of the Kiddstodarts Estate, which the defendant pleads is neither Crown lands nor owed by anyone else. The defendant counterclaims ‘for all monies paid to the claimant by mistake and claims damages for misrepresentation by the claimant’. He further claims that he is on the land by virtue of the ‘licence and interest in the land earned by his presence on the land for over 12 years.’

The claimant’s evidence

- [4] The sole witness for the claimant was Dr. Patrick Welcome, Head of the Privatisation and Commercialisation Unit. In this capacity, he is tasked with the administration, management and sale of property owned by the government, otherwise referred to as ‘Crown lands. His affidavit was admitted as his evidence-in-chief without objection. Dr. Welcome averred that he was unsure how or when Mr. Isaac had come into possession of the property but, to the best of his knowledge he had been permitted to remain there since about 2009 at the licence and leisure of the government, having no interest in the property as owner or tenant.
- [5] In 2009, Cabinet approved the sale of residential properties consisting of Crown lands, including the property in dispute here. As a matter of policy, persons already in occupation were offered the right of first refusal on the purchase of the property being offered for sale.

[6] By letter dated 28th October 2009 Mr. Halva Hendrickson, then head of the Privatisation and Commercialisation Unit wrote to Mr. Isaac, informing him that Cabinet had approved the sale of residential houses at SSMC. The letter indicated that occupants were being afforded first right of refusal on the purchase of houses occupied by them failing which the houses would be sold on the open market. Mr. Isaac was asked to indicate in writing by 31st December 2009, whether he intended to take up the offer. He responded by letter dated 9th November expressing his 'intent to take full advantage of this offer to purchase' the property, and he requested the price and terms of sale. By letter dated 20th September 2010, Mr. Hendrickson informed Mr. Isaac that the sale price was EC\$154, 530.88 and that he had thirty days to indicate his intention with respect to the purchase of the property. By letter dated 26th October 2010, Mr. Isaac accepted the offer to purchase the property. That said day, Mr. Hendrickson issued a letter to Mr. Isaac indicating that the survey plan and size of the property could be obtained from Mr. James Buchanan, Land Surveyor, and that he had three months to complete the purchase of the property failing which the property would be sold to the general public on a first come first serve basis. By letter dated 1st March 2013, Mr. Isaac was further advised that the purchase price had been reduced to \$138,933.69 and that he had three months from the date of that letter to complete the purchase of the property. By letter dated 7th October 2020, Mr. Isaac was reminded that the price of the property had been reduced and that he had three months from 7th October 2020 to complete the sale or the property would be sold to the public on a first come first serve basis. Mr. Isaac replied by letter dated 19th January 2021 confirming receipt of the letter of 7th October 2020, which he said was hand delivered to him on 8th January 2021 when he visited Mr. Hendrickson's office. Mr. Isaac proposed that in fairness he should be allowed three months from the date the letter was hand delivered to him but pleaded that he needed more time to pay as he was unable to do so on account of the difficult times occasioned by the pandemic. He requested a meeting to discuss a payment plan. By letter dated 2nd February 2021, Dr. Welcome informed Mr. Isaac that because he had made no payments towards the purchase of the property, it would be placed on the open market. By letter dated 21st July 2021, Dr. Welcome informed Mr. Isaac that the property had been sold and asked him to vacate the property by 6th August 2021 and hand over the keys. On 23rd July 2021, the claimant served Notice to Quit on Mr. Isaac. To date Mr. Isaac has refused to vacate the property and the purchaser is unable to access the property.

[7] Dr. Welcome further deposed in a supplemental affidavit that Mr. Isaac has made no payments towards rental or purchase of the property at any time, either to the National Land Sales Agency or

to the Privatisation & Commercialisation Unit or to the Treasury. Had he done so, it would have been recorded in a register kept by the Accountant General for that purpose.

[8] In response to the counterclaim, Dr. Welcome deposed that it is false to say that the defendant received a letter saying he was allocated the property and he notes that no such letter was produced by the defendant. Further, while unable to say whether Mr. Isaac had made any improvements to the property, Dr. Welcome stated that when the property was inspected in January 2021, it was overgrown and in a state of disrepair and seemed unfit for habitation. He exhibited, without objection, 17 photographs taken by architect Edwin Glasford, depicting the state of the property in January 2021.

[9] Under cross-examination, Dr. Welcome stated that he identified the property as government property from a list given to him, which was compiled by engineers of the Public Works Department and others. He said he has never seen a Certificate of Title signed by the Governor General in relation to that property.

The defendant's evidence

[10] The defendant's affidavit was admitted as his evidence-in-chief. He averred that in 2009 he was residing at the property when he received a call from Mr. Buchanan, a land surveyor. He subsequently visited Mr. Buchanan, who gave him a draft Certificate of Title and an allocation letter for the property. He said that the letter advised him that he had been allocated the property which he had been occupying and further advised that he was required to see the surveyor to have the property surveyed in order to determine its size so as to be able to price the property.

[11] Mr. Isaac stated that he subsequently paid the surveyor, Mr. Buchanan, \$500 and received a copy of a survey map of the property. Having paid the surveyor, who showed him the boundaries of the property, he lawfully entered into possession of the property in 2009. Exhibited to his affidavit are exhibits 'GI 2' and 'GI 3', the invoice and the receipt from the surveyor respectively which show that payment was made on 19th November 2010.

[12] Mr. Isaac deposed that upon entering into possession, he immediately set about making several improvements to the property. He painted the building; constructed a workshop using a converted container; fenced the property with galvalume which he imported from St. Vincent at considerable expense. In all he stated that he expended about \$2000. Additionally, he made footing and filled the

ground space with ready mix concrete and paved and tiled the interior flooring. He also replaced the rusty, rotten and leaking roof with galvanize.

[13] Finally, Mr. Isaac stated that in the erroneous belief that SSMC was the registered proprietor of the land, he had been paying monies at the Domus Window where the business affairs of SSMC were carried out.

[14] Under cross-examination, Mr. Isaac stated that he came into possession of the property in 2009. He was cross-examined about the series of correspondence between himself and Mr. Hendrickson and accepted that they had been exchanged. He acknowledged that he was responsible for paying for the property. He further accepted that he had never had a conversation with Mr. Hendrickson in which he had told him that the sale could not go through because the government did not own the land. With respect to his claim to carrying out improvements to the property, Mr. Isaac said that he commenced the workshop about three years ago and fenced the property with galvalume during the Covid pandemic. He was referred to the photographs of the property and admitted that they did not show a fence. He accepted that the photo of the workshop depicted a container resting on the land, but which could be removed. He was shown other photos and accepted that they depicted the house on the property. He further accepted that he had produced no evidence to support his assertion that he had made improvements on the house.

[15] Mr. Isaac was asked whether he had made any payments towards the property. He claimed to have attempted to pay the sum of \$6,300 into the Treasury but the clerk refused to accept it. He conceded that he had not mentioned this in his affidavit. Mr. Isaac said it was fair to say that since receiving the letter from Dr. Welcome, he hadn't made any payment but explained that this was because his payment was not accepted.

The claimant's submissions

[16] In written closing submissions, the learned Solicitor General, Ms. Simone Bullen-Thompson, submitted that the claimant's position is that the defendant has been in occupation of the property at the licence and leisure of the Crown pending completion of the sale of the property to him. The claimant submitted that the defendant has not established that he has an interest in the property and was a bare licensee. As a bare licensee, the defendant's licence was liable to be determined by the Government at any time and was so determined when he was served with the notice to quit dated

23rd July, 2021. The claimant submitted that since the defendant's licence was terminated by the Crown, it is appropriate that the court make an order that he delivers up possession of the premises and that he pays mesne profits and costs.

[17] The claimant further submitted that the defendant is not entitled to use the Limitation Act as a shield. The owner of the property is the Crown, and the applicable limitation period is therefore thirty (30) years pursuant to section 6(1) of the Limitation Act. The defendant has not shown that he has been in possession of the land for thirty years.

[18] In any event, says the claimant, the defendant cannot rely on section 6 of the Limitation Act as a bar to the claimant's action as he has not established that he is in adverse possession. The defendant was in occupation of the property with the Crown's permission and therefore his possession of the premises could not in these circumstances be adverse. The claimant relies on **Hughes v Griffin and Another**¹ for this proposition. There the Court found that time under the limitation statute could not run in favour of the testator who was a licensee and was therefore not in adverse possession. **Ramnarace v Lutchman**² is further cited in support.

[19] The claimant further submitted that adverse possession does not arise in circumstances where the defendant's occupation of the premises arose directly from the defendant's agreement to purchase the property. This agreement was never repudiated or rescinded by the defendant. In fact, when Dr. Welcome wrote to the defendant on 7th October 2020 indicating that he had three months to complete the purchase of the property, the defendant did not assert that there was no agreement to purchase the property; he requested more time to complete the sale and a payment plan. The claimant submitted that in these circumstances where the defendant's occupation of the premises arose directly from his agreement to purchase the property, the issue of adverse possession does not arise.

The defendant's submissions

[20] In written closing submissions, learned counsel, Mr. John Cato, submitted that the property lot 4. House 5 is and has always been, a vacant undeveloped Lot of Land belonging to no one. He submitted that 'this is commonly referred to as vacant property belonging to no previous owner, technically "bona vacantia"'. The submission continued that when Mr. Isaac moved on to the land in

¹ [1969] 1 All ER 460.

² [2001] UKPC 25.

2009 and took possession of it and expended considerable sums of monies to maintain and develop the property, it automatically became vested in him alone by virtue of the provisions of The Limitation of Actions Act. Mr. Cato submitted that there was at that time “no statutory owner incorporated by the legislature in which it would have been vested or incorporated.”

[21] Mr. Cato further contended that the claimant’s offer to the defendant to purchase the property was made at a time when the defendant was already in occupation of the vacant property as owner and was therefore not an offer he could accept as he was already in possession of the vacant property as owner and had made improvements to the property.

[22] As to the defendant’s counterclaim, Mr. Cato submitted this is founded on the defendant’s entitlement to be refunded the money he had already paid at the Domus Windows’.

Issues

[23] The nub of the defendant’s case is that he is the possessory owner of the property by adverse possession. He says that at the time he took possession of the property it was not owned by the crown or by anyone else. He claims to have been in undisturbed possession of the property for twelve years and thus, by virtue of the Limitation Act, may not be dispossessed by the claimant. The claimant contends that the defendant came into possession of the property, which is Crown land, no earlier than 2009 and as a bare licensee of the claimant. The issues, therefore, are whether the disputed property is owned by the Crown. If so, does the defendant occupy the property as a bare licensee of the Crown, or has he acquired possessory title by adverse possession and, if so, whether the claimant’s action is barred by the Limitation Act.

Discussion and analysis

[24] If the crown cannot establish ownership of the land, then its claim fails. The claimant submitted that with the folding of the sugar industry, the passage of the Vesting of Certain Properties Act, No. 11 of 2012 was intended to vest the lands formerly belonging to SSMC in the Governor General. Section 3 provided as follows:

“3. Certain Properties vested in the Governor General.

(1) Subject to subsection (2), the properties set out in the Schedule are hereby transferred to and vested in the Governor General for the time being and his or her successors in office,

to and for such uses and upon such trusts for the public service of the Islands of Saint Christopher and Nevis and shall be held, used, conveyed and dealt with accordingly.

(2) The properties hereby vested in the Governor General and his or her successors shall be held by him or her and his or her successors in trust to be used for such public purposes or to be leased for such term or terms of years and on such conditions as the Cabinet of Ministers may direct.”

- [25] The lands and buildings at Kittstodarts were among the properties vested in the Governor General as evidenced by paragraph 1 of the Schedule which states:

“SCHEDULE

Properties Transferred to and Vested in the Governor General

(1) All that Lot of land with hereditaments and messuages known as Kittstodarts situate in the Parish of St Peter containing by admeasurements 10 acres and 2 roods registered at Register Book G1 Folio 37

(20) All that land and buildings and works known as the Basseterre Sugar Factory situate at Kittstodarts in the Island of Saint Christopher.”

- [26] Notably, the survey plan and receipt submitted by the defendant confirm that the property forms part of the Kittstodarts Estate and is described as Lot No. 4 on the survey plan and as “SSMC Kittstodart” on the receipt; both exhibited by the defendant. I have no hesitation in finding that the property forms part of the lands intended to be vested in the Governor General by Act 11 of 2012. I say intended to be vested because this did not in fact occur. Section 1 of the Act provided that it was to come into force “on such date as the Minister May by Order appoint”. Although the Act was passed by the National Assembly on 29th March 2012, it does not appear that it was brought into force by Order by the Minister of Sustainable Development.

- [27] Nonetheless, the learned Solicitor General submitted that the lands vested in the Crown by virtue of the St. Kitts Sugar Manufacturing Corporation (Dissolution) Act Chapter 18.32. Section 3 of this Act dissolved the SSMC, effective 30th June 2012, and provided for the vesting of its assets and liabilities after its dissolution in the manner provided for in section 4. Section 4 so far as relevant provides:

“Vesting of assets and liabilities of the Corporation in the Crown.

4. (1) Upon the dissolution of the Corporation as provided for by section 3 of this Act, any immovable property which was not vested in the Crown by the Vesting of Certain Properties Act, No. 11 of 2012, wherever such property may be located, and all equipment and other moveable property of the Corporation as of that date shall vest in the Crown and be dealt with in such manner as the Minister, acting on the advice of Cabinet, may direct.”

[28] I accept the claimant’s submission that the effect of this Act was to vest the immovable assets of the SSMC in the Crown as of 30th June 2012. Such assets included the Kittstodarts property.

[29] On the defendant’s own pleadings and evidence, I find that he took possession of the property in or about 2009. The claimant argues that it is doubtful that the defendant was in occupation of the property in 2009 because his evidence was that he entered into possession after he paid for the survey plan. Since the survey plan and the receipt for that payment are dated 19th November 2010, it is argued that the defendant must have taken possession sometime thereafter. This argument overlooks the uncontradicted evidence that Mr. Hendrickson’s first letter to the defendant offering him first right of refusal to purchase the property was dated on 28th October 2009. On the claimant’s own evidence, such offers were made only to persons who were in occupation of the SSCM lands. It stands to reason that the defendant was in occupation of the property by at least October 2009.

[30] I further find that at the time the defendant entered into possession, the property was owned by SSMC. This apparently was his own understanding of the ownership of the property, if his evidence is accepted that he had been making payments at the business office of SSMC. I will explain later in this judgment why I do not accept that he made any such payments. It is also clear that as of 30th June 2012, when the property vested in the Crown, the defendant had been in occupation for only about three years.

[31] The defendant’s pleaded case is that he is entitled to possession of the property by virtue of the Law of Property Act and the Limitation Act because he has been in possession of the property since 2009.

Adverse possession

[32] Under the principle of adverse possession, a trespasser or squatter can acquire a right to retain possession of land against the true owner. To establish adverse possession, two requirements must

be met. The first is factual possession, meaning a significant degree of physical custody and control by the possessor. As to what acts might evince such control, guidance may be derived from the judgment of Slade J in **Powell v McFarlane**³:

“The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.”

[33] The possession must be open and unconcealed and without permission or consent.

[34] The second requirement is that there must be the intention to possess the land by exercising acts of control over the land: **JA Pye (Oxford) Ltd v Graham**⁴. If possession is enjoyed by a lawful title or with the consent of the true owner, it is not normally regarded as adverse. See **Ramnarace v Lutchman**. Where the true or paper owner of the land fails to assert his title within the statutory limitation period, the adverse possessor may be allowed to remain in possession of the land. Adverse possession is therefore established where it is proven to the satisfaction of the court that the adverse possessor was in factual possession of the land for the required period and had the necessary intention to possess the land: **Luella Mitchell v Maurice Jones**⁵.

The Limitation Act

[35] In Saint Christopher and Nevis, the relevant limitation period is stipulated in the Limitation Act. Section 6, so far as relevant, provides:

“Limitation of actions to recover land.

(1) No action shall be brought by the Crown to recover any land after the expiration of thirty years from the date on which the right of action accrued to the Crown or, if it first accrued to some person through whom the Crown claims, to that person:...

³ (1997). 38 P&CR 452.

⁴ [2003] 1 AC 419.

⁵ HCVAP 2006/016.

(3) No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or if it first accrued to some person through whom he or she claims, to that person:

[36] In construing the corresponding provision in St. Vincent and the Grenadines the Court of Appeal explained the objective of the provisions in the following terms:

“Sections 4 and 27 of the Limitation of Actions Act 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”.

[37] The policy underpinning this provision is said to be that the title of owners who allowed others to remain in possession of their land for many years with their consent but without paying rent or acknowledging their title should eventually be extinguished. Per Lord Millett in **Ramnarace v Lutchman**.

Application to facts

[38] Applying these principles to the facts, the defendant has not proved his case that Mr. Hendrickson gave him a draft Certificate of Title and an allocation letter for the property. No such documents were adduced in evidence by the defendant. I find that the defendant entered into possession of the land in 2009 as a gratuitous licensee as he paid no rent. It has been held that a person who is in occupation of land as a licensee cannot begin to obtain a title by adverse possession until his license has been revoked. Until such time as it is revoked his possession of the land is attributable to his license: **Clarke v Swaby**⁶.

[39] From 2009, the defendant was permitted to remain in possession of the property on the understanding that he would take up the Crown's offer to give him first option to purchase. The series of correspondence between the defendant and the Crown's agents irrefutably establish that the defendant, throughout the years, recognised the Crown as owner of the land and that he expressed an intent to purchase it. This stultifies any notion that he had the intention to possess the land to the exclusion of the Crown. See **Pollard v Dick**⁷ where the Court of Appeal held that the claim based

⁶ [200] UKPC 1.

⁷ 1977) 2 OECLR 239.

on adverse possession failed because the appellant had failed to show the necessary animus possidendi, as he had entered the land, not with an intent to dispossess the owner, but in the expectation of purchasing it from someone who purported to be the true owner.

- [40] Further, by raising the defence of limitation and adverse possession, the defendant must be taken to have accepted that the Crown was the owner of the land against whom he could raise the defence. It is inconsistent with his pleading that the land is owned by no one else. As the Court of Appeal has stated in **Celestine v Baptiste**⁸:

“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.”²⁶

- [41] Further, to bar the Crown’s claim under the Limitation Act, the defendant would have had to be in possession of the land for at least 30 years, pursuant to section 6 of the Act. He cannot surmount this hurdle as he has not been in possession of the land for the period required to extinguish the claimant’s title, i.e., 30 years. The 12-year limitation period he invokes is of no application where the person seeking to recover land is the Crown.
- [42] Accordingly, the defence of adverse possession fails, and, with it, the companion defence of limitation.
- [43] The defendant’s licence was terminated by service of the Notice to Quit on him which became effective 6th August 2021. The Crown’s right of action to recover the land accrued from that date as the defendant remains in possession of the land. The Crown is therefore entitled to an order for possession.

Mesne profits

- [44] Having been deprived of the use of the property since 6th August 2021, the claimant is entitled to recover a reasonable rent for the wrongful use of the property by the defendant even though no

⁸ HCVAP 2008/011.

actual loss was suffered by being deprived of the use of the property. See **Geddes Meyer v Kehvin Dickinson**.⁹ Generally, mesne profit is awarded from the date on which the landlord became entitled to possession of the land and is assessed by reference to the market value of the land during the period when the owner was kept out of possession, or the loss suffered by the owner during this time. The claimant has not furnished evidence on which to ground its claim for mesne profits in the sum of \$1000.00 per month on the purported basis that the claimant would be entitled to rent the property on the open market at that rate. I decline to make any order for the payment of mesne profits.

The counterclaim

[45] As to the counterclaim, proved that he expended monies to improve the property. He did place a workshop on the property, but this is in the form of a moveable container. His claim to have fenced the property is refuted by the photographs, which he conceded do not depict any fence. The photos also show that in January 2021 the property was in a dilapidated condition. I reject the defendant's evidence that he paid monies for the property to the business office of SSMC. No evidence is adduced to support this assertion. I further reject his evidence that he attempted to pay \$6, 300 towards the property at the Treasury but the clerk refused to accept it. This appeared nowhere in any of his affidavits and was first mentioned under cross-examination. This further undermined his credibility. Overall, I did not find the defendant to be a credible witness. As to the claim for damages for misrepresentation, the defendant has not pleaded any particulars of the alleged misrepresentation by the Crown. In the premises, the counterclaim is dismissed.

Disposition

[46] In view of my findings above, I make the following orders:

1. The claimant is entitled to possession of the property situated at #5 Kittstodarts, St. Kitts;
2. The defendant, Gretson Isaac, is ordered to give vacant possession of the said property to the Crown within one month of the delivery of this judgment;
3. The claimant is awarded prescribed costs on the value of the claim, treated as \$50,000.00.

⁹ ANUHC VAP2014/0005.

**Trevor M. Ward QC
High Court Judge**

By the Court

Registrar