

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2015/0079

BETWEEN:

**[1] JOSEPH JOHN MORREL
[2] ALICE WHYTE**

Claimants

and

GODWIN BIBBY

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Sandina Date for the Claimants

Mrs. Winnifred Duncan-Phillip and Ms. Thira Dumont for the Defendant

2022: August 2

ORAL RULING

[1] **ACTIE J:** This is a claim concerning ownership and possession of parcel of land with a building thereon situate at Mt. Parnassus in the parish of St. George, Grenada. This matter has had a chequered history and has been the subject of two High Court decisions and one Court of Appeal decision relating to the same property. At the trial on 20th July 2022, I gave an oral ruling and now give the reasons for my decision.

Background

[2] It is necessary to give some background details to give some perspective to the extant claim. The claimant, Joseph John Morrel, now 92 years, filed a claim in

1994 against the defendant, Godwin Bibby. The claimant sought a declaration that he is entitled to the fee simple absolute to a dwelling house and the adjoining land at Mt. Parnassus. He also sought an injunction to restrain Mr. Bibby from trespassing on the said property and effecting changes to the house. The claimant alleged that he and Mr. Bibby had an agreement for the purchase and sale of the land and house. A period of five months elapsed, and Mr. Bibby was not ready or able to complete the payment of the balance of the purchase price. The claimant accordingly returned the deposit and informed Mr. Bibby that the agreement was at an end. Alleyne J, as he then was, in a written judgment dated 7th October 1999, found in favour of Mr. Bibby on his counter claim. The court ordered Mr. Bibby to pay Mr. Morrel, the sum of \$200,000.00 within thirty (30) days of the judgment and directed Mr. Morrel to convey the legal estate in fee simple in possession free and clear from encumbrances to Mr. Godwin Bibby.

- [3] On 22nd March 2005, Godwin Bibby applied to the court for an order inter alia to give directions for the enforcement of the order of Alleyne J and to quantify costs. The parties entered a consent order for costs. Belle J in his decision dated 24th June 2005 was of the view that the claimant was seeking to relitigate an issue already disposed of by Alleyne J in 1999. Accordingly, Belle J directed Godwin Bibby to file a notice embodying the 1999 order on the claimant Joseph John Morrel attaching a penal notice within 14 days of the order. The order directed that the notice should advise the claimant that compliance with the order was required within seven (7) days of the order and if noncompliance persisted, the applicant (Mr. Bibby) must apply to the court for the committal of the claimant (Mr. Morrel) for contempt of court for non-compliance with the order. The court granted Mr. Morrel, twenty-eight (28) days after service to comply with the order.
- [4] It is the evidence that Mr. Bibby has been in possession of the house and land since 1993 except for a brief period when he was forcibly ejected by the claimant's agent. Mr. Bibby has not paid the sum of \$200,000.00 neither did he enforce the order made by Belle J.

The Present case of the Claimants

- [5] The first claimant, Joseph John Morrel is the father of the second claimant, Alice Whyte to whom the absolute interest and estate in the property was conveyed by deed of gift made by the first claimant dated 26th August 2013.
- [6] By fixed date claim form filed 26th February 2015 the claimants claim:
- (1) A declaration that the Order made by His Lordship the Honourable Justice Brian Alleyne, SC in Civil Suit GDAHCV1994/0247 on 17th October 1999 for specific performance of the agreement dated 4th November 1993 which this court found as a fact to have been made between the parties is hereby discharged for failure of the defendant to comply with the primary obligation of that order within the time specified in that order for its performance;
 - (2) A declaration that consequent upon the declaration just hereinabove made, the said agreement for sale of the subject property dated 4th November 1993 and made between the first claimant as vendor and the defendant as purchaser is hereby terminated and discharged;
 - (3) A declaration that the defendant is not entitled to enter, occupy, use or remain upon or otherwise deal with the property of the claimants at Mt. Parnassus, St. George;
 - (4) An order for possession of the premises forthwith;
 - (5) Damages for breach of contract;
 - (6) Damages for trespass;
 - (7) An injunction restraining the defendant whether by himself or by his servants or agents from entering, occupying, using or remaining upon or otherwise dealing with the subject property;
 - (8) Interest, costs; and such further and/or other relief as this Honourable Court deems just.

- [7] The claimants' claim is premised on the agreement of sale made on 4th November 1993 for the purchase of the property, which had been the subject of the claim before Alleyne J. The claimants aver that from the date of the order, the defendant has failed to/or refused to pay to the first claimant the sum of \$200,000.00 in breach of the agreement and court order.
- [8] The claimants assert that the defendant gave up possession of the property and ceased occupation sometime after 1999, but in or about October 2014, the defendant returned and entered into occupation of the property and has secured the outer doors of the property without the knowledge or consent of the second claimant, in whom the legal estate of the property was passed.
- [9] The claimants contend that the defendant threatens the claimants and is a trespasser and that unless restrained, the defendant intends to repeat acts of trespass or continue in use and occupation of the property. The claimants also contend that they have suffered loss and damage as a result of the defendant's trespass.

The case of the Defendant

- [10] The defendant avers that at all relevant times, he was and is still ready, willing and able to fulfil his contractual obligation to pay the first claimant the sum of \$200,000.00, but that the first claimant was unable and/or unwilling to convey the legal estate in fee simple in possession free from incumbrances in the said property.
- [11] The defendant states that the first claimant conveyed the legal estate of the said property to the Grenada Building and Loan Association by way of legal mortgage, and that a reconveyance of the legal estate has not been obtained notwithstanding that the loan secured has since been repaid.
- [12] The defendant relies on the ruling of the Honourable Mr. Justice Francis H.V. Belle dated 24th June 2005 (hereafter "the Belle judgment") wherein the learned judge

clarified and gave directions for the enforcement of the order of The Honourable Mr. Justice Brian Alleyne dated 7th October 1999. The defendant states that this ruling was appealed by the first claimant but dismissed by the Court of Appeal for want of prosecution.

[13] The defendant avers that thereafter the first claimant and himself, through their Attorneys-at-Law sought to have a negotiated solution to the matter, and that an engrossed conveyance between Grenada Building and Loan Association, the first claimant and the defendant was sent to the Grenada Building and Loan Association, however there has been no response from the Grenada Building and Loan Association.

[14] The defendant states that since 5th November 1993 save for a brief period in August 1994 when he was forced out by the first claimant's agent, he has been in undisturbed possession and control of the said property.

[15] The defendant avers in the alternative, that the second claimant's interest is subject to his equitable interest therein by reason of the agreement for sale dated 4th November 1993 between the first claimant and the defendant.

[16] The defendant counterclaims for the following:

- (1) An order that, under and by virtue of sections 4 and 27 of the Limitation of Actions Act, the claimants are not entitled to remove the defendant from occupation and possession of the said property;
- (2) Alternatively, a declaration that the second claimant's acquisition of the legal title in the said property by reasons of the deed of gift made 26th August 2013 between the first claimant of the One Part and the second claimant of the Other Part is subject to the defendant's prior equitable interest in the said property for an order of specific performance of the contract of sale dated 4th November 1993;

- (3) An order, pursuant to the declaration in paragraph 2 above, that upon the defendant paying the sum of \$200,000.00 within ----- days of this date the second claimant do convey to the defendant the legal estate in fee simple free from incumbrances in the property; and
- (4) Such further or other order as this court seems just; and Costs.

Legal Analysis

Whether the transfer by way of deed of gift between the first claimant and the second claimant of the first claimant's interest in the property is valid

- [17] The starting point is that there must be an end to litigation. The Privy Council in the case of **Isaacs v Robertson**¹ held that an order of the Court is valid unless set aside, varied or successfully appealed.
- [18] The defendant in this matter was previously successful in proving a contract between himself and the first claimant in Civil Suit No. GDAHCV1994/247, wherein this court through the Honourable Mr. Justice Alleyne ordered specific performance of the agreement for the sale of the property to the defendant.
- [19] The claimants contend that the defendant's failure to perform the primary obligation of paying the sum of \$200,000.00 within the specific period has the effect of discharging or dissolving the specific performance order, and the agreement between the first claimant and the defendant, therefore discharging the first claimant from further performance of the agreement for the sale of the property.
- [20] The agreement between the first claimant and the defendant was deemed valid by the said judgment, and specific performance of the agreement thereafter being ordered, the defendant held an equitable interest in the property. This equitable interest was acknowledged in 2005 by the Belle judgment. Yet in 2013, the first claimant sought to transfer his interest in the property to the second claimant.

¹ 3 WLR 705

- [21] The order of Alleyne J made in 1999 having not been appealed or set aside stands. The Order of Belle J made in 2005 again confirmed that the issue had been fully ventilated and that the parties were bound by the 1999 decision. Belle J gave directions for the enforcement of the 1999 judgment and contempt.
- [22] The first claimant could not in the face of the judgment transfer by way of gift to the second claimant in light of the 1999 judgment. The proper recourse was to have filed a claim to discharge the order or for enforcement of the order made by Alleyne J in 1999.
- [23] It is a well-established principle of equity that equity regards as done that which was to be done². What was to be done in this instance was the transfer of the property free from incumbrances to the defendant at the price of \$200,000.00, which the defendant asserts he was and is willing to pay.
- [24] The court finds, therefore, that the first claimant's purported transfer of his interest in the property was in breach of the court's order given the equitable interest in the property held by the defendant pursuant to the court's order.

Whether there was breach of the court order by either the first claimant and/or the defendant

- [25] In the said judgment, Alleyne J, dismissed the first claimant's claim and entered judgment for the defendant for specific performance of the contract, ordering that the first claimant convey to the defendant the legal estate in fee simple in possession free from incumbrances, inclusive of the mortgage which was obtained by the first claimant in 1978.
- [26] The strict timeline given by Alleyne J on the performance of the agreement for the conveyance of the legal estate was contingent upon the defendant, Godwin Bibby paying Joseph Morrel the sum of \$200,000.000 within thirty (30) days of the judgment. There is no evidence before the court that Mr. Bibby complied with the precondition stipulated in order to obtain title.

² Walsh v Lonsdale (1882) 21 Ch D 9

[27] Counsel for Mr. Bibby made much of the fact that the property had been conveyed to the Building and Loan Association and there was no evidence of the reconveyance of his interest in the property to him. This court notes that Alleyne J in his 1999 judgment acknowledged the fact that the claimant had long repaid the loan, but the title remained vested in the Building Loan Association.

Whether the defendant's re-entry of the property entitled the defendant to claim possession of the property by virtue of Sections 2 and 27 of the Limitation of Actions Act

[28] It is a settled principle of law that if a person is in possession of land with the permission of the true owner, his possession would not be adverse³. Megarry and Wade in **the Law of Real Property**⁴ state this very principle in the following:

“If a person is in possession of land with the permission of the true owner, his possession cannot be adverse. The permission may be expressly given or it may be implied. It will be implied where there has been some overt act by the land owner or some demonstrable circumstances from which it can be inferred that permission was given.”

[29] The defendant claims possession pursuant to **Sections 2 and 27** of the **Limitation of Actions Act**, yet still acknowledges the claimants as the owners of the property.

[30] The defendant cannot plead adverse possession of his equitable title. Alleyne J accepted that he had an equitable interest in the property based on the agreement for sale. In **Arnold Celestine (Administrator of the Estate of O' Ferril Celestine) v. Carlton Baptiste**⁵, the claimant sought declarations to the effect that he was the fee simple owner and possessory owner of a parcel of land. The Court of Appeal, per George-Creque, J.A (as she then was), said:

“In my view, this is clearly an inconsistent pleading. To claim to be in possession of land “as of right”, whilst at the same time claiming to be in adverse possession of it, is simply incomprehensible, given the legal connotation of each.

³ Zarb v Parry [2011] EWCA 1306

⁴ 7th edn, page 1417

⁵ HCVAP2008/011 at paragraph 12

[31] As a result, the defendant could not have been occupying the property in his own right but was occupying same by virtue of the agreement for sale which he held with the first claimant, in anticipation of its specific performance. **Sections 2 and 27** therefore do not assist the defendant.

[32] Counsel for the defendant also contends that the judgment made in 1999 in excess of twelve years is statute barred. The court takes into consideration the judgment of Belle J made in 2005 related to the same matter which would in effect interrupt prescription. Belle J acknowledged the judgment of Alleyne J and directed the defendant Godwin Bibby to file a notice embodying the order of 7th October 1999 attaching a penal notice in 14 days of the order. If non-compliance persisted then Mr. Bibby was to apply to the court for the committal of the Joseph Morrel.

[33] The court is of the view that the issue of limitation of action does not arise on the facts of this case.

Whether the defendant trespassed onto the property

[34] The claimants argue that the defendant has trespassed on the property, permission by the first claimant having been revoked. The said trespass however is as a result of the very agreement that was previously before this court in 1999, the issues concerning which this court is functus. The claim in 1999 was a claim in trespass against the defendant as licensee. The court held that the plaintiff condoned the defendant's continuing possession and executing works of renovation to the property.

[35] The filing of a new claim for trespass is an abuse of process. The first claimant is bound by the judgment of the court made in 1999 and 2005.

The defendant's counterclaim

[36] The defendant in his counterclaim, in the alternative, seeks a declaration that the second claimant's title pursuant to the deed of gift is subject to the equitable interest in the said property. He also seeks an order, that upon paying the sum of

\$200,000.00, the second claimant do convey the legal estate in fee simple free from incumbrances in the property.

[37] The defendant is once again seeking to enforce the judgment of Alleyne J made in 1999 and reinforced by Belle J in 2005 establishing his equitable right in the said property. The equitable right was conditional upon the defendant paying the first claimant the purchase price of \$200,000.00 within thirty (30) days and thereafter to obtain free unencumbered title to the said property. The order has not been appealed or set aside and it is for the court to ensure compliance.

[38] This court notes that the first claimant, Mr. Joseph John Morrel at 92 years, appeared in court and was in no state of mind to understand the nature of the proceedings or to give effect to the order. The second claimant is likewise of little assistance to the court. This is rather unfortunate as the claimants, especially the first claimant, have been deprived of their property in excess twenty years without compensation.

[39] The court is of the view that the Mr. Morrel lacks the mental capacity to execute the deed of conveyance and will accordingly direct the Registrar of the High Court to sign and execute the deed and any other document necessary on behalf of the first claimant to give free unencumbered title to the defendant, conditional upon payment of the sums ordered as directed by this court.

Costs

[40] In relation to costs, it is the general rule that the unsuccessful party is to pay the costs of the successful party⁶. However, the court may order a successful party to pay all or part of the costs of an unsuccessful party⁷. Dame Janice M. Pereira, Chief Justice in **The Attorney General et al v Anton Tonge**⁸ stated:

“Whilst it is recognised that the court has a general discretion with regard to costs, and may order a successful party to pay all or part of the costs of

⁶ CPR 64.6(1)

⁷ CPR 64.6(2)

⁸ ANUHCVP 2013/0005

an unsuccessful party, the reasons for departing from the general rule, must either be obvious from all the circumstances such as not to require a stated reason, or otherwise it is expected that a reason or reasons would be expressed for the departure from the general rule”.

[41] Pereira CJ stated further stated:

“from the factors to be considered, it becomes clear that the court would look to see whether party “A” may have behaved unreasonably in the context of the proceedings and is such that notwithstanding being successful, “A” should nevertheless either be deprived of his costs or be ordered to pay “B’s” costs although “B” was unsuccessful”.

[42] The court is required to look at the conduct of the parties and whether they have behaved unreasonably. Both parties are in breach of the court’s orders. However, the court notes that the defendant has been in possession of the said property since 1993. The defendant admits that he has not paid the claimant the sum of \$200,000.00 as was directed by the court in the 1999. The defendant has deprived the first claimant of the proceeds of the purchase price ordered by the court.

[43] There were several options available to the defendant to give effect to the court’s orders such as making a payment into court, enforcing the judgment as was directed by Belle J in 2005 or seeking an order for the Registrar to execute the conveyance on behalf of the first claimant. The defendant instead remained in occupation enjoying the free use and occupation of the property. Mr Bibby at trial further indicated that he took a mortgage on the said property without providing any evidence to support his averment.

[44] The first claimant having been deprived of his property is now ninety-two (92) years and is obviously unable to appreciate the nature of the proceedings. The court is a court of equity. He who seeks equity must do equity. Equity will not suffer a wrong to be without a remedy.

[45] Both parties are in breach of the court orders. However, the court is of the view that although the defendant was successful in his counterclaim, he was bound by the decisions of Alleyne J in 1999 and Belle J in 2005. The enforcement of the

judgment was always conditional upon payment of the contract sum which Mr Godwin Bibby has failed to perform.

- [46] The court is of the view that this case requires a departure from the general rule that the successful party pays the costs. The court takes into consideration that the claimant, Joseph John Morrel, has been kept out of his property and proceeds of sale since 1993. Accordingly, the defendant shall pay prescribed costs pursuant to CPR 65.5 (i.e., \$27,500.00 - 7500.00 = \$20,000.00) reduced to compensate for the first claimant's breach.

ORDER

- [47] In summary and for the forgoing reasons, it is ordered and directed as follows:

- I. The claimants claim for trespass stand dismissed.
- II. The defendant, Godwin Bibby, shall pay the first claimant, Joseph John Morrel, the sum of \$200,000.00 together with interest within six (6) weeks at the rate of 3% from the date of judgment by Belle J in 2005 until this judgment and at the rate of 6% from this judgment until payment in full.
- III. The said sum shall be paid to Green Law Chambers on behalf of the first claimant, Joseph John Morrel.
- IV. Thereafter, the Registrar of High Court shall sign all documents required on behalf of the first claimant, Joseph John Morrel, to give effect to a clear and unencumbered title to the defendant, Godwin Bibby, to the parcel of land described in the judgment of Alleyne J on 7th October 1999.
- V. Unless the defendant, Godwin Bibby, complies with the said order, he shall vacate the said premises within thirty (30) days after the effluxion of the time in paragraph (ii) and the title shall revert to Joseph John Morrel to give effect to the Deed of Gift to the second claimant, Alice Whyte.

- VI. Should there be compliance with Paragraph (ii) above, the Deed of Gift by the first claimant, Joseph John Morrel to the second claimant, Alice Whyte shall become null and void and shall be expunged from the Land Registry records.
- VII. Prescribed Costs to the claimant, Joseph John Morrel, to be paid by the defendant, Godwin Bibby, in the sum of \$20,000.00 to be paid within Six (6) weeks.
- VIII. A penal clause shall be inserted on the said order.

Agnes Actie
High Court Judge

By the Court

Registrar