

**EASTERN CARIBBEAN SUPREME COURT
GRENADA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV 2022/0079

BETWEEN:

MARTIN CLEMENT

Claimant

and

JOSEPH HOYTE OLLIVIERRE

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Deloni Edwards for the Claimant

Mr. Ruggles Ferguson K.C. for the Defendant

2026: September 22nd.

Ruling

- [1] **ACTIE J:** The claimant became the fee simple owner in possession of premises measuring 6,375 square feet, situated at Good Hope on the island of Petite Martinique ("the property") through a deed of conveyance dated 6th February 2019 and recorded in the Deeds and Land Registry of Grenada.
- [2] By claim form filed on 12th February 2020, the claimant avers that, in or about May 2018, while he was in possession but before the deed was recorded, the defendant and his agents wrongfully entered the property and demolished the fence erected along the boundary. The claimant claimed against the defendant damages for trespass and for the claimant's damaged fence, special damages in the sum of \$10,026.70, an injunction, interest, costs and other reliefs.
- [3] In his defence, the defendant contends that, in or about May 2018, he learned that a surveyor had entered the property on one Sylvester Sandy's instructions.

He admits causing the fence to be demolished and removed, asserting that he acted in exercise of his rights of ownership and control. He further avers that any damage to the fence resulted from the claimant's insistence on unlawfully entering the property.

- [4] Having reviewed the pleadings, the court concluded that no triable issue arose because the defendant's defence admitted liability: he had resorted to self-help by entering the property and damaging or demolishing the claimant's fence. As the claimant was in possession at the material time, he was entitled to recover any loss caused by the defendant's trespass. Accordingly, there being no viable defence, judgment was entered for the claimant, leaving only the assessment of the pleaded special damages, damages for trespass, and costs.

Defendant's counterclaim case

- [5] The matter now turns on the defendant's counterclaim in which he seeks:
- (1) A declaration that the Indenture of Conveyance dated 16th January 2001 made between Agnes Sandy of the one part and Kenwyn Sandy of the other part is null and void and of no effect having no or no valid root of title;
 - (2) A declaration that the Indenture of Conveyance dated 6th February 2019 between Sylvester Sandy of the first part Stephanie Sandy of the second part and Martin Clement of the third part is null and void and of no effect having no or no valid root of title.

Or in the alternative

- (3) A declaration that any title vested to the predecessors in title to the Sandys (the Vendors in the 2001 Deed) was extinguished by the open continuous and exclusive possession of the late Theresa Ollivierre and John Caesar in excess of 100 years by virtue of the combined effects of Sections 4 and 27 of the Limitation of Actions Act CAP 173 of the 2010 Revised Laws of Grenada.

- (4) An order setting aside the Indentures of Conveyance dated 16th January 2001 and 6th February 2019, and directing the Registrar to strike them from the records of the Deeds and Land Registry of Grenada.
 - (5) A permanent injunction restraining the claimant, his servants and/or agents from entering upon the property and conducting any activity thereon.
 - (6) Damages arising from the demolition of the two (2) buildings on the property on 5th July 2020.
 - (7) Damages for trespass, such further or other relief as the court deems just; and Costs.
- [6] The defendant avers that his maternal grandfather, John Caesar, was the original owner in possession¹, and that thereafter his grandfather's daughter, Theresa "Flavia" Ollivierre, who is the defendant's mother, remained in possession of the property for well over sixty years before her death in 2010.
- [7] The defendant is the administrator of the estate of Theresa "Flavia" Ollivierre, and alleges that he has been in exclusive possession of the property in his capacity as administrator. The defendant further contends that he and his immediate families have been in actual, open, exclusive and continuous possession of the property for well over 100 years. The defendant avers that neither of the Sandys, from whom the claimant purports to have purchased, have ever been in possession of the property.
- [8] The claimant denies that the defendant and his predecessors have been in exclusive undisturbed possession and avers that it was his predecessors in title who have been in exclusive undisturbed possession.
- [9] Both parties referred to Claim No. 2003/0118, **Kenwyn Sandy v Michael Caesar**, concerning trespass on the disputed parcel. The claimant pleaded that the said Micheal Ceasar entered the land in 2022 and began fencing and constructing a concrete foundation. The court directed the parties to ascertain the final outcome of that claim and listed this matter for a further status hearing. Although the file

¹ In a Witness Statement filed 1st March 2021 however, the defendant concedes and agrees with the claimant that Francis Clement was the original owner of the property

contains various notations, this court found no record of a final determination of the claim or the interlocutory application to strike out the defence, and one of the attorneys on record was unable to assist. The 2013 claim therefore appears to have been abandoned.

Legal Analysis

Whether the Claimant's Predecessors in Title were Paper Title Owners of the Property

[10] According to the claimant, the history of the land is as follows:

- (1) The land was first in possession of the late Francis Clement and his wife Angelina Clement until the death of Francis.
- (2) By the will of Francis Clement dated 10th September 1908, he devised the property to his said wife Angelina Clement and his son Elias Clement.
- (3) Angelina Clement and Elias Clement remained in possession and in 1996 Agnes Sandy, the daughter of Elias Clement, caused a Statutory Declaration dated 30th January 1996 to be prepared and executed whereby the declarant, Ambrose Mitchell, declared that he knew the said Francis and Angelina Clement to be in possession of the property since in or about 1922.
- (4) During his lifetime, Elias Clement put Agnes Sandy in possession of the property.
- (5) Elias Clement then died leaving several children and his estate was divided among all of his beneficiaries, one of whom as Agnes Sandy. The estate lands were surveyed and a lot received by Agnes Sandy by conveyance dated 13th July 1996.
- (6) Agnes Sandy gifted the property to her son, Kenwyn Sandy by Indenture dated 16th January 2001. Kenwyn Sandy then died in 2010 leaving Sylvester Sandy and Stephanie Sandy the persons entitled to his estate.
- (7) The claimant then bought the property from the beneficiaries under the estate of Kenwyn Sandy by virtue of conveyance dated 6th February 2018.

- [11] Michel JA in **Marlon Mills v Stacey McKie**² at paragraph 24 of his judgment stated thus:

“[24] Title, in the context of property, refers to the right which a person has to the ownership of the property. In terms of title to land, the right may be established by long possession of the land, with the intention to possess it as owner to the exclusion of everyone else. Title may also be established by a document which specifies the property to which it refers, the person who is asserting the right to it, and the manner in which that right was acquired – whether by grant, by assignment, by purchase or otherwise...”

- [12] The claimant relies on the existence of a Statutory Declaration deposited by Ambrose Mitchell. It is a well-established law that a Statutory Declaration is nothing more than a written document containing allegations of fact solemnly declared in the form of law, which may have certain limited evidential value³. The court notes the production of tax receipts in support of the claimant's pronouncement of the aforesaid history, although the payment of taxes for land is not conclusive of ownership of land⁴ and does not prevent time from running for the purpose of adverse possession⁵.

- [13] The valid evidence of the claimant's title stems from the specific devise in the 1908 Will of Francis Clement. According to **J T Farrand in Contract & Conveyance**⁶:

“Between 1897 and 1926 such a devise would still be a good root although the assent of the deceased's personal representative was also necessary to make the devise operative as to the legal estate.”

- [14] Both the claimant and the defendant agree that Francis Clement was the original owner of the property. In his said Will, Francis Clement devised and bequeathed the following:

² SVGHCVAP2016/0001

³ Claim No. 519 of 2014 Stephanie Baptiste v Salisha Jones

⁴ George Donald Barclay and Ors v Hilda Clement nee la Pierre Unreported decision of Price-Findlay J in GDAHCV2009/0177 adopted in Magdelene Lendor v Winsford Frank and Viola Frank Unreported decision of Mohammed J in GDAHCV2003/0620

⁵ Claim No. 71 of 2009 - Alfred St. Clair Neverson v Brenda Neverson

⁶ 4th Edn, Oyez Longman.

“...to my wife Angelina Clement and Elias... Clement my lawful son, the Estate, Good Hope for their sole use...”

- [15] It is the evidence that Elias Clement died leaving several children including Agnes Sandy and the estate was divided among all beneficiaries. Agnes Sandy by deed of conveyance dated 13th July 1996 became the registered proprietor of part of the said estate and then gifted the disputed property to her son Kenwyn Sandy on 16th January 2001. Kenwyn died in 2010 leaving Sylvester Sandy and Stephanie Sandy as named beneficiaries, who then sold to the claimant on 6th January 2018.

- [16] The land’s history shows that the “Clements” consistently asserted ownership through acts such as commissioning surveys and obtaining a statutory declaration confirming their occupation under the title devised by Will of Francis Clement, the original owner.

- [17] The defendant’s evidence is that his grandfather, a son of Francis Clement who was ineligible to inherit under the law at the time, gave the disputed land to Theresa “Flavia” Ollivierre. However, there is no evidence that the grandfather of the defendant held title when the purported transfer occurred, how he acquired title, or how title passed to his daughter. The defendant further states that his mother cultivated the land and permitted others to use it.

- [18] The only evidence of actual occupation concerns Michael Caesar, who is brother to Theresa Ollivierre. Caesar in his defence in Claim No. 2003/0118 contends that he entered the property after returning from the United States in 1988. The claimant, Kenwyn Sandy in the 2003 claim filed an application to strike out the defence. Micheal Caesar in written submissions in opposition to the striking out application, stated that Theresa Ollivierre occupation of the disputed land culminated in 1988 when he took possession. He states that his occupation was curtailed by an injunction granted to the claimant, Kenwyn Sandy in or about 2002 restraining him from entering the on the land.

- [19] It is the defendant’s evidence that his mother left the property and relocated to Grenada and he likewise moved to Grenada at the age of five. Michael Caesar in

his defence to Claim No. 2003/0118, stated that he placed two metal containers on the land and had entered the land in his own right.

[20] Although the defendant maintains that Michael Caesar occupied the property with the permission of his mother, he cannot rely on the possession of Michael Caesar, who is now deceased. The evidence does not support the defendant's assertion that his mother through Doris Alexander remained in continuous and uninterrupted occupation of the disputed property.

[21] The court taking into consideration the totality of the evidence, namely 1908 last will and testament, letters of administration of the estate of Elias Clement dated 26th November 1986, survey of the disputed property in 1995, Statutory Declaration made on 13th January 1996 asserting the occupation; indenture of conveyance made on 13th July 1996, the payment of taxes over the years, the filing of an action against Michael Caesar together with the injunction all support the superior title of the claimant and his predecessors in title. The defendant has not provided any evidence of superior title by his mother or predecessors to nullify the claimant's title. The devise establishes that the claimant's predecessors held title to the property and, in the court's view, constitutes a good root of title.

Whether the Claimant's Predecessors in Title were dispossessed by the Defendant's Predecessors

[22] For the defendant and his predecessors to have dispossessed the claimant and his predecessors in title, the requirements of sections 4 and 27 of the Limitation of Actions Act must be met. In **Mt. Hartman Bay Estate Limited v Ashok Bhawnani**⁷, Henry J summarised the applicable law as follows:

"In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, so that if the defendant is to dispossess the claimant or its predecessor in title, [the] defendant and his predecessor must be shown to have both factual possession and the requisite intention to possess... Such possession with the requisite intention must be for the continuous period under the Limitation Act, that is, twelve years."

⁷ GDAHCV2006/0423

[23] Further In **Powell v McFarland and Another**⁸, it was held by Slade J that 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.

[24] It is well established that a limitation defence is a shield, not a sword. Having failed to establish superior title, the defendant cannot rely on Sections 4 and 27 of the Limitation of Actions Act to advance an independent cause of action against the claimant. Any claim to title by adverse possession should have been brought under the Possessory Titles Act, which prescribes the statutory requirements for obtaining a declaration of title on that basis. The defendant has therefore failed to establish his cause of action, and the counterclaim is dismissed.

Conclusion

[25] For the foregoing reasons, it is ordered and directed as follows:

- (1) The claimant succeeds in his claim for trespass and the defendant's counterclaim for trespass and adverse possession is dismissed.
- .
- (2) Damages and costs to be assessed, if not agreed within thirty (30) days of today's date, upon application by the claimant.

Agnes Actie
High Court Judge

By the Court

Registrar

⁸ (1977) 38 P & CR 452