

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA**

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2004/0429

BETWEEN:

**ELLEN (EDLYN) WORKS
(by her Attorney Wellington Charles)**

Claimant

And

**(1) MITCH PHILLIP
(2) MARGARET PHILLIP**

Defendants

Appearances:

Brenda Wardally-Beaumont for the Claimant
Celia Edwards QC for the Defendants

2015: January 27th

JUDGMENT

[1] **ELLIS J.:** By Fixed Date Claim Form filed on 3rd September 2004, the Claimant claims:

1. Recovery of possession of a lot of land situate in Victoria in the Parish of Saint Mark belonging to the Claimant and recorded in the Deeds and Land Registry in Liber 4-93 at page 272.
2. A declaration that the Defendant is not entitled to possession of the aforesaid lot of land.
3. An order that the Defendant do forthwith remove from the Claimant's land, the chattel house situate on the Claimant's land at Victoria and an injunction restraining the Defendant from entering the Claimant's land.

4. Mense Profits.

5. Costs.

- [2] The Claimant claims to be the owner in fee simple of a lot of land situated at St. John's Street, Victoria in the Parish of St. Mark by virtue of a Deed of Conveyance dated 15th April 1993 made between Roy Lawrence and the Claimant, recorded in the Deeds and Land Registry in Liber 6-93 at page 427. (the Deed) The lot of land is described as containing one thousand nine hundred and eighty square feet (1980 sq. ft.) and abutted and bounded as delineated and described in the plan or diagram marked "L" and annexed to the Deed. (the Property).
- [3] The Claimant contends that the Second Defendant entered the Property as a tenant of Roy Lawrence who was the previous owner and who permitted her to erect a chattel house on a house spot on the Property. In or about April 1993, the Second Defendant was informed by Roy Lawrence that the Property had been sold to the Claimant and she was given notice to quit the Property. The Second Defendant however, refused to deliver up possession.
- [4] In or about July 1995, lawyers acting for the Claimant again served the Second Defendant with a notice to quit, terminating on 31st January 1996. The Second Defendant again ignored the notice to quit and refused to deliver up possession of the Property to the Claimant. As a result, the Claimant commenced proceedings in the Victoria Magistrate Court against the Second Defendant on 30th May 1997 for recovery of possession. However, the Magistrate dismissed the Claimant's claim for possession. The Claimant contends that the Magistrate did so on the basis that he did not accept the Claimant's reasons for termination.
- [5] In 1998, the Second Defendant migrated to Canada leaving her son, Antoine Phillip in possession of the Property. The Claimant contends that when she became the owner of the Property, neither Antoine Phillip nor Second Defendant chose to become her tenants and despite her demands, they both refused to pay rent.
- [6] Antoine Phillip was also served with a notice to quit in March 2003, and he ignored all entreaties by the Claimant and her agent to quit and vacate the Property. He later migrated from Grenada leaving the First Defendant in possession of the Property.

[7] The Claimant contends that the First Defendant wrongfully continues to retain possession of the Property and has exhibited no intention of removing the said chattel house unless ordered to do so by this Court.

THE DEFENDANTS' CASE

[8] The First Defendant filed a Defence to this action on 4th April, 2005. The Second Defendant who is the mother of the First Defendant was joined as a defendant to the Claim by an Order made on 17th October 2005. She filed a separate defence in November 2005.

[9] Both Defendants put the Claimant to strict proof that she is the owner of the Property. In her Defence, the Second Defendant denies that she was ever a tenant in respect of the Property or that she erected her house on the land with the permission of Roy Lawrence or any other person. In fact, the Second Defendant says that she chose not to become the tenant of the Claimant because the Claimant is not in a position to offer her a lease.

[10] Instead, she contends that she has been in possession of the Property for over twenty years without permission from the Claimant or any other person. In support of this contention, she relied on a Statutory Declaration of Lenore Bishop dated 22nd September 2003 and registered in the Deeds and Land Registry at Liber 31-2003 at page 455. Both Defendants allege that as a consequence of this, any title which the Claimant or her predecessors may have had would have been extinguished by virtue of sections 4 and 27 of the Limitation of Action Act Cap 173 of the Laws of Grenada.

[11] The Defendants do not deny that the notices to quit were issued but they dispute their efficacy. The Defendants also admit the institution of the magisterial actions, but they contend that the reason for dismissal of the action was that the purported notices to quit were invalid. They contend that there was no determination as to whether or not a tenancy existed. The Second Defendant says that in any event, the Summary Court action would not stop time running for the purpose of limitation.

[12] The Defendants do not deny that the Second Defendant migrated to Canada. In the same way, they do not deny that Antoine Phillip also migrated abroad leaving the First Defendant in occupation of the Property. In conclusion, the Defendants state categorically that they have no intention of vacating the Property.

[13] It became clear during the course of these proceedings that a determination of the Claimant's claim hinges on the Defendants' contention that the Second Defendant has been in peaceful uninterrupted possession of the subject property for a period in excess of 20 years. In advancing what is essentially a defence of adverse possession, the Defendants assert that any title which the Claimant or her predecessors may have had would have been extinguished by virtue of sections 4 and 27 of the Limitation of Actions Act. The Court must therefore first consider the relevant legislative framework as well the applicable judicial authorities.

THE LAW

[14] Section 4 of the **Limitation of Actions Act Chapter 173 of the Revised Laws of Grenada** provides as follows:

“No person shall make an entry or distress, or bring an action to recover any land, but within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to some person through whom he or she claims, or, if the right has not accrued to any person through whom he or she claims, then within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to the person making or bringing it.” (Emphasis Mine)

[15] This section bars the bringing of an action to recover land where 12 years have elapsed following the time when the right to bring the action first accrued to individual or any person through whom the individual claims.

[16] This section must however be read in conjunction with sections 5, 12 and 27 of the same Act which provide as follows:

s. 5 In the construction of this Act, **the right to make an entry or distress or to bring an action to recover any land shall be deemed to have first accrued** at such time as is hereinafter mentioned, that is to say—

(a) when the person claiming the land, or some person through whom he or she claims, has in respect of the estate or interest claimed, been in possession or receipt of the profits of the land and while entitled thereto has been dispossessed or has discontinued the possession, then the right shall be deemed to have first

accrued at the time of the dispossession or discontinuance of possession or at the last time at which any such profits were so received;

(b) when the person claiming the land claims the estate or interest of some deceased person who has continued in such possession or receipt in respect of the same estate or interest until the time of his or her death, and has been the last person entitled to the estate or interest who has been in such possession or receipt, then the right shall be deemed to have first accrued at the time of such death;

(c) when the person claiming the land claims in respect of an estate or interest in possession granted, appointed, or otherwise assured by an instrument, other than a will, to him or her or some person through whom he or she claims, by a person being, in respect of the same estate or interest in the possession or receipt of the profits of the land, and no person entitled under the instrument has been in such possession or receipt, then the right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he or she claims, became entitled to such possession or receipt by virtue of the instrument;

(d) when the estate or interest claimed has been an estate or interest in reversion or remainder or other future estate or interest, and no person has obtained the possession or receipt of the profits of the land, then the right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession; and

(e) when the person claiming the land or the person through whom he or she claims, has become entitled by reason of any forfeiture or breach of condition, then the right shall be deemed to have first accrued when the forfeiture was incurred or the condition was broken.

s. 12 No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon.

s. 27 At the determination of the period limited by this Act to any person for making an entry or distress or bringing an action, the right and title of that person to the land for the recovery whereof the entry, distress, or action, might have been made or brought within that period shall be extinguished.

[17] The English courts have also provided a number of useful judicial precedents in this area. It is now accepted that the case of **JA Pye (Oxford) Ltd. & Anor v Graham & Anor**¹ stands as a definitive authority on the applicable legal principles. In that case the House of Lords helpfully traced the history and development of the law relating to adverse possession and restated the applicable principles relating to ‘possession’.

[18] These principles have since been applied in several cases in this region and in particular in **Jeffrey Adolphus Carty v Raphael Edwards**² in an erudite judgment rendered by George Creque J. At paragraph 9 of that judgment, the learned Judge restated the opinion of Lord Browne-Wilkinson in **Pye** thusly:

“The question is simply whether the defendant squatter has dispossessed the paper owner (in this case, the registered proprietor) by going into ordinary possession of the land for the requisite period without the consent of the owner”.

At paragraph 40 of his opinion, he succinctly stated the two elements necessary for establishing legal possession thus:

“(1) a sufficient degree of physical custody and control (“factual possession”);

(2) an intention to exercise such custody on one’s own behalf and for one’s own benefit (“intention to possess”).

....Such an intention may be, and frequently is, deduced from the physical acts themselves.

He went on further to say that “it is not the nature of the acts which A does but the intention with which he does them which determines whether or not he is in possession.”

[19] In order to properly ground this defence, it is therefore clear that there are several requirements that a defendant must satisfy. These requirements have been repeatedly prescribed in local case law which has been succinctly summarized by Price-Findlay J in **George Donald Barclay and Others v Hilda Clement nee La Pierre**³. The learned Judge recaps the position in this way –

¹ 2003 1 AC 419

² AXAHCV 2003/0045 High Court of Justice Anguilla 2007 unreported judgment.

³ GDAHCV2003/0177 at paragraph 83

“Firstly, possession has to be without the permission of the person with the proper title to the land. Any party asserting possessory title on that basis must therefore have entered the land without permission from the beginning, or having entered with permission, such permission must have expired. Secondly, the party must demonstrate that he or she has sufficient exclusive occupation to constitute possession continuously for the prescribed period. Thirdly, such possession must be adverse to the possession of the holder of the paper title. The person claiming must exercise control of the land with the intention to exclude the owner of the land on his behalf and for his benefit. He must therefore demonstrate an intention to possess the land. Fourthly, the possession must be *nec vi nec clam nec precario*, that is, without force, openly and without permission. For a party to succeed in a defence of adverse possession, all the requisite elements must exist. Should any element be missing, the defence fails and adverse possession is not made out.”

[20] The Claimant’s title is therefore indefeasible unless the Defendants can prove that the Claimant (or those through whom she claims) has been dispossessed. The onus of proof therefore lies squarely on the Defendants who must advance such proof on a balance of probabilities.

THE EVIDENCE

[21] The Claimant’s attorney, Wellington Charles gave evidence on her behalf. In addition, she called one other witness, Brewyn Andrew Alexander. Both Margaret Phillip and Mitch Phillip gave evidence in defence of the Claim.

[22] Generally, the Court was challenged by the lack of accurate recall and/or veracity of all of the witnesses. It appeared to this Court that the Parties evidence was generally advanced in a manner intended to address the legal requirements of the claim and the defence rather than a frank and honest recount of the facts and circumstances of this case. As such, the Court was obliged to anxiously scrutinise the evidence when applying the law to the facts.

[23] In the case of the Second Defendant, her oral testimony during the trial considerably revised her witness statement. This adversely impacted how the Court viewed her testimony and that of the First Defendant whose evidence was in many respects not corroborated by the Second Defendant. Similarly, the Court found that Mr. Charles’ evidence contained a number of inconsistencies which affected his reliability as a witness.

THE DEFENCE

- [24] In her witness statement filed on 31st March 2006, Margaret Phillip states that in 1975 she purchased a house located on a parcel of land on St. John's Street, Victoria, St. Marks for \$300.00 from Veronica Gill. At the time, the house was occupied and in a state of disrepair. Together with Ms Gill, Ms Phillip requested that the occupant vacate the house. After she took her receipt to the Magistrate's Court in Victoria, a police officer was sent to evict the occupant. Over the years, she renovated the house and eventually moved in with her family and took possession.
- [25] She also stated that in 1980 (while she was already residing in the house), she was approached by Roy Lawrence who informed her that he had purchased the Property. In 1993, he served her with a Notice to Quit which she ignored.
- [26] After some time elapsed, she was contacted by the Claimant who informed her that she had purchased the land from Mr Lawrence. The Claimant demanded that she either pay rent or vacate the Property. Ms Phillip stated that she did not comply. She further stated that she has not paid rent to either Mr Lawrence or the Claimant but has continued to live on the Property.
- [27] The Second Defendant admits that the Claimant served a Notice of Quit dated 17th June 1994 which alleged that she had lived there for several months, but she states that she ignored it. The Claimant commenced legal proceedings against her but the case was later withdrawn. A further Notice to Quit was served in 1995 but she again ignored it. In 1997, she was served to attend a hearing in which the Claimant again sought possession of the Property. She contends that after examining the evidence, the magistrate ruled in her favour. She continued to occupy the Property as she had been doing for nearly 30 years (approximately 1977). In 1998, she migrated to Canada but she left her children in occupation of the house. In 2003, she gave instructions for a statutory declaration to be prepared evidencing her possession of the Property. She reiterates that since she has been in possession, she has neither paid rent nor acknowledged the title of any person to the Property.

- [28] When she was examined under oath, Ms Phillip testified that she purchased the house on 10th October 1975 with money that she obtained from the credit union. She told the Court that when she purchased the house she obtained a receipt from Veronica Gill. When she was shown a copy of receipt which evidences a payment of \$150.00, she reiterated that she purchased the house for \$300.00. She also noted that the receipt was dated 27th October 1975, but she testified that she purchased the house on 10th October 1975. She testified that she did not have a copy of this receipt and she denied that this was the receipt which was given to her by Veronica Gill.
- [29] Ms Phillip further testified that she moved into the house together with her children in 1977. She agreed that Veronica Gill was alive at the time and that in 1977 she moved into the house as a tenant paying Veronica Gill the sum of \$10.00 per year. Initially, she testified that she last paid the rental until 1979; but when she was asked to clarify whether she only paid rent for 2 years, she clarified that she paid rent until 1989. This rent was paid in cash to Ms Gill who would come to collect it at the end of the year.
- [30] She further testified that Mr Lawrence approached her in early the 1980s and again in the late 1980s – 1990s. During this period, she was still a tenant to Veronica Gill because the agreement between them ended in 1989 when Ms Gill informed her that she had sold the Property to Roy Lawrence.
- [31] Ms Phillip also told the Court that Mr Lawrence approached her but did not produce his title to the Property. Later in her testimony, she stated that she had an agreement with Roy Lawrence to remain on the Property and to keep it clean. Moreover, she stated that she was there with his permission. He approached her on 2 occasions and thereafter, she had a conversation with him about buying the land from him. She was still waiting for the negotiations when she was told that he had sold the land to the Claimant.
- [32] She denied that she ever paid rent to Roy Lawrence. She also denied that she ever paid rent to Judith Paul on behalf of Roy Lawrence. She admitted that Roy Lawrence gave her notice to quit the Property. Her evidence is that she began negotiations with Roy Lawrence about buying the Property and that is why she ignored the notice to quit. When a copy of the notice to quit dated 1993 was shown to her, she admitted that this was the notice which was served on her but which she ignored.

- [33] She stated that Mr Lawrence never informed her that he was going to sell the Property to the Claimant. She admitted that she received a notice to quit from the Claimant and Wellington Charles on 17th June 1994. She ignored that notice. She also admitted that she received a further notice to quit in 1995 which she also ignored.
- [34] She concurred that the Claimant (through her attorney Wellington Charles) sued her in Magistrate's Court. She also indicated that at the time of this litigation, she had no intention of claiming the Property because she had negotiated to purchase it.
- [35] It was in 2003 that she had a Statutory Declaration prepared by Lenore Bishop. In this Declaration, Ms Bishop states that she is 68 years old and well acquainted with the lot of land owned by the Second Defendant. She declares further that for over 20 years the Second Defendant has been in full, free and undisturbed possession of the said lot of land and enjoyment of the rents and profits thereof acknowledging title in no one. The lot of land in question is described in the following way:
- “ALL THAT lot piece or parcel of land situate at St. John's Street in the town of Victoria and Parish of St. Mark and State of Grenada containing by estimation One Thousand Nine Hundred and Eighty-Eight sq. ft. (1988 sq. ft.) English State measure and abutted and abounded on one side by the land of Henderson Charles on another side by the land of Pauline Farrier on another side of P.G. Alley and on the remaining side St. John's Street or howsoever the same may be known distinguished or described.”*
- [36] Ms Phillip stated that at the time that this declaration was executed she had been in possession of the property as owner for 35 years which possession was not interrupted by anyone else. She denied paying rent to anyone after 1989. And when it was put to her, she denied paying rent in the amount of \$60.00 (representing 6 years rental) to Judith Paul (sister-in-law to Roy Lawrence) on 21st June 1989. When a copy of a receipt was produced, she stated that it was false. A further receipt dated 24th July 1989 was shown to her. It indicated that she paid rent to Judith Paul for Roy Lawrence in the sum of \$30.00 (representing 3 years rent). She again denied that she ever paid any such rent.
- [37] In 1998, she migrated to Canada leaving her children (Mitch, Johnson Michael, Alton and Anton) in the house. When she left Grenada, the house had 2 bedrooms and she was in the process of installing an inside bathroom and toilet. She left her children to complete the

work. When she was cross-examined, she told the Court that the work was only recently completed. By way of explanation, she indicated that her son, Anton was doing the work but he got sick.

[38] She denied that she had no intention of claiming the land as owner in 2003. She further testified that it was not until 1998 that she decided to claim the land because there was no other person with title to the land besides her.

[39] Ms Phillip's co-defendant and son, Mitch Phillip also filed an amended witness statement on 13th July 2006. In it, he states that the Second Defendant has been in possession of the Property for over 20 years. He also relies on the statutory declaration made by Lenore Bishop.

[40] His evidence regarding the purchase of the house, the eviction of the then occupant, the renovations and eventual entry into possession mirrors almost exactly the evidence of the Second Defendant. However, he went further to say that over the years, they completed major alterations and additions to the house; namely the addition of the bedroom, change of roofing addition of veranda and additions of bathroom with concrete foundation in 1980 and paving of the yard with concrete.

[41] He stated that they have never obtained permission from anyone to effect any one of those changes; neither did anyone tell them anything about those changes. At this point, Mitch Phillips evidence diverges from that of the Second Defendant. His evidence is that from the time that they started to live there, the Second Defendant also planted short crops and reared animals on the lot. The Court noted that no mention was made of this either in the written or oral testimony of the Second Defendant.

[42] Mr Phillip then went on to state that sometime in the late 1980s or early 1990, he became aware that Roy Lawrence returned from England claiming to be the owner of the Property. Mr. Lawrence offered to sell the Property to the Second Defendant for \$16,000.00 and he gave the Second Defendant a deed and plan to take to an attorney. However, the attorney indicated that Mr Lawrence's papers were no good.

[43] In 1993, Mr Lawrence served a notice to quit which was ignored. After some time, they were contacted by the Claimant who informed them that she had purchased the land from

Mr Lawrence and who demanded that they either pay rent or vacate the Property. They did not comply with either demand. He states that they have nether paid rent to Mr. Lawrence or the Claimant or to anyone. In fact, he states that his family has lived there all these years without paying rent to anyone. This is of course inconsistent with the oral testimony of the Second Defendant who testified that she paid rent to Veronica Gill until 1989.

[44] Again, his evidence regarding the notices to quit served by the Claimant in 1994 and 1995 and the legal proceedings which followed, mirrors that of the Second Defendant. He stated that after hearing the evidence, the magistrate hearing the case ruled in the Second Defendant's favour. She continued to occupy the Property as she had been doing for nearly 30 years not paying rent. The Second Defendant later migrated to Canada in 1998 leaving her children in the house. He stated that although he lives elsewhere, he visits the home almost daily.

[45] He further states that he has never before seen the Claimant in Victoria and that she has never been in possession of the land anytime immediately before his family moved there and at no time between 1975 and present.

[46] When he was cross-examined under oath, Mr Phillip testified that he is 41 years old and so he would have been about 6- 7 years old in 1975. When it was suggested to him that he would know nothing of the arrangements concerning the Property, he testified that his mother, the Second Defendant is a mother who shares all information. So that when she purchased the house, they were all fairly aware of the process.

[47] When he was asked to described the house in 1975, he described it as a wooden shingle house with 1 bedroom and no bathroom or kitchen. At the time when the Second Defendant migrated to Canada, the house had 2 bedrooms, a bathroom and a kitchen. At that time, he was living in the house together with his brothers Anton, Alton and Albean.

[48] He further testified that when this action was commenced; he was living in the house. When probed, he denied that he was living with his girlfriend and children away from the Property. He denied that he only moved on to the Property in 2008. He denied that none of his brothers lived on the Property until 2011 when the renovation works were being carried out. He denied that bathroom and kitchen were added in 2011.

[49] Mr Phillip testified that he knew Mr Lawrence because he did not live very far away from them and he saw him almost every day. He denied that the Second Defendant was a tenant of Mr Lawrence.

[50] He denied that he ever met the Claimant, but he admitted that he knows her agent Mr Wellington Charles. He states that Mr Charles spoke to him when he served him with a letter and when he brought the police to him when he was planting short crops on the land. Although he could not recall exactly when this occurred, he stated that it would have been after the legal proceedings in the Magistrate's Court.

[51] Mr Phillip testified that the Property belongs to his mother and that he is not the owner. His occupation appears to have been on behalf of his mother and he does not assert any independent claim of adverse possession.

THE CLAIM

[52] The Claimant's attorney, Wellington Charles provided a witness statement in which he stated that he has lived all his life across the road from the Property. As such, he asserts that he has knowledge of all the parties connected to the land including the previous owners. He stated that the land was previously owned by Veronica Gill who sold the land to Roy Lawrence. He is aware that Ms Gill had a wooden house on the land and that the Second Defendant bought the house from her on 27th October 1975. The house was not removed from the Property because at the same time, Veronica Gill agreed to rent the land to the Second Defendant. He stated that at that time, Roy Lawrence would collect the rent on behalf of Veronica Gill.

[53] He goes on to state that Roy Lawrence purchased the Property from Veronica Gill years before he had a deed for the land. No deed was executed until 3rd March 1993 when he agreed to sell the land to the Claimant. His evidence is that from the time she purchased the house until the house was sold to the Claimant, the Second Defendant continued to pay rent to Roy Lawrence in the sum of \$10.00 per year. He obtained from Roy Lawrence, copies of rent receipts which he had directed his agent Judith Paul to execute on his behalf. Those receipts dated **21st June 1989** and **24th July 1989** were produced and shown.

- [54] He also states that he was instrumental in negotiating the purchase of the Property for the Claimant. At the time, Roy Lawrence was the owner of the Property and the Second Defendant was his tenant. He states that he is aware that Roy Lawrence informed the Second Defendant that he had purchased the Property. He testified that Roy Lawrence also gave the Second Defendant notice to quit the Property but she refused to vacate the Property because she had paid rent to Roy Lawrence up until 1995.
- [55] When the Claimant became owner of the Property, she also issued a notice to quit to the Second Defendant on 20th May 1994. Legal proceedings followed, but because of a “technical error” and the fact that she had paid rent covering that period, the matter was “not ventilated”.
- [56] Notwithstanding repeated demands, the Second Defendant refused to pay rent. She also ignored a further notice to quit which was served on 26th July 1995. A second action was commenced in the Magistrate’s Court on 30th May 1997. This was also dismissed because the Magistrate concluded that the claim for possession did not meet the requirements of the Rent Restriction Act.
- [57] Mr Charles stated that from his personal observations, the Second Defendant did not leave the First Defendant in possession of the Property when she migrated to Canada. Rather, he contends that the First Defendant lived and still lives with his girlfriend and family elsewhere. It is Mr Charles evidence that it was Antoine Phillip who was left in occupation of the premises after the Second Defendant left and it was only after Antoine also migrated that the First Defendant began to pay brief visits to the Property.
- [58] In regard to the statutory declaration which supports the Defence, Mr Charles states that the Second Defendant’s possession of the Property has been interrupted by the notices to quit and the magistrate’s court actions in 1994 and 1997.
- [59] When he was cross-examined, Mr Charles testified that the Claimant purchased the Property in 1993. At that time, the Second Defendant was living in the house. When it was suggested to him that at that time the Second Defendant had been living there for 15 years, he made no admission.

- [60] When Counsel questioned him about the veracity of paragraph 7 of the Statement of Claim, Mr Charles agreed that the Second Defendant never erected a house on the Property. In fact, he denied that any renovation was carried out on the Property before she went into occupation. He denied that she changed the roof of the house. He testified that she put concrete on the ground and put up galvanise to cordon off the bathroom area. He denied that she paved the yard with concrete.
- [61] He told the Court that the Second Defendant purchased the house for \$150.00 as evidenced from the receipt which he obtained from Roy Lawrence. With regard to the Property, he testified that the Second Defendant rented from Veronica Gill. He stated that she was paying rent for the land and not the house.
- [62] He confirmed that neither of the Defendants has ever paid rent to the Claimant.
- [63] Mr Charles agreed that Roy Lawrence only obtained a deed to the Property approximately one month before he sold the Property to the Claimant. When the notice to quit dated 13th April 1993 (which purports to be served on behalf of Roy Lawrence as owner) was shown to him, he testified that at that time Roy Lawrence did not own the Property. However, the Court noted that at the date of the Notice (13th April 1993), Mr Lawrence had a title deed to the Property (3rd March 1993) and had not transferred title to the Claimant until 15th April 1993.
- [64] With respect to the second notice dated 20th May 1994, it was pointed out to Mr Charles that it indicates that the Second Defendant had been living there for “several months”. Again, the third notice was shown to him dated 17th June 1994 which also states that the Second Defendant had been living there for “several months”. When Counsel for the Defendant suggested that these notices were all false documents intended to remove the Second Defendant from the Property, Mr Charles indicated that they were truthful. When the inconsistency with his earlier evidence was pointed out to him, he conceded that the Second Defendant went into the house in 1975. It was pointed out to him that something was scratched out in the word before “years”, he denied that there was any such change in the receipt and he denied that it was done to manufacture evidence.

- [65] He testified that the receipts were written by Judith Paul the agent for Roy Lawrence (then residing overseas). He told the Court that they were obtained from Roy Lawrence who retrieved them from the magistrate's court. He surmised the originals may have been kept in the magistrate's court. He could not say what period was covered by these rental receipts.
- [66] He concurred that neither of the Defendants have paid rent for over 12 years preceding the filing of this action, nor have they acknowledged the title of any person prior to the action. However, he denied that the Claimant title was extinguished as a result.
- [67] The Claimant's other witness was Brewyn Andrew Alexander. The Court found this witness to be generally unhelpful. Mr Alexander indicated under oath that there were several corrections which had to be made to his witness statement (paragraphs 2 and 4). He did indicate however, that he has known the Defendant since 1989 (he was 16 years old at the time). This conflicted with the last line of paragraph 2 of his witness statement. He also asked the Court to delete the first line in paragraph 4 of his affidavit which provided that "*...to my knowledge and information the Defendant was never in undisturbed possession of the Claimant's land*" He testified that from then to present the Defendants have been living on the Property. He then informed the Court that he has no knowledge of the arrangements which governed the Defendants' occupation of the Property.

COURT'S ANALYSIS & CONCLUSIONS

- [68] The Court is not unmindful of the definitive statement of the House of Lords in **JA Pye (Oxford) Ltd. v Graham** at page 435 D which approved the following statement of Slade J in **Powell v MacFarlane**⁴;

"...in the absence of evidence to the contrary, the owner of land with paper title is deemed to be in possession of the land as being the person with the prima facie right to possession."

- [69] The Defendants have advanced no basis upon which the Claimant's title as reflected in the Indenture of Conveyance dated 15th April 1993 can be disputed or invalidated. The Claimant's title is therefore indefeasible unless the Defendants can prove that they have

⁴ (1977) 38 P&CR 452

acquired an interest in the Property through adverse possession. The Court reiterates that the onus of proof therefore lies squarely on the Defendants who must demonstrate on a balance of probabilities that they satisfy the statutory requirements of the Limitation of Actions Act. The Court in **Vera Noel v Laurina Charles et al.** explained it this way;⁵

“It is said that “The burden is on the plaintiff to prove a right to possession as against the defendants. Once this burden has been discharged on a balance of probabilities, the burden then lies on the defendants, on the same standard, to prove that they are entitled to resist the claim by virtue of the Limitation of Actions Act.” (per Alleyne J. in JOSEPH LETT v NATHANIEL DAVIS and VERONICA JONES Civil Suit No. 403 of 1994 Grenada).

[70] Section 12 of the Limitation of Actions Act makes it abundantly clear that mere entry onto land without more will not avail a defendant. Lord Denning MR in **Wallis’ Cayton Bay Holiday Camp Ltd. v Shell-Mex and BP Ltd.** ⁶ reiterated the position in the following way:

*“There is a fundamental error in that argument. **Possession by itself is not enough to give a title. It must be adverse possession. The true owner must have discontinued possession or have been dispossessed and another must have taken it adversely to him. There must be something in the nature of an ouster of the true owner by the wrongful possessor.** That is shown by a series of cases in this court which, on their very facts, show this proposition to be true. When the true owner of land intends to use it for a particular purpose in the future, but meanwhile has no immediate use for it, and so leaves it unoccupied, he does not lose his title to it simply because some other person enters on it and uses it for some temporary purpose, like stacking materials; or for some seasonal purpose, like growing vegetables. Not even if this temporary or seasonal purpose continues year after year for 12 years, or more: see *Leigh v. Jack* (1879) 5 Ex.D. 264; *Williams Brothers Direct Supply Ltd. v. Raftery* [1958] 1 Q.B. 159; and *Tecbild Ltd. v. Chamberlain* (1969) 20 P. & C.R. 633. The reason is not because the user does not amount to actual possession. The line between acts of user and acts of possession is too fine for words.”*

[71] The time period starts to run from the moment that a “trespasser” takes adverse possession of the paper owner’s land. The paper owner is then regarded as having been “dispossessed” or as having “discontinued his possession.” It is therefore critical that the

⁵ GDAHCV1999/ 0513

⁶ [1975] Q.B. 94

Defendants prove adverse possession of the Property to the requisite standard – i.e. on a balance of probabilities.

Legal Requirements for Adverse Possession

[72] The relevant case law makes it clear that the Defendants must prove factual possession. This means that they must have control of the land to the exclusion of all other persons, including the paper owner. Slade LJ in **Powell v McFarlane (1977) 38 P & CR 452 at 470 – 471** made the following observation in regard to this legal principle:

“Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession....Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. 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.”

[73] Moreover, such possession must be inconsistent with and contrary to the rights of the paper owner. If the possession is enjoyed by virtue of some legal entitlement, then it cannot be adverse. Hence, the existence of a lease or licence will defeat a claim as the possession, even if exclusive, is by the agreement of the paper owner. This position was clarified by Alleyne, J. in **Lett v Davis & Jones**⁷ where he stated:

“Where the occupier of premises is in possession by the owner's leave, his occupation may not be an independent possession by him, but the possession of the owner himself, so that the owner is in possession through the occupier as his licensee.”

[74] A defendant would not have discharged his burden of proof if the relations between the parties indicate that possession is by virtue of a licence. In that regard, the Court has noted that Second Defendant's own unequivocal evidence is that following the purchase of the chattel house, she was put into possession of the Property by Veronica Gill, to whom she paid an annual rental of \$10.00. Her evidence is that the relationship of landlord and tenant persisted between herself and Veronica Gill up to 1989. It follows that notwithstanding the

⁷ GDAHCV 1994/0463

Defendant's witness statement, it is abundantly clear that the Second Defendant entered into possession of the Property with the permission of the then owner and occupied the property not *qua* owner but as a tenant. It follows that during the course of this tenancy, her possession could not be said to be adverse.

[75] What is also apparent from the Second Defendant's own evidence is that sometime after 1989, Veronica Gill informed her that she had sold the Property to Roy Lawrence. Roy Lawrence then approached her and they began negotiations for sale of the Property to her. Her evidence is that although a notice to quit had been issued, she ignored it because these negotiations were ongoing. In fact, her evidence is that she is still waiting for the negotiations when she was told that Roy Lawrence had sold the land to the Claimant.

[76] Most important is the Second Defendant's further evidence that she had an agreement with Roy Lawrence to remain on the Property and to keep it clean. In fact, it is her evidence that she was there with his permission.

[77] Finally, one of the critical burdens which a defendant claiming adverse possession must discharge is the proof of *animus possessendi* or an intention to possess. A defendant's attitude to ownership is irrelevant. He may be well aware that the land belongs to someone else or he may mistakenly believe that it is his, but the defendant must intend to exclusively possess it – in other words he must intend to take control of it as if it were his own and to exclude everyone else from it.

[78] In this regard, the Court is guided by Slade LJ in **Powell v McFarlane** at 471 – 472

“...the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.”

[79] Again, Slade LJ in **Buckinghamshire County Council v Moran**⁸ explained,

“What is required for this purpose is not an intention to own or even an intention to acquire ownership but an intention to possess, that is to say, an intention for the

⁸ [1989] 2 All ER 225

time being to possess the land to the exclusion of all other persons, including the owner with the paper title.”

[80] It will always be a question of evidence as to whether a defendant had the necessary animus possidendi. Ultimately, this is a question of fact which has not been specifically addressed by Counsel for the Defendants in their submissions. Notwithstanding, it seems to the Court that the relevant evidence to be considered would include the fact that the Second Defendant remained on the Property despite being served with multiple notices to quit being the subject of at least two legal actions commenced by the Claimant seeking possession; as well as the fact that when she left Grenada in 1998, she left her children in possession of the Property, and the fact that she took active steps from 1998 onward to improve the Property and that she sought and obtained a statutory declaration in 2003 in the hope of advancing her interest in the Property. The Court does not accept the evidence of the First Defendant to the effect that the cultivation of short crops were undertaken on the Property.

When did the Right of Action be deemed to have First Accrued to the Applicant?

[81] In examining section 5 (a) of the Limitation of Actions Act the Claimant’s title stems from the title of Roy Lawrence and before him, Veronica Gill. Veronica Gill’s title (**19th July 1973**) was transferred to Roy Lawrence on **3rd March 1993**, and he in turn transferred title to the Claimant on **15th April 1993**.

[82] Given the Second Defendant’s own evidence that she entered into the Property as a tenant and paid rent until 1989, and for the reasons already set out herein at paragraphs 73 – 74, it is clear to this Court that she would not be able to claim adverse possession from 1975, the date when she went into occupation of the chattel house which stood on the Property up until 1989.

[83] The Claimant has also sought to rely on two additional receipts dated **21st June 1989** and **24th July 1989**. She contends that they prove that the Second Defendant paid an annual rent of \$10.00 to Judith Paul for and on behalf of Roy Lawrence covering a period of nine years. These receipts were trenchantly disputed by the Defendants and they have asked the Court to disregard them.

- [84] Having reviewed the evidence, this Court is satisfied that these receipts should not be counted in the Claimant's favour. The author of the receipts was not brought before the Court and no explanation for this failure was advanced by the Claimant. This is particularly critical in light of the Defendant's outright denial and in light of the manuscript amendment made to the 24 July 1989 receipt. Further, the two receipts were issued one month apart with no indication as to the effective period covered by the purported rental. Finally, although they indicated the purpose (land rent), the property in question is not described.
- [85] However, Court has noted the Second Defendant's sworn evidence that she was later informed by Veronica Gill that she had sold the Property to Roy Lawrence. The Second Defendant appears to have accepted Ms. Gill's intimation, because her evidence is that she remained in possession with the permission of Roy Lawrence with whom she had an agreement to remain on the Property and to keep it clean.
- [86] This evidence is critical because it is clear that even a unilateral licence in favour of an occupier granting him permission to occupy property will prevent time running. As the occupier is then in possession by virtue of the licence, this can no longer be said to be 'adverse'.
- [87] In **BP Properties Ltd v Buckler**⁹, Buckler lived in a farmhouse with his elderly mother. She had formerly had a tenancy of the house but this had long ago expired and the family had continued in possession as trespassers. In 1974, BP attempted to gain possession of the house before the expiry of the 12 year limitation period. Because of local hostility to them, they withdrew the action and wrote to the old lady telling her that she could live in the house rent-free for the rest of her life.
- [88] On her death, twelve years later, BP sought possession from Buckler who then himself claimed title by adverse possession. The Court of Appeal granted possession. The Court reasoned that Mrs. Buckler had been in possession by virtue of the licence granted in 1974 and this had stopped time running. Consequently, Buckler had only himself been in adverse possession from the date of his mother's death and BP were not therefore statute-barred from bringing the action against him.

⁹ (1987) 55 P & CR 337 followed in *Markfield Investments Ltd. v Evans* [2001] 1 W.L.R. 1321 and applied in *Ashe and National Westminster Bank Plc* [200] EWCA Civ. 55

[89] The Court of Appeal in that case observed:

“It is said for B.P. Properties Ltd. that under the letters Mrs. Buckler became a licensee for life of the farmhouse and garden. Therefore she was no longer in adverse possession and time ceased to run in her favour. This is supported by the statement of Slade J. in Powell v. McFarlane that time can never run in favour of a person who occupies or uses land by licence of the owner with the paper title and whose licence has not been duly determined. In so far as it is urged for the other side that Mrs. Buckler’s possession continued to be adverse before and after the receipt of the letters, without any change, and was referable to her own expressed belief that she was the owner of the land because of her grandfather’s title, it is said for B.P. Properties Ltd. that there is a rule that “possession is never adverse if it can be referred to a lawful title,” and reference is made to the judgment of Harman L.J. in Hughes v. Griffin .

The claim that a unilateral licence can stop time running is a new one. It may be of some general importance in that it would enable a person who is not prepared to incur the obloquy of bringing proceedings for possession, or of enforcing a possession order, to keep his title alive for very many years until it suits him to evict. It might be thought that for title to be kept alive in this way was contrary to the policy of the statute as exemplified by section 13 of the 1939 Act which reproduced earlier statutory provision to the same effect and prevented any right of action to recover land being preserved by formal entry or continual claim....I can see no escape therefore from the conclusion that, whether she liked it or not, from the time of her receipt of the letters, Mrs. Buckler was in possession of the farmhouse and garden by the licence of B.P. Properties Ltd., and her possession was no longer adverse within the meaning of section 10 of the 1939 Act.”

[90] Here, the case for the Claimant is even stronger. The evidence is that the Second Defendant was positively given express permission by Roy Lawrence to remain in possession of the Property after her agreement with Veronica Gill have ended, and after she was informed that he had purchased the Property from her.

[91] The purported sale between Veronica Gill and Roy Lawrence appears to have only been memorialized in the Indenture of 13th March 1993. It may well be argued that prior to this, Roy Lawrence would have lacked the legal capacity to grant permission to the Second Defendant to remain on the Property. However, having given evidence that she remained in

possession with the permission of Roy Lawrence (who she understood had purchased the Property) who agreed that she would keep it clean, it is clear to this Court that the Defendants would in any event be estopped from disputing his title.

[92] Case law demonstrates and prescribes that the estoppel rests on the acknowledgement by conduct of the licensee and not on what title the grantor actually had. **Terunnanse v Terunnanse**¹⁰ concerned a licence of land in Sri Lanka (then Ceylon). The landowner executed a deed conferring rights on the appellant, the true effect of which was to appoint the appellant to manage the Property as a deputy. The appellant permitted the respondent to live on a piece of land belonging to the temple. The landowner died in 1944. The respondent stopped paying the licence fee in 1953. In his defence, the respondent claimed that the appellant had no title to the land. The Privy Council held that for the purposes of estoppel under s.116 of the Ordinance, it was not necessary to consider what the landowner's title truly was when he granted the licence. The respondent / licensee was therefore estopped from disputing the licensor's title.

[93] It follows that having conceded that she remained in occupation of the property with the permission of Roy Lawrence; time would only begin to run against the Claimant and the person through who she claims when the steps were first taken to make it clear to the Second Defendant that her continued occupation of the Property was no longer permitted and yet she remained on the Property with the relevant intention to possess.

[94] The evidence before the Court is that Roy Lawrence issued a six month notice dated **13th April, 1993** (demanding the removal of chattel house) which was served on the Second Defendant on **15th April 1993**. The evidence discloses that prior to this Notice, Roy Lawrence had secured paper title to the Property through an Indenture of Conveyance from Veronica Gill on **3rd March 1993**. The evidence also discloses that he later transferred this title to the Claimant in an Indenture of Conveyance dated **15th April 1993**. No doubt, this notice to quit would have been issued with a view to securing vacant possession for the Claimant further to the sale of the Property.

¹⁰ [1968] AC 1086

- [95] The Court therefore finds that the Claimant's right of action would accrue from April 1993 when she no longer had permission to remain on the property but remained in exclusive possession thereof, adverse to the paper owner. So that after 1993, the Claimant had 12 years to bring an action for recover the Property.
- [96] In the wake of this, the Claimant issued her own notice to quit dated 17th June 1994 expiring on 31st August 1994. The Claimant followed this up with legal proceedings - Suit 18 of 1994 was commenced in the Magistrates Court and sought possession of the Property, mesne profits until delivery of possession and costs. It is not disputed that the Claimant was unsuccessful in the relief sought. A further notice to quit dated 26th July 1995 was served in August 1995. Further legal proceedings were commenced on 30th May 1997, again seeking possession of the Property and costs. The Claimant was equally unsuccessful.
- [97] Counsel for the Claimant has contended that these actions stopped time from running. This contention is however not supported by the case law.
- [98] It is quite clear that mere assertions by the paper owner about his legal rights will be ineffective to stop time running in favour of a trespasser. **Buckinghamshire County Council v Moran [1989] 2 All ER 225.**
- [99] While the most effective way to stop time running is for the paper owner to commence proceedings for possession, it would only have the effect of "stopping the clock" if these are successful. In **Iri Anthony Francis v Raphael Frederick and Anor**¹¹, Alleyne J prescribed as follows:
- "In order to interrupt acts of adverse possession, the party must initiate and pursue effectively a remedy. It is for that reason that I have already indicated my view that the acts of adverse possession of the second named defendant would have effectively commenced, if indeed I find that she was in adverse possession, would have effectively commenced upon the dismissal of the appeal in 1984, and the plaintiff taking no further steps in pursuance of that action."*
- [100] It follows that the time continued to run from 1993 until the current cause of action was commenced in September 2004. At that time, the statutory limitation period would not have elapsed and so she would not have been precluded from bringing this action; neither would

¹¹ Grenada Civil Suit 100 of 2001

her title to the Property have been extinguished. Having regard to the findings herein, the Court must therefore conclude that the Defendant cannot rely on the statutory provisions laid out in the **Limitation of Actions Act**.

CONCLUSION

[101] Having reviewed the pleadings and the totality of the evidence, and with the benefit of having heard and observed the witnesses, and after applying the relevant law, the Court has no hesitation in concluding that the Defendants have failed on a balance of probabilities to prove any entitlement to possessory title. In the premises, they have failed to defeat the Claimant's title to the property and are therefore obliged to deliver up possession to her.

[102] **The Court's Order is therefore as follows:**

- 1. Judgment is entered for the Claimant. The Defendants will deliver up possession of the Property within 60 days of this Judgment.**
- 2. The Defendant shall within 60 days of the date of this judgment remove the house which currently sits on the Property.**
- 3. Thereafter, the Defendants are restrained from entering or remaining on the property.**
- 4. The Defendants will pay the Claimant's costs in the sum of \$2500.00.**

**Vicki Ann Ellis
High Court Judge**