

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law & Equity Division**

**2020/CLE/gen/00406**

**BETWEEN**

**BEVERLEY DEVEAUX by  
JUDY DEVEAUX (her daughter and attorney)**

**Plaintiff**

**AND**

**LAVITA PINDER**

**Defendant**

**Before Hon. Mr. Justice Ian R. Winder**

**Appearances: Sidney Campbell and Cyril Ebong for the Plaintiff**

**Edward Turner for the Defendant**

**12 April 2021 and 22 July 2021**

**JUDGMENT**

## **WINDER J**

This is a claim by the Plaintiff (Deveaux) for trespass and wrongful occupation by the Defendant (Pinder) of property situated at Sutton Street, Whites Addition in New Providence.

1. The action was commenced by an Originating Summons dated 19 March 2020 which was subsequently converted to a Writ action and a Statement of Claim filed. The Statement of Claim provided, in part, as follows:

...  
2. The subject land belonged to George Herbert Campbell, deceased, who died leaving Maureen Mable Russell (nee Campbell), Mary Campbell Green, Beverley Deveaux (nee Campbell) and Lawrence Campbell surviving him.

...  
9. By a lease dated 29 March 1968 the Plaintiff and Zerlene Flowers, the Defendant's predecessor in title executed a lease by which the Plaintiff demised unto Zerlene Flowers, the tenant, the said land on which to build a dwelling house. The tenant covenanted not to erect any permanent buildings on the said land without the consent of the Landlord in writing. The lease was for the term of twenty (20) years for the net yearly rent of twenty dollars (\$20.00).

10. In or about 1982, Zerlene Flowers moved out of the land and assigned the lease to her daughter, Lavita Pinder, the Defendant in this action. The Defendant assumed payment of the lease.

11. The said lease expired in 1988 and was not renewed. The Defendant held over and continued to pay rent which was accepted by the Plaintiff. The lease thus became a yearly periodic tenancy.

12. In or about 1995 the Plaintiff sought to sell the land to the Defendant but the transaction fell through. Attorneys for the Defendant's Bank, Messrs. Callenders & Co., by letter dated 16 January 1995 advised that upon investigation it was discovered that the said property was by separate conveyances dated 5 April 1962, conveyed to Mary Campbell Green and the Plaintiff respectively and that the conveyance to Mary Campbell was recorded first and accordingly the Plaintiff was not the freehold owner of the land. Mary Campbell, the title owner did not agree to the sale and refused to sign off on the conveyance. The Defendant continued to pay lease/rent which the Plaintiff continued to accept.

13. By letter dated 18 January 2004, the Plaintiff advised the Defendant that her lease had been increased and would take effect on 1 January 2005. The amount of the lease would be increased in the year 2005 to the sum of \$2,000.00 annually.
14. By letter dated 28 January 2004 Messrs. Wells & Wells, Attorneys for the Defendant, wrote to the Plaintiff in response to the above letter advising that the Defendant had instructed them to offer the sum of \$300.00 annually effective 2005. And should the Plaintiff not be inclined to accept the sum of \$300.00, then to suggest that the Plaintiff purchase Ms. Pinder's house or allow Ms. Pinder an opportunity to purchase the land in question.
15. By letter dated 1 October 2010, Judy Deveaux, Attorney-in-Fact for Beverley Deveaux and Mary Campbell Green, advised the leaseholders/occupiers of Herbert Campbell Estate, in Whites Addition, including Lavita Pinder, the Defendant, that effective immediately 2011 all leasehold agreements in reference to the lands in the said estate would become null and void, and that the lease holders were being given first option to purchase the lands outright.
16. By letter dated 19 October 2010, Messrs Edward B. Turner & Co., Attorneys for the leaseholders/occupants of Herbert Campbell Estate, John Evans Road, Whites Addition, Freetown, New Providence, The Bahamas, responded to the above Judy Deveaux's letter and advised that his clients were interested in purchasing the portion of land on which they are in occupation and requested the Plaintiff to forward the back title to the property to assist them in their title search.
17. Mary Campbell Green died on or about 21 October 2010. On 16 August 2012, a Grant of Letters of Administration of all the real and personal estate and effects of Mary Campbell was granted to Beverley Deveaux. The Deed of Assent was executed on 10 August 2016 vesting the property in the Plaintiff.
18. By letter dated 6 November 2012 Messrs W.E. Olander & Co., Attorneys for the Plaintiff wrote to tenants of the lands in Whites Addition belonging to Mary Campbell that the said Mary Campbell died on 21 October 2010; that the Supreme Court of The Bahamas on 16 August 2012 appointed Beverley Deveaux, the sister and heir-at-law of Mary Campbell Administratrix of the estate of Mary Campbell; that all rents previously collected by the late Mary Campbell would be then collected for Mrs. Beverley Deveaux. The tenants/occupiers of the said lands were advised that the lands were to be sold and that they were being given the first choice to purchase, failing which they were given 6 months to vacate. The Defendant did not respond.
19. Notwithstanding that the Defendant continues in use and occupation of the land, the Defendant has paid no rent for same since October 2010.
20. On 16 January 2018, Messrs Campbell-Ebong & Co., Attorneys for the Plaintiff served on the Defendant Notice to Quit, thereby terminating the

lease, but the Defendant in breach of Section 2 of the Landlord and Tenant (No. 2) Act has willfully held over the land and wrongfully continues in possession without the assent of the Plaintiff.

21. By reason of the Defendant trespass and wrongful occupation and use of the land the Plaintiff has been deprived of the use of the said land and has suffered loss and damages thereby.

**AND THE PLAINTIFF CLAIMS against the Defendants**

1. Possession;
2. Damages;
3. Rent arrears;
4. Mesne profits;
5. Costs;
6. Further or other relief

2. Pinder filed a Defence and Counterclaim which provided, in part, as follows:

...

4. The Defendant admits that her mother, Zerlene Flowers, executed a lease with the Plaintiff dated 29<sup>th</sup> March, 1968. The Defendant further states that the Plaintiff encouraged her mother to build a structure on the land as her mother intended to purchase the land from the Plaintiff. However, after the termination of the lease, when the Plaintiff, the Defendant's mother and the Defendant attended the Plaintiff's Attorney the late Charles Barnwell Esq., the said Charles Barnwell Esq. told the Plaintiff, that she did not have proper title to the land and therefore she was unable to pass good and Marketable title to the Defendant's mother. Sometime in the early 1995 the Plaintiff, Beverley Deveaux, again took the Defendant' (sic) to her lawyer, Charles Barnwell with a view to purchase the land in question. Lawyer Barnwell reiterated that the Plaintiff did not own the land. The Defendant then consulted Messrs Callenders and Co. who confirmed that the Plaintiff's title to the land was defective.
5. The Defendant denies paragraph 10 of the Plaintiff's Statement of Claim and states that after Mr. Charles Barnwell Esq. told the Plaintiff that she could not pass good and marketable title to the land the Defendant discontinued paying annual lease to the Plaintiff and the Plaintiff did not interfere with her quiet enjoyment of the land for a period in excess of 20 years.
6. The Defendant admits that the lease agreement between Beverley Deveaux and Zerlene Flowers expired in 1988 and on the 13<sup>th</sup> day of May, 1994 the Defendant caused the house to be connected to BEC in her name. The Defendant began to improve the land by cementing the structure of the house and enlarging same.

7. Save that the Defendant consulted Messrs. Callender & Co. concerning the purchase of the land in question on or about 1995, who confirmed that the Plaintiff was not the owner, Paragraph 12 is neither admitted nor denied.

...

10. The Defendant admits a letter dated 19<sup>th</sup> October, 2020 was written to the Plaintiff by Messrs Edward B. Turner & Co [The said letter will be referred to at trial for its full force and effect].

...

12. The Defendant admits that the letter dated 6<sup>th</sup> November 2012 was written by W. E. Olander & Co. addressed to tenants Whites Addition but denies that she received a copy of such letter.

13. The Defendant admits that she is in occupation of the land but denies that she paid rent since October 2010. In fact the Defendant has not paid lease for the land from 1995 to 2015.

...

#### **COUNTERCLAIM**

16. The Defendant repeats Paragraphs 1 to 15 of the Defence hereof.

17. The Defendant is the occupier of the land and has been so since 1983. When the Defendant consulted Messrs. Callenders & Co. who confirmed that the Plaintiff could not pass a good and marketable title to the land the Defendant discontinued paying rents for the land and enjoyed quiet enjoyment of the land from on or about 1995 to 2015 and as such dispossessed the Plaintiff of the land under the Quieting of Titles Act 1959.

18. Alternatively, the Defendant has acquired a proprietary Interest in the land as she has enlarged the dwelling house and has cemented the entire structure and the foundations to the land. The Plaintiff has "stood by" and allowed the Defendant to improve the land by erecting a permanent structure without interference by the Plaintiff. It was not until 16<sup>th</sup> January, 2018 that the Plaintiff through her attorney Campbell-Ebong & Co. issued a "Notice to Quit" addressed to the Defendant.

19. That the Plaintiff spent the period from 1995 to 2018 attempting "to perfect" a root of title to the land in question. Then in 2018 purported to give the Defendant "Notice to Quit" by attempting to disrupt the Defendant's quiet enjoyment of the land.

#### **PARTICULARS**

(i) That the Plaintiff was unable to produce legal Title to the land in her name.

(ii) That the Plaintiff allowed the Defendant to improve the land by enlarging her house and creating a permanent structure on the land.

(iii) That the Plaintiff Beverley Deveaux did not interfere with the Defendant's quite (sic) enjoyment of the land until 2018 when she had "perfected" title to the land.

3. At trial each party called one witness in support of their respective cases. Judy Deveaux gave evidence for Deveaux and Pinder gave evidence on her own behalf.

4. Judy Deveaux's evidence was contained in her affidavits filed on 19 March 2020 and 27 November 2020. It was agreed that the affidavits would stand as her examination in chief. The affidavits confirmed the facts in Deveaux's Statement of Claim. Judy Deveaux was subject to cross examination.

5. Under cross examination, Judy Deveaux stated that her mother, Deveaux, prepared the receipt for rent for the \$150, the stub of which was exhibited as paid in 2000. She stated that the other piece of the receipt, that was torn off, was given to Pinder and the document exhibited was the piece of stub that remained in the receipt book. Pinder would not always pay the full amount of rent and that her mother would have to return for the balance.

6. According to Judy Deveaux, Pinder continued to pay the lease after the proposed sale transaction fell through in 1995. The last time she received rent from Pinder was shortly after her aunt had passed away in October 2010. Her evidence was that she personally received it. Judy Deveaux stated that this payment was shortly after she received the letter signed by Mr. Turner in 2010. That she could not recall the amount because whenever they went to Pinder's for the rent she never paid the full amount.

7. Pinder settled a witness statement and relied on her affidavit of 16 September 2020 as her examination in chief. She was also subject to cross examination. Under cross examination Pinder stated that her mother's entry onto the land in dispute was by consent and under the terms of a 20 year lease which had expired.

8. Pinder confirmed that it was her mother Zerlene Flowers who built the house on the property and that both she and her mother lived in the house until her mother left. She assumed responsibility for the payment of the lease thereafter. She says that she discontinued paying lease on the land in early 2000's. She says that she could not recall ever receiving receipts for rent. She denied that the stubs produced by Deveaux were

genuine. When questioned as to when she became the owner of the land, however, Pinder vacillated between 2000 and 1995.

#### Issues

9. The issues in this dispute are:
  - (1) whether the Defendant has successfully established adverse possession for the requisite period under the Limitation Act;
  - (2) Whether Dexeaux was encouraged to develop the property to her detriment;
  - (3) Whether the house which was constructed is a chattel house or fixture.

#### Submissions

10. Deveaux described her case at paragraph 8 of her submissions as follows:
  8. The Plaintiff's case is that on the 29 March 1968 she and the Defendant's mother, Zerlene Flowers executed a lease by which the Plaintiff demised unto her, the tenant, the disputed land on which to build a chattel house. The lease was for the term of twenty (20) years for the net yearly rent of twenty dollars (\$20.00). In or about 1982, Zerlene Flowers moved out of the land and assigned the lease to her daughter, Lavita Pinder, the Defendant in this action. The Defendant assumed payment of the lease. The lease expired in March 1988. The Defendant held over the land and continued to pay the rent which the landlord accepted. In or about 1990 the Landlord increased the rent to \$100.00 per year which the Defendant accepted and paid. The Landlord-tenant relationship continued until it was determined by the landlord by notice to quit served upon the Defendant on 16 January 2018.
11. Pinder says in her submissions that:
  - (a) Beverley Deveaux realized that she did not own land and did not interfere with Lavita Pinder since 1995.
  - (b) That Judy Deveaux who had no legal authority to deal with the land from the legal owner, Mary Campbell, but continued to harass Lavita Pinder, her conduct was high handed, obnoxious and ruthless.
  - (c) That Lavita Pinder invested heavily in the property after 1995 and acquired propriety interest in the land.

Pinder also submits that:

The Defendant Lavita Pinder, acted upon representations made by the Plaintiff. The Plaintiff claimed to be the owner of the property in question. She took the Defendant to her lawyer to effect the sale of the land. In the meanwhile the

Plaintiff encouraged the Defendant to improve the land that the Defendant invested good money into the property. When the Plaintiff left lawyer Barnwell's office in 1995, as the deal fell through, she did not look back, she allowed the Defendant to improve the land supposing it to be her own.

#### Law and Analysis

12. The usual starting point in any title dispute is the case of ***Ocean Estates and Pinder [1969] 2 AC 19*** and the oft cited passage of Lord Diplock at page 25 paragraph A where he stated:

"Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land. It follows that as against a defendant whose entry upon the land was made as a trespasser a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser."

13. According to the learned authors of ***Commonwealth Caribbean Property Law*** at p. 260:

In order to succeed in a claim for adverse possession the claimant must show positively that the true owner has gone out of possession of the land, that he has left it vacant with the intention of abandoning it. The mere fact that the paper owner is shown to have made no use of the land during the period does not necessarily amount to discontinuance of possession...

The factual possession required must have characteristics similar to those required for a claim to an easement by prescription, viz, the possession must be open (*nee clam*), peaceful (*nee vi*) and adverse (*nec precario*). Furthermore, factual possession must be accompanied by an *animus possedendi*, that is, an intention to enjoy possession to the exclusion of the paper owner.

14. According to ***Samson Owusu*** in the text ***Commonwealth Caribbean Land Law***, p. 280, in discussing adverse possession:

These should be acts, which are inconsistent with the enjoyment of the soil by the person entitled to the land. The land should have been used in a way, which altered or interfered in a permanent or semi permanent way with the land. A classic case is where the disputed land is fenced and substantial structures are constructed on it by the squatter, leaving in its trail substantial traces of use.



15. **Barnett CJ**, in considering the *Petition of Ellis Peet and Arthur Peet [2012] 1 BHS J. No. 26* confirmed the applicability of the principles set out in the case of *J.A Pye (Oxford) Ltd v Graham [2003] A.C. 419*. At paragraphs 17-19 he identifies the salient principles:

17 In *J.A Pye (Oxford) Ltd v Graham [2003] A.C. 419*, Lord Browne-Wilkinson cited with approval the following statements by Slade J in *Powell v Macfarlane (1977) 38 P&CR 452*. Lord Browne-Wilkinson said:

Factual possession

In *Powell's* case Slade J said, at pp 470-471:

"(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. 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 ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so." I agree with this statement of the law which is all that is necessary in the present case.

18 As to an intention to possess, Lord Browne-Wilkinson adopted the following propositions:

In the *Moran* case (1988) 86 LGR 472, 479 the trial judge (Hoffmann J) had pointed out that what is required is "not an intention to own or even an intention to acquire ownership but an intention to possess". The Court of Appeal in that case [1990] Ch 623, 643 adopted this proposition which in my judgment is manifestly correct. Once it is accepted that in the Limitation Acts, the word "possession" has its ordinary meaning (being the same as in the law of trespass or conversion) it is clear that, at any given moment, the only relevant question is whether the person in factual possession also has an intention to possess: if a stranger enters on to land occupied by a squatter, the entry is a trespass against the possession of the squatter whether or not the squatter has any long term intention to acquire a title.

19 And later: Slade J reformulated the requirement (to my mind correctly) as requiring an "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"

16. Deveaux argues, and I agree, that *"it is an established principal of law that if a Landlord purports to grant a lease of land to a tenant, but the Landlord has no title to the land, the landlord is estopped from repudiating the tenancy and the tenant is also estopped from denying the Landlord's title and the existence". In such a case, there arises a 'tenancy by estoppel' which is binding on the Landlord and the tenant, and as between them, has the attributes of a true tenancy.* In **Universal Permanent Building Society v Cooke [1952] Ch. 95 at 102**, the Court stated:

*" There are some points in the law relating to estoppels which seem clear. First, when a lessor without any legal estate or title demises to another, the parties themselves are estopped from disputing the validity of the lease on the ground."*

Any suggestion therefore by Pinder, that she was entitled to the property because her landlord had title issues is rejected.

17. Having observed the demeanor of the witnesses as they gave their evidence, I have no hesitation in indicating that I prefer the evidence of Deveaux's witness to that of Pinder. I am satisfied that Pinder never formed the animus possesidi to possess the property until Deveaux took steps to evict her from the premises in 2018. Whilst Pinder was clearly an occupant, that occupation was as a tenant and no more.

18. Pinder says that she entered into adverse possession in 1995 or 2000. I found this to be inconsistent with the evidence, which I accepted. In 2004 Pinder's then lawyers, Wells and Wells, wrote to the Deveaux offering to negotiate upon a proposed increase in rent or alternatively to offer Deveaux to purchase the house. Later, in October 2010 Pinder's then lawyers, Edward Turner, wrote to Deveaux offering to purchase the portion of the land Pinder occupied. In that letter, Pinder, through her lawyer, described herself as the occupants of Huber Campbell Estate, John Evans Rd. I accepted the evidence of Judy Deveaux that Pinder paid rent, albeit sporadic and inconsistently, up to the year 2010 (a period less than the statutory period of 12 years prescribed under the Limitation Act). Such payment of rent was not only an

acknowledgment of the leasehold relationship but an acknowledgement of Deveaux's title to the property. Such acknowledgement is inconsistent with Pinder's claim to be in adverse possession.

19. In respect of the claim of proprietary estoppel I did not accept that Pinder acted upon any representations made by Deveaux or that Deveaux encouraged Pinder to improve the land by investing money into the property. This is especially so where Pinder also claims to have gone into adverse possession, as against Deveaux, and have dispossessed her. I also rejected the claim that following the property issues in 1995 that Deveaux abandoned any interest in the property as alleged by Pinder.

20. As to the question of chattel versus fixture, the evidence is accepted that the property is affixed to the land in a substantial way leaving very little doubt that it is a fixture and not a chattel. Pinder's own pleading is that she cemented what was otherwise a chattel house. I therefore reject any claim that the house could be separated from the land or did not become a part of the land.

21. In the circumstances, I give judgment for Deveaux for possession and dismiss the Counterclaim of Pinder. I order that Pinder do vacate the premises within 120 days from the date hereof. Deveaux is awarded damages for Pinder's wrongful occupation and use of the property such damages to be assessed by the Registrar. Deveaux shall have her reasonable costs such costs to be taxed in default of agreement.

Dated this 26<sup>th</sup> day of October 2021



Ian R. Winder

Justice