

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**2013/CLE/gen/01757**

**BETWEEN**

**ANTOINETTE TROTMAN**

**First Plaintiff**

**AND**

**TROPICAL LAND COMPANY LIMITED**

**Second Plaintiff**

**AND**

**MONICA ARMBRISTER**

**Defendant**

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Ian Jupp for the Plaintiffs

Jerome D'Arceuil for the Defendant

9 December 2021, 5 May 2022, 6 May 2022 and 8 June 2022

**JUDGMENT**

## WINDER, CJ

1. This is a land dispute. The plaintiffs' claim is for possession and the eviction of the Defendant (Monica) from premises in the Marshall Road area of New Providence.

2. The action was commenced by the First Plaintiff (Trotman) and the Second Plaintiff (Tropical) by generally indorsed Writ of Summons. The Statement of Claim provides, in part, as follows:

1. The First Plaintiff is the legal owner of ALL THAT piece parcel or lot of land in the Southern District of the Island of New Providence situate approximately three hundred and sixteen (316) feet west of Blue Hill Road and being bounded NORTHWARDLY by Marshall Road (hereinafter referred to as "The "Said Property"), by Conveyance dated the 23<sup>rd</sup> day of July A.D., 2010, Stamped and Recorded in Book 11758 at Pages 182 to 186; and occupier of one of the houses on the said property situate at the rear, since on or around 2006. The Plaintiffs will at the trial rely on the said Conveyance, for its full terms and effect.
2. The Second Plaintiff was at all material times, a Company duly incorporated under the laws of the Commonwealth of the Bahamas; and at the material time, owner of the said land, having been granted to the Second Plaintiff by the Queen on the 20<sup>th</sup> day of February A.D., 1971; and the owner of the houses situate on the said land. The Plaintiffs will at the trial rely on the said Grant, for its full terms and effect.
3. On or around the year 1993/1994, the First Plaintiff's brother, Anthony Smith, moved into one of the houses on the said land (situate at the rear of the said land) where he was allowed to stay on a temporary basis only.
4. The Plaintiffs were informed and verily believe that, it was some time on or around 1997, when the Defendant moved into one of the houses on the said property (situate at the front of the said land), at the First Plaintiff's brother's invitation and without the Second Plaintiff's knowledge and/or consent.
- ...
8. On or around 2001, the First Plaintiff's brother relocated to the United States. The Plaintiffs were advised and verily believe that, prior to him leaving, he told the Defendant that she had to move out of the Second Plaintiff's house and off the said land owned by the Second Plaintiff.

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13. On or around early 2005, an eviction/possession action was brought (with the Second Plaintiff's permission and/or consent) in the Magistrate's Court against the Defendant. Two subsequent eviction/possession actions were also brought in the Magistrate's Court, in 2010 and 2013 against the Defendant. The Plaintiffs will at the trial rely on the aforesaid Magistrate's Court actions, for their full terms and effect.
14. The Plaintiffs' 2005 and 2010 actions were never tried and/or heard on the merits. The Learned Magistrate in the 2013 action said that, he did not have the jurisdiction to hear this action, as the Defendant was now claiming to have possessory title, which only the Supreme Court can determine. He further stated that, notwithstanding that, there was no bar to bringing the 2013 action, particularly as, the initial 2005 action was not tried and heard on the merits.
15. The Defendant only occupies one of the houses on the said land. She does not have and has never had possessory title of the said land nor has the Defendant been in undisturbed possession of the house on the said land. In addition to being asked to vacate the house by the owners, numerous complaints have been made to the police against her and/or her agent(s), including to have her evicted from the house on the said land. The First Plaintiff currently occupies one of the houses on the said land and has documentary and possessory title of said land. The Plaintiffs will at the trial rely on copies of the Police Reports, for their full terms and effect.
16. The Defendant has made no improvements, alterations and/or renovations to the house beyond normal wear and tear as, the house is and/or has been in a state of disrepair since the Defendant's occupation. Further, the Defendant has made no improvements to the said land and has accumulated a lot of debris on the said land including old cars and boats, which is a health hazard and unsightly.

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AND the Plaintiffs Claim:-

- (1) Damages;
- (2) Loss of use of the said land and/or forgone rent;
- (3) A Declaration that, the Plaintiffs are the lawful owner(s) (the Second Plaintiff prior to 2010 and the First Plaintiff since 2010) of the said land, on which the house is situate that the Defendant occupies;
- (4) Vacant Possession and/or Eviction Order that, the Defendant immediately vacates the house and the said land;

- (5) An injunction restraining the Defendant whether by herself and/or by her servants and/or agents or any of them from damaging and/or making any material alterations to the house and/or said land until the Court makes a determination on the matter;
- (6) An Order that the Defendant removes all debris that is, garbage/vehicles/boats which she has accumulated on the said land;
- (7) Interest for such period and at such rate as the Court deems just pursuant to Civil Procedure (Award of Interest) Act;
- (8) Costs; and
- (9) Such further relief as this Honourable Court deems fit and just.

3. The Defence provides, in part, as follows:

4. The Defendant admits paragraph 4 of the Plaintiffs' Statement of Claim that the Defendant did move on to the property in May of 1997 and Anthony Smith did ask if she would consider moving on to the property and at no time did the Plaintiffs or any of its agents give the Defendant permission to enter the property.

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8. The Defendant denies paragraph 8 of the Plaintiffs' Statement of Claim and further states the Defendant was never requested by the Plaintiffs to move off the property, the Defendant now has possessory title to and has no knowledge of the whereabouts of Anthony Smith.

...

11. The Defendant denies paragraph 11 of the Plaintiffs' Statement of Claim save and except that the Defendant is in occupation without the consent or permission of the Plaintiffs and puts the Plaintiffs to strict proof.

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17. That the Defendant has no derelict vehicle on her property, the Defendant's one has a few cars on her property that he is repairing. There is no debris outside the normal limits on the property and the boat is a working boat owned by the Defendant and there is no health hazard on the property.

4. At trial the Plaintiffs called Trotman and William Weeks III as witnesses. Monica gave evidence and called David Ginton, Dwayne Sawyer and Dwayne Bain as witnesses.

5. Let me begin by stating that I have no hesitation in indicating that I preferred the evidence of the Plaintiffs' witnesses to that of Monica and her witnesses. Trotman acquired the property in 2010 from Tropical. Tropical is a family owned company

controlled at various times by William Weeks Jr and Williams Weeks III. The Weeks family included Trotman and Anthony Smith (Smith), who are siblings. Monica was allowed to move into one of the two houses on the property because she and her children were destitute. One of her children was fathered by Smith. Monica has permitted other members of her family to live on the property with her. Trotman lives in the other house on the property. Trotman says that Monica and her family keep the premises in an unsanitary manner, permitting garbage and old derelict vehicles to be stored and collected there.

6. William Weeks III, the president of Tropical, gave evidence that the house was not run down as Monica alleges. He stated that the house was rented prior to Monica moving onto the property. He said that the purpose of the apartments were for rental so they were not allowed to be run down such that they were not livable. He said that Monica was allowed to move into the premises. Monica did not initially get permission from Tropical but from Smith the father of one of her children. Smith ultimately obtained permission from Tropical.

7. Tropical became displeased when Monica's stay in the premises extended much longer than they had expected. Summons was taken out in the Magistrates Court to remove Monica off the property in 2005. The 2005 Magistrates Summons failed because the wrong party's name (Smith) had been used in the Summons. It was not until the 2013 Summons that Monica made a claim that she had a possessory title to the property. Weeks said that he was unaware if someone else was living there. Monica was told she could stay there until she could get out of her current economic situation and she could find some permanent or other residence. At the time, they were told that she was without a home.

8. Monica's evidence was that she thought that Smith owned the property because he had lived there before along with his wife. She said that she does not own the property, in that she does not have any papers for the property, but that she has put equity in the property. 2005 was the first time that she knew that Smith did not own the property.

9. Monica said that the arrangement was for her to move into the house and there was no stipulation who she took there.

10. According to Monica, Smith gave her permission to stay as long as she wanted to. She accepted that she was allowed onto the property because of the circumstances with her and her son not having a place to live. She says that based on the fact, that the property was available she took possession of the property as her own. She denied that the property was poorly kept and in an unsanitary condition, although she identified the property in photographs which showed that the property was in an extremely unsanitary state.

11. According to Monica there was no challenge for nine years. On the evidence, however, until the defense of the 2005 Magistrates Court claim, it could not be said that Monica expressed to anyone that she was there in adverse possession. Monica says that she didn't leave in 2005 when Smith asked her to leave because she already had equity in the place. She says that the first time she knew of Smith's displeasure and wanting to retract his permission, was when she saw his name on the Summons in 2005.

12. Monica sought to demonstrate that she expended moneys to maintain the property and update the electrical and plumbing. She called witnesses to support this claim.

### **Discussion**

13. It is not disputed that Trotman is the documentary title owner of the property. Monica's case is that she has dispossessed the Plaintiffs who would have (at different periods) owned the property within the last 12 years. This is a reliance on the provisions of the Limitation Act Chapter 83 of the Statute Laws of The Bahamas.

14. Section 16(3) of the Limitation Act provides:

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

15. In considering the meaning of possession, Slade J. in *Powell v McFarlane* (1977) 38 P&CR p452 at 470 held that:

(1) 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, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.

(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").

(3) Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive 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. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. "What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants": *West Bank Estates Ltd. v. Arthur*, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession. On the particular facts of *Cadija Umma v. S. Don Manis Appu* the taking of a hay crop was held by the Privy Council to suffice for this purpose; but this was a decision which attached special weight to the opinion of the local courts in Ceylon owing to their familiarity with the conditions of life and the habits and ideas of the people. Likewise, on the particular facts of the Red

House Farms case, mere shooting over the land in question was held by the Court of Appeal to suffice; but that was a case where the court regarded the only use that anybody could be expected to make of the land as being for shooting: per Cairns, Orr and Waller L.JJ. 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.

(4) The animus possidendi, which is also necessary to constitute possession, was defined by Lindley M.R., in *Littledale v. Liverpool College* (a case involving an alleged adverse possession) as "the intention of excluding the owner as well as other people." This concept is to some extent an artificial one, because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that, 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.

16. The principles enunciated in *Powel v. Mcfarlane* have been approved in the Bahamian Privy Council decision of *Armbrister et al. v. Lightbourn et al.* [2012] UKPC 40.

17. In the instant action time would have begun to run against the Plaintiffs when Monica would be deemed to have taken possession of the land adverse to the documentary title holder. Section 17(1) of the Limitation Act provides as follows:

"Where the person bringing an action to recover land, or some person through whom such person claims, has been in possession thereof and has while entitled thereto been dispossessed or discontinued possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance."

18. Resolution of this claim revolves upon the determination of the questions of whether the plaintiffs:



(1) have had factual possession of the land for the requisite statutory period of 12 years; and

(2) possessed the requisite animus i.e. the intention to exclude all others from the land based on the evidence before the court.

19. In my view Monica could not be said to have dispossessed the plaintiffs, having not been in possession for the requisite 12 years period. On the evidence, which I accept, it cannot sensibly be disputed that Monica was placed on the property with the permission of the Plaintiffs, albeit through Smith. I accept that Monica was placed on the property by Smith, the father of one of her children and I accept that Smith was acting on the authority of his family who were the beneficial owners of Tropical, the documentary title owner.

20. Monica accepts that she was given permission to occupy the property at least up to 2005. On her own account she says that the first time she knew of Smith's displeasure and wanting to retract his permission, was when she saw his name on the Summons in 2005.

21. In my view therefore, on Monica's case, at best, the cause of action accrued in 2005. In which case, this action which commenced in 2013, is within the period of limitation and must succeed. In any event, I accepted the evidence that the first time that Monica claimed a possessory interest in the property was in the 2013 Magistrates Court action.

22. This case represents another example of the adage that no good deed goes unpunished. The Plaintiffs offered assistance to Monica at a time when she was in considerable distress, homeless and destitute. She was allowed to occupy the premises whilst she got on her feet. Quite naturally, as time went by, and maintenance needs for the property was required she, occupying it for free, funded the maintenance herself. She couldn't really ask the Plaintiffs or anyone else to fund the maintenance or wear and tear of her family. Having outlived their benevolence, the Plaintiffs asked her to find alternative accommodation. Instead, she eventually alleges that she had a possessory claim to the property. Whilst she was physically in occupation of the premises, I am not satisfied that

there was any animus possidendi in Monica, to support a claim for possession. At best, until 2005, she was content to have been there on the permission of Smith.

23. I therefore find no merit in Monica's claim that she had been in possession of the property in excess of the limitation period. I therefore give judgment in favor of Trotman, the legal and documentary owner of the property for possession thereof. I order that Monica, and those claiming through her, do vacate the property within 90 days. I direct the Registrar to conduct an assessment as to the Plaintiffs' damages claim.

24. Trotman shall be entitled to her costs to be taxed if not agreed.

Dated this 28<sup>th</sup> day of March AD 2023

A handwritten signature in black ink, appearing to be 'I. R. Winder', written in a cursive style.

Sir Ian R. Winder  
Chief Justice