

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

Salvador Alvarez,

Plaintiff,

v.

Estate of Everlena Keel, Anton Keel and All
Persons Claiming any Legal or Equitable
Right, Title, Estate, Lien or Interest in Plot
No. 9A Queen Street Christiansted, St. Croix
Adverse to Plaintiff's Title, or Any Cloud on
Plaintiff's Title Thereto and Does 1 through
5, Inclusive,

Defendants.

Civil No. SX-14-CV-436

Complaint to Quiet Title
(Adverse Possession)

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff's Motion for Default Judgment on his claim to Quiet Title to Plot 9A Queens Street, Christiansted, St. Croix Virgin Islands, asserting adverse possession as the basis of his claim. For reasons stated below, Plaintiff's Motion for Default Judgment is **DENIED**.

Factual and Procedural Background:

Salvador Alvarez (hereinafter "Plaintiff" or "Alvarez") filed a complaint in the Superior Court on November 14, 2014. In his complaint, Alvarez alleged that his possession of Plot 9A Queens Street, Christiansted, St. Croix Virgin Islands (hereinafter "the property"), warrants his acquisition of title by adverse possession. Plaintiff contends that he has been in possession of the property in the manner that satisfies the requirements of Title 28 V.I.C. § 11, the statutory provision that governs adverse possession. The complaint names as Defendants, the Estate of Everlena Keel,

Anton Keel and all others who may claim an interest in the property. In his claim for relief, Alvarez asks this Court to enter judgment granting him title to the property.

Alvarez was unable to serve the defendants personally. Therefore, he requested and obtained an order from the Court permitting him to serve them by publication. He published his Notice of Action in the St. Croix Avis, a St. Croix daily publication, the Union County Local Source and the Ervington Herald, two (2) New Jersey newspapers of daily publication.

When the Defendants failed to respond to the complaint, Alvarez filed a Motion for Entry of Default on April 7, 2015. The Court was concerned about the sufficiency of information from which it could determine whether there are any disabilities or limitations that would preclude adjudication or the entry of judgment, such as whether any of the defendants were minors, incompetent or in military service. Therefore, on May 14, 2015 the Court entered an order requiring the Plaintiff to supplement the record with affidavits and documents providing evidence to satisfy the requirements of Federal Rule of Civil Procedure Rule 55(b), as it relates to the limitations which may preclude the entry of default. On May 29, 2015, Plaintiff filed a response to the Court's May 14, 2015 Order and on June 8, 2015, Plaintiff filed a supplemental response with an attached Declaration of Counsel. The responses provided some information about the Defendants and detailed Plaintiff's reasons why the Defendants would not be subjected to the limitations which would preclude the Entry of Default. At the direction of the Court, the Clerk of the Court entered default on May 1, 2017.

Subsequent to Entry of Default, the Plaintiff filed a Motion for Default Judgment on June 20, 2017. On July 14, 2017, the Court issued a memorandum opinion holding that additional evidence was necessary for an Entry of Default Judgment and ordered an evidentiary hearing.

An evidentiary hearing was conducted on July 2, 2018 at which time the Plaintiff testified. The Court took the matter under advisement.

The Legal Standard

Under the Virgin Islands Rules of Civil Procedure, an entry of default and default judgments are separate matters. *King v. Appleton*, 61 V.I. 339, 345 (VI 2014). When a party fails to plead or otherwise defend an action the Clerk of the Court may enter that party's default. Super. Ct. Rule 47, V.I.R.Civ.P. Rule 55(a). The mere fact that a default has been entered against a defendant does not necessarily entitle the Plaintiff to a default judgment as a matter of right. *Bank of Nova Scotia v. Dove*, 57 V.I. 105, 110 (Super. Ct. 2012). After the entry of default, the Court must consider whether the unchallenged facts constitute a legitimate cause of action. To enter a default judgment, there must be a sufficient factual or legal basis in the pleadings for judgment to be entered. *King*, 61 V.I. 339 at 346.

Adverse possession is a method by which a person who is not the owner of real property obtains title to that property by the passage of time. In the Virgin Islands, adverse possession is governed by Title 28 section 11 of the Virgin Islands Code which provides:

The uninterrupted, exclusive, actual, physical adverse, continuous, notorious possession of real property under claim or color of title for 15 years or more shall be conclusively presumed to give title thereto, except as against the government.

The person asserting adverse possession bears the burden of proving all the required elements by clear and convincing evidence. *Mahabir v. George*, 63 V.I. 651, 659 (VI 2015).

Analysis:

A. The characteristics of Adverse Claim to Property.

At the hearing conducted on July 2, 2018 to determine whether there was sufficient basis to warrant judgment on the Plaintiff's claim of adverse possession, the Plaintiff testified that he first

occupied the premises in 1967 on lease from the then owner, Mr. Williams. The lease agreement was for eighteen (18) months. Plaintiff established his business on the property where he operated a barber shop. After the eighteen (18) month period of the original lease expired, he continued to occupy the premises by paying rent on a month-to-month basis. When Mr. Williams died, Alvarez continued to pay the rent to Mr. Williams' daughters. After the death of Mr. Williams' first daughter, Alvarez continued to pay the rent to the second daughter, Ms. Everlena Keel, who at the time lived in the State of New Jersey. After Ms. Keel's death, Alvarez tried to find someone to whom he could pay the rent. Unable to do so, Plaintiff opened an account and deposited the monthly rent of \$180.00 in an account at the First Bank. Plaintiff paid the rent up until about December 2017 or January 2018.

During the period of his occupation of the premises, Plaintiff performed maintenance and repairs of the property. After Hurricane Hugo in 1989, Plaintiff secured a loan from Small Business Administration to make repairs, and restore and develop the property. Since 1996, Plaintiff has been paying taxes because he did not want the property to be subjected to a tax lien and sold.

Before entering a default judgment, the Court must determine whether these facts establish a legitimate claim for adverse possession under Virgin Islands law. In order for a party to establish title or ownership to property by adverse possession, the possession or use of such property must be actual, uninterrupted, exclusive, physical adverse, continuous and notorious for the statutorily prescribed period of time. Courts in the Virgin Islands have always held that adverse possession means that the adverse claimant asserts ownership, an interest that is hostile to the title of the true owners. *Fleming v. Frett*, 33 V.I. 58 (Super. Ct. 1995); *Andrews v. Nathaniel*, 42 V.I. 34 (Super. Ct. 2000); *DeCastro v. Stuart*, 43 V.I. 115 (Super. Ct. 2000). Generally, a hostile claim is

established when the party in possession of the property undertakes such activities as to convey to the world that he owns the property. Hostile possession does not mean ill will, malevolence, animosity or enmity but an assertion of ownership adverse to or in derogation of the title of the true owner. A hostile claim to property exists when the claimant does on the land what only an owner would do. *Simpson v. Golden Resorts LLLP*, 56 V.I. 597, 607 (VI 2012). However, the acts required to accomplish adverse possession will of course, vary depending on the nature of the property itself and the uses to which it is adaptable. *Id* at 606. Accordingly, the validity of Alvarez's claim of adverse possession will depend upon whether his activities in relation to the property clearly communicated to the world that he was claiming the property as his own. Essentially, it is possession with the intention to claim ownership of the occupied property that constitutes the hostile character of the claim.

The doctrine of adverse possession is to be applied strictly. Since adverse possession deprives a true owner of their property, strict compliance with statutory requirements by those seeking ownership by adverse possession is essential because of the harsh consequences faced by the record owner. The statutory requirements are specifically calculated to give the record owner notice that someone else is claiming title to the property. *Mahabir*, 63 V.I. 651 at 658.

What constitutes adverse possession is determined by the facts of each case. *Simpson v. Golden Resorts, supra*. (citing *LaClaire v. First National Bank & Trust Co.*, 301 Mass. 488, 17 NE 2d 685, 687 (Mass. 1938)). The assessment of the validity of a claim for adverse possession takes into consideration the nature of the property, the extent of occupancy, the purposes for which the property was adapted, the uses to which it has been put, the circumstances under which the claimant acquired possession and the assertion of a hostile claim. There is no fixed rule or

mechanical formula to determine if possession is hostile. *McNamara v. Christian*, 26 V.I. 109, 112 (Super. Ct. 1991).

B. The Sufficiency of Plaintiff's Adverse Claim.

The Plaintiff entered the premises as a tenant in 1967. He occupied the premises to operate a barbershop and erected a sign showing his occupancy of the premises and the operation of his business. Initially, Plaintiff paid rent and continued to pay the rent up until December 2017 or January 2018. Over the years, Plaintiff has made repairs and improvements, maintained the property and as of 1996 paid the taxes on the property. Plaintiff argues that these facts establish his uninterrupted, exclusive, actual physical adverse, continuous notorious possession of the property. In addition, Plaintiff argues that his activities on the premises in repairing and improving the property and paying taxes constitutes those activities that ordinarily only an owner would do, thereby establishing his claim of adverse possession.

If the facts are taken as true, they support a conclusion that the Plaintiff was in actual continuous, exclusive and notorious possession of the premises thereby satisfying some of the elements of adverse possession. Even if Plaintiff's occupancy of the premises satisfies some of the elements of a claim of adverse possession, there still remains a question as to whether all elements of an adverse possession claim have been satisfied. *Mahabir*, 63 V.I. 651 at 659. If any one of the elements is absent, title by adverse possession cannot be gained. *McGowan v. Hodge*, 2003 V.I. LEXIS 201 (Terr. Ct. 2003)(*vacated and remanded on procedural grounds – Hodge v. McGowan*, 48 V.I. 413 (DVI 2006)). Strict compliance with the statutory requirements is essential. For instance, mere passive possession without intending to claim ownership of the property is insufficient to establish a claim of adverse possession regardless of the length of time it continues or however uninterrupted, exclusive or notorious it may be. *Andrews*, 42 V.I. 34 at 39.

Since Plaintiff first entered the property by a lease agreement, it may be concluded that Plaintiff was in actual possession of the property. However, the lease agreement infers that Plaintiff was in possession of the property with the permission of the owner. Possession of the property will be presumed to be with the owner's permission and in subordination to his title. *Hodge v. Bluebeard's Castle*, 44 V.I. 242, 250 (Terr. Ct. 2002). When possession has begun under circumstances justifying a finding of the permission of the true owner, such possession cannot acquire the character of adverse possession until the presumption of continued subservience is rebutted. *Andrews*, 42 V.I. 34 at 39.

It follows that the possession of property by permission will not automatically ripen into title by adverse possession no matter how long it is maintained. Since Plaintiff's initial possession of the property was permissive, the continued possession of the property will not transform into adverse possession by the mere passage of time. Possession that begins by permission may become hostile for purposes of adverse possession if the party in possession clearly repudiates the permission and disavows holding possession in subservience to the title of the true owner. *Id.*

To change the character of possession from permissive to hostile, the claimant in possession is required to renounce the owner's title and assert his adverse claim by actions clearly communicated to the owner. The purpose of the requirements that the adverse claimant's use of the property be uninterrupted, exclusive actual, physical, adverse, continuous and notorious is to give the record owner notice that someone else is claiming title to the property. *Mcnamara*, 26 V.I. 109 at 111. The statutory requirements are specifically calculated to give the record owner notice that someone else is claiming title to the property. *Blumrosen v. St. Surin*, 36 V.I. 3, 8 (Super. Ct. 1995).

There is no evidence that Alvarez repudiated his permissive possession or took such action as to adequately communicate to the owner that he was asserting a claim of ownership to the property. On the contrary, the Plaintiff testified that he paid the rent up until December 2017 or January 2018. This act of paying the rent evidences the Plaintiff's acknowledgment of the owners title and had not taken a position adverse or hostile to that title.

C. Plaintiff's Payment of Taxes and Maintenance of the Property.

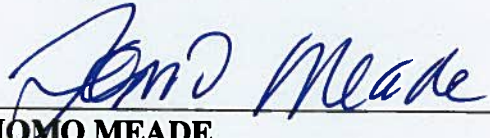
Ordinarily the payment of taxes, making repairs, developing and maintaining the property are activities such as an owner would do. In order for a party to acquire title by adverse possession, it is critical that a hostile claim attends the possession. That hostile claim must exist for the statutory period. The activities which the adverse claimant undertakes with respect to the property must convey a claim of ownership in derogation of the title of the true owner. In the absence of a hostile claim the claimant cannot obtain title by adverse possession. The payment of taxes on the property coupled with other acts may constitute evidence of adverse possession, but may not be sufficient to establish a hostile claim. *McNamara*, 26 V.I. 109 at 114. Accordingly, neither the continuous, exclusive, notorious and uninterrupted possession nor the payment of taxes alone will be sufficient to establish title by adverse possession. The possession must be accompanied by a clearly communicated claim of ownership for the required statutory period.

Although it is likely that Alvarez was in uninterrupted, exclusive, actual physical continuous and notorious possession of the property, there is no evidence that Alvarez took such action as would repudiate his initial permissive entry upon the property and clearly communicated his intention to make a claim of ownership. Despite the payment of taxes and maintenance of the property, Alvarez provides no evidence that he asserted a claim of ownership for the required statutory period.

Conclusion:

Plaintiff failed to provide evidence that he asserted claim of ownership during his years of occupancy of the property. Therefore, Plaintiff has failed to show hostile claim to support his claim of adverse possession. Plaintiff's Motion for Entry of Default Judgment is **DENIED**.

DONE AND SO ORDERED this 31 day of December, 2018.


JOMO MEADE
Judge of the Superior Court

A T T E S T:
ESTRELLA GEORGE
Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 1 / 9 / 19