

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX AT KINGSHILL**

**RUPERTHA A. ANDREWS, CARLA
A. ANDREWS, ANDREA ANDREWS,
ALEXIS ANDREWS, CLAIR
ANDREWS and ANDRE ANDREWS,**

Plaintiffs,

vs.

**CHARLES NATHANIEL and VIRGIL
ROBERTS,**

Defendants.

CIVIL NO. 759/1994

**ACTION TO QUIET TITLE
and EVICTION**

NOT FOR PUBLICATION

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CABRET, J.

MEMORANDUM OPINION

(October 7, 1998)

Rupertha Andrews and five of her children sued Charles Nathaniel and Virgil Roberts to quiet their alleged title to Plot 304, Estate Peters Rest, St. Croix, U. S. Virgin Islands ("the property"). In their complaint, the Andrews claimed that they acquired the property through an adjudication distributing the estate of Carl Andrews, the deceased husband of Rupertha Andrews and father of the remaining plaintiffs. The Andrews further asserted that Virgil Roberts

erroneously claimed he owned the property and that Charles Nathaniel wrongfully occupied a superfiary structure which Roberts constructed on the property. In response, Roberts and Nathaniel denied that the Andrews owned the property. In addition, Roberts counterclaimed to quiet his own alleged title to the property. According to Roberts, in 1971 he purchased the property from Carl Andrews under a verbal agreement between the two. In his counterclaim, Roberts alleged that he owns the property pursuant to this verbal agreement, and that even if he does not, he acquired title by adverse possession. The matter is now before the Court on the defendants' motion for summary judgment. For reasons which follow, the motion is denied.

I. SUMMARY JUDGMENT STANDARD

To prevail on their motion for summary judgment, the defendants must show that "[t]he pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that [they are] entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (c). In determining whether the Roberts and Nathaniel have met this burden, the Court must view the evidence in a light most favorable to the Andrews as the party opposing their motion. See Fleming v. Frett, 33 V.I. 58, 60 (Terr. Ct. 1995).

II. EVIDENCE

In support of defendants' motion, Roberts submitted an affidavit stating that on October 14, 1971, he purchased the property from Carl Andrews "for a price of \$7,500.00 and paid \$1,500.00 as down payment and agreed to pay \$100.00 monthly."¹ Roberts stated that

¹ Aff. of Virgil Roberts at paragraph 2.

"whenever [Andrews] ran into [him, Andrews] demanded payment with the promise to issue a receipt later but many times did not give [him] any receipt."² As further evidence, Roberts attached a letter he received from Carl Andrews concerning the agreement. The letter, dated December 8, 1975, states Roberts paid the \$1,500 down payment and apparently several monthly payments. The letter, however, also states: "there is a balance [owing] in the amount of \$3222.00 as of this date, Dec. 8, 1975. Your account is in arrears in the amount of \$2222.00. This makes the entire amount due and payable at this time. You are hereby asked to make necessary payment within 30 calendar days. That is, the principal amount plus 6% interest per annum, else legal action will be taken."³ In his affidavit, Roberts contended that he does "not owe anyone any amounts on the contract but if any amount is owed, said contractual duty has lapsed by the passage of time. . . ."⁴

As evidence that he acquired title by adverse possession, Roberts testified that in 1972 or 1973 he built a three bedroom one bath house on the property. Roberts lived in the house until he left St. Croix in 1977. Some of Roberts' family members subsequently lived in the house, and in 1985 he rented the premises to Nathaniel. In his affidavit, Roberts stated that although Rupertha Andrews resides on an adjacent plot, she has never attempted to enforce his purchase agreement and has only once tried to collect rent from Nathaniel. Roberts stated that on that occasion in 1987, he "stopped her and she abstain[ed] from demanding rent from Charles

² Aff. of Virgil Roberts at paragraph 3.

³ Letter from Carl Andrews to Virgil Roberts dated 12/8/75.

⁴ Aff. of Virgil Roberts at paragraph 12.

Nathaniel."⁵ In his deposition, however, Roberts acknowledged that he "was aware that [Nathaniel] paid two or three payments to [Rupertha Andrews] after he was harassed by her to pay. . . ."⁶ Finally, Roberts stated in his deposition that he has been paying taxes on the property since "somewhere in the '70s."⁷

In opposition to the defendants' motion, the Andrews presented evidence showing that Roberts never paid the full purchase price for the property and that on several occasions Rupertha Andrews collected rent from people occupying the premises. Specifically, the Andrews submitted four letters from representatives of Carl Andrews' estate to Roberts demanding that he pay the balance owed under the agreement. The first letter, which was sent by the estate's attorney and dated December 31, 1985, states that according to Carl Andrews' records the balance owed under the contract was \$2,712. On June 9, 1986, Rupertha Andrews, the administrator of the estate, sent a similar letter to Roberts stating that he still owed \$2,712 for the property and that he needed to submit any documentation he had which conflicted with that figure. On September 6, 1988, the estate's attorney sent a third letter to Roberts which stated that Rupertha Andrews had made arrangements with the court to honor his unwritten agreement for the purchase of the property. According to the letter, these arrangements were premised on Roberts paying the remaining balance, which he had not done, and that if he did not pay the full price or a substantial payment within the next 30 days, the arrangements would be canceled.

⁵ Aff. of Virgil Roberts at paragraph 9.

⁶ Dep. of Virgil Roberts at 32.

⁷ Dep. of Virgil Roberts at 74.

Finally, on January 2, 1991, Ruperttha Andrews sent Roberts a letter stating that he still owed a balance of \$1,912 and that he would lose a great deal of money if he did not pay the full balance on or before February 14, 1991. There is no evidence that Roberts responded to this last letter, and on June 9, 1994 a judge of the Territorial Court of the Virgin Islands, Division of St. Croix entered an adjudication disposing of Carl Andrews' property. Plot 304 Estate Peter's Rest was awarded to the six plaintiffs here.

In addition to this evidence, Ruperttha Andrews stated in her affidavit that on several occasions she collected rent from people who lived on the property. Specifically, Andrews stated that "on January 22, March 17, May 11 and December 17 of 1987 [she] collected rents from Condorset Roberts" and "on March 8, April 24, May 29 and June 26 of 1989 [she] collected rents from Charles Nathaniel."⁸ Although Roberts was aware of some of these payments, he never requested that Andrews remit the money to him.

III. DISCUSSION

As stated above, to prevail on their motion for summary judgment, Nathaniel and Roberts must show that there "is no genuine issue as to any material fact and that [they are] entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (c). They have not met this burden on either Roberts' claim of ownership under the oral purchase agreement or by adverse possession.

⁸ Aff. of Ruperttha Andrews at paragraphs 11 and 12.

A. The Purchase Agreement.

Though the evidence appears undisputed that Carl Andrews verbally agreed to sell the property to Roberts, the parties clearly dispute whether Roberts ever paid the full purchase price for the property. Indeed, in contrast to Roberts' affidavit testimony that he does "not owe anyone any amounts on the contract,"⁹ evidence presented by the Andrews showed that as of January 2, 1991, he still owed a balance of \$1,912 and never paid this amount. Accordingly, there is a genuine issue of material fact as to whether Roberts ever performed his obligations under the purchase agreement.

B. Roberts' Claim of Adverse Possession.

In the Virgin Islands, title by adverse possession is conclusively presumed upon a showing of "[t]he uninterrupted, exclusive, actual, physical, adverse, continuous, notorious possession of real property under claim or color of title for 15 years or more. . . ." V.I. Code Ann. tit. 28, § 11 (1975). A party asserting title by adverse possession must establish these elements by clear and convincing evidence. McNamara v. Christian, 26 V.I. 109, 112 (Terr. Ct. 1991). And, although there is no fixed rule or mechanical formula for determining if possession is hostile, "[m]ere possession of the true owner's land will be presumed to be with the owner's permission and in subordination to his title and thus not hostile to it. [Cit.]" Id. Similarly, it is the law in several jurisdictions that "[w]hen 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." Richard R.

⁹ Aff. of Virgil Roberts at paragraph 12.

Powell, 16 Powell on Real Property ¶1013 (f) (ii) (1998) (emphasis in original). Therefore, the question of "whether or not possession by an adverse claimant is exclusive, open, notorious, and hostile to the rights of the true owner of the property is a question for the trier of fact. [Cit.]" McNamara, supra at 112.

The evidence in this case, viewed in a light most favorable to the Andrews, would justify a trier of fact in finding that Roberts' possession of the property started as permissive and remained permissive into the late 1980's. In this regard, it is uncontested that the oral purchase agreement authorized Roberts to live on the property while he paid installments toward the purchase price. Though the initial agreement required full payment within five years, the evidence also showed that Carl Andrews and his estate acquiesced in Roberts' slow and inconsistent payment history and that they allowed and accepted payments as late as 1988. Based on this evidence, a trier of fact could find that during his life Carl Andrews, and thereafter his estate, permitted Roberts to remain in possession because he continued, though intermittently, to pay money towards the agreed upon purchase price. Under such circumstances, Roberts' possession, though problematic to the Andrews, would not have been adverse as required by V.I. Code Ann. tit. 28, § 11 (1975).

Even if Roberts' possession after the initial five year payment period was adverse, there exists evidence which shows that it may not have been continuous. There were several months in both 1987 and 1989 when Carl Andrews' estate demanded and received rental payments from tenants in actual possession of the property. Though Roberts was admittedly aware of some of these payments, he never objected and never requested that estate remit the money to him. Such

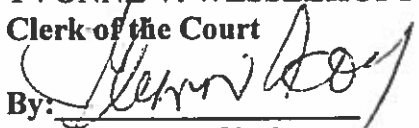
conduct "is inconsistent with any claim of right to the property." McNamara, supra at 115.

Based on this evidence, a trier of fact could find that Roberts' possession, even if adverse for some period, was interrupted by the record owners. See V.I. Code Ann. tit 28 (1975).

IV. CONCLUSION

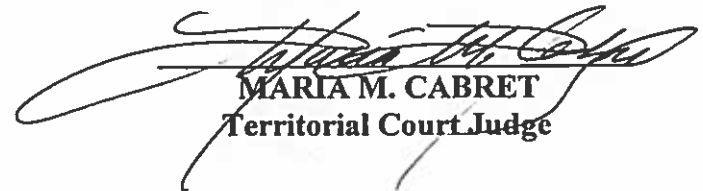
For the foregoing reasons, the Court concludes that defendants Roberts and Nathaniel have not met their burden of showing that there "is no genuine issue as to any material fact and that [they are] entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (c). A trier of fact could find that Roberts never paid the required purchase price for the property, had the permission of the Andrews to remain there while he continued to pay the purchase price and that when he failed to pay, the estate interrupted his possession and demanded rent from those occupying the property. Because material issues of fact remain to be decided, the defendants' motion for summary judgment must be denied.

ATTEST:
YVONNE V. WESSELHOFT
Clerk of the Court

By: 

Deputy Clerk

Dated: 10/18/94


MARIA M. CABRET
Territorial Court Judge