

No. 85 of 2017 IN THE LAND COURT OF GUYANA

LAND REGISTRATION DISTRICT: Buxton

BLOCK: XXIV

ZONE: East Coast Demerara

PARCEL: 678

In the matter of an application by Richard Winston Pollard.

Before Ms. Nicola Pierre, Commissioner of Title

October 10, December 12, 2017; January 30, April 19, 24, 2018.

Appearances:

Mr. R. Jackson for the Applicant

Ms. C. Persaud for the Objector

#### REASONS FOR DECISION

1. Richard Winston Pollard (“the Applicant”) on July 5, 2017, applied for a declaration of title to parcel 678, part of Buxton, located in block: XXIV, zone: East Coast Demerara, on the ground that he had been in adverse possession thereof for more than 12 years.
2. Orin Arthur on April 16, 2018, filed an objection and produced a certificate of title dated October 12, 2017, to parcel 678.

3. I dismissed the application pursuant to section 108 of the Land Registry Act, Chapter 5:02 of the Laws of Guyana, because Orin Arthur proved he is the registered proprietor of parcel 678 and also because the applicant had failed to disclose material facts in his application.
4. The Applicant alleged that he lived with his grandmother until her death in a house she had built on parcel 678. He did not name his grandmother. He says that after her death, despite migrating to the United States of America in 1990, he “maintained control over the property to the exclusion of all other persons” and has effected repairs to the house, cleared the land, dug drains and paid rates and taxes. He presented only one document in support of his application, an occupational plan numbered 58990, by D. Yaw, Sworn Land Surveyor, dated May 28, 2014, which shows parcel 678 to be fenced and contain a building.
5. The matter came on for hearing on October 10, 2017, when it was disclosed for the first time that one Orin Joseph Arthur resided in the building on parcel 678. I ordered personal service of the application on Orin Arthur. I also ordered that the applicant present documentary evidence in support of his

alleged occupation and that he file two corroborating affidavits sworn by persons in his locality.

6. No documentary evidence was presented nor corroborating affidavits filed.

Marshal service of the petition was effected on Orin Arthur on February 15, 2018.

7. On April 16, 2018, Orin Arthur filed an objection in which he alleged his grandparents Randolph and Princess Ifill were the occupants of parcel 678 since 1958 and had been declared entitled to be registered as proprietors thereof by the Honourable Commissioner of Title Mr. Rishi Persaud, as he then was, on May 15, 2003, in application No. 4 of 1999. He also alleged that he himself occupied the property with his grandparents and after their death paid the taxes due on it, maintained it and improved it by building a concrete fence amongst other things. More importantly he alleged that he had in application No. 68 of 2014, applied for a declaration of title in his name to parcel 678, was granted that declaration on March 1, 2016, by the Honourable Commissioner of Title Madam Priscilla Chandra Hanif, and was registered as proprietor on October 12, 2017.

8. In proof Orin Arthur produced a section 141 Certificate which certified that he was registered as proprietor of parcel 678 on October 12, 2017.
9. A court of competent jurisdiction in 2016 held that Orin Arthur had possessory title to parcel 678. The remedy of anyone in disagreement with the order of a Commissioner of Title under the Land Registry Act, is an appeal to the Full Court within 28 days of the publication of that order: s.34 of the Land Registry Act, Chapter 5:02. The applicant has not appealed the declaration made in favour of Orin Arthur.
10. The applicant did not state in his application that Orin Arthur lived on parcel 678. The Land Registry Rules (Third Schedule, Form 1, Note (a) (ii)) require that in the statutory declaration supporting his application the applicant must state “the names of all persons now in occupation of the land and in case the applicant himself is not in occupation, particulars of any right, agreement or other circumstance by virtue of which the land is now occupied.” The applicant was therefore in breach of the Rules.

11. The fact that someone other than the applicant lives on the parcel claimed is a fact “that goes to the root of the matter,” it is material to a determination whether the applicant is in sole possession of the property. That is why the rules require that the applicant provide that information in his statutory declaration. Omitting to disclose that Orin Arthur lived on the property was non-disclosure of a material fact. Taking guidance from the reasoning of the Court of Appeal in Garraway v. Williams, 81 WIR 293, I find that the applicants non-disclosure of Orin Arthur’s occupation to be a “clear violation of the mandatory requirement for full disclosure of material facts under the rules” and I draw the inference that it was a “deliberate and fraudulent suppression of evidence’ and “a meditated and intentional contrivance to keep all interested parties and the Court in ignorance of the real facts of the case.”

12. The Land Registry Act, Chapter 5:02 itself statutorily mandates that the title of a registered proprietor must prevail. That is the nature of its indefeasibility. Section 108 provides as follows:

“If at any time before the making of a declaration of title any person lodges with the commissioner an affidavit to the effect that he is the person registered as the proprietor of the land claimed, the Commissioner shall stay any proceedings on the claim that may be pending before him and shall investigate the identity of the person lodging the affidavit. If he is satisfied that such person is the registered proprietor, he shall dismiss the application and notify the applicant accordingly...”

13. Orin Arthur lodged an affidavit stating he was registered proprietor and produced a section 141 Certificate in proof. The affidavit was lodged before the making of a declaration of title in favour of the applicant. The declaration leading to his registration as proprietor was made prior to the filing of this application by the applicant. He had been registered as proprietor before the making of a declaration in favour of the applicant.

14. The law is clear, “If at any time before the making of a declaration” the registered proprietor objects, then the Commissioner of Title shall dismiss the application.

15. I dismissed the application herein on April 24, 2018 because the proven registered proprietor objected pursuant to s. 108, and because the applicant omitted to disclose material facts in his application.

A handwritten signature in blue ink, appearing to read "N. Pierre". The signature is written in a cursive style with a large initial "N" and a distinct "P".

Ms. Nicola Pierre,  
Commissioner of Title and Judge of the Land Court.

July 9, 2018.