

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2016/0612

BETWEEN:

COLLETA JAMES
CHARLES ANTHONY as representative of the Estate of SABINUS JAMES¹
JIMMY JAMES
DANIEL JAMES

Claimants

and

FLORA JAMESON
CATHERINE WEEKES
GEEST INDUSTRIES (ESTATES) LIMITED

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Horace Fraser for the Claimants

Mrs. Veronica Barnard for the First and Second Defendants

Mrs. Cynthia Hinkson-Ouhla for the Third Defendant

2022: April 13;	(Trial)
June 22;	
May 26;	(1 st and 2 nd Defendants' Submissions)
July 14;	(Claimant's Submissions)
16;	(3 rd Defendant's Submissions)
2025: November 18.	(Decision)

JUDGMENT

Background Facts

- [1] **CENAC-PHULGENCE J:** The facts as agreed by the parties is that in early August 1985, the first claimant, Ms. Coletta James ("Ms. James") entered into an agreement with Geest Industries (Estates) Limited ("Geest") to purchase a parcel of land from them and on 12th August 1985 a Deed of Sale of the parcel

¹ By Order dated 15th November 2021.

of land was executed by Geest to Ms. James on her own behalf and on behalf of her three children who were then minors, Sabinus Jasmin James, Jimmy James and Daniel James who are the 2nd to 4th claimants in these proceedings (“together referred to as the claimants”). That Deed of Sale was registered in the Registry of Deeds and Mortgages on 30th August 1985 in Vol. 125 No. 150001² (“the 1985 Deed”). The parcel of land which is situate in Anse La Raye is now registered in the Land Registry as Block and Parcel 0641B 74 (“the Property”).

- [2] It would appear that Geest had also entered into an agreement for sale of the Property with Eustace Fanis also called as Eustace Fannus (“Eustace”), who was the late son of the first defendant, Ms. Flora Jameson (“Ms. Jameson”) and brother of the second defendant, Ms. Catherine Weekes (“Ms. Weekes”). The actual date of that agreement for sale is unknown and there is no Deed of Sale to Eustace. Neither is there any evidence of the agreement for sale. There was however a restriction noted on the adjudication record as follows: “Restriction as to sale. Lot 60 sold to Eustace Fanis by Geest Industries (Estates) Limited.” The Property was adjudicated to the Crown during the Land Registration and Titling Project (LRTP) as the land was unclaimed. It was assigned Block 0641B Parcel 74.
- [3] On 11th June 2014, Geest executed a Deed of Sale of the Property to Ms. Jameson and Ms. Weekes³ which was registered at the Land Registry on 5th August 2014 as Instrument Number 2878/2014 (“the 2014 Deed”).
- [4] The documentary evidence shows that the land register in relation to the Property was rectified by the Registrar of Lands by a document titled ‘Rectification of the Register’ dated 15th January 1990 and registered as Instrument No. 196/90 on 16th January 1990.⁴ By that rectification, Geest’s name was recorded on the land register in place of Crown which had previously appeared and the title recorded as absolute.

² Pages 9-11 of Trial Bundle (TB) 3.

³ Pages 12-14 of TB 3.

⁴ Page 21 of TB 3.

- [5] It is also accepted that (i) the claimants did not claim the Property during the LRTP; (ii) both the 1985 and the 2014 Deeds of Sale were executed by Notary Royal, Mr. Cyril Landers; and (iii) that Mr. Cuthbert Jameson ("Cuthbert") has been in occupation of the Property with Ms. Jameson's and Ms. Weekes' permission.
- [6] The claimants have filed this claim seeking the following relief:
- (a) a declaration that the claimants are entitled to have their names registered on the Land Register as owners with absolute title to Block and Parcel 0641B 74.
 - (b) a declaration that the registration of the Deed of Sale on 30th August 1985 in Vol. 125A No. 150001 is a first registration of ownership of the Property and is protected by law.
 - (c) a declaration that the registration of the Deed of Sale in the names of Flora Jameson and Catherine Weekes in respect of the Property on 5th August 2014 as Instrument No. 2878 of 2014 is null and void and without legal effect.
 - (d) an order that the Deed of Sale registered on 5th August 2014 as Instrument No. 2878 of 2014 be improbated in accordance with Article 1142 of the Civil Code and Article 173 et seq of the Code of Civil Procedure.
 - (e) an order directing the Registrar of Lands to correct the proprietor section of the land register on the ground of mistake.
 - (f) damages for distress and inconvenience, costs and such further or other orders as the Court deems just.
- [7] The claimants' contention as pleaded in their statement of claim is that the 1985 Deed was registered first in time and therefore ownership and title to the Property was vested in them absolutely. The 2014 Deed they say is ineffective to give Ms. Jameson and Ms. Weekes title to the Property and is therefore null and void.
- [8] The claimants also contend that this situation which has caused them great inconvenience and distress was caused by the reckless or negligent actions of Geest.

- [9] In their defences, Ms. James and Ms. Weekes say that Eustace died in 1984. They say that they along with Eustace contributed to the purchase price for the Property by paying to Geest sums of money amounting to the full purchase price.
- [10] On completion of the payment of the purchase price for the Property, they engaged the services of Notary Royal, Mr. Cyril Landers to prepare the 2014 Deed. They both claim that they had no notice or knowledge that the claimants had any interest in the Property. They aver that neither the Adjudication Record at the Land Registry nor any other documents evinced any interest of the claimants in the Property.
- [11] The claimants say that Cuthbert, Ms. Jameson's son resides and has been residing on the Property for over twenty-six years and built his house there with full authority and permission of Eustace. Geest as owner did not object.
- [12] Ms. Jameson and Ms. Weekes rely on sections 23 and 28 of the **Land Registration Act** ("LRA").⁵ Should the Court find in favour of the claimants, they seek an indemnity from Geest for the market value of the Property.
- [13] Ms. Jameson and Ms. Weekes say that the statement of claim contains no particulars of breach or particulars of loss and is fundamentally flawed and should be struck out.
- [14] Geest claims that it sold the Property to Eustace prior to 1984. His purchase therefore preceded that of the claimants which was in 1985. Geest says that the claimants had a duty to register their Deed of Sale which they failed to do, and it is only that registration at the Land Registry which could give them rights of ownership to the Property.
- [15] Geest denies that it acted recklessly or negligently and put the claimants to strict proof in that regard. Geest avers that there exists a blood/family relationship

⁵ Cap 5.01 of the Revised Laws of Saint Lucia, 2020.

between the claimants and the first and second defendants and they would have knowledge of any deeds of sale, of who in fact paid for the Property and who is entitled to it.

- [16] Geest denies that the claimants are entitled to the relief sought and prays that the claim be dismissed.

Issues for determination:

- [16] The following issues were identified for determination in the pre-trial memorandum filed by the first and second defendants with which the claimants and third defendant agreed:
- (a) Whether the 2014 Deed, having been duly registered at the Land Registry pursuant to sections 23 and 24 of the **Land Registration Act** can be impugned?
 - (b) Whether the 1985 Deed registered on 30th August 1985 takes priority over the 2014 Deed?
 - (c) Whether Ms. Jameson and Ms. Weekes having had no notice of any interest by the claimants in the Property are nevertheless bound by the 1985 Deed?
 - (d) Whether Geest is liable to indemnify Ms. Jameson and Ms. Weekes?

The Land Registration System in Saint Lucia

- [17] In the case of **Sylvia Louisien v Joachim Rodney Jacob**,⁶ the Privy Council thoroughly explained the history and current scheme of land ownership in Saint Lucia. This was also done in several cases of the Court of Appeal, including, **Moses Joseph and others v Alicia Francois consolidated with Matty and Others v Francois**,⁷ in the recent Privy Council decision of **Francis Chitolie et al v St. Lucia National Housing Corporation**⁸ and in the decision of the Caribbean Court of Justice (“CCJ”) in **David Phillips v Joseph Phillips**.⁹ I will give a very brief overview to set the context for the discussion which will follow.

⁶ [2009] UKPC 3.

⁷ SLUHCVP2011/0025 and SLUHCVP2011/0037, (delivered 21st August 2015, unreported).

⁸ [2023] UKPC 43.

⁹ [2024] CCJ 21 (AJ) LC.

- [18] It is well-known or ought to be by now, that in the early 1980's, Saint Lucia adopted the Torrens system of registration of land. To give effect to the new system, two statutes were enacted in 1984: the **Land Adjudication Act**¹⁰ ("LAA") and the **Land Registration Act**¹¹ ("LRA"). Together these two pieces of legislation provided a complete process for registration of title to land for the indefinite future. The Land Registration and Titling Project ("LRTP") as the system was called, spanned the years 1984 to 1987.
- [19] The LAA comprised a complete process where persons were invited to submit a claim in relation to their land/s whether based on ownership evidenced by deed of purchase, succession or long possession/prescription. It made provision for adjudication officers, demarcation officers and the resolution of disputes which fell within the sole purview of the adjudicator who acted in a quasi-judicial capacity. Once the adjudication process was complete the adjudicator would prepare the adjudication record, sign and date it and give notice of completion and the place and time where that record could be viewed. Importantly, section 23 of the LAA deals with finality of the adjudication record and provides that after the expiry of 90 days from the date of publication of the notice of completion of the adjudication record, or upon determination by the adjudication officer of all petitions, the adjudication record became final and the adjudication officer was required to sign a certificate to that effect and deliver same to the Registrar of Lands.
- [20] The LAA in sections 20, 21 and 24 made provision for dissatisfied persons to have a right of review and appeal. Provision was made for a petition to be made to the adjudication officer in relation to the accuracy or completeness of an adjudication record or demarcation map or in relation to any act, omission or decision of certain officers (section 20(1)). Where a person was dissatisfied with the decision of the adjudication officer, an appeal would lie to the Land Adjudication Tribunal (section 20(2) and (4)). Section 24 gave a right of appeal from a decision of the Tribunal to the Court of Appeal.

¹⁰ Cap 5.06 Revised Laws of Saint Lucia 2020.

¹¹ Cap 5.01, Revised Laws of Saint Lucia, 2020.

- [21] The LRA would then take effect. Section 10 of the LRA provided that whenever an adjudication record becomes final under section 23 of the LAA, the Registrar shall prepare a Register for the subject parcel and register therein the particulars of the adjudication record. This was the process that led to first registration of land under the LRTP.

Discussion and Analysis

- [22] The following issues will be dealt with together:
- (a) Whether the 2014 Deed, having been duly registered at the Land Registry pursuant to sections 23 and 24 of the Land Registration Act can be impugned?
 - (b) Whether the 1985 Deed registered on 30th August 1985 takes priority over the 2014 Deed?
 - (c) Whether Ms. Jameson and Ms. Weekes having had no notice of any interest by the claimants in the Property are nevertheless bound by the 1985 Deed.
- [23] Much of the evidence given by the witnesses in this matter is not essential for the determination of the issues and therefore I have only referred to the evidence which is relevant.
- [24] Section 23 of LRA states as follows:
- “23. Effect of registration with absolute title**
- Subject to the provisions of sections 27 and 28 registration the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject—
- (a) to the leases, hypothecs and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register.”

- [25] Morrison JA in the Belizean Court of Appeal case of **Santiago Castillo Ltd. v Quinto and another; Santiago Castillo Ltd v Registrar of Lands**,¹² reviewed the statutory scheme in Belize (which is similar to Saint Lucia) and relevant authorities and observed that provisions of the statutory scheme establish and entrench the Torrens system of land title, thereby land can only be created by registration of a certificate of title to the land. Registration in the Land Register is the sole source of rights and obligations with respect to lands falling within its ambit, subject only to the exceptions stated in the Act. The statutory scheme according to Morrison JA was designed to further the objective of indefeasibility of registered title notwithstanding the curious fact that the word 'indefeasibility', did not appear in the legislation.¹³
- [26] Whilst **Santiago Castillo Ltd v Quinto and another; Santiago Castillo Ltd v Registrar of Lands** was appealed to the Privy Council, the Board did not disturb the findings of the Court of Appeal as to the nature and consequence of the operation of the Torrens system but affirmed it. The Board referred to the provisions relied on in the Court of Appeal as entrenching the Torrens system and the principle of indefeasibility of title.
- [27] It is correct that section 23 of the LRA does not mention the word indefeasibility at all. However, this is what the section seeks to establish. The doctrine of indefeasibility of title means that a registered owner of land has a conclusive and secure title that is generally immune from challenge by any adverse claims. It is the cornerstone of the Torrens system of land registration, which guarantees the accuracy of the register and protects the rights of a bona fide purchaser for value. However, this protection is not absolute and is subject to specific exceptions which can allow for the title to be challenged. Absolute ownership provided for in section 23 is subject to sections 27 and 28 which relate to voluntary transfers and overriding interests.

¹² (2007) 71 WIR 156.

¹³ At paragraphs 30 and 42.

- [28] Pereira CJ in the Court of Appeal case of **Ferdinand James v Planviron (Caribbean practice) Limited and Rodney Bay Marina Limited**¹⁴ explained:

“The LRA and the LRTP signalled the adoption of the Torrens system of land registration in place of the existing ‘title by deed’ system. The LRTP took place in the early 1980s when all lands in Saint Lucia were surveyed and adjudicated upon under the Land Adjudication Act (the “LAA”). The LAA was the companion interlocking legislation in the LRTP process which brought all lands, upon adjudication pursuant to the LAA, under the registered land regime established by the LRA...”¹⁵ (my emphasis)

- [29] The learned Chief Justice quoted from Barwick CJ in **Breskevar v Wall** where he explained the nature of this paradigm shift as follows:¹⁶

“The Torrens system of registered title of which the Act is a form is not a system of registration of title but a system of title by registration. **That which the certificate of title describes is not the title which the registered proprietor formerly had, or which but for registration would have had. The title it certifies is not historical or derivative. It is the title which registration itself has vested in the proprietor.**” (my emphasis)

- [30] Her Ladyship then came to the following conclusion on the current state of affairs:¹⁷

“With the completion of the LRTP, and the advent of the LRA, the goalposts of Saint Lucia’s land ownership system shifted significantly. **Title is no longer derivative and can no longer be conferred, discerned or extracted from any document other than the land register.** It is the LRA which governs all lands in Saint Lucia, as all lands have been registered under the regime operated by the LRA. **The registered land system replaced the previous system whereby title was conferred by deed and subsequently registered by volume and folio (the “title by deed system”) ...** (my emphasis)

- [31] The facts in this claim are that the claimants’ Deed of Sale for the Property was registered under the title by deed system in the Registry of Deeds and Mortgages in 1985. At that time, the LRTP had already commenced and as mentioned above every person had to come forward and submit a claim for their land. The fact that the 1985 Deed was already registered in the Registry of

¹⁴ SLUHCVP2017/0050, (delivered 16th October 2019, unreported).

¹⁵ Fn 14 at paragraph 9.

¹⁶ At para 12.

¹⁷ At para 25.

Deeds and Mortgages did not exempt it from the process of the LRTP. Our system of registration was not like in some other countries where once there was a registration under the old title system, it was transferred or converted to the new system with no need for a claim to be made.¹⁸ In Saint Lucia, one had to make a claim.

[32] Ms. James in her evidence in chief admits that during the LRTP she was not present in Saint Lucia and was not aware that she had to claim her land. In cross-examination she said she knew she bought land, she paid for it, but she never knew she had to claim it. Mr. Charles Anthony, the brother of Ms. James and uncle to the 2nd to 4th claimants in cross-examination, says that Ms. James has been living overseas for over thirty-five years. He says he was aware that people had to claim their land, but he did not know whether Ms. James claimed the Property, and he did not claim on her and the children's behalf.

[33] In the CCJ case of **Phillips**, Barrow J discussing the PC decision of **Chitolie** made the point in relation to prescriptive rights that these rights which were being acquired or already acquired which were brought on the register during the LRTP would have full effect. He went on to say that if not brought on the register at the time of first registration, they were wiped out. The Court made the point, which is applicable to this case, that this was the fate also of a person with full, formal title by deed at the time of first registration who did not register their title.¹⁹

[34] This is the situation which confronts the claimants. They did not claim the Property nor was the Property claimed on their behalf. As Barrow J said in **Phillips** at paragraph 23,

“...in Saint Lucia, the foundation of the introduction of the Torrens system of title by registration was that **all rights had to be registered when first registration was introduced ...**” (my emphasis)

[35] The fact that the 1985 Deed was registered first is of no moment as any rights the claimants may have had to the Property were wiped out when they did not

¹⁸ For example, in Antigua and Barbuda.

¹⁹ See para 15 of **Phillips** (CCJ).

claim the Property and did not take advantage of the appeal process. They cannot now seek to claim the Property.

[36] Ms. Jameson and Ms. Weekes would have been registered in 2014 as proprietors of the Property following the registration of the 2014 Deed. This therefore means that they have absolute title to the Property. The 1985 Deed is no longer of any effect.

[37] Ms. James in her evidence states that when the 2014 Deed was executed the records ought to have revealed that the Property had been sold to her and her three children. It is not clear which records she is referring to.

[38] Ms. Weekes says in her evidence that neither she nor her mother had any notice or knowledge that the claimants had any interest in the Property. None of the claimants had worked or been in possession or occupation of any part of the Property. As far as they know, Geest never objected to Eustace building his house or living on the Property. It would appear from their evidence that the Property was paid for by Ms. Jameson, her mother, in order that Eustace would get it.

[39] Ms. Weekes says after the trough in December 2013, the road by the Property got very bad and attempts were made to fix it. However, Ms. James' niece and her boyfriend attempted to stop her husband and nephew from doing so. At that point, Ms. Weekes says her mother asked her to go to Geest to sort out the papers. She says it was her mother, Ms. Jameson who paid Geest but she agreed to put her name (Ms. Weekes) on the Deed as well since she was assisting her. Geest signed the Deed of Sale subsequently and she and her mother became the registered owners of the Property. Ms. Weekes says since that time there has never been any more trouble for the road or the Property until Ms. James brought the claim in 2016.

[40] According to Clotilda's evidence, another daughter of Ms. Jameson, because of the volatile nature of Eustace's relationship with Ms. James, he moved to Guadeloupe sometime in 1978/1979. Whilst Eustace was in Guadeloupe, Geest

was selling land and her parents decided to buy the Property with the intention of having Eustace build there eventually. Eustace died in Guadeloupe in 1984.

[41] It will be recalled that there was a note on the adjudication record referring to a sale of that lot to Eustace Fanis which suggests that there was some information the adjudicator would have considered in order to make that note. All of this transaction in relation to the land which Ms. Weekes and Clotilda speak of took place prior to the LRTP. If there was a sale to Eustace, he like Ms. James, did not make a claim to the Property, nor was a claim made on his behalf. The Property was therefore unclaimed and adjudicated to the Crown.

[42] When the 2014 Deed was executed, the proprietor on the land register for the Property was Geest. According to the rectification document Instrument No. 196/90,²⁰ the register was rectified in 1990 to replace the Crown with Geest. It was alleged in the claimants' statement of claim that the restriction placed on the Adjudication Record was removed sometime in 2014. Mrs. Valerie Rapier ("Mrs. Rapier"), the Chairman of the Board and a shareholder of Geest has never been involved in the day to day running of the Company. It was apparent from her evidence that Mrs. Rapier did not have any personal knowledge of any of the transactions relating to the 1985 Deed and 2014 Deed.

[43] Mrs. Rapier says on the basis of a statutory declaration given by Ms. Jameson and Ms. Weekes, an application was made by the lawyer acting for Ms. Jameson and Ms. Weekes to remove the restriction. The application was granted by Instrument Number 2867/2014 which was registered in the Land Registry on 5th August 2014. This document was not exhibited, neither was this pleaded in Geest's defence, however, the 2014 Deed could only be registered if the restriction had been removed.

[44] Mr. Fraser, Counsel for the claimants submitted that when Geest sold the Property to Ms. Jameson and Ms. Weekes, they were not the owners of the Property and therefore the 2014 Deed is a nullity. However, this is not the case, and this argument is flawed. Even if Geest did not have title as Mr. Fraser

²⁰ P. 21 of TB 3.

argues, (which is not the case) the 2014 Deed is not a nullity. This is supported by the dicta of Morrison JA in **Santiago**. I must mention here that this contention that Geest was not the owners of the Property was only raised in submissions and was never pleaded. Counsel for the first and second defendants, Mrs. Veronica Barnard (“Mrs. Barnard”) correctly pointed out that the claimants never contested the fact that Geest became owners of the Property by Instrument No.196/90-the rectification of the register. It must be remembered that it is a fundamental rule that fairness dictates that a party is bound by their pleaded case, and the Court in the proper discharge of its duty is bound to do so based on the pleaded case.²¹

[45] In **Santiago**, Morrison JA observed the common aim of the Torrens system is:

“to ensure that someone dealing with the registered proprietor of title to the land in good faith and for value will obtain an absolute and indefeasible title, whether or not the title of the registered proprietor from whom he acquires was liable to be defeated by title paramount or some other cause’. It is for this reason that under the Torrens system ‘a registered proprietor may obtain absolute title to land or an interest in land by registration even though there was no title in the person who granted him those rights’.”²²

[46] In this regard, Morrison JA referred to several cases of the Privy Council.

Quoting from **Gibbs v Messer**,²³ he said:

“The basic principle was stated as follows:

‘The main object of the Act, and the legislative scheme for the attainment of that object, appears to [their Lordships] to be equally plain. The object is to save persons dealing with registered proprietors from the trouble and expense of going behind the register, in order to investigate the history of their author’s title, and to satisfy themselves of its validity. That end is accomplished by providing that everyone who purchases, in bona fide and for value, from a registered proprietor, and enters his deed or transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author’s title.’”²⁴
(my emphasis)

²¹ George W. Bennett Bryson’s and Co Ltd trading as Bryson Shipping v. George Purcell trading as Hortico Landscaping and Nursery, ANUHCVP2011/0033 (delivered 28th February 2018, unreported).

²² At paragraph 30.

²³ [1891] AC 248.

²⁴ Santiago Castillo Ltd v Quinto and another; Santiago Castillo Ltd v Registrar of Lands, at paragraph 43.

- [47] Section 38 of the LRA provides that any person dealing for consideration with a proprietor shall not be required or in any way be concerned to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered. The section also provides that there is no requirement for such person to see to the application of any consideration or any part thereof; or to search any register kept under the provisions of the Eighteenth Book of the Civil Code.
- [48] The dicta in **Santiago** coupled with section 38 of the LRA makes it clear that a purchaser for value is not required to go behind the register. The register is notice to the world and he is only concerned with what is contained there. There was therefore no obligation on Ms. Jameson and Ms. Weekes to find out about the 1985 Deed or to carry out any searches outside of the land register for the Property. They did not need to concern themselves with whether or not Geest had good title, or even how they came to be recorded as proprietor.
- [49] I have no reason to doubt the evidence of Ms. Weekes that she and her mother did not know about Ms. James' 1985 Deed. In any event by the time the 2014 Deed was executed, the claimants' right to claim had been 'wiped out'. The evidence clearly shows and was not shaken in cross-examination of the witnesses for the first and second defendants that they were dealing with the Property from the early 1980's and the claimants who lived overseas never made it known that they had purchased the Property and more importantly they never claimed it.
- [50] On a proper understanding of the LAA, LRA, LRTP and the various pronouncements of our Court, the Privy Council and the CCJ in the several cases, there is no basis on which any Court is entitled, at this time, to go behind the Land Register and, by examining deeds of title from any time prior, award ownership of land to the claimants. The LRTP, and with it, its adjudication, review and appeal processes have long ago come to an end.
- [51] Therefore, the 1985 Deed is ineffective as the claimants did not claim the Property during the LRTP. That being so, there was no obligation on the first

and second defendants in 2014 to do any searches behind the Land Register. It must be remembered that the LRTP was not a system of registration as had transpired with the registration of title deeds at the Registry of Deeds and Mortgages. The LRTP was a system of title by registration.

[52] Therefore, Counsel for the claimants, Mr. Fraser is incorrect in referring to the 1985 Deed as an unregistered deed/instrument. That deed was properly registered under the old system of registration but that was not what was required under the LRTP. As stated in **Phillips**, that 1985 Deed was wiped out when the claimants did not claim the Property. It is not alive and cannot now be used to defeat the first and second defendants' title to the Property.

[53] In the context of the LRTP, first registration refers to where Property has been adjudicated; and the adjudication record is complete and is then transmitted to the registrar for the opening of the land register. First registration does not refer to chronological date stamping of deeds as operated under the old system of registration of deeds in the Registry of Deeds and Mortgages.

[54] Given the above discussion, the relief sought by the claimants at paragraphs 1, 2 and 3 of the claim form is refused.

Other Issues

[55] Part of the claimants' relief sought is an order that the 2014 Deed be improbated, I note though that this was not addressed in the claimants' submissions, perhaps for good reason, but for completeness I will address it very briefly. It is settled law that in Saint Lucia a notarial document cannot be improbated unless the executing notary is joined as a party to the claim.²⁵ In this case, this was not done and therefore the order sought at paragraph (6) of the claim form for the improbation of the 2014 Deed is refused. In addition to the failure to make the executing notary a party, there is no basis shown on the claim for the improbation of the 2014 Deed. As Mrs. Barnard notes in submissions, in any event, this is not an appropriate case for improbation and I totally agree.

²⁵ Marguerite Desir et al v Sabina James Alcide, [2015] UKPC 24.

- [56] The claimants also seek an order that the land register for the Property be rectified on the basis of mistake which was again not addressed in their submissions for good reason. Section 98 of the LRA provides for rectification of the register by the Court where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.
- [57] The only time that the claimants mention mistake is at paragraph 5 and 10(e) of the claim form and statement of claim respectively. There are no pleadings in relation to this alleged mistake. Section 98 of the LRA has been the subject of several decisions of our Court and in **Zinna Zimbanni (As Personal Representative of the Estate of Adelaide Joseph, deceased) v Computron Limited**²⁶ it was made clear that mistake and fraud must be specifically pleaded. In **Moses Joseph**, Pereira CJ was clear that rectification under section 98 of the LRA was not an alternative remedy for a claimant who simply failed to avail himself/herself of the processes for making or challenging a claim under the LAA or availing himself/herself of the avenues for review or appeal.²⁷ This relief is accordingly refused.
- [58] In the statement of claim, the claimants allege that they have suffered great distress and inconvenience which was caused by the reckless or negligent actions of Geest. This is a bald allegation with no particulars of negligence and no evidence of the distress and inconvenience occasioned by the claimants. The Court cannot assume the particulars of negligence. It is not for the Court to make the claimants case for them.
- [59] In light of the discussion above and the case law, Counsel for the claimants, Mr. Fraser's submissions cannot be sustained. Mr. Fraser submitted that in the absence of registration under the LRA, the claimants' interest and title to the land are protected by article 2112²⁸ of the **Civil Code** and section 28(f) of the

²⁶ SLUHCVPAP2019/0017, (delivered 10th January 2022, unreported).

²⁷ At para 36.

²⁸ Article 2112 states: "He or she who acquires a corporeal immovable in good faith under a written title, prescribes the ownership thereof and liberates himself or herself from the servitudes, charges, and hypothecs upon it by an effective possession in virtue of such title during 10 years."

LRA. That submission is incredible as I am yet to understand how article 2122 applies in this case. Section 28 deals with overriding interests. In particular, section 28(f) provides that unless the contrary is expressed in the register, all registered land shall be subject to rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription. This section is also inapplicable as the claimants are not claiming title to the Property by prescription. There is no pleading with respect to any of these matters raised and the issue of prescription and overriding interest is only raised in the submissions for the first time. The cases referred to in the claimant's submissions at paragraph 4.4 do not assist them as they are not applicable in the circumstances of this case.

Conclusion

[60] Based on the foregoing discussion, the claimants claim cannot be sustained, and they are not entitled to any of the reliefs sought in the claim and which were identified at paragraph 6 above.

[61] Given this outcome there is no need to consider whether Geest should indemnify Ms. Jameson and Ms. Weekes.

Order

[62] The Order is as follows:

1. The claimants' claim is dismissed.
2. The claimants shall pay with prescribed costs calculated on a value of \$50,000.00 in the sum of \$7,500.00 to the first and second defendants and \$7,500.00 to the third defendant in accordance with CPR 65.5.

[63] Given that the matter was heard in 2022 prior to the revised **Civil Procedure Rules 2023**, prescribed costs have been calculated in accordance with the **Civil Procedure Rules 2000** as these would have been the applicable rules at the time. I thank Counsel and the parties for their patience as they awaited the delivery of this decision.

Kimberly Cenac-Phulgence

High Court Judge

By The Court



egistrar