

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE

MONTserrat

CLAIM NO. MNIHCV 2024/0008

BETWEEN:

[1] Brian Hollender

[2] Montserrat Company Limited

Claimant

and

[1] Attorney General of Montserrat

Appearances:

Mr. Sylvester Carrot for the Claimants

Mrs. Sheree Jemmotte-Rodney for the Respondent

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2025: FEBRUARY 3

MARCH 25

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RULING

**COTTLE [AG.]:**

- [1] It is an ill wind that blows nobody any good. Beginning in 1995 and continuing to this day the Soufriere Hills Volcano on Montserrat erupted. The volcano had been dormant since 1630. The repeated eruptions have since generated the deposit of many tons of pyroclastic material over the island especially over the southern half. The Claimants are the owners of lands on the west coast of Montserrat. Brian Hollender is the Executor of The Hollender Estate. This estate has been in existence since 1668 and continues to belong to the Hollender family. In his affidavit in support of the fixed date claim Mr. Hollender swore that the western boundary of the lands in question was stated to be the sea, however he acknowledged that the true western boundary is actually the high-water tide line and that all lands west of the high-water mark belong to the crown. Over the years of volcanic activity, new lands have formed west of the original boundary of the lands involved in this claim. He further swore that a survey carried out in 2022 shows that 31 acres is the extent of the new lands formed.
- [2] The Claimants brought the instant claim seeking the following relief;
- a. A declaration that the new lands formed on the western boundary of the land belongs to the Claimants having been formed by accretion as a result of the volcanic activities in Montserrat.
  - b. An order that the Registrar of Lands be ordered to adjust the dimensions of the western boundary relative to the title of the Claimants to include the new lands formed by accretion and;
  - c. For such further or other relief as the Court may deem necessary.
- [3] The First Claimant avers that he is the owner of lands which share a western boundary with lands owned by the Second Claimant but does not explain the basis on which ownership is claimed. The Second Claimant says that it owns the lands in question by virtue of a certificate of title issued under the Title by Registration Act. That certificate of title is Title H107 dated 11th June 1963.
- [4] The Respondent resists the claim. Counsel for the Respondent argues that the new lands formed by way of volcanic activity belong to the crown. They do not form part of the Claimants' lands by reason of accretion. They also aver that the Registrar of Lands has no power to adjust the boundary of the Claimants' land so as to encompass all the new land which now lies west of their

boundary. As far as the Second Claimant is concerned the Respondent says that the certificate of title that this Claimant relies on is no longer capable in law of conferring title in real property to the Second Claimant.

[5] By way of background, in 1978 Montserrat passed legislation implementing a system of registered land ownership under the Torrens System. The Registered Land Act (RLA) and its linked statute the Land Adjudication Act (LAA) were enacted to bring all the lands in Montserrat under the Torrens System. Both statutes commenced and became operational on the 1st day of September 1978. The purpose of this regime was to survey all lands on the island and prepare a map on which all lands can be identified. Anyone claiming ownership of lands was invited to present their claim to the officers appointed under the LAA. Competing claims, if any were adjudicated and a final map identifying all parcels along with the owners of those parcels was finalized. The LAA continues to operate. It has been amended in 1978, in 1979, in 1988, in 1999 and in 2011. The cadastral mapping exercise was completed before the eruptions of the Soufriere Hills volcano. The map that resulted does not reflect the new lands as these lands did not then exist.

[6] As I understand the Respondent's argument, the certificate of title relied on by the Second Claimant is of no legal effect. The particulars of his registration under the RLA have been transferred to the Land Register by virtue of Section 10 of the RLA. In my view there is no need to decide on the ownership of the lands that the Claimant now says that they own. The real point of contention in this matter is, *whether the Claimants are entitled to the new lands and if so on what basis does their entitlement rest.*

### **Accretion**

[7] The Claimants say that the land should be in effect added to the lands they presently own. They say that the doctrine of accretion operates in their favour.

[8] In the case of **Southern Centre of Theosophy Inc. v State of South Australia [1982] AC 706**, accretion is described as

*"A doctrine which gives recognition to the fact that where land is bounded by water, the forces of nature are likely to cause changes in the boundary between the land and the water. Where these changes are gradual and imperceptible (phrase considered further below), the law considers that title to the land as applicable to the land as it may be so changed from time to time. This may be*

*said to be on the grounds of convenience and fairness. Except in cases where a substantial and recognizable change in boundary has suddenly taken place (to which the doctrine of accretion does not apply)."*

- [9] The Claimants argue that as a result of volcanic activity over the past years much material has been deposited to the west of their lands. They ask that the Registrar adjust the Land Register to reflect that all of this new land now falls within their adjusted boundary. The only evidence as to how this new land came about, came from Mr. Brian Hollender. When he was cross examined he admitted he had no expertise to advise or opine on the movement of land and water on the coastline. He said that before the eruption the area consisted of a 14 hole golf course on 100 acres of land. From his personal observation for a period in excess of 10 years he would see material coming down the Belham Valley, across the golf course and going out to sea during periods of heavy rainfall. He swore that the process is still ongoing whenever there is heavy rainfall.
- [10] The Respondents reject this argument that a case of accretion is made out. They rely on the case of **Loose v Lynn Shellfish Limited and others [2016] 2 WLR 1126**, in which that Court agreed with the statement of Griffith CJ in the High Court of Australia in **Williams v Booth (1910) 10 CLR 341, 350**. The learned Chief Justice said,
- "I do not think that any case of accretion is made out. The law as stated by Blackstone (2 Bl Com 262), is that if this gain be little by little, by small and imperceptible degrees, it shall go to the owner of the land adjoining. For de minimis non curat lex... But, if the alluvion or dereliction be sudden or considerable, in this case it belongs to the King; for as the King is the Lord of the sea, and so the owner of the land while it is covered with water, it is but reasonable that he should have the soil when the water has left it dry."*
- [11] According to the Claimants the extent of the new lands measures more than 31 acres. In the context of a small island, rendered even smaller by the fact that most of it now comprises an exclusion zone in which occupation is prohibited, this cannot be said to be a little gain. In my view this is a considerable area. Ten years in terms of geological time can only be described as sudden. The Claimants ask how it could be that they should one day be the owners of beachfront property and the next day they own backyard property. The answer is simple. It is an act of God. I do not agree with the Claimants that the new lands should be viewed as accretion. I find that these are crown lands.

[12] As a second string to their bow the Claimants advanced another basis to support their claim for ownership of the new lands. They seek to rely on the Crown Titles Act (CTA). Section 2 of the CTA provides

2. Any interest in land remaining unclaimed since the coming into force of the Land Adjudication Act, and which by the provisions of section 17(1) of that Act were deemed to be Crown Land shall, if not claimed by 31<sup>st</sup> December, 2020, vest absolutely in the Crown.

Under section 4

4. Any person wishing to establish any claim to any interest in land that remains unclaimed under the Land Adjudication Act, shall, by 31 December 2020, make his claim in writing to the Registrar of Lands or forfeit his claim.

Section 7 provides

7. Upon receipt of a claim by any person to unclaimed land, and if the claim is accompanied by a survey plan acceptable to the Registrar of Lands, the Registrar of Lands shall advertise the application at the expense of the Applicant in such manner as the Registrar of Lands shall think fit.

And under section 9

9. Six weeks after the date of the advertisement of the claim the Registrar of Lands, on being satisfied that the applicant is the owner of the land claimed, may allow the claim and register the claim if there is no dispute arising in relation to that claim and no notice of any appeal against the Registrar's decision.

[13] The position of the Claimants is that they have applied to be registered as owners of the new lands. They have advertised as required. No one has come forward to dispute their claim. The Registrar is now bound to recognize and register the claim that they have made.

[14] I do not interpret the legislation in this way. The CTA deals with land which is on the Land Register and which was not claimed by anyone under the LAA. The CTA operates to vest this land in the Crown. Anyone who wishes to advance a claim must then follow the requirements of the

legislation and if they are able to satisfy the Registrar that they own the land the Registrar will register the Claimant as owner. There are two hurdles that the Claimants cannot surmount. They cannot show that the new lands are on the Land Register. The lands simply did not exist at the time the Register came into being. It is very artificial to describe lands as remaining unclaimed under the LAA when these lands did not yet exist. The second difficulty that faces the claimants is that they must satisfy the Registrar that they are the owners of the new lands. They have shown no basis upon which they can claim to own the 31 acres in issue. The Registrar is a creature of statute. He is empowered to adjust the map to delineate boundaries and ascribe ownership to parcels on the map. He has no power to create a new map to include new lands.

[15] For the reasons I have given the claim is dismissed.

[16] The Claimant will pay prescribed costs to the Respondent in the sum of \$10,000.00.

**The Hon. Brian Cottle**  
(Ag) High Court Judge

**By the Court**

**REGISTRAR**