

IN THE EASTERN CARIBBEAN SUPREME COURT
ST VINCENT & THE GRENADINES

IN THE HIGH COURT OF JUSTICE

(CIVIL) –

CLAIM NO. SVGHCV2021/0050

IN THE MATTER OF AN ACTION FOR DAMAGES FOR RECOVERY OF POSSESSION
PROPERTY AND INJUNCTION

BETWEEN:

ALPHONSO GAYMES

(Personal Representative of the Estate of Albert Gaymes Deceased)

Claimant

and

STACYA CHAMPMAN

Defendant

BEFORE:

The Honourable Mde. Justice M E Birnie Stephenson

High Court Judge

Appearances:

Mr Michael Wylie with Mr Maxron Holder of Frederick Attorneys for the Claimant

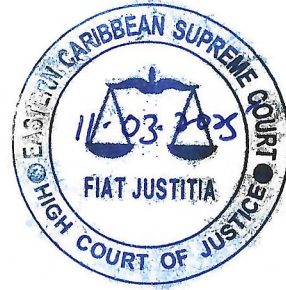
Mr Jomo S Thomas of Thomas & Ms. Shirlan Barnwell for the Defendant

2024: December 9

2025: January 24

March 11 (Issued)

JUDGMENT



- [1] **STEPHENSON J.:** This claim concerns a dispute over the ownership of land located at Layou in the island of Saint Vincent and the Grenadines. The claimant is the Personal Representative of the estate of Albert Gaymes deceased and his claim is that the Albert Gaymes was at the time of his death entitled to the possession of the disputed property.
- [2] Albert Gaymes died intestate on the 9th August 1982 and Letters of Administration was granted to the claimant on the 2nd July 2020¹. It is the claimant's contention that the property in dispute previously belonged to his grandmother Eva Gaymes who was the mother of Albert Gaymes, and he asserts that through his predecessors in title that he is the owner in possession of the lot in dispute.
- [3] The defendant denies the claimant's assertions and claims that she is entitled to apply for and obtain a declaration of possessory title of the said property on the grounds that she has been in open, notorious and continuous possession of the property since in or about 2003.

BACKGROUND AND EVIDENCE

- [4] The claimant asserts that his father Albert Gaymes as owner in or around 1960 placed his sister into possession of the disputed property and that her grandson Charles A Paynter came to live with her as she advanced in age. Charles Paynter, it is said, had special needs and was financially provided for by Government funding along with contributions received from family members.
- [5] Edith Gaymes died in 1977 leaving her grandson Charles Paynter in occupation of the premises. The claimant's case is that this was with the knowledge and consent of the family members.

¹ Letters of Administration numbered 2/2020 was duly exhibited by the claimant

- [6] The claimant contends that the defendant Stacya Chapman moved into the house with Charles prior to his death. Charles Paynter died on the 2nd October 2014. A copy of his death certificate was duly exhibited and attached to the statement of claim.
- [7] After Charles' death in 2014, the claimant applied for and obtained letters of administration for the Estate of Albert Gaymes. After obtaining letters of administration the claimant proceeded to take steps to have the defendant remove from the premises on the property which she occupied with Charles Paynter, but the defendant refused and/or failed to oblige the demands made for her removal.
- [8] A notice to quit was duly issued to the defendant on the 20th November 2020 demanding that she quit and deliver up the premises on or before the 30th December 2020. It is the claimant's case that the defendant occupied the premises as a tenant and a demand was made that she pay the sum of \$2,400.00 being the outstanding rent for 32 months at the monthly rate of \$75.00. A copy of the Notice to Quit was duly attached to the Statement of Claim and marked "B".
- [9] The defendant did not comply with the notice to quit, and these proceedings were brought against her for possession of the property, for an injunction to restrain her whether by herself her servants and or agents or otherwise howsoever from trespassing on the property which was owned by Albert Gaymes deceased. The claimant also seeks an order of court that the defendant be ordered to quit and deliver of the said premises within 30 days of the order made.
- [10] The defendant has refused to vacate the property. Her claim is that she moved into the property in March of 2003 at the invitation of Charles Paynter. That whilst she lived there, she cooked his meals and gave him his and gave him his medication and vitamins and generally took care of him up until October 2014 when Charles passed away. (emphasis added)

- [11] Ms Chapman filed an affidavit in response to the Statement of claim and averred therein that she took care of Charles in his life and upon his death and that she made his funeral arrangements with no assistance from his family. In her defence, Ms Chapman averred that Charles always told her no one could move her from the house, and that is her understanding that he was the owner of the property and that it was his intention that he should have it when he died. It is noted that Charles passed away in 2014.
- [12] Ms Chapman averred that whilst living with Charles she paid the land taxes, maintained the house by changing the roof, doors, windows and she repaired the kitchen which was initially a galvanized structure, and she replaced this with a plywood structure with a wall foundation.
- [13] It is Ms Chapman's evidence that in April 2018 she was approached by one Ms Hadaway who introduced herself as the sister of Alphonso Gaymes who informed her that the property belonged to her brother. Ms Chapman says that she told Ms Hadaway that she was not aware that Alphonso Gaymes owned the property. At the time Ms Hadaway came to her she had been living on the premises for fifteen years and at the time Charles passed away some four years before.
- [14] Ms Chapman said Ms Hadaway told her that she understood that she was paying the property taxes on the house and requested the receipts from her; she said that she did not give them to her. Further to that Ms Hadaway promised to pay her for the years she had been looking after the property.
- [15] Ms Chapman's affidavit evidence is that she did not take any payments from Ms Hadaway neither did she hand over the tax receipts in spite of subsequent visits made to her by Ms Hadaway. She exhibited those tax receipts that she had in her possession to her affidavit together with marked **SC 1**.

- [16] Ms Chapman says she was subsequently served with demand letters from Fredericks Attorneys demanding that she pay rent, which she did not do. She said further, that she was summoned to the Magistrate's Court for the outstanding rents, but the magistrates' proceeds were discontinued and the High Court Matter pursued.
- [17] Ms Chapman averred that she was not aware that the claimant was entitled to the property, and she has never seen any deed of Conveyance evidencing his ownership of same.
- [18] By her defence Ms Chapman's contends that she has acquired an interest in the disputed parcel by adverse possession on the grounds that she and her predecessor in title Mr Charles Paynter were in continuous and undisturbed possession of the disputed premises for in excess of 30 years which would have been from March 2003. (emphasis added)
- [19] Ms Chapman in her affidavit spoke of being advised as to the law however, she did not say who advised her and clearly this is not of her own knowledge and is in none compliance with of Part 30.3 of the Civil Procedure Rules 2023 (Revised Edition) which provides that "*The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge*". Clearly from Ms Chapman's own knowledge the contents of paragraphs 20 and 21 and will be disregarded by this court.
- [20] The claimant filed a response to Ms Chapman's affidavit and denied the contents of the affidavit and any assertion by the defendant she has been in adverse possession of the property as claimed. The claimant disputes the interest as claimed by the defendant and maintains that she has no interest whatsoever in the disputed property.

- [21] It is the defendant's contention that the defendant went into occupation of the property until around 2012 to 2013, further, that Charles never had a heart problem and that he was not ailing for a long period of time before he passed away. The claimant admits that Ms Chapman took care of Charles but she was not his sole care giver or provider, but that other members of the family and members of the community also looked after him.
- [22] The claimant contends that the defendant had no familial connection with Charles' family. However, it is noted that the claimant admits that he has no knowledge as to how the funeral arrangements for Charles was handled.
- [23] The claimant contends that the disputed property is Gaymes family property, and that Charles was never clothed with the power or entitlement to own the said property or to give it to anyone else. It is further contended that at all material times Charles knew that the property was Gaymes family (his family) property and that when he came to live there, he came to live there with his grandmother who predeceased him.
- [24] Further the claimant contends that when Charles came to live on the disputed property with his grandmother, he knew that she was put there by her brother who owned the property. The Claimant further contends that when the defendant went to live on the premises she did so with Charles' permission as a licensee and only lived there exclusively after his death in 2014 still as a licensee. The claimant does not admit that the claimant did any repairs to the premises or maintained the premises and puts the defendant to strict proof thereof.
- [25] The claimant contends that when the defendant made payments of the taxes she did so on behalf of the deceased and that the claimant himself also paid taxes for the property, and he attached copies of the tax receipts evidencing his payments to his Reply and collectively marked "AG1a".

[26] The claimant contends that the letters and Magistrate's proceedings served on the defendant was done by his lawyers upon his instructions and that the proceedings at bar were commenced when he obtained letter of administration to his father's estate.

THE ISSUES:

[27] The issues that arise for determination are:

- a. Whether the claimant has a right to possession and ownership of the disputed property?
- b. Whether the claimant's rights to the disputed property have been extinguished?
- c. If not, has the defendant acquired a beneficial interest in the property?
- d. Whether the defendant can tack on her possession to the possession of Charles Paynter to enable her to be in possession for requisite years to acquire adverse possession.

[28] In order for the claimant to succeed in his claim he will have to prove on the balance of probabilities that he can through his predecessors in title apply for possessory title of the disputed property on behalf of the estate of Albert Gaymes. If he does, he entitled to vacant passion of the disputed property. In considering the claimant's case the court will also have to consider whether or not the actions taken by the claimant caused time to stop running against any claim or right that the defendant may have acquired.

[29] On the other hand, has the defendant been in adverse possession of the previous owners of the property? and is she entitled to a possible declaration of possessory title?

[30] There were three witness statements filed for and on behalf of the claimant and two witness statements on behalf of the defendant. All five witnesses attended the

trial and were duly cross examined by the counsel representing the respective parties.

The evidence

- [31] Alphonso Gaymes gave sworn evidence. He confirmed the contents of this witness summary and it was admitted as his evidence in chief.
- [32] Mr Gaymes essentially repeated the facts as stated in his statement of claim. He did provide some more details. He said that he knew that his father put his aunt Edith into possession of the property and that as she was getting down in age Charles A Paynter, her grandson moved into the property with her. He said his father used to pay the taxes on the property and that it was well known in the community that the property belonged to the Gaymes Family.
- [33] Mr Gaymes said that when his aunt died in 1977, that Charles Paynter continued in occupation and that Charles was supported by family members and the Government and that family members assist him financially when they visited.
- [34] That as far as he was aware the defendant had no where to live and she took up residence with Charles at the house. That when Charles died in 2014, she continued to live in the house and that as far as he knew the defendant was not employed.
- [35] It is Mr Gaymes' evidence that since Charles died that over the years, he repeatedly requested the defendant to remove from the house but to no avail. This witness said that from time to time he would visit Saint Vincent and visit the premises, but the defendant was never there when he did so. The witness mentioned the demand letter sent to the defendant and his evidence to this court is that because the defendant refused to remove from the house, he has been unable to take up occupancy of the premises.

- [36] Under cross examination this witness was unable to identify to the court which part of his witness summary he stated that he was the owner of the land.
- [37] Mr Gaymes under cross examination told this court that at the time of the trial he was 88 years old and that he left Saint Vincent and the Grenadines since 1962 which was 62 years ago. He said he was last in Saint Vincent in 2024 (which was the year of the trial). In response to a question from Mr Jomo Thomas on behalf of the defendant the witness said over the years he has made many trips to Saint Vincent, and he proceeded to name the years he visited.
- [38] Mr Gaymes said when he came to Saint Vincent, he stayed at his cousin's Dionne Hadaway's home in Layou and that when he visited the disputed premises his cousin accompanied him.
- [39] Mr Gaymes was pressed by counsel as to his knowledge of his aunt being put into possession of the house by his father. He admitted that he was not in Saint Vincent when that happened. Mr Gaymes admitted that the property in question as far as he knew did not belong to his father but to his grandmother and that in spite of visits to the registry, he has never seen a deed as to who owned the property.
- [40] When asked if his grandmother squatted on the land that is occupied the land without paying for it, Mr Gaymes response was that she paid the tax for the land.
- [41] Mr Gaymes was adamant under pressing cross examination from Counsel that the land was owned by his father and that his grandmother gave his father the land and that the land had a small structure on it.
- [42] Counsel then questioned Mr Gaymes about Charles and he told this court that Charles was retarded and that as far as he knew Charles who he knew fairly well never worked on the land. He told this court that when asked whether he took care of Charles' welfare his answer was that he did. Mr Gaymes said even though

he did not say in his witness statement that he took care of Charles he did so in many ways. Mr Gaymes was persistent in that he and his family looked after Charles even though Charles relied on Government assistance.

[43] Mr Gaymes admitted to counsel that as an industrial mechanic in Canada he made a lot of money however he did not see it necessary to assist Charles so that he would not have had to depend on Government assistance. And this witness when asked by Counsel Thomas whether or not he liked Charles very much, his response was *"I did like him, but I did not see the need to help him"*.

[44] When pressed about his personal knowledge as to whether the defendant worked, Mr Gaymes was unable to say of his own knowledge whether the defendant was employed. Mr Gaymes agreed that the defendant lived in the house with Charles prior to his death. He was insistent that she move in there in 2012 and that he knew this from different sources. However, he did not know the exact date that she moved in.

[45] Mr Gaymes described the house as having a small kitchen, a single bed and two chairs in the kitchen. He agreed that there was no indoor plumbing or running water in the house.

[46] When asked about his visit to Saint Vincent in 2023 Mr Gaymes said he was here for a couple of weeks, and he went past the house and that he had a good view of the house, and he agreed that it did not look like the house that Charles lived in, in that there were additions and running water to the house. This witness agreed that no member of the family neither did he make the upgrades to the house.

[47] Counsel then moved onto the claimant's application for Letters of Administration and he said in his application it included the land as his father's property but no bank account. He said that his father died in 1982 and at his death he had three other pieces of land in different places, in Rutland Valem another piece in Layou and one in Vigie. He said that the other pieces of land have been sold except

Rutland Vale which was not the disputed property. He said that the two pieces of land that were sold were sold by his brother.

[48] Mr Gaynes told this court that before his brother sold the two pieces of land owned by this father that his brother would have obtained probate of his father's estate, however, the disputed land was not included in his brother's application. This witness agreed that his application was the second attempt at probating his father's estate.

[49] Counsel suggested to Mr Gaymes that his brother, whose name is Winston Gaymes did not include the disputed land in his father's estate because his brother knew that it did not belong to his father and Mr Gaymes agreed with counsel.

Adverse Possession

[50] It is this court's view that a good starting point would be to examine the nature of Ms Chapman's occupation of the disputed property in light of the principles of law regarding adverse possession the provision of the Limitation Act.²

[51] The statutory provisions relating to adverse possession are contained in Sections 17 (1) and 19 and Schedule 1 paragraphs 1, 2 and 8 (1) of the **Limitation Act**. The relevant provisions are as follows:

"17(1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

...

19. Subject to Section 20, at the expiration of the period prescribed by this Act for any person to bring an action to recover land

² Chapter 129 of the Laws of Saint Vincent & the Grenadines Revised Edition

(including a redemption action) the title of that person to the land shall be extinguished."

...

Schedule 1:

Paragraph (1):

Where the person bringing an action to recover land, or some person through whom he claims has been in possession of the land, and has while entitled to the land been dispossessed or has discontinued his possession, the right of action shall be treated as having accrued on the date of dispossession or discontinuance.

Paragraph (2):

Where any person brings an action to recover any land of a deceased person (whether under a will or intestacy) and the deceased person:

- (a) was on the date of his death in possession of the and or in, the case of a rent -charge created by will or taking effect upon his death, in possession of the land charged;

and

- (b) was the last person entitled to the land to be in possession of it, the right of action shall be treated as having accrued on the date of his death.

...

Paragraph 8:

- (1) No right of action to recover land shall be treated as

accruing unless the land is in possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as "adverse possession"); and where under the preceding provision of this schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.

..."

- [52] Adverse possession is a matter of fact. In order to amount to adverse possession there must be clear evidence that the squatter is not merely a persistent trespasser but is seeking to dispossess the owner. **Re: Powell -v- McFarlane**³. (emphasis added)
- [53] **Halsbury laws**⁴ states: "...for the claimant's possession of the land to be adverse, so as to start time running against the owner, the factual possession should be sufficiently exclusive, and the claimant should have intended to take possession."(emphasis added)
- [54] The defendant in this case contends that she has been in sole exclusive possession of the disputed property since Charles A Paynter's death in 2014. During her occupation she effected repairs and improvements to the property, further, that she has duly paid the property taxes. To that end she exhibited receipts of the payments made.
- [55] The defendant contends that she first came to live on the property at the invitation of Charles Paynter and whilst there she essentially looked after him up until his death. That upon his death she arranged and looked after his funeral the

³ (1977) 36 P & C 452

⁴ Volume 28 Fourth Edition Paragraph

defendant did not produce any tangible evidence in support of her statement in this regard.

[56] The defendant contends that she continued to live on the premises through and with the permission of Charles who she knew to be the owner and she relies on his statement to her that no one could move her from there. The defendant holds out that Charles wanted her to have the property after he died.

[57] The claimant has advanced an alternative narrative. The claimant contends that Charles Paynter was never the owner of the property. That he in fact went to live there with his grandmother who lived on the property not as owner but as a licensee of her brother who was the de facto owner of the property and through whom the claimant is seeking to claim ownership.

[58] The claimant contends that at all material times the property was owned by Albert Gaymes Deceased and that Charles entered into the property based on the family's permission and remained as a licensee through out his possession. It is the claimant's contention that the defendant entered the property upon the invitation of the licensee and occupied the premises as a licensee and that she cannot claim title by adverse possession as a licensee or further, seek to base her claim for possession on the rights of Charles who himself was a licensee.

[59] It is clear from the evidence adduced before the court that Charles went to live on the premises with his grandmother who is the sister of Albert Gaymes. That Charles was a developmentally challenged person who relied on Government Assistance and had to be looked after so to speak.

[60] From the evidence adduced and accepted by this court the defendant moved into the house when she had no where else to live and that she occupied the premises whilst looking after Charles until his death.

- [61] The Claimant maintains and this court accepts and agrees that the property belonged to Albert Gaymes who would have in fact been the great uncle of Charles Paynter. This court has concluded that Charles lived on the property as a licensee with the agreement of his family (the Gaymes family) up until his death. His occupation adverse to the owner's title and it was not an open peaceful occupation upon which a claim for adverse possession could be based.
- [62] Charles died in 2014, and the defendant continued to live in the property clearly without permission of the de facto owner. Even if her occupation can be described as sole, open and peaceful the question arises was it long so as to satisfy the requirements of the applicable Limitation Act.
- [63] In this court's view her sole occupation would have commenced the day that Charles Paynter died in 2014. These proceedings commenced in 2021 that would be some 7 years after Charles departed this life. Her rights would have accrued in 2014 and in order for occupation to extinguish the Gayne's title she would have had to be sole open peaceful occupation for 12 years. She has, in this court's view failed to establish this.
- [64] It is to be considered also even if Charles adversely possessed the owner's possessory title was the defendant's occupation such that she could be considered the beneficiary of his estate? Can she rely on Charles' occupation as would a beneficiary of Charles' estate? Charles died intestate, she is not a relative, she is not his spouse, she has not adduced evidence to show that she was in any way a "constructive trustee" with a beneficial interest in the property. Her claim, and as such her defence must fail in all circumstances of this case.
- [65] It is noted that this court was not invited to consider or to investigate the existence of such a possible interest, that the defendant may have acquired, though the defendant in her evidence has sought to suggest that she expended monies on the repairs and improvements to the house because Charles told her no one could

remove her from there. That certainly is not sufficient evidence to mount a case of her being a constructive trustee with a beneficial interest as is required by the well-established principles of law in that regard.

- [66] Reference is made to the Privy Council decision of **Clarke -v- Swaby**⁵ where it was held that the law of England which is the applicable law of St Vincent was stated to be:

“... a person who is in occupation of land as a licensee cannot begin to obtain a title by adverse possession so long as his licence has not been revoked. Unless and until it is revoked his occupation of the land is to be ascribed to a licence and not an adverse claim.”

- [67] It is well established if not trite law that a licensee does not acquire an interest, estate; legal or equitable interest in property to which the occupation relates. A licensee does not acquire any proprietary estate in property even if she was in sole and absolute control of the property. To establish her claim the defendant would have had to prove on the balance of probabilities that she occupied the premises and the property with the intention to possess it for at least 12 years without the true owner's permission. This the defendant has been unable to do.

- [68] This to this court's mind is precisely the situation that the defendant finds herself in. She entered into occupation of the disputed property at the invitation of a licensee and thereafter occupied the said property as a licensee during the lifetime of that Licensee. Even if her occupation transitioned into that of a squatter it would have done so upon Charles' death, and she has failed and or occupy the property adverse to the de facto owner for twelve years. It is noted that she would have achieved the necessary length of time of occupation so as to extinguish the title of Albert Gaymes in 2026 which would have been 12 years after Charles' death.

⁵ [2007] UKPC 1

- [69] As a licensee her occupation of the disputed property can be terminated by the giving or reasonable notice which was done by the claimant in the case at bar.
- [70] It is noted that both the claimant and the defendant in this case have sought to bolster their respective claims having asserted that they have paid taxes for the property. They both have exhibited receipts for the payment of same. Reference is made to the case of **Richardson -v- Lawrence**⁶ where it was held that the payment of taxes does not create an interest in land nor is it necessarily evidence of ownership of land. The court noted in that case that taxes can be paid by anyone who desires to do so, and the record of the taxes may actually be in the name of some who has been dispossessed.
- [71] In the case at bar, the claimant is seeking to claim the disputed property through his father Albert Gaymes deceased.
- [72] In the case at bar Counsel submitted that the defendant should be allowed to tack her occupation of the property in dispute by tacking her occupation onto the occupation of Charles Paynter.
- [73] Counsel Jomo Thomas on behalf of the defendant submitted that if the court is not inclined to find that the defendant has proved adverse possession in her own right he invited this court to find that the defendant should be allowed to "tack" on Mr Paynter's possession which would run from the 1977.
- [74] Counsel cited and relied on the definition from Black's Law Dictionary as follows:

"Tacking is a common law principle in property law that allows successive landowners to combine time of their adverse possession so that the last owner can meet the statutory period. The parties must be found to be in

⁶ (1966) 10 WIR 234

privity as a general rule. Privity may be created by any conveyance, agreement or understanding that has for its object the transfer of possession of the land and is accompanied by a transfer in fact"

[75] Counsel Cited and relied on the following cases in support of his submissions and sought to alert the court to the following points of law as contained in the excerpts cited and relied on:

- a. **Mulcahy -v- Curramore Pty Ltd.**⁷ And based on the excerpt of the decision presented to the court stated *inter alia* " ... the law did not require any formal or informal conveyance or assignment of the inchoate possessory formal or informal conveyance or assignment of the inchoate possessory rights and, that, if during the period in question there was continuous occupation to the exclusion of the owner of the documentary title, that sufficed for the purpose of bringing into existence a possessory title. ..."
- b. **Re: Mount Carmel Investments Ltd -v- Peter Thurlow Ltd**⁸ per Nichols LJ
"We do not accept that, in a case where one person is in possession of property, and another is not, the mere sending and receipt of a letter by which delivery up of possession is demanded, can have the effect in law for limitation purposes that the recipient of the letter ceases to be in possession and sender of the letter acquires possession."
- c. **Re: Florence Louise Belfon -v- Lester Mc Intosh**⁹ to say
'The respondents' extra judicial protests, objections and demands do not in law constitute acts of ownership. (i.e. acts that evince an intention to assert ownership) acts of possession (i.e. acts that

⁷ 2 NSWLR 464 @ 21

⁸ [1988] 1 WLR 1078

⁹ Civil Appeal No 13/1944

evinced an intention to assume, retain, or regain possession), or acts that legally interrupt disturb, or otherwise affect the quality of adverse possession.'

d. **Re: David Lachana -v- Cooblal Arjune**¹⁰

There is much to tack and clear evidence of adverse possession.

e. **Re: Joseph Stewart et al -v- Victor Hypolyte**¹¹

"Factual possession allows for tack on"

f. **Earl of Oxford's Case**¹²

*"The common law itself will admit no contract to be good without quid pro quo for land to pass without valuable consideration, and therefore equity must see that proportionable satisfaction be made in this case"*¹³

...

*Equity together be veration; yet voluntary to attempt the law in a doubtful case, after to resort to equity, is neither strange nor unreasonable"*¹⁴

...

*By all which cases it appearest that when a judgment is obtained by Oppression, Wrong and a hard Conscience, the Chancellor will frustrate and set it aside, not for any error or defect in the judgment, but for the hard Conscience of the Party; and in such Cases the Judges also play the Chancellors"*¹⁵

¹⁰ CCJ Appel No CV 8 of 2007

¹¹ SVGHCV2018/0096

¹² In Chancery 13 Jac 1[1615]

¹³ Ibid at paragraph 5

¹⁴ Ibid at para 7

¹⁵ Ibid at para 10

[76] Counsel Thomas made the following submission in urging the court to consider the following evidence as being supportive of the law as he has stated:

- a. That the defendant moved into the house in 2003.
- b. That her now 15-year-old son was born in that house.
- c. That she has been in possession of the house and to that end she has done repairs and made improvements to the building.

[77] Counsel Thomas submitted that if the court is inclined to find that the defendant's possession commenced at the death of Mr Charles Paynter then he is inviting the court to tack on Mr Paynter's possession to her possession and this would be the proper equitable and just thing to do. Counsel referred to the decision as previously cited **Re: Earl of Oxford (Op Cit)**

[78] Counsel on behalf of the Defendant urged the court not to accept the evidence of Silma Lewis and submitted that her evidence was discredited under cross examination on the issue as to whether the defendant was Mr Paynter's caretaker when she admitted that the defendant "*prepared meals, cleaned the house, took him to the doctor and even took care of Mr Paynter's burial.*" Counsel also drew to the court's attention that Ms Lewis admitted to only meeting the claimant after the case at bar was initiated.

[79] It was submitted that the fact that the defendant took care of the burial of Mr Paynter suggests that the defendant was more than just Mr Paynter's caretaker and based on her relationship with him and the fact that Mr Paynter himself was in possession of the property without the permission of owner in that he himself adversely possessed the owner of the premises that the defendant in all the circumstances of this matter should be allowed to tack onto his possession and that if the claimant's case should be dismissed and apply the equitable principle of tacking the defendant's possession to the possession of Mr Paynter thereby making her eligible to claim possessory rights to the property.

The principles of Tacking:

- [80] The principles of Tacking were discussed in the case of **Ewers (Executrix of the estate of Mavis Williams) -v- Barton - Thelwell**¹⁶ were discussed by the Court of Appeal in Jamaica. It is to be noted that essentially the case was dealing with an application for extension of time to file a defence. However, in considering the defence as is well established the learned judge was called on to consider the viability of the defence which the defendant was seeking leave to file. The claimant in the matter submitted to the court that her occupation of the premises when tacked to the occupation of her husband and partner who lived in the premises before her together extinguished the title of the defendant and in those circumstances her claim for possession brought against the defendant was going to succeed and the proposed defence was not viable and or sustainable and in the circumstance the court ought not to allow leave to file the defence as the defendant had no sustainable case.
- [81] It is in considering the merits of the defence and the justice of the case whether to grant leave to file a defence out of time by the titled owner against a case of a person claiming to have extinguished her right by her adverse possession which would have included her possession being tacked onto the possession of her deceased husband that the court considered the principle of tacking.
- [82] The learned Justice of Appeal Brooks referred to the learning in:
Megarry and Wade ... Real Property (7th edition 2008) para 35 -021

"... ... a squatter has a title based on his own possession, and this title is good against everyone except the true owner. Accordingly, if a squatter who has not barred the true owner sells the land he can give the purchaser a right to the land which is as good as his own. The same applies to devises, gifts or other

¹⁶ (2017) 81 WIR 441

dispositions by the squatter, and to devolution on his intestacy: in each case the person taking the squatter's interest can add the squatter's period of possession to his own. Thus, if X, who has occupied A's land for eight years, sells the land to Y, A will be barred after Y has held the land for a further four years.' (Emphasis supplied)

Commonwealth Caribbean Land Law (2006) by Sampson Owusu at page 272

"A squatter who does not remain in adverse possession for the full limitation period acquires title which is therefore transmissible to the his heirs on intestacy or devises or which can be alienated by him to another person whose title matures if the paper owner is kept out of the property for the whole limitation period. .."

Elements of Land Law (5th Edition, 2008 state the same principle at Para 9.14

"For the purposes of establishing the expiration of the limitation period of unregistered land, immediately consecutive periods of adverse possession may be aggregated: the statutory period can be accumulated by possession of the part of a series of squatters."

- [83] **Re: Toolsie Persaud Ltd -v- Andrew James Investment Ltd et al** ¹⁷ The Caribbean Court of Justice also in its judgment touched on the concept of the ability of tacking on to the possession of a previous occupier who was in adverse possession to the owner of the land. The court gave consideration to the issue of whether a vendor. The important take away from this case is that for there to be a passing on or the ability to tack on a previous possession their must be some legal

¹⁷ (2008) 72 WIR 292

relationship between the previous possessor and the current possessor which does not exist in the case at bar.

[84] It is to be noted that Ms Chapman was not an heir or purchaser for value ... she had no apparent legal link so to speak with Mr Paynter, further she was not present when Mr Paynter went into possession and this court believes that Mr Paynter went to live on the premises with his aging grandmother who was a licensee of the owner pursuant to a familial arrangement and after the death of his grandmother he was allowed to continue living on the premises up until his death a clearly in all the circumstances of this case he would have had no where else to go. The evidence before this court is that whilst he lived there and in his life his family came to check on his in what can be assumed to ensure his welfare and wellbeing.

[85] There is no evidence before this court that Mr Paynter's occupation of the premises was without the permission of his family or the successors of the owner of the property. He was not a squatter therefore in the circumstances of the case Ms Chapman would be unable to tack her act of trespass or occupation of the property without the permission of the owners to that of Ms Paynter to acquire the necessary number of years to establish adverse possession. There was no transmissible adverse possession by Mr Paynter which the defendant could tack to her own to make the requisite 12-year limitation period.

[86] Based on the facts as adduced in the case at bar which this court finds the defendant entered onto the premises as a licensee at the invitation of Mr Paynter who was living on the premises with the permission of his family. He was not a trespasser. Therefore, Mr Paynter had no transmissible rights obtained by adverse possession in respect of the disputed property. The defendant's claim to be able to tack her possession onto Mr Paynter's possession for the purpose of acquiring 12 years possession to establish adverse possession of the property is misconceived and is dismissed.

[87] It is not disputed that the defendant went into occupation of the disputed property at the invitation of Charles Paynter deceased. At that time Charles was occupying the premises as a family member of the Gaymes family where he initially lived with his grandmother who we are told who herself was put into occupation of the property by her brother who is the alleged owner of the disputed property. His possession was not adverse to the owner. Neither is there any evidence adduced to this court that Mr Paynter by his possession of the property was with the intention to adversely possess the owner.

[88] It is clear to this court that the defendant went to live in the house on the land with the permission of Charles who himself was living there based on a family arrangement. It is therefore clear to this court that the defendant went into occupation of the house as a guest of Charles and in consideration of all the circumstances was no more than a licensee.

[89] The defendant fails in her defence to establish that she has been for the requisite period a sufficient degree of physical custody and control of the claimed land in the light of the land's circumstance with the intention to exercise such custody and control on her own behalf and for her own benefit independently of anyone else. It is this court's finding that the defendant is unable to tack her occupation and possession of the disputed property to Mr Paynter as Mr Paynter had no transmissible rights obtained by adverse possession of the property as he at all material times occupied the premises as a licensee pursuant to familial arrangement and or agreement.

[90] In Conclusion this court finds that the claimant is entitled to the reliefs sought in his claim. It is therefore ordered that:

- a. Judgment is granted in favour of the claimant.
- b. An injunction is therefore granted to restrain the defendant by herself, her servants or agents or otherwise howsoever from continuing to trespass on the premises and property of Albert Gaymes Deceased represented

herein by the Personal Representative of the Estate of Albert Gaynes Deceased.

- c. The Defendant shall quit and deliver up possession of the said premises within 90 days of this order.
- d. Damages in the sum of \$3600.00 shall be payable by the defendant herein to the estate of Albert Gaynes deceased.
- e. Costs to be assessed if not agreed within 21 days of the issue of this judgment.

[91] This court thanks Counsel for their very helpful submissions in this matter.

M E Birnie Stephenson
High Court Judge

