

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO: DOMHCV 2021/0082

BETWEEN:

VERONICA ABRAHAM also known as

VERONICA STEVENS also known as

CLARA PAUL

-

Claimant

V

[1] RAYMOND STEVENS

-

First Defendant

[2] THERESA STEVENS

-

Second Defendant

APPEARANCES:

Mr Glenworth Ducreay and Ms Candace Ducreay-Williams of Casaropa Chambers for the Claimant

Mrs Laurina Vidal-Telemaque for the Defendants

2024: June 10th, 11th,

July 1st,

October 24th

JUDGMENT

1. **COLIN WILLIAMS J:** The Claimant, Ms Veronica Abraham, also known as Veronica Stevens, and also known as Clara Paul, is the registered owner of a parcel of land measuring 9,392 square feet at Bense, in the Parish of Saint Andrew, in the Commonwealth of Dominica. The Claimant has a Certificate of Title, showing that the land is registered in the Book of Titles T8 Folio 54. The title was entered as No. 260 of 1991 on the 1st of March 1991. The Claimant purchased the land from the late Mrs Philomen Stevens, more familiarly known as 'Ma

Matass' and also known as 'Ms Ariel'. The First Defendant, Mr Raymond Stevens, and his wife, the Second Defendant, Mrs Theresa Stevens, are in occupation of the land. The Claimant is seeking to recover the property. The Defendants say that they are the owners of the land; and that if the Claimant had any rights to the land, those rights were extinguished by them.

2. The Claimant, who resides in the State of New York, in the United States of America, initiated these proceedings by filing a Fixed Date Claim Form on the 16th day of April 2021. The Claimant is asking for:¹
 - 1) Possession of a portion of land at Bense in the Parish of Saint Andrew containing 9,392 square feet and registered in Book of Titles T8 Folio 54;
 - 2) The Defendants to vacate the land at Bense;
 - 3) Damages for trespass;
 - 4) Mesne Profits;
 - 5) Interest;
 - 6) Costs; and
 - 7) Further or other relief as the Court deems just.
3. At the trial, the Claimant testified via an electronic link, and called four witnesses in support of her Claim. The two Defendants testified on their own behalf and called two witnesses.
4. Following the trial, both sides were given time to file closing submissions. They both did so on the 16th of July 2024.

The issues

5. Counsel for the Claimant, Mr Glenworth Ducreay, framed the issues to be resolved as:²
 - 1) Whether the Defendants have any ownership rights to the land by virtue of the First Defendant's contention that he has been in continued and undisturbed possession of the said land for [more than] 45 years?
 - 2) Whether the Defendants can rely on section 2 of the **Real Property Limitation Act**³ to justify their ownership interests in the said land as adverse possessors?
6. Counsel Ms Laurina Vidal-Telemaque on behalf of the Defendants indicated that the issues to be determined are:⁴

¹ Fixed Date Claim Form, Trial Bundle No 1, pages 1 and 2

² Part B of the Claimant's submissions, page 2

³ Chapter 54:07 of the Laws of Dominica

⁴ Headings to paragraphs 86 and 91 of the Closing submissions

- 1) Whether the First Defendant has been in possession of the land for the statutory prescribed period?
 - 2) Whether the title of the Defendants obtained under the **Real Property Limitation Act** should prevail over the Claimant's Certificate of Title?
7. The issues as summarized by counsel identify the central critical issues in this matter. The identified issues relate to the Defendants' case, as they seek to resist the Claimant's paper title to the land. The matters to be resolved are principally issues of fact; and whether the accepted facts satisfy the requirements of the law. The issues may be condensed or restated in this fashion:
 - 1) Was the First Defendant in undisturbed possession of the land since 1973 which entitled him to claim ownership?
 - 2) Was the Claimant prevented by operation of the law from bringing a claim against the Defendants?

Background

8. The Claimant based her claim to ownership of the land on the title that she obtained upon purchasing the land from Ma Matass.
9. The Claimant paid Ma Matass EC\$450.00 in 1971 for the land. The Claimant migrated from the Commonwealth of Dominica shortly after paying for the land. The Claimant was domiciled overseas when Ma Matass signed the Deed of Conveyance, dated the 29th of October 1985.
10. Ma Matass was married to the First Defendant's grandfather, Augustin Stevens, better known as Matass, who pre-deceased her. Matass had one son, Lewis Stevens, who was the First Defendant's father.
11. The land that is the subject matter of this dispute was abutted and bounded by a much larger portion of land which previously belonged to Matass. A survey plan⁵ annexed to the Certificate of Title shows that the disputed land is bounded on two sides, to the north and to the east, by lands in the name of Lewis Stevens.
12. The First Defendant contends that the land previously belonged to his father, Lewis Stevens, and that he, the First Defendant, has been in continued and undisturbed occupation of the land since 1973. The Defendants further submit that the Claimant is statute barred from recovering the land, as pursuant to the **Real Property Limitation Act** more than twelve years have elapsed since the Claimant's right to bring an action accrued.

⁵ Dated the 1st day of March 1991, Trial Bundle No 2, pages 40 – 42

13. The Claimant contends that the Certificate of Title which she possesses is indefeasible by virtue of the **Title by Registration Act**.⁶ The Claimant also submits that the Defendants knew of and recognised her title to the land. The Claimant disputes the Defendants' rights to or ownership of the land and further contends that the Defendants sought and obtained her permission to use the land.

Was the First Defendant in undisturbed possession of the land since 1973?

14. The parcel of land containing 9,392 square feet that is the subject matter of this claim, abounds a larger parcel of land that was once in the possession of Matass and registered in the name of the First Defendant's deceased father, Lewis Stevens. The First Defendant is the third of Lewis Stevens' nine children. The First Defendant, his sister, Mrs Janillia Gallaway, a brother and a niece occupy the larger parcel of land that was in his father's name.
15. After Matass's death, Ma Matass continued at times to live in a chattel house that was located on the parcel of land that is the subject of this claim. Ma Matass died in 1994.⁷ The testimony on behalf of the Claimant was that Ma Matass prior to her death, lived for a while with some relatives in the village of Wesley, then she returned to Bense and was allowed to live on the land in a chattel house until her death.
16. The First Defendant, who was born on the 17th of September 1955,⁸ stated that he was in possession of the land since 1973. He therefore dates his possession of the land to during Ma Matass's life time.
17. The First Defendant acknowledged that he migrated to Guadeloupe in the mid-1970s and spent fifteen years there. He said that after he returned from Guadeloupe, he migrated to Anguilla in 1989 and he lived there for two years. Sometime following the First Defendant's return from Anguilla, he married the Second Defendant in December 1996.
18. The First Defendant stated that while he was living in Guadeloupe, he returned to Dominica on occasions to construct his house – which is located near to, but not on the land in issue in this case. The First Defendant in his evidence in chief⁹ explained that after he went to Guadeloupe:

“Every two or three years or less than that I would be coming back to Dominica. From that time I start to build my home. My home did not build in one. Is me alone that working, so every two or three years I will be coming to and fro.”

⁶ Chapter 56:50 of the Laws of the Commonwealth of Dominica

⁷ See paragraph 7 of Gloria Carriere's Witness Statement

⁸ Paragraph 2 of the First Defendant's Witness Statement, Trial Bundle No 2, page 92

⁹ In response to what the Claimant's witness, Ebert Joseph, stated in his Witness Statement, page 62, Trial Bundle No 3, paragraph 13, that: “The 1st Defendant built his house upon return to Dominica from Guadeloupe where he had stayed for a while.”

19. The Defendants acknowledge that they received correspondence from the Claimant, who at the time resided in the Bronx, New York, which said:¹⁰

"Raymond,

Gloria, my sister told me that you would like to work on the land. I am now giving permission to till the said land.

The agreement is that I am permitting you to till the land for three years January, 1998, to January 2001, after which I may renew the agreement until I need my land for my purpose. I would appreciate if you would not destroy any bearing trees except the kinnip (sic) tree which is not bearing.

Please give Francois Carrier my share for me."

20. The Claimant's view is that this permission given to the First Defendant underscores her ownership of the land. The Claimant's position was that the Defendants recognised her title and occupied the land because she permitted them to. On the other hand, the Defendants position was that if there was an agreement, it expired in January 2001, and they remained in possession of the land since then which would vest them with rights.
21. The First Defendant, when asked by his counsel whether he wished to comment on the Claimant's contention¹¹ that she gave him permission via a letter to occupy the land, said:

"I received a letter like that but very late. I can't remember what date. I observed the letter and I spoke to my wife about it. I asked her who sent the letter. Theresa - my wife - and Gloria had a conversation about land. I don't know if is that land. I don't know what land she is talking about."

22. The Second Defendant wrote a letter to the Claimant, bearing the date 3-1-07,¹² which stated:

"Hi Clara.

New Year Greetings to you and family in the name of God above.

Thanks for giving us the privilege to work your land for two years.

¹⁰ Exhibit 'VA2'

¹¹ The Claimant at paragraph 19 of her Witness Statement said: "...in or about 1998, I wrote to the 1st Defendant informing him that I was granting him permission to toil the land for three years. In the same letter, I asked the 1st Defendant to give Francois Carriere 'my share for me'."

¹² Exhibit 'VA3'

At present we only ensure its (sic) not abandon[ed], therefore we clean up the place sometimes to avoid people from using it as a dump site.

<i>The sale for pears last year</i>	<i>100.00</i>
<i>2006</i>	<i>258.00</i>
	<i>\$358.00</i>

Thank you.
Theresa & Raymond."

23. (This letter, although bearing the date "3-1-07" could possibly have been incorrectly dated, given that it separately referred to "sale for pears last year" and "2006". This discrepancy was not resolved by any evidence.)
24. The First Defendant in reference to the letter dated 3-1-07, said in his oral evidence in chief:

"I didn't write the letter to Ms Veronica.

"Yes, I spoke to my wife about the letter sent to Ms Veronica. I told her, (my wife), the land belonged to my father."
25. In cross examination, the First Defendant stated that the letter was written without his knowledge or approval.
26. There were some notable features of the letter when considered in the context of the correspondence from the Claimant allowing the Defendants to cultivate the land:
 - i. It referred to permission for a two-year period, while the letter exhibited from the Claimant giving permission was "for three years January, 1998 to January 2001" but which may be renewed.
 - ii. It contained an accounting statement of the value of the sale of produce for "last year" and "2006", while the original letter from the Claimant was for the Defendants to "give Francois Carriere my share for me."
 - iii. It stated that the Defendant's activities were principally to keep the land clean in order to prevent persons from using the land as a dump site. The letter from the Claimant permitted the Defendants to till the land and not to destroy any bearing trees.
27. The statement in the letter that: "At present we only ensure its not abandon, therefore we clean up the place sometimes to avoid people from using it as a dump site" was consistent with the evidence from the Claimant's witness, Gloria Carriere, who testified that the Second Defendant told her that they were keeping the land clean to avoid it being used a dump site.

28. Mrs Carriere in her testimony stated:

“I knew that Ma Matass was married to the 1st Defendant’s grandfather, Augustine Stevens, but that neither Augustine Stevens nor his son Lewis Stevens, the father of the 1st Defendant ever disturbed the Claimant either by herself or (sic) her agents in the Claimant’s occupation and possession of the land.”¹³

29. Notably, the Claimant’s Certificate of Title, had annexed to it a plan¹⁴ showing the boundaries of the disputed land. The property was bounded by a public road, lands of Victor Massicot and on two sides by lands of Lewis Stevens. At that time, in 1991, Mr Lewis Stevens was still alive.¹⁵

30. The First Defendant’s assertion that he was in undisturbed possession of the land from 1973 is not accepted or believed and stands rejected. His claim lacked credibility. A number of factors undermined the reliability of the Defendants’ contention of undisturbed possession from 1973:

- a) At that date, Ma Matass even though a senior citizen, was still alive and at times living on the land in question. Ma Matass did not sign the deed of conveyance to the Claimant until 1984. It is therefore not accepted that with Ma Matass having the legal title and being physically present on the property that the First Defendant could have been in possession of the disputed land.
- b) In 1973, the First Defendant was 18 – 19 years old. He migrated to Guadeloupe where he said he spent 15 years before returning to Dominica and again migrating to Anguilla in 1989. This would place the latest date of his migration from the Commonwealth of Dominica to the French Overseas Department to 1976. He personally could not have been in occupation of the land. The accepted evidence does not support anyone acting on his behalf and carrying out acts of ownership.
- c) The fact that the Second Defendant wrote to the Claimant a letter bearing the date 3-1-07 accounting for the use of the land in terms corresponding to the Claimant’s authorisation letter of 1998, was inconsistent with someone who was occupying their own land.
- d) The First Defendant during cross examination acknowledged that the first time that he made a claim for the land was in 2020.

¹³ Witness Statement filed on the 10th of February 2022, upon which the witness relied, paragraph 25

¹⁴ Trial Bundle No 2, page 40

¹⁵ The First Defendant in cross examination placed his father, Lewis Stevens, death at close to 2010

- e) The Second Defendant acknowledged that the Claimant's sister, (Gloria Carriere) on her visits to Dominica would enter upon the land and pick produce without any interference.
31. On the evidence presented and accepted, the Defendants were not and could not have been in possession of the disputed property since 1973, whether personally or by any predecessor in title, or anyone else claiming a right to possession since then.

Was the Claimant prevented by the operation of law from bringing a claim?

32. The Defendants sought to resist the Claimant's registered title to the property by resorting to the **Real Property Limitation Act**.
33. The side note to section 2 of the **Real Property Limitation Act** indicates that: "No land or rent to be recovered but within twelve years after right of action accrued." The relevant parts of the section as it applies to this case may be stated this way:

"After the commencement of this Act, no person shall... bring an action or suit to recover any land or rent, but within twelve years... after the time... to bring the action or suit, has first accrued to the person making or bringing the same."

34. In essence, the Defendants case was that even though the Claimant may have legal title to the land, they have been in actual possession of the land for the requisite time period so as to defeat the Claimant's title.
35. The Defendants in their defence¹⁶ stated that:

"13. The Defendants rely on section 2 of the **Real Property Limitation Act** Chapter 54:07, and state that the Claimant is precluded from bringing an action to recover the said land or any mense profit and damages since more than twelve (12) years has passed since the right to bring this action first accrued.

"14. The Defendants state that they are the owners of the said land and further, any right the Claimant may have had, which is not admitted, was extinguished by the Defendants thereby preventing the Claimant from asserting ownership over the said land.

"15. In the premises, the Defendants deny that the Claimant is entitled to the relief sought, including possession of the land, damages, mense profit, interest, costs as claimed or at all. The Defendants claims prescribed costs."¹⁷

¹⁶ Filed on the 14th of June 2021

¹⁷ The Defence, page 32 of Trial Bundle No 1

36. Mrs Vidal-Telemaque, on behalf of the Defendants, submitted that:

“...the legal effect of the Defendants adverse possession is that it extinguished the remedy and right of the claimant as against the [D]efendants. This would therefore afford the Defendants immunity from interference by the Claimant.”¹⁸

37. It is stated in the **Title by Registration Act** that: “All certificates of title granted under this Act... shall be indefeasible.”¹⁹ A casual reading of the section only, without any reference to what is the meaning of the word ‘indefeasible’ under the **Act**, would lead to the conclusion that the Claimant’s paper title cannot be challenged.

38. At the heart of the Defendants’ submission is the definition of “indefeasible” as it appears in the **Title by Registration Act**. The relevant parts of the definition state:

“INDEFEASIBLE. The word used to express that the certificate of title issued by the Registrar of Titles, and the notings by him thereon, cannot be challenged in any court of law on the ground that some person, other than the person named therein as the registered proprietor, is the true owner of the land therein set forth... except on the ground of fraud connected with the issue of the certificate of title, ... or that the title of the registered proprietor had been superseded by a title acquired under the **Real Property Limitation Act**, by the person making the challenge....”²⁰

39. There are two exceptions to the indefeasibility of title:

- 1) Fraud connected with the issue of the Certificate of Title; or
- 2) Title acquired by an adverse possessor by virtue of the **Real Property Limitation Act** which supersedes the Certificate of Title.

40. The Defendants were of the view that they satisfied the second of the two exceptions applied to them, in that the Claimant’s title “was superseded by a title acquired under the **Real Property Limitation Act**.”²¹

41. This country’s Apex Court, the Caribbean Court of Justice, CCJ, has already pronounced by a majority decision in **David George v Albert Guye**,²² regarding the interplay between the **Real Property Limitation Act** and the exceptions to the indefeasibility of a Certificate of Title issued under the **Title by Registration Act**.

42. Mr Justice Adrian Saunders, PCCJ, authored the judgment in **George v Guye** on behalf of the majority. He noted that the **Real Property Limitation Act**:

¹⁸ Paragraph 93 of the Closing Submissions on behalf of the Defendants filed on the 16th of July 2024

¹⁹ Section 8

²⁰ First Schedule Title by Registration Act

²¹ As above

²² [2019] CCJ 19 (AJ)

“combines the passage of time with the conduct respectively of a landowner and of a person who ‘squats’ on the owners land.... [It] speaks to the doctrine of what lawyers refer to as *adverse possession*. Most persons might know this as ‘squatter’s rights’.”²³

43. President Saunders went on to explain:

“[6] ... (I) f you allow someone to squat on your land for a continuous period in excess of 12 years, you are barred from bringing an action in court to recover the land from the squatter.... After the squatter has enjoyed your land continuously for the statutory 12 year period, your right and title to the land are extinguished and the squatter obtains a title that supersedes that of the registered proprietor. This dramatic result is to be seen not so much as rewarding a land thief but more as evidencing the abdication by a landowner of the ownership rights the law once vested in the land owner.

“[7] The RPLA therefore imposes on all owners of land a responsibility continuously to exercise their ownership rights. Who has not heard the expression ‘possession is nine-tenths of the law’? Owners of land should obtain and maintain, whether by themselves or by others on their behalf, possession of the land they own. If they discontinue possession without making suitable arrangements for others to continue possession on their behalf, they are at risk of having their title to the land extinguished by any squatter who enters the land and remains in continuous possession for the statutorily prescribed period....”

44. President Saunders went on to speak approvingly of the words of Cenac J who said in **Castaways Development Ltd v Castaways Hotel Ltd et al**:²⁴

“The definition of the word ‘*indefeasible*’ in the First Schedule of the Act empowers the defendants to challenge the certificate of title on the grounds that the plaintiff’s title was superseded by a title acquired under section 2 **Real Property Limitation Act**. By section 33 of the **Title by Registration Act** Cap. 56:40 the person who claims to have acquired ownership under the **Real Property Limitation Act** Cap. 54:07 cannot maintain an action in regard to that land until he has obtained a certificate of title in respect thereto from the Registrar. The defendant may however by way of defence plead ‘*adverse possession*’ to any action instituted by a person with a paper title.”

45. The Defendants here were not trying to initiate any action. Rather, they were seeking to resist a claim for possession by the paper title holder. They therefore did not need a Certificate of

²³ Paragraph 6

²⁴ Dominica High Court Suit No 590 of 1995, Judgment delivered November 21, 2000; DM 2000 HC 8 (JustisOne)

Title for the land issued by the Registrar. The Defendants were required to show that they gained title by being in adverse possession of the land.

46. Does the accepted evidence support the Defendants' contention that they were in adverse possession for the statutory period? All the Defendants have to show is that:

- 1) they were in physical occupation of the land; and
- 2) their possession extends to the minimum statutory period of twelve years.

47. The Defendants first entered into occupation of the land with the Claimant's permission initially for a period of three years commencing January 1998. The arrangement as stipulated by the Claimant, was that the period could be renewed, subject to the Claimant needing the land for her purpose. There was no fixed rate for the use of the land, but the Defendants were asked to give the Claimant's share to Francois Carriere. The Second Defendant, in correspondence dated 3-1-07, accounted for the "sale of pears last year" and "2006." The Defendants, in the correspondence to the Claimant, apart from thanking the Claimant for allowing them to cultivate the land, gave an indication that they probably were no longer cultivating the land, but only seeking to keep it clean.²⁵

48. The Claimant's sister, Mrs Gloria Carriere, functioned as the Claimant's agent. She was present in 1985 when the Deed of Conveyance for the land was finally executed. Her husband, Francois Carriere, was the one who was named by the Claimant as the person to whom the Defendants should give the Claimant's share. Mrs Carriere between 1991 and 2014 traveled regularly from the United States of America back to Dominica where her husband resided. She would freely go on to the land.

49. In 2020, when Mrs Carriere, visited Dominica, she met with opposition when she sought to enter the land. She was told that "Clara has no land there."²⁶ The Second Defendant told Mrs Carriere that she (the Second Defendant) was "only cleaning the land because people were throwing garbage on it."²⁷

50. In cross examination, Mrs Carriere said:

"In 2020, when I came to weed the place, because it was abandoned; when I send some men to weed for me, they came back and say Raymond [the First Defendant] said not there. Then we had a conversation about the land. He said it is his grandfather land. In 2020, that is when we had some big talk about it, when he stopped me (from cleaning the land)."

²⁵ Note as well that the letter only referenced the sale of pears and no other agricultural produce

²⁶ Paragraph 20 of her Witness Statement filed on the 10th of February 2022

²⁷ Paragraph 21 of her Witness Statement

51. Mrs Carriere previously explained that when she made arrangements to have the land cleaned, the First Defendant “raised his ownership of the land, by stating to me that I shouldn’t send anybody to clean the land and the land is his grandfather’s land.”²⁸
52. The First Defendant in cross examination acknowledged that in 2020, he prevented three Haitians that Mrs Carriere sent to clean the land from doing so.
53. The First Defendant in cross examination stated that the first time that he made a claim of ownership of the disputed land was in 2020.
54. The Claimant engaged the services of Mr Ali Cuffy, a Licensed Land Surveyor and Valuator to visit the property to “determine the level of land encroachment if any and or squatting within the boundaries of the subject property, if any.”²⁹
55. Mr Cuffy in his “Report on property of Veronica Stevens at Bense Village”³⁰ dated the 10th of September 2021, stated that:

“Along the north-western boundary line, the adjacent owners Raymond and Theresa Stevens are in occupation of a portion of land owned by Veronica Stevens. This occupation is solely on the basis of crop cultivation such as various fruit and root crops. It must also be note[d] that no part of their building/dwelling home has encroached on the land of [V]eronica Stevens.”³¹

56. What was apparent from the report of the Surveyor/Valuator which included a display plan (diagram) was that:
 - 1) No physical or permanent structure was on the disputed land close to the Defendants’ property.
 - 2) The extent of the cultivation on the disputed land was limited in the north-western area of the land, adjacent to the Defendants property, and was confined to fruit and root crops.
 - 3) There was no measurement of the extent of the crop cultivation that the Land Surveyor/Valuator saw, although the diagram and the key to the diagram suggested that it was not extensive.
57. For completeness, it should be stated that Mr Cuffy also reported that:

²⁸ Paragraph 22 of her Witness Statement

²⁹ Trial Bundle No 2, page 56, paragraph 3

³⁰ Trial Bundle No 2, page 56 - 60

³¹ Paragraph 5 of the Report

“Along the north-eastern boundary line which is adjacent to the property of Janila Galloway, there is some level of encroachment. This encroachment involves a [p]lywood and timber dwelling house erected on a concrete foundation with dimensions of 18 by 20 feet.... The building is positioned in a manner which cuts the boundary line between Veronica Stevens and Janila Galloway causing and (sic) overlap of the building on the property of Veronica Stevens.... [T]he entire building does not sit on the property of Veronica Stevens but it is partitioned between both properties.”³²

58. Mrs Galloway is the First Defendant’s sister. She testified on behalf of the Defendants. Mrs Galloway was asked by the Defendants’ counsel whether she wished to respond to paragraph 24 of the Claimant’s witness summary where the Claimant said that on her last visit to Dominica, “the sister of the 1st Defendant asked if the Claimant can sell the land to her.”³³ Mrs Galloway stated:

“That was not the statement I made, I asked her if she is selling the land.”

59. Under cross examination, Mrs Galloway indicated that following Mr Cuffy’s report, her husband vacated the land. She indicated that it was her brother, the First Defendant, who told her that Ma Matass said when she (Ma Matass) dies, their father will get the land; she did not hear that from Ma Matass and did not know when that undertaking was given. Mrs Galloway also accepted that when the surveyor came to the property, she did not make any claim that the land belonged to her father.
60. Mrs Galloway’s testimony that it was the First Defendant who told her of the land being inherited by her father after Ma Matass’ death was in direct contradiction to what the First Defendant said in cross examination, that their father called them together in the presence of Ma Matass and told them that when she died, that the land will belong to him (Lewis Stevens). No mention was made in the pleadings or in any witness statement on behalf of the Defendants of any such promise being made by Ma Matass.
61. The First Defendant stated that he did not know that his wife wrote to the Claimant until the Claimant brought it to his attention through her lawyer;³⁴ this would have been several years after the fact. His denial of any knowledge of the letter written to the Claimant on behalf of the Defendants cannot be believed. The First Defendant said during amplification of evidence that he told his wife that the land belonged to his father. In cross examination he said that when the letter was received from the Claimant and when the response was sent by his wife, that his father was still alive.

³² Paragraph 6 of the Report

³³ Witness summary of Veronica Abraham, also known as Veronica Stevens also known as Cara Paul filed on the 31st of December 2021, Page 83, Trial Bundle No 3 and repeated in Veronica Abraham’s Witness Statement filed on the 22nd of August 2022 (at the same stated paragraph 24)

³⁴ See paragraph 8 of his witness statement and also his response in cross examination

62. Mr Ducreay on behalf of the Claimant submitted that in relation to an adverse possessor who wished to displace the valid title of the owner:

“Not only must the adverse possessor be in physical possession of the lands, [but] must evince an intention to possess to the exclusion of the paper owner... [the adverse possessor] must have *animus possidendi*.”³⁵

63. Counsel Ducreay also cited the learning in **Halsbury’s Laws of England**³⁶ in reference to the meaning of adverse possession:

“What constitutes adverse possession is a question of fact and degree and depends on all the circumstances of each case, in particular the nature of the land and the manner in which land of that nature is continually used.... However, 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. Where the occupier’s possession of the land is by permission of the owner, the possession cannot be adverse and possession is never adverse if it is enjoyed under a lawful title.”³⁷

64. Saunders, PCCJ, in **George v Guye**, helpfully reviewed a number of Dominican cases where the issue of indefeasibility of a Certificate of Title was discussed, and whether a trespasser by virtue of the **Real Property Limitation Act** could in fact dispossess someone with a paper title. President Saunders said:³⁸

“In **Green v Joseph**,³⁹ the question was whether a squatter had, by adverse possession, defeated the ownership rights of a registered proprietor who was suing for recovery of possession. Justice Joseph did not for a moment consider that the supposedly indefeasible certificate of title of the registered proprietor immunized the registered owner from the risk that the squatter could dispossess her and extinguish her registered certificate. The squatter’s defence failed because the squatter could not establish adverse possession for the requisite period. The squatter was unsuccessful because of the inability to provide the necessary evidence. But in the course of her judgment Justice Joseph stated:

“...I do not consider that the defendant was in exclusive possession of the land. Possession by the plaintiff and her predecessors in title of a portion of the estate constitutes possession of the whole and it would be for the defendant to satisfy the court that he has dispossessed the plaintiff of the portion that he cultivated for the 12 year limitation period and that the

³⁵ Page 10 of the Claimant’s Closing Submissions, Issue #2 at point 2

³⁶ Fourth Edition Reissue, Volume 28, Buttersworth, London 1997

³⁷ Paragraph 977

³⁸ Paragraph 17

³⁹ Dominica High Court Suit 277 of 1987, Judgment delivered July 30, 1990; DM 1990 HC 7 (JurisOne)

plaintiff's title, had been superseded by sec. 2 of the Real Property Limitation period. He has not done so."

65. In a letter dated the 29th of September 2020,⁴⁰ the Claimant's counsel wrote to the Defendants urging them to "immediately cease and desist from using and occupying"⁴¹ the land. The letter went on to state: "Should you persist in your trespass to the land we are instructed to institute swift legal action against you without any further notice."
66. On the 16th of April 2021 the present action was commenced with the filing of a Fixed Date Claim Form along with a Statement of Claim.
67. For the Defendants assertion of adverse possession and to pray in aid the **Real Property Limitation Act**, they were required to demonstrate that they were in adverse possession of the land for a period of at least twelve years preceding the Claim. That would place the required date of possession to 2009; in other words, that sometime following what can be termed the 'thank you' letter bearing the date 3-1-07, the Defendants then squatted on the land.
68. The Claimant's narrative is that the Defendants knew and acknowledged her as the owner of the land up until 2020. The correspondence ending with the letter dated 3-1-07 has already been referred to. Mr Francois Carriere, the Claimant's brother in law, was in occupation of the land up until he got sick and migrated in 2014.
69. Mrs Carriere, who functioned as the Claimant's agent, visited Dominica regularly while her husband was alive. She would go on the land and pick avocados and other fruit. She would go on the land without any interference. As noted earlier, it was not until 2020 when Mrs Carriere returned to Dominica that she encountered any difficulty with going on the disputed land.
70. The Claimant's brother in law who cultivated the land did not leave Dominica until 2014. Even if the Claimant, as the registered proprietor, discontinued her possession when Francois Carriere migrated in 2014 and the Defendants entered into adverse possession upon Mr Carriere's departure from the State, the time that elapsed between 2014 and 2021 when this claim was filed is at best seven years. This falls well short of the statutory requirement of twelve years.
71. As the Claimant acknowledged, it was not until 2020 that he sought to make a claim for the land. The steps he took at that stage to occupy the land to the exclusion of anyone else was met by legal action by the holder of the legal title for possession of the disputed land.

⁴⁰ Page 50 – 52 of Trial bundle No 2. The inscription on the letter is that it was served on the First Defendant on the 2nd of October 2020 by Carl Samuel

⁴¹ Page 52, Trial Bundle No 2

72. It is also noteworthy that the First Defendant when he sought to do an addition to his house that is adjacent to the disputed land, did not seek to extend it unto the parcel of land he now seeks to claim, but as he said in cross examination, bought another “portion of land” towards the ravine to do the extension. Why would he inconvenience and expense himself unnecessarily if in fact he knew that the disputed land belonged to him?
73. The accepted evidence in this case does not favour the Defendants.

Reliability/Credibility

74. It ought to be noted that the Claimant’s witness, Ms Gloria Carriere, appeared to be particularly reliable. She was forthright, composed and impressive.
75. Where there were any conflicts of evidence between the evidence on behalf of the Claimant and the evidence on behalf of the Defendants, the testimony on behalf of the Claimant was accepted.

Disposition

76. The Claimant was not prevented by the operation of law from bringing a claim. The Defendants were not in undisturbed possession for the requisite period of time as specified in the **Real Property Limitation Act** to extinguish the Claimant’s Certificate of Title.
77. It is ordered that:
- 1) The Claimant is the lawful owner of the 9,392 square feet of land at Bense, in the Parish of Saint Andrew, in the Commonwealth of Dominica, that is registered in her name in the Book of Title T8 Folio 54;
 - 2) The Claimant is entitled to possession of the said 9,392 square feet of land at Bense;
 - 3) The Defendants must immediately vacate the land at Bense and deliver up peaceful possession to the Claimant, or her representative;
 - 4) The Defendants, whether singly, jointly, or by any servant or agent, are restrained from trespassing on the property of the Claimant;

- 5) The Defendants, Mr Raymond Stevens and Mrs Theresa Stevens, must pay prescribed costs to the Claimant within 28 days of this Order.

Colin Williams
Judge

By the Court

Registrar