

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT VINCENT AND THE GRENADINES

SVGHCVAP2020/0014

BETWEEN:

**[1] CARIBBEAN RESORTS LIMITED
trading as MARINER'S HOTEL
[2] THE FRENCH VERANDAH INC.**

Appellants

and

GLENNIS MARLON MILLS

Respondent

Before:

The Hon. Mr. Gerard St. C. Farara	Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay	Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, KC	Justice of Appeal [Ag.]

Appearances:

Mr. Stanley John, KC with him Mr. R. Akin S. John for the Appellants
Mrs. Zhing Horne-Edwards for the Respondent

2022: July 22;
2023: February 23.

Civil appeal – Landlord and tenant – Contractual interpretation – Whether judge erred in concluding that the first appellant relinquished any beneficial interest in the car park and knoll – Proprietary estoppel – Whether a proprietary estoppel arose in relation to the car park and knoll – Whether judge erred in failing to determine what equity, if any, the first appellant had acquired in the car park prior to the settlement agreement – Whether judge erred in failing to consider the appellants' position that it was unconscionable for the respondent to deny the appellants' proprietary rights in the car park and knoll area – Res judicata – Whether judge ignored the respondent's concession that the first appellant could not be estopped via res judicata/abuse of process from pleading matters which it could have pleaded as a defence in the previous proceedings – Tenancy at will – Whether judge erred in finding that a tenancy at will had been created between the appellants and the respondent

By a settlement agreement stemming from two sets of related proceedings, the parties agreed, inter alia, that Island Holdings Ltd (“IHL”) would transfer 3 or more acres of land situated at Villa adjacent to the Mariner’s Hotel to Ms. Glennis Mills (“the respondent” or “Ms. Mills”) in consideration of the parties’ mutual agreement to resolve the various disputes and differences. A consent order was entered by the court incorporating the terms and conditions of the agreement and a vesting deed was executed and registered to reflect the transfer of the land.

The respondent claimed that the land transferred to her included the car park used by Caribbean Resorts Limited (“CRL”) and The French Verandah Inc (“TFVI”) (together “the appellants”) for their respective businesses and a restaurant and hotel, as well as an area for their signage. She did not object to the appellants’ use of the parking area and signage area when she became the owner of the property and requested that they pay rent for the use of the properties. When they refused to do so, she issued a notice to quit. The respondent claimed that the appellants were trespassers and claimed possession of the disputed lands, mesne profits, injunctive relief, interest and costs.

The appellants claimed that the respondent was not the owner of the disputed property which they occupied for parking and signage, but that it was theirs and they had acquired it by adverse possession. Further, they claimed that they had expended monies on the disputed land and had acted to their detriment having made significant improvements to the land in question. The appellants urged that the respondent knew this and was estopped from denying their interest in the land. They also counterclaimed for a declaration that the respondent was not entitled to possession, a declaration that they were entitled to possession as owners by way of adverse possession, injunctive relief against the respondent and costs.

The learned judge found that the respondent was the owner of the disputed lands and was entitled to mesne profits from both CRL and TFVI. She further found that CRL was a fully informed and willing party to the consent order and settlement agreement and agreed that IHL would transfer to the respondent 3 acres of land at Villa without incumbrances such as any beneficial interest enjoyed by CRL in the said property and that CRL had, by virtue of the settlement agreement, relinquished any claim to the subject property by agreeing that once it became the property of the respondent, the property would no longer be a realisable asset of CRL. She also found that taken together, this represented an undertaking by CRL not to pursue any claim to any equitable beneficial interest, right or title it may have had prior to the signing of the agreement. The learned judge further found that the respondent’s claim in trespass was not statute-barred and that the appellants were trespassers on the subject property, the tenancy at will created after the respondent gained possession of the property having been terminated by the respondent by the instituting of these proceedings. Accordingly, the respondent was entitled to vacant possession of the disputed lands, mesne profits, interest and costs.

Being dissatisfied with the judgment of the learned judge, the appellants appealed to this Court on 8 grounds of appeal which can be summarized as follows: (i) Whether the learned

judge erred in making certain findings of fact and law related to possession, trespass, proprietary estoppel and convention estoppel; (ii) Whether the learned judge erred in holding that by being a party to the consent order and settlement agreement CRL agreed that IHL would transfer to the respondent the subject property without incumbrances and thereby undertook not to pursue any claim to any equitable beneficial interest, right or title to which it may have been entitled, prior to the execution of the settlement agreement and consent order; (iii) Whether the learned judge erred in finding that the respondent's claim in trespass is not precluded by the concept of res judicata and that CRL's claim to a beneficial interest in the car park could have been the subject of a defence in the 2010 proceedings; (iv) Whether the learned judge erred in declaring that res judicata applies to prevent an abuse of the court's process and in striking out and dismissing the appellants' ancillary claim against the respondent, with costs; (v) Whether the findings and decisions of the learned trial judge mentioned under paragraphs 3(1) to 3(6) exceeded the generous ambit within which reasonable disagreement is possible, and were, in fact, plainly wrong; and (vi) Whether the tenancy at will was terminated on the institution of proceedings by the respondent; whether the appellants by remaining on the disputed property after the institution of proceedings became trespassers of the disputed property; and whether the trial judge erred in finding that the respondent's action was not statute-barred.

Held: dismissing the appeal and ordering the appellants to pay the respondent's costs, such costs to be assessed by a Judge or Master of the High Court at no more than two-thirds of the amount awarded at the court below if not agreed within 21 days, that:

1. The purpose of a contract can be ascertained by reference to the factual matrix known to the parties at the time the contract is entered into and which forms or instructs the background against which the contract was agreed. These facts are presumed to be within the parties' contemplation, and these facts form part of the relevant facts and circumstances upon which the interpretation of the contract depends. The learned trial judge conducted an extensive analysis of what the terms of the settlement agreement meant as well as a lengthy assessment of the surrounding circumstances which led to its signing. Accordingly, she applied the appropriate principles in arriving at her decision that the settlement agreement transferred the lands encompassing the car park and knoll to the respondent absolutely free of incumbrances.

Halstead (Donald) v The Attorney General of Antigua and Barbuda (1995) 50 WIR 98 followed; **Reardon Smith Line Ltd v Hansen-Tangen**; **Hansen-Tangen v Sanko Steamship Co** [1976] 3 All ER 570 applied; **Bahamas International Trust Co Ltd and another v Threadgold** [1974] 3 All ER 881 applied.

2. In order to establish proprietary estoppel, the appellants would be required to show that there was some representation either by words or by conduct on the part of the respondent that they were entitled in equity to an interest in the said property and that they relied on those representations or acts to their detriment. The appellants would have to show that it would have been unconscionable for the respondent to seek to exclude them from the use of the properties. The appellants having been

parties to the settlement agreement and having agreed that the property was transferred to the respondent free and clear of all incumbrances and having made promises to hold the respondent harmless from any matters competent to be raised whether known or unknown, they were estopped from making a claim for a beneficial interest in the car park and knoll area and the learned judge rightly so found.

Walsh v Ward and others and other appeals (2015) 87 WIR 101 applied.

3. Proprietary estoppel is an equitable doctrine rooted in the fundamental principle of unconscionability. Put simply, the question of whether it would be unconscionable for a court to allow a party to resile from the assurance or representation made or given to another party is to be approached in the round as part of a broad inquiry. It is not to be approached in a compartmentalised way whereby each element or ingredient of proprietary estoppel is considered as free-standing, leading to a court accepting or rejecting the claim where it finds each element may not have fully made out. While the learned judge accepted that CRL had expended monies to develop the car park, by signing the settlement agreement, the appellants accepted that the car park and knoll had been transferred to the respondent and they retained no beneficial interest in them. Accordingly, it would not have been unconscionable for the respondent to assert beneficial ownership over those areas and deny the appellants' proprietary rights.

Gillett v Holt and another [2000] 2 All ER 289 applied.

4. The principle of res judicata would necessarily arise where an issue could or should have been raised in previous civil proceedings. In this matter it cannot be said that the first appellant would not have been in a position; indeed, would not have had an obligation to raise the issue of its beneficial interest in the car park during the discussions leading up to the execution of the settlement agreement. It was an issue that ought to have been brought to the attention of various parties. Having failed to do so and being unable to indicate the existence of any special circumstances entitling them to re-open that claim in the interest of justice, the trial judge was correct in her conclusion that res judicata applied.

Virgin Atlantic Airways v Zodiac Seats UK Ltd [2013] UKSC 46 applied; **Halstead (Donald) v The Attorney General of Antigua and Barbuda** (1995) 50 WIR 98 followed.

5. A tenancy at will may be implied in a situation where a person is in possession of property by the consent of the owner. A tenancy such as this is determinable at the will of the owner of the land. The owner may give such notice of termination by some act of the landowner on the property or off the property inconsistent with the continuation of the tenancy. Accordingly, having determined that the appellants were tenants at will, the learned judge was correct in concluding that by bringing the action for trespass the respondent had determined the tenancy at will. Further, having concluded that the appellants' tenancy at will had been terminated, the finding that the appellants became trespassers naturally followed.

Whaldama Brooks (aka Ras B) et al v Kenneth Brooks et al AXAHCV/2006/0006 (delivered 25th January 2008, unreported) followed.

6. The right to bring an action to recover land is barred whenever 12 years has elapsed from the time when the right of action accrued. That right of action only accrues when a person is in adverse possession of the land. Time only begins to run when adverse possession is taken of the land. This was not a situation where it could be said that the land was in possession of some person in whose favour the limitation period could run. The appellants were not squatters but were persons who entered into possession with the knowledge and permission of the property owner, IHL, and the trial judge correctly found this to be the case. Therefore, there could be no adverse possession and the issue of the limitation period was a non-issue.

Sections 17(1) and 19 of the **Limitation Act** Cap 129, Laws of St. Vincent and the Grenadines considered; **Michael Findlay v Elroy Arthur** SVG Civil Appeal No. 17 of 2010 followed.

JUDGMENT

- [1] **PRICE-FINDLAY JA [AG]:** This is an appeal against the decision of Henry J dated 22nd July 2020 whereby the learned judge entered judgment in favour of Ms. Glennis Mills (“Ms. Mills” or “the respondent”) and ordered Caribbean Resorts and The French Verandah Inc. (collectively “the appellants”) to deliver to Ms. Mills vacant possession of the disputed property (which was the subject of the claim below) comprising the parking area and knoll, being part of the land described in the Second Schedule to Vesting Deed No. 2599 of 2011.

Background

- [2] This matter arises out of 2 sets of proceedings, one ancillary relief proceeding between Ms. Mills and her former husband Mr. Vidal Browne as well as a claim brought by Ms. Mills against the companies, Island Holdings Ltd (“IHL”), Young Island Resorts Ltd, St. Vincent Manufacturing Company Limited (“SVGML”) and Caribbean Resorts Limited (“CRL”) in which both she and Mr. Browne were shareholders and directors.
- [3] In the latter proceedings (“the 2010 proceedings”) the respondent in these proceedings, Ms. Mills, alleged that the businesses of the various companies were

being conducted in a manner oppressive to her and in a way which unfairly disregarded her interests as a shareholder and director.

- [4] In 2011, the parties to both sets of related proceedings finalised and executed a settlement agreement and consent order relative to both sets of proceedings.
- [5] Mr. Browne represented IHL, SVGML and CRL as their director and signed the settlement agreement in that capacity on their behalf in the 2010 proceedings and signed in his personal capacity in the ancillary relief matter.
- [6] The settlement agreement provided that IHL would transfer 3 or more acres of land situated at Villa adjacent to the Mariner's Hotel to Ms. Mills in consolidation of the parties' mutual agreement to resolve the various disputes and differences.
- [7] A consent order was entered by the court which incorporated all the terms and conditions of the agreement. Further, a vesting deed No. 2599 of 2011 was executed and registered.
- [8] The respondent claimed that the 3 acres of land transferred to her included the car park used by CRL and The French Verandah Inc ("TFVI") for their respective businesses to wit a restaurant and hotel as well as an area for their signage.
- [9] The respondent did not object to the appellants' use of the parking area and signage area when she became the owner of the property and requested that the two companies pay rent for the use of the properties. When the entities refused to do so she issued a notice to quit. The respondent claimed that the appellants were trespassers and claimed possession of the disputed lands, mesne profits, injunctive relief, interest and costs.
- [10] The appellants claimed that the respondent was not the owner of the disputed property which they occupied for parking and signage. They alleged that the

disputed area was theirs and they had acquired it by adverse possession. Further, the appellants claimed that they had expended monies on the disputed lands and had acted to their detriment having made significant improvements to the land in question. The appellants urged that the respondent knew this and was estopped from denying their interest in the disputed lands.

- [11] The appellants counterclaimed for a declaration that the respondent was not entitled to possession, a declaration that they were entitled to possession as owners by way of adverse possession, injunctive relief as against the respondent and costs.
- [12] The learned trial judge found that the respondent was the owner of the disputed lands and was entitled to mesne profits from both CRL and TFVI.
- [13] The learned trial judge further found that CRL was a fully informed and willing party to the consent order and settlement agreement and agreed that IHL would transfer to the respondent the disputed lands comprising 3 acres of land at Villa without incumbrances such as any beneficial interest enjoyed by CRL in the said property and that CRL had by virtue of the settlement agreement relinquished any claim to the subject property by agreeing that once it became the property of the respondent, the property would no longer be a realisable asset of CRL.
- [14] The learned judge found that taken together this represented an undertaking by CRL not to pursue any claim to any equitable beneficial interest, right or title it may have had prior to the signing of the agreement.
- [15] The learned judge also found that the doctrine of res judicata applied to prevent an abuse of the process of the court by CRL and TFVI and she dismissed CRL's claims against the respondent.

- [16] She further refused to strike out the respondent's claim in trespass as she found that the 2010 proceedings and the ancillary relief matters had nothing to do with the claim for trespass and the current proceeding which was before her.
- [17] The learned trial judge further determined that the respondent's claim was not statute-barred and that the respondent was entitled to bring a fresh claim for trespass arising out of the consent order and settlement agreement.
- [18] The learned trial judge further found that the appellants were trespassers on the subject property, the tenancy at will created after the respondent gained possession of the said property having been terminated by the respondent by the instituting of these proceedings.
- [19] The learned trial judge also found that the respondent was entitled to vacant possession of the disputed lands, mesne profits, interest and costs.
- [20] The appellants, being dissatisfied with the judgment of the learned trial judge, have appealed.

Grounds of Appeal

- [21] The appellants have appealed on 8 grounds which may be summarised into the following issues:
- (i) Whether the learned judge erred in making certain findings of fact and law related to possession, trespass, proprietary estoppel and convention estoppel.
 - (ii) Whether the learned judge erred in holding that by being a party to the consent order and settlement agreement CRL agreed that IHL would transfer to the respondent the subject property without incumbrances and thereby undertook not to pursue any claim to any equitable beneficial interest, right or title to which it may have been entitled, prior to the execution of the settlement agreement and consent order.

- (iii) Further or in the alternative, whether the learned trial judge erred in finding, having found that she accepts that neither party pleaded *res judicata*, that the respondent's claim in trespass for possession is not precluded by the concept of *res judicata* and that CRL's claim to a beneficial interest in the car park could have been the subject of a defence in the 2010 proceedings since both it and the respondent were parties to the claim and the consent order.
- (iv) Further or in the alternative, whether the learned trial judge erred in declaring that *res judicata* applies to prevent an abuse of the court's process and in striking out and dismissing the appellants' ancillary claim against the respondent, with costs.
- (v) Further or in the alternative, whether the findings and decisions of the learned trial judge mentioned under paragraphs 3(1) to 3(6) exceed the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong in that she failed in all the circumstances of the case to apply the right principles and to decide justly as between the parties in all the circumstances.
- (vi) Whether the tenancy at will was terminated on the institution of proceedings by the respondent; whether the appellants by remaining on the disputed property after the institution of proceedings became trespassers of the disputed property; and whether the trial judge erred in finding that the respondent's action was not statute-barred.

Appellants' Submissions

- [22] The appellants argue that the learned trial judge erred in concluding that by the settlement agreement entered into on 24th May 2011 between IHL, Mr. Browne and Ms. Mills, the first appellant relinquished any beneficial interest in the car park and knoll and retained no interest therein.

- [23] The appellants further complain that the learned trial judge erred in finding that the appellants were tenants at will and that tenancy was terminated when the respondent instituted the instant claim and further that the appellants' failure to surrender possession of the property made them trespassers.
- [24] The appellants argue that the learned trial judge, in coming to the findings that she did, acted on the wrong principles of law and contrary to the factual matrix as presented to the court.
- [25] The appellants complain that there is inconsistency in the findings of the learned trial judge in the following respect:
- (i) She found that a tenancy at will was created.
 - (ii) She found that the appellants were not in exclusive and undisturbed possession of the car park area.
 - (iii) She failed to examine the first appellant's proprietary estoppel claim.
 - (iv) She failed to address the claim that after the signing of the settlement agreement the parties acted on an assumed state of facts or law that the car park would remain a part of the hotel property; and
 - (v) She failed to address the injustice of the respondent maintaining an interest in both the car park and the knoll.
- [26] The appellants argue that the learned trial judge erred when she found that 'the parties to the vesting deed intended that all legal and equitable interest right and title to the referenced 3 acres including the parking area and knoll ... be conveyed to Ms. Mills and were to belong to her absolutely'.

[27] They further argue that that finding cannot relate to CRL as it was not a party to the vesting deed.

[28] The appellants argue that the finding made by the learned trial judge that CRL relinquished its beneficial interest in the car park via the vesting deed which formed the basis of other findings made by the learned trial judge, including her failure to determine the extent of CRL's proprietary interest on the bases of proprietary estoppel, was wrong.

Respondent's Submissions

[29] The respondent posits that the learned trial judge made no error in concluding as she did that the settlement agreement passed the properties to the respondent absolutely free and clear of all incumbrances.

[30] The respondent further states that the learned trial judge, having conducted a full analysis of the circumstances and terms of the settlement agreement, came to the correct interpretation of the said agreement.

The Learned Trial Judge's Analysis

[31] The learned trial judge conducted a full analysis of the terms of the settlement agreement. She analysed the words used and the objectives to be achieved by the said agreement. Further, she looked at all of the surrounding circumstances and the context in which the agreement was reached.

[32] The learned judge considered and applied the principles set out in **Halstead (Donald) v The Attorney General of Antigua and Barbuda**,¹ quoting Sir Vincent Floissac, CJ:

“the basic principle that the interpretation of a contract or the appropriate meaning of an ambiguous word or phrase of a contract is derived from the objective common intention of the parties to the contract. That objective common intention is an inference drawn from the word or phrase interpreted

¹ (1995) 50 WIR 98.

objectively in the light of its contractual context. That contractual context comprises the whole or every part of the contract and all relevant contractual surrounding circumstances which were known to and should be presumed to have been within the contemplation of the parties at the time of the execution of the contract.”

The learned trial judge continued:

“Quoting from the case of *Prenn v Simmonds* the learned Chief Justice stressed that such an agreement must be placed in context of the facts out of which they arose; and the adjudicator must:

‘inquire beyond the language and see what the circumstances were with reference to which the words were used, and the object, appearing from those circumstances, which the person using them had in view. ... evidence of mutually known facts may be admitted to identify the meaning of a descriptive term.’”

[33] Further, in **Reardon Smith Line Ltd v Hansen-Tangen; Hansen-Tangen v Sanko Steamship Co.**,² Lord Wilberforce stated at page 574:

“When one speaks of the intention of the parties to the contract, one is speaking objectively – the parties cannot themselves give direct evidence of what their intention was – and what must be ascertained is what is to be taken as the intention which reasonable people would have had if placed in the situation of the parties. Similarly, when one is speaking of aim, or object, or commercial purpose, one is speaking objectively of what reasonable persons would have in mind in the situation of the parties.”

[34] He further stated at page 574:

“No contracts are made in a vacuum: there is always a setting in which they have to be placed. The nature of what is legitimate to have regard to is usually described as ‘the surrounding circumstances’ but this phrase is imprecise: it can be illustrated but hardly defined.”

[35] The purpose of a contract can be ascertained by reference to the factual matrix known to the parties at the time the contract is entered into and which forms or instructs the background against which the contract was agreed. These facts are presumed to be within the parties’ contemplation, and these facts form part of the

² [1976] 3 All E.R. 570.

relevant facts and circumstances upon which the interpretation of the contract depends.

[36] The learned trial judge conducted an extensive analysis of what the terms of the settlement agreement meant as well as a lengthy assessment of the surrounding circumstances which led to its signing, the protracted divorce proceedings along with the 2010 proceedings brought by the respondent against the appellant companies.

[37] It would have been clear what the respondent sought from the various proceedings as they related to the settlement ultimately arrived at. Indeed, part of the agreed facts in the present matter was the following:

“In the Claimant’s affidavit in support of the claim which she instituted against the First Defendant and others in the High Court in 2010, she stated the following: ‘I do not desire to control any of the Defendant Companies except Caribbean Resorts Limited, which I wish to have full ownership of along with its assets including its real estate intact and with an adjustment to the title deed that would extend the boundaries of the property to encompass the existing car park’.”

Clearly the parties contemplated that the respondent wanted to have full control of CRL ‘along with its assets including its real estate intact and with an adjustment to the title deed that would extend the boundaries of the property to encompass the existing car park’.

[38] IHL, through whom CRL claims a beneficial interest in the car park, was a party to the settlement agreement and was represented by Mr. Browne who was both a shareholder and director of this company. He would have been aware (or ought to have been aware) of CRL’s interest in the car park. The terms of the vesting deed were known to the first appellant through Mr. Browne and by way of that vesting deed the property of IHL was transferred free of incumbrances. Mr. Browne represented IHL, SVGMC and CRL as director and signed the agreement in that capacity, he also signed in his personal capacity with respect to the matrimonial proceedings.

[39] Even though the first appellant was not a signatory to the settlement agreement, it claimed beneficial rights to the car park through IHL as did TFVI to the knoll.

[40] The appellants argue that the construction of the settlement agreement adopted by the learned trial judge is erroneous and that the agreement did not pass the car park and knoll to the respondent absolutely but that the appellants retained a beneficial interest in the said areas.

[41] In **Bahamas International Trust Co Ltd and another v Threadgold**,³ Lord Diplock states:

“In a case which turns, as this one does, on the construction to be given to a written document, a court called on to construe the document in the absence of any claim for rectification, cannot be bound by any concession made by any of the parties as to what its language means. This is so even in the court before which the concession is made; a fortiori in the court to which an appeal from the judgment of that court is brought. The reason is that the construction of a written document is a question of law. It is for the judge to decide for himself what the law is, not to accept it from any or even all of the parties to the suit; having so decided it is his duty to apply it to the facts of the case. He would be acting contrary to his judicial oath if he were to determine the case by applying what the parties conceived to be the law, if in his own opinion it was erroneous.”

[42] The learned trial judge conducted an exhaustive and thorough examination of the settlement agreement and its terms and applied the appropriate principles in arriving at her decision that the settlement agreement transferred the lands encompassing the car park and knoll to the respondent absolutely free of incumbrances. In my judgment, no fault can be found with that conclusion.

Proprietary Estoppel

[43] The appellants complain that the learned trial judge did not analyse the ancillary claim against the respondent founded upon the first appellant's beneficial interest in the car park. They further argue that a proprietary estoppel arose in relation to the

³ [1974] 3 All ER 881 at 884.

said car park as they had expended monies thereon to their detriment with the acquiescence of IHL, and further, that the learned trial judge failed to determine what equity, if any, the first appellant had acquired in the car park prior to the settlement agreement.

[44] They further argued that the learned trial judge refused to address the first appellant's claim that after the signing of the settlement agreement whether they continued to occupy the said car park and knoll based on an assumed state of facts that the car park and knoll would remain as part of the first appellant's property and that the respondent acquiesced to the continued use of the said areas.

[45] The respondent submits that it would have made little sense, given the learned trial judge's findings in respect of the settlement agreement, to consider what equity the first appellant had acquired in the car park on the bases of proprietary estoppel prior to the settlement agreement, as having signed the said agreement it relinquished any and all such beneficial claims.

[46] The respondent states that the learned trial judge accepted the evidence of the respondent as she was entitled to do and found as a fact that after the signing of the settlement agreement the appellants continued to occupy the car park and knoll with the permission of the respondent who did not object to such a continued use, having demanded the payment of rent.

[47] The respondent argues that the effect of this finding by the learned trial judge was a rejection of any suggestion that there was any assumption on the part of the respondent that the first appellant retained any beneficial or equitable interest in the said property, or that the car park would remain part of the first appellant's property.

[48] The respondent further submits that merger and res judicata as an abuse of process applied to prevent the appellants from relying on claims of adverse possession and

limitation, and these concepts cannot be divorced from the learned trial judge's refusal to address the claim of proprietary estoppel.

[49] The claims of adverse possession and limitation both relate to the construction of the car park in 2002/2003 prior to the consent order and settlement agreement.

[50] Res judicata is therefore closely tied to the claim of proprietary estoppel and the learned trial judge was right in her findings that the claim for an equitable or beneficial interest could have been raised in the 2010 proceedings brought by the respondent, and not having done so was caught by the abuse of process.

Discussion

[51] The issue of proprietary estoppel has been described as follows in the CCJ case of **Walsh v Ward and others and other appeals**:⁴

"The doctrine of proprietary estoppel was based on three main elements: a representation or assurance made to the claimant that he would have a certain interest in land; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance. The representation had to be clear and unequivocal, made by the party against whom the estoppel was asserted and assuring the other of a certain interest in the property claimed. Further, an expectation of a successful negotiation was not an expectation of an interest having sufficient certainty; the latter being, for example, an option to renew a lease in which the terms of the new lease were spelled out in the option and the lessee's expectation was that on exercise of the option the new lease would be granted."

[52] It goes on:

"Moreover, it was established that 'detriment' was not to be seen as a 'narrow and technical' concept and did not necessarily have to consist of quantifiable financial detriment so long as it was 'something substantial'; there should also be a sufficient causal link between the representation and the detriment. As a matter of principle, the court should weigh the disadvantages suffered by the claimant against the countervailing advantages which he enjoyed as a consequence of that reliance."

⁴ (2015) 87 WIR 101.

[53] The appellants would therefore have been required to show that there was some representation either by words or by conduct on the part of the respondent that they were entitled in equity to an interest in the said property and that they relied on those representations or acts to their detriment. The appellants would have to show that it would have been unconscionable for the respondent to seek to exclude them from the use of the properties.

[54] The appellants rely on expenditure on the said lands prior to the consent order and settlement agreement, but what representation or assurance was given to the appellants by the respondent is not stated. The appellants state that the parties relied on an assumed set of facts, but clearly the consent order and settlement agreement along with the vesting deed clearly transferred the property to the respondent free of incumbrances, incumbrances which, as found by the learned trial judge, would include any beneficial interest of the appellants.

[55] **Halsbury's Laws of England**⁵ at para 1514 states:

“When one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualifications which he himself has so introduced.”

[56] Under the consent order and settlement agreement IHL (through and under whom the appellants claim the beneficial interest) transferred the said property to the respondent free from incumbrances. The vesting deed which flowed from the consent order and settlement agreement was intended to affect the legal relationship between the parties thereto. The respondent acted on the representations made, that the said property was no longer a realisable asset of the company, IHL.

⁵ Halsbury's Laws of England, 4th Ed. Vol 16.

[57] Further, under the said settlement agreement the parties undertook to not 'bring or participate in any proceedings against each other or against any of the Defendant Companies their respective heirs administrators or assigns... in respect of any matters relating to the Lawsuit, and shall hold each other harmless in respect of any matters competent to be raised now whether known or unknown to them, or either of them save for the matters arising under this Release & Discharge...'.⁶

[58] Both IHL and CRL were signatories to the settlement agreement by their shareholder and director, Mr. Browne. Under that settlement agreement, the first appellant promised to hold the respondent harmless from any matters competent to be raised whether known or unknown.

[59] The issue of any beneficial interest in the properties by IHL was not addressed at this stage. This promise was intended to affect the legal relations between the parties, therefore the second appellant who claims through the first appellant is also bound by the terms of the settlement agreement and is also properly estopped from making a claim for a beneficial interest, the learned trial judge so found and there was no error in her coming to that conclusion.

Unconscionability

[60] The appellants argue that the learned trial judge erred in failing to give any consideration to the appellants' position that it was unreasonable and unconscionable for the respondent to maintain a beneficial right of ownership to the car park and knoll so as to deny the appellants' proprietary rights in those two areas.

[61] They further present that the learned trial judge erred in rejecting the evidence of Mr. Browne that IHL had acquiesced to the first appellant in making expenditures to its detriment on the understanding that the car park would remain a part of the first appellant's hotel property.

⁶ Para. 5(c) of the Settlement Agreement.

- [62] They further complain that this is so especially in view of the learned trial judge's finding that the circumstances surrounding the appellant's occupation of the disputed areas was orchestrated by Mr. Browne who was the director and person who was the controlling mind behind these companies.
- [63] They state that the learned trial judge ought to have adopted the approach that the first appellant held a reasonable expectation that by developing the car park area it would have had security of tenure because the expenditure had been at the instance of and the encouragement of IHL and the acquiescence of the respondent.
- [64] The respondent posits that while the learned trial judge did not expressly deal with the issue of unconscionability, she properly applied the equitable principles to the first appellant's attempt to resile from the settlement agreement and consent order which the judge found that they could not do.
- [65] In determining unconscionability, the respondent argues that the court must look at all of the background facts and circumstances, including the conduct of the parties in the execution of the settlement agreement and consent order.
- [66] The respondent submits that the learned trial judge was correct in determining that the appellants' director, Mr. Browne, was the person who orchestrated the circumstances regarding the first appellant's occupation of the car park and was correct in accepting the evidence of the respondent that she played no role in the management of the companies at the relevant times and it was Mr. Browne who stood to benefit from a successful proprietary claim.

Discussion

- [67] With respect to the evidence led before the learned trial judge by both the appellants and the respondent, it is clear that an appellate court will be slow to set aside findings of fact and substitute its own assessments and findings for those of the learned trial

judge, unless the trial judge clearly erred as a matter of principle in her assessment of the evidence or the witnesses, or did not consider relevant evidence and/or was plainly wrong.⁷

[68] In this matter, the learned trial judge properly and extensively examined the evidence led in these proceedings, and having seen and heard the witnesses, she opined at paragraph 36 of her judgment:

“The only party that was not represented by eminent Queens Counsel was Young Island Resorts Limited. The order makes clear that each party made certain representations to the Court before the consent order was made. The order is signed by Ms. Mills and Mr. Browne in their personal capacities and by Mr. Vidal Browne as director for and on behalf of the 2nd, 4th and 5th defendants. He certified it by confirming that he had read it, had it explained to him and that he consented to it freely on behalf of those defendants. CRL does not dispute that it was a signatory and party to the claim out of which the consent order arose and also party to the order. I am satisfied that CRL was a fully informed party to it and is thereby bound by its terms in accordance with the applicable rules of court and principles of law.”

[69] Proprietary estoppel is an equitable doctrine rooted in the fundamental principle of unconscionability. Put simply, the question of whether it would be unconscionable for a court to allow a party to resile from the assurance or representation made or given to another party is to be approached in the round as part of a broad inquiry. It is not to be approached in a compartmentalised way whereby each element or ingredient of proprietary estoppel is considered as free-standing, leading to a court accepting or rejecting the claim where it finds each element may not have fully made out.

[70] The learned trial judge accepted that CRL had expended the monies (or developed) the car park, but found correctly that the applicable principle when interpreting a contract is to approach that task objectively by ascertaining the intention which a reasonable person would have had if placed in the situation of the parties.

⁷ Mathilda Nelson v Alexis Alcide SLUHCVP2018/0002 (delivered 8th April 2020, unreported).

- [71] Even if there was a beneficial interest held by the appellants in the car park and knoll, the learned trial judge having interpreted the vesting deed, consent order and settlement agreement found that the said properties were transferred to the respondent by the owner IHL 'free from incumbrances'.
- [72] The learned trial judge went further to find at para 85 of the judgment:
- "It follows that the release conferred on CRL by Ms. Mills released CRL from its obligations under the consent order to the extent that it performed or co-operated in the performance of those obligations. This necessarily includes CRL's agreement and concurrence with the transfer to Ms. Mills of the subject land including the car park, free from incumbrances. The Court remains mindful that the consent order was executed by CRL without protest and that CRL included an acknowledgement that it was signed freely and voluntarily. The Court also reminds itself of the stipulation in rule 42.7(2) of the CPR which characterizes a consent order as one in which 'all relevant parties agree to the terms in which judgment should be given or an order made.'"
- [73] The learned trial judge further found at paragraph 86 of her judgment that the first appellant could not be heard to challenge the transfer to the respondent of the car park on the ground that it owned at the time and retains a beneficial interest in the subject property.
- [74] She found that '[s]uch insistence is in direct violation of the terms of the settlement agreement and consent order to which CRL was a fully informed and consenting party'.
- [75] The learned trial judge, having examined the express provisions of the settlement agreement, consent order and vesting deed and having regard to the objective purpose, found correctly that the vesting deed transferred the legal and beneficial ownership of the disputed property to the respondent without limitation, restrictions, or conditions, legal, equitable or otherwise.
- [76] Even if the appellants had proved that they retained a beneficial interest in the subject properties, by the signing of the consent order, settlement agreement and

vesting deed by IHL that beneficial interest was transferred to the respondent and no further claim could be made by the appellants whose interest came into being through IHL.

[77] In **Gillett v Holt and another**⁸ it is stated:

“The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded – that is, again, the essential test of unconscionability.”

[78] The learned trial judge correctly found that the parties to the vesting deed intended that all legal and equitable interest, right and title to the referenced 3 acres including the parking area and knoll were conveyed to the respondent and belong to her absolutely.

Res judicata

[79] The appellants submit that the learned trial judge erroneously ignored the respondent’s concession that the first appellant could not be estopped via res judicata/abuse of process from pleading matters which it could have pleaded as a defence in the previous proceedings, i.e., the divorce proceedings and the 2010 proceedings, because the consent order was made in the 2010 proceedings prior to the first appellant being required to file a defence in that matter. They submit that they could not have pleaded these claims as the 2010 proceedings were settled.

[80] They submit that the learned trial judge’s determination that res judicata applied was in contradiction to the respondent’s case and the learned trial judge did not have a sufficient basis for coming to the conclusion which she did and went beyond the discretion which was exercisable by the court.

⁸ [2000] 2 All ER 289, per Walker LJ.

[81] The respondent submitted that the judge made no error in holding that res judicata applied to the counterclaim of the appellants but not to the respondent's claim. They submit that the judge recognised the duty of the court to avoid having a multiplicity of proceedings and properly invoked the inherent power of the court to prevent an abuse of process by barring the appellants' claim to a beneficial interest in the car park and knoll.

[82] The judge found that 'CRL's claim to a beneficial interest in the subject property could have been the subject of a defence in the 2010 proceedings. Both it and Ms. Mills were parties to the claim and the consent order'⁹ and further:

"The cause of action which CRL seeks to bring in present proceedings could have been dealt with in the 2010 claim... It cannot be denied that CRL had the opportunity to bring before the court in those proceedings any beneficial claim it claimed to have had in that property based on adverse possession, proprietary estoppel or otherwise."¹⁰

[83] The trial judge was of the view that parties had already settled all of the relevant issues which were in dispute in the 2010 proceedings via the consent order, settlement agreement and vesting deed and it was not open to the parties to attempt to re-litigate those issues in these proceedings.

[84] Lord Sumption in **Virgin Atlantic Airways v Zodiac Seats UK Ltd**¹¹ said:

"Res judicata is a portmanteau term which is used to describe a number of different legal principles with different juridical origins. As with other such expressions, the label tends to distract attention from the contents of the bottle. The first principle is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is 'cause of action estoppel'. It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings. Secondly, there is the principle, which is not easily described as a species of estoppel, that where the claimant succeeded in the first action and does not challenge the outcome, he may not bring a second action on the same cause of action, for example to recover further damages... Third, there is the doctrine of merger, which treats a cause of action as extinguished once judgment has

⁹ Paragraph [111] of the judgment below.

¹⁰ Paragraph [112] of the judgment below.

¹¹ 2013 UKSC 46.

been given on it, and the claimant's sole right as being a right on the judgment... Fourth, there is the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties... 'Issue estoppel' was the expression devised to describe this principle by Higgins J in *Hoystead v Federal Commissioner of Taxation* (1921) 29 CLR 537, 561 and adopted by Diplock LJ in *Thoday v Thoday* [1964] P 181, 197-198. Fifth, there is the principle first formulated by Wigram V-C in *Henderson v Henderson* (1843) 3 Hare 100, 115, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones. Finally, there is the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all of the above principles with the possible exception of the doctrine of merger."

[85] Further, there is learning on this topic in **Phipson on Evidence**:¹²

"The lines between traditional *res judicata* estoppels, the wider (or extended) doctrine and these related forms of abuse of process are often indistinct, and, in practice, it is not always necessary to identify with any clarity which doctrine is being invoked. It is common to find cases being argued and almost as often decided, on the basis that if one doctrine does not apply then another certainty should. Indeed because well established forms of abuse of process will in many situations prevent re litigation even where the conditions for invoking traditional *res judicata* estoppel are not satisfied it is difficult to deny that some of the old learning about the technical conditions is fast becoming redundant."

[86] The appellants urge that the trial judge erred in finding that they ought to have raised the issue of beneficial ownership during the negotiations in coming to the consent order. They further submit that if, as held by the trial judge, clauses 5(c) and 7 of the settlement agreement could estop the first appellant because those clauses were intended to bar such claims as those made in the defence and counterclaim, that those clauses should also estop the respondent from the claims made in the claim forms.

[87] I cannot agree with the appellants on this issue. The learned trial judge, having carried out an exhaustive analysis of both parties' contentions on this issue, opined at paragraphs 111, 112 and 113 of her judgment as follows:

¹² 20th Ed. (2021) para. 40-03.

“[111] The parties have accurately and adequately expounded the legal principles surrounding application of the concept of res judicata. The court accepts that neither party pleaded res judicata. It is mindful that it retains inherent jurisdiction to protect the court from any abuse of its process by the filing of multiplicity of claims in the manner described. I accept Ms. Mills’ claim in trespass is not precluded by the concept of res judicata, for the reasons she has articulated. I find however that CRL’s claim to a beneficial interest in the subject property could have been the subject of a defence in the 2010 proceedings. Both it and Ms. Mills were parties to the claim and the consent order.

[112] The cause of action which CRL seeks to bring in present proceedings could have been dealt with in the 2010 claim since part of the subject matter then (the disputed land) is the object of the present proceedings. It cannot be denied that CRL had the opportunity to bring before the court in those proceedings any beneficial claim it claimed to have had in that property based on adverse possession, proprietary estoppel or otherwise. It has pleaded and placed no reliance on anything that allegedly transpired after settlement of the 2010 claim by consent order by a competent court. I infer that the merits and demerits of the case were considered and factored into the determination in view of the very explicit terms of the settlement agreement and consent order together with the fact that the various sides were advised by experienced and senior legal practitioners.

[113] Nothing has been urged on this court constitutes special circumstances that justify a deviation from the established approach to be taken by the Court in such matters. I am satisfied that the facts as they unfolded demonstrate that this is an appropriate case in which the court should apply the doctrine of res judicata to prevent an abuse of the court’s process by CRL and TFVI. It is accordingly declared that res judicata applies and CRL’s claim against Ms. Mills is dismissed with costs. I agree with Ms. Mills’ submissions on the point and find too that TFVI is a privy of CRL and is caught by the principle. Its claim against Ms. Mills is also struck out for this reason.”

[88] Clearly these issues were in play when the settlement agreement, consent order and vesting deed were in negotiation and at the time of the execution of those documents. It is clear from the learning in **Halstead** that the principle of res judicata would necessarily arise where an issue could or should have been raised in previous civil proceedings. In this matter it cannot be said that the first appellant would not have been in a position; indeed, would not have had an obligation to raise the issue of its beneficial interest in the car park during those settlement discussions. It was an issue that ought to have been brought to the attention of various parties. Having

failed to do so and being unable to indicate the existence of any special circumstances entitling them to re-open that claim in the interest of justice, the trial judge was correct in her conclusion.

[89] As Floissac CJ stated in **Halstead**:

“A litigant is precluded from relitigating an adjudicated cause of action either by instituting a different kind of proceedings or by relying on a different right of action or by claiming a different remedy. If the previous and fresh proceedings could or should have been consolidated or the new right of action or remedy could or should have been claimed in the previous proceedings in which the original right of action was determined, the relitigation is regarded as an abuse of process of the court.”

[90] With respect to the respondent’s claim for trespass the trial judge found that:

“The respective causes of action [that is the Divorce Proceedings and the 2010 Claim] had nothing to do with the tort of trespass which is the cause of action in the case at bar. I am satisfied that the cause of action is neither identical nor similar to the 2010 claim or the ancillary claim. I find therefore that the doctrine of merger does not affect Ms. Mills’ claim in trespass. It may not be struck out on that basis and I make no order striking it out.”¹³

[91] Having determined, as she was entitled to do, that the respondent’s claim was not affected by res judicata, the learned judge correctly determined that a fresh action in trespass was the proper course to be adopted by the respondent. The learned trial judge’s finding that the respondent would not have been able to pursue her claim for damages, mesne profits and possession and injunctive relief through enforcement procedures under the CPR cannot be faulted.

¹³ Para. 121 of the judgment below.

Whether the tenancy at will was terminated on the institution of proceedings by the respondent; Whether the appellants by remaining on the disputed property after the institution of proceedings became trespassers of the disputed property; Whether the trial judge erred in finding that the respondent's action was not statute-barred

Tenancy At Will

- [92] The appellants submit that the learned trial judge erred in finding that the respondent had established on a preponderance of the evidence that a tenancy at will was created between the appellants and the respondent and that the respondent permitted the appellants to remain in occupation of the disputed land after she became owner in 2011.
- [93] They further submit that the learned trial judge erred in finding that the appellants occupied the car park as tenants as well.
- [94] The respondent submits that the trial judge was correct in finding that there was a tenancy at will created when the respondent allowed the appellants to continue in occupation after she took possession of the disputed lands.
- [95] **Halsbury's Laws of England** states that an implied tenancy at will arises when:
“... a person is in exclusive possession by the owner's consent, and his possession is not as employee or agent or as a licensee holding under an irrevocable licence, and is not held in virtue of any freehold estate or of any tenancy for a certain term. Such a tenancy is implied accordingly in cases of mere permissive occupation without payment of rent.”¹⁴
- [96] Further, George-Creque J (now Pereira CJ) in the Anguillan case of **Whaldama Brooks (aka Ras B) et al v Kenneth Brooks et al**¹⁵ stated:
“Tenancies at will may be created either expressly or by implication in certain situations; for example where a tenant takes possession under a void lease or under a mere agreement for a lease and has not yet paid rent, or where a person is allowed to occupy premises rent free and for an indefinite period.”

¹⁴ 5th edn, Volume 62 at para 211.

¹⁵ AXAHCV/2006/0006 (delivered 25th January 2008, unreported) at paragraph 28.

- [97] The trial judge having examined the evidence and accepting the respondent's version of events (as she was entitled to) found that the respondent had established on a preponderance of the evidence that a tenancy at will was created between her and the appellants when she allowed them to remain in occupation of the disputed land after she became owner in 2011.
- [98] I agree with the respondent's submission that the trial judge's finding that the appellants were not in exclusive and undisturbed possession of the disputed land relates to the 2011 period when she found that the disputed property was owned by IHL which entity the judge found had co-operated with the first appellant in their occupation of the car park.
- [99] The learned judge found that a tenancy at will arose with respect to the period after the respondent became owner of the disputed property and permitted the appellants to continue in occupation of the said lands. Further, the trial judge found that a tenancy at will having been created, and the institution of proceedings having brought that tenancy to an end, the respondent's claim was not and could not be statute-barred.
- [100] **Halsbury's Laws of England** states that:
- "The tenancy is impliedly determined by the landlord when he does any act on the premises which is inconsistent with the continuance of the tenancy... and also when he does an act off the premises which is inconsistent with the tenancy, as for example when he grants a lease of the premises to commence forthwith. An act done off the premises, however, does not determine the tenancy until the tenant has notice of it."¹⁶
- [101] A tenancy at will may be implied in a situation where a person is in possession of property by the consent of the owner. A tenancy such as this is determinable at the will of the owner of the land. The owner may give such notice of termination by some act of the landowner on the property or off the property inconsistent with the continuation of the tenancy.

¹⁶ Halsbury's Laws of England 4th Ed. Re-issue, Vol 27(1) at para. 123.

[102] The learned trial judge concluded that a tenancy at will arose on the facts and circumstances of this case. She opined at paragraphs [137] and [138] of her judgment:

“[137] CRL and TFVI submitted accurately that the person in possession of land is the only one with locus standi to maintain an action in trespass. They cited Halsbury’s Law of England. The learned authors describe a tenancy at will as one ‘under which the tenant is in possession, and which is determinable at the will of either the landlord or the tenant. ... As in other tenancies, (it) arises by contract which binds both the landlord and the tenant; and the contract may be express or implied.’

[138] The learning is that an implied tenancy at will arises when ‘a person is in exclusive possession by the owner’s consent, and his possession is not as employee or agent or as a licensee holding under an irrevocable licence, and is not held in virtue of any freehold estate or of any tenancy for a certain term. Such a tenancy is implied accordingly in cases of mere permissive occupation without payment of rent.’ In view of this statement of the applicable legal principles, I am satisfied that Ms. Mills has established on a preponderance of the evidence that a tenancy at will was created as between her and CRL and TFVI when she permitted them to remain in occupation of the disputed land after she became the owner in 2011.”

[103] Further she went on to state at paragraph 139 how such a tenancy is terminated:

“[139] The learned authors of Halsbury’s Laws of England provide guidance on how such a tenancy is terminated. They stated ‘A tenancy at will is determinable by either party on his expressly or impliedly intimating to the other his wish that the tenancy should be at an end. Until such an intimation is given, the tenant is lawfully in possession; and accordingly, the landlord may not recover the premises in a claim for recovery of land without a previous demand for possession or other determination of the tenancy. ...the issue of a possession claim is a sufficient demand for possession to bring the tenancy to an end.’ By initiating the instant claim, Ms. Mills terminated the tenancy at will which existed between her as landlord and CRL and TFVI as tenants. Their failure to deliver vacant possession constituted them as trespassers as they were occupying the land without Ms. Mills’ permission. They thereafter became trespassers. I so find.”

[104] The learned trial judge, having determined that the appellants were tenants at will, concluded that by bringing the action for trespass the respondent had determined the tenancy at will. I find no fault in the conclusion of the trial judge.

[105] Further, having concluded that the appellants' tenancy at will had been terminated, the finding that the appellants became trespassers naturally follows.

[106] The appellants submitted that the respondent's claim was statute-barred as they were, for a period in excess of 12 years, in undisturbed possession of the disputed lands and have been exercising acts of ownership over them. They submit that the trial judge erred in finding that the appellants were not entitled to adverse possession as against any claim to ownership by the respondent.

[107] The respondent submitted in response that there is there is a misconception by the appellants of the relevant facts and law and the trial judge was correct in her findings that adverse possession was not applicable to the facts of this matter.

[108] The case of **Michael Findlay v Elroy Arthur**¹⁷ gives an apt definition of adverse possession:

“[A]dverse possession means factual possession of an exclusive and undisturbed nature of the piece or parcel of land in Saint Vincent and the Grenadines for a continuous period of 12 years or more accompanied by the requisite intention to possess the said land as owner thereof.”

[109] The statutory provisions relative to adverse possession are found in sections 17(1) and 19 and schedule 1 paragraphs 1, 2 and 8(1) and 8(2) of the **Limitation Act**.¹⁸

[110] Sections 17(1) and 19 are as follows:

“17(1) – No action shall be brought by any person to recover any land after the expiration of twelve (12) years from the date on which the right of action accrued to him, or if it is first accrued to some person through whom he claims to that person.

.....

19. Subject to sub-section 2 at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished.”

¹⁷ SVG Civil Appeal No. 17 of 2010.

¹⁸ Cap 129, Laws of St. Vincent and the Grenadines.

[111] Paragraphs 1, 2 and 8(1) of Schedule 1 of the **Limitation Act** state as follows:

“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.

2. Where any person brings an action to recover any land of a deceased person (whether under a will or an intestacy) and the deceased person –
(a) was on the date of his death in possession of the land 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 too be in possession of it, the right of action shall be treated as having accrued on the date of his death.

...

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 the preceding provisions 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.”

[112] The effect of these provisions is that the right to bring an action to recover land is barred whenever 12 years has elapsed from the time when the right of action accrued. That right of action only accrues when a person is in adverse possession of the land. Time only begins to run when adverse possession is taken of the land.

[113] The trial judge heard and analysed the evidence of the parties and found at paragraphs 130 and 134 as follows:

“[130] Against this backdrop, CRL and TFVI contended that their use of the disputed parking area was unrelated to any conduct of IHL’s geared at facilitating and accommodating them. Interestingly, Mr. Browne used the personal pronoun ‘I’ when speaking about actions undertaken by CRL in respect of the disputed land and referred to IHL by that name when he testified about the commissioning of the survey plan G3078. He accepted that the survey plan was prepared on instructions from him as director of IHL. Survey plan G3078 supports this and shows that it was approved and lodged at the Survey Department on 14th August 2002. I accept that this

was at the instance of IHL under Mr. Browne's directorship. In this regard, I accept Ms. Mills' testimony that IHL was being managed wholly by Mr. Browne without input from her at that time.

...

[134] The defence of limitation is raised by CRL and TFVI as a shield against Ms. Mills' claim for possession of the disputed land. It is useful to link the conclusion on this point with the earlier pronouncements on the *res judicata* and merger points in issue. Having found that CRL's claim is an abuse of the court's process on the ground that the doctrine of *res judicata* is operational, TFVI's claim is also caught in this scenario and its cause of action merged with CRL's in the 2010 proceedings. For those reasons, their reliance on adverse possession and limitation as defences to Ms. Mills' claim fail. There is no need to consider their claim to an interest in the disputed land by virtue of proprietary estoppel."

[114] In **Halsbury's Laws of England**¹⁹ adverse possession is described as follows:

"No right of action to recover land accrues unless the land is in possession of some person in whose favour the period of limitation can run. Such possession is called adverse possession. What constitutes such possession is a question of fact and degree; there is no general principle that, to establish possession of an area of land, the claimant must show that he made physical use of the whole of it."

[115] The trial judge found that the circumstances surrounding the occupation of the area by the appellants was orchestrated by Mr. Browne in his capacity as director of all the parties involved in the transaction. This is a finding of fact with which I agree.

[116] This was not a situation where it could be said that the land was in possession of some person in whose favour the limitation period could run. The appellants were not squatters but were persons who entered into possession with the knowledge and permission of the property owner, IHL, with Mr. Browne behind the scenes directing the operation and the trial judge correctly found this to be the case. Therefore, there could be no adverse possession and the issue of the limitation period was a non-issue as a result.

¹⁹ 4th Ed. Vol 28, para. 768.

[117] In the premises, I am of the view that the appeal fails and should be dismissed.

[118] The respondent would be entitled under CPR 64.6(1) to her costs.

[119] Accordingly, I would order that:

- (i) The appeal is dismissed, and the orders of the learned trial judge are affirmed.
- (ii) The appellants are ordered to pay the respondent's costs of this appeal to be assessed by a Judge or Master of the High Court at no more than two-thirds of the amount awarded at the court below, unless such costs are agreed within 21 days of the date of this judgment.

I concur.

Gerard St. C. Farara
Justice of Appeal [Ag.]

I concur.

Sydney Bennett, KC
Justice of Appeal [Ag.]

By the Court

Chief Registrar