

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHCV2021/0212

BETWEEN:

DENNIS BERNARD DOXILLY

(personal representative of the Estates of **Horace Jn Pierre**
also known as “**Oras Jn Pierre**” and **Leona Jn Pierre**
also known as “**Leona Orice** and **Leona Thomas**”,
heir to the estate of **Dugard Arthur**, also known as **Arthur Dugard**”
and **Philpsia Elisa Arthur** (nee **Philippe**) also known as **Elisa Philpe Arthur**)
Claimant

and

VICTOR LA CORBINIERE

representative of the estate of **Carl George Donald La Corbiniere**
also called **Karl George Donald La Corbiniere**
Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence High Court Judge

Appearances:

Mr. David Francis of Counsel for the Claimant
Mr. Andie George with Ms. Sherene Francis for the Defendant

2022: January 25;
February 7.

RULING

Preliminary Issue-Whether claim is prescribed-Whether Court has jurisdiction to entertain the claim

- [1] **CENAC-PHULGENCE J:** By fixed date claim and statement of claim, the claimant, Dennis Bernard Doxilly (“Mr. Doxilly”) on behalf of the estates of Horace Jn Pierre also known as “Oras Jn Pierre” and Leona Jn Pierre on 25th February 2021 filed a claim against the estate of Carl George Donald La Corbiniere also called Karl George Donald La Corbiniere seeking declarations and rectification of the land register relating to

Block and Parcel No. 1665B 8 (“the Property”) on the basis of mistake in accordance section 98 of the **Land Registration Act**¹ (“LRA”).

- [2] The claimant claims the following declarations and relief that:
- (i) the Adjudication Record with respect to Claim No 5A037 dated 5th March 1985 is null and void as it fails to comply with the requirements of section 19 of the **Land Adjudication Act**² (“LAA”);
 - (ii) the land register compiled by the Registrar of Lands with respect to the Property was compiled based on a mistake insofar as the Adjudication Record was not delivered to the Registrar by the Adjudication Officer in accordance with section 10 of the LRA;
 - (iii) the initial registration of one hundred and fifteen hectares of property registered as Block and Parcel No. 1655B 8 in the name of Carl George Donald La Corbiniere also called “Karl George Donald La Corbiniere” was done by mistake;
 - (iv) the claimant is entitled to sixty (60) carres of the Property from the estate known as Veuve Oliver;
 - (v) the Property be surveyed and subdivided to reflect the entitlement of the parties as described in the Deed of Sale dated 7th November 1877 by Sieur Thomas Abraham de Glapion to Dugard Champfleur (for his son Arthur Dugard);
 - (vi) the land register be rectified to include the Heirs of Dugard Arthur also known as Arthur Dugard pursuant to section 98 of the LRA; and
 - (vii) costs and further and other relief as the Court thinks fit.
- [3] The defendant’s contention is that the Property was correctly registered in the name of Carl George Donald La Corbiniere, now deceased during the adjudication process which was part of the Land Registration and Titling Project (“LRTP”). The defendant requests that the claim be dismissed with costs for various reasons, one of these being that the claim is prescribed, and the claimant would be estopped from bringing a claim at this time alleging mistake. The defendant averred that the time has since passed for the claimant to raise any challenge to the award of the Property to Carl George Donald La Corbiniere as the adjudication and registration processes have long concluded in accordance with the law.

¹ Cap. 5.01, Revised Laws of Saint Lucia.

² Cap 5.06, Revised Laws of Saint Lucia.

[4] The Court by Order dated 29th November 2021 as part of the case management process directed the parties to file written submissions with authorities on the question of whether the claim is prescribed and therefore the Court does not have jurisdiction to entertain the claim.

[5] The claimant and defendant filed written submissions on 17th January 2022.

Submissions

[6] Mr. David Francis, ("Mr. Francis") submitted that the LRA does not provide a specific limitation period for the types of matters contemplated by section 98 and as such the Court would be constrained to apply article 2103 of the **Civil Code of Saint Lucia**³ ("the Code").

[7] Article 2103 of the Code provides as follows;

"All things, rights, and actions, the prescription of which is not otherwise regulated by law, are prescribed by thirty years, without the party prescribing being bound to produce any title, and notwithstanding any exception pleading bad faith." (my emphasis)

[8] Mr. Francis on behalf of the claimant submits that the matter is prescribed by thirty (30) years in accordance with article 2103 of the Code. This is view held by counsel for the defendant, Mr. Andie George ("Mr. George") as well. The divergence in the submissions is on the question, when does this period of prescription run from?

[9] Mr. Francis relies on the United Kingdom Supreme Court case of **Test Claimants in the Franked Investment Income Group Litigation and others v Revenue and Customs Commissioners**⁴ which affirmed the decision of **Kleinwort Benson Ltd. v Lincoln City Council**⁵ which he submits held that the time limit for matters of mistake begins to run from the date when the mistake is discovered or could reasonably have been discovered.

³ Cap 4.01, Revised Laws of Saint Lucia.

⁴ [2020] UKSC 47.

⁵ [1999] 2 AC 349.

- [10] Mr. Francis therefore submits that the claimant was granted probate⁶ of the Will of Horace Jn. Pierre in 2011 and having regard to Mr. Doxilly's claim, it can reasonably be asserted that from 2011 he would have through his diligence been able to discover the mistake after making investigation into the extent of the Estate of the Horace Jn. Pierre. Mr. Francis also argued that Mr. Horace Jn. Pierre would have died before the commencement of the LRTP and therefore would not have been able to make any claim during the LRTP. Therefore, he submits that the limitation period of thirty (30) years ought to run from 2011.
- [11] Mr. George on the other hand submits that the period of prescription runs from the date of first registration, being 4th September 1987. Mr. George's contention is that since first registration, this is the first time, well over thirty years, that ownership of the Property is being disputed, and the first time that rectification of the land register is being sought on the ground of mistake or fraud. He argues that LRTP having been completed, Mr. Doxilly ought not to be allowed to go beyond that period to raise a claim when he did not take advantage of the adjudication and/or appeals processes designed specifically to deal with disputes as to entitlement of property. He says the claim is effectively prescribed.
- [12] Additionally, Mr. George argues that any mistake pleaded should pertain to mistake in the registration process which is not pleaded or made out by Mr. Doxilly. Mr. George in contrast to Mr. Francis argues that the starting point for determining whether an action is prescribed is the date on which the cause of action arose. In relation to claims for land, he argues that this would generally be from the date that a person assumes possession, asserts his rights and/or interest in disputed land, contrary to the rights of the alleged claimant. Specifically, in respect of a claim against a registered proprietor who acquired proprietorship as a result of the LRTP, it is accepted that the starting point is the date of first registration or the conclusion of the adjudication. He submits that the Court does not have jurisdiction to entertain the claim and it ought to be dismissed with costs to the defendant. In support of his submissions, Mr. George relies on the case of **Francis Chitolie et al v Saint Lucia National Housing Corporation**.⁷

⁶ It was stated in the submissions as a grant of letters of administration.

⁷ SLUHCVP2020/0022, delivered 13th January 2022, unreported.

What does mistake refer to?

- [13] Section 98(1) of the LRA which is the basis of the relief sought by the claimant provides:

“98. Rectification by Court

(1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that **any registration including a first registration has been obtained, made or omitted** by fraud or **mistake**.” (my emphasis)

- [14] In the case of **Norton Gaspard et al v Bernard Isidore representative of the Heirs of Zepherin Mathieu**,⁸ the learned Chief Justice referred to the cases of **Sylvina Louison v Joachim Rodney Jacob**⁹ and **Joseph and others v Francois, and Matty and others v Francois**¹⁰ and helpfully summarized the learning from these two cases on the issue of mistake. At paragraph 39 of **Norton Gaspard**, the Chief Justice extracts the principles and states as follows:

“(1) the court is empowered to make an order for rectification of the Land Register under section 98 of the **LRA** on the basis of a mistake which occurred in the registration process. This necessarily includes a mistake in first registration at the end of the adjudication process; or

(2) the mistake may also have carried forward into the registration process as a result of a mistake in the adjudication process. This may occur where the staff of the Land Registry are presented with an adjudication record which does not correctly embody the final decision of the adjudication officer; and

(3) the alleged mistake must not relate to the correctness of the adjudication officer’s decision - in which case there are avenues provided for review or appeal as the case may be.”¹¹

- [15] Without commenting on the merits of the claim and the pleadings as regards mistake, Mr. Doxilly seems to be alleging mistake/s in the adjudication process which were carried into the registration process. The culmination of the process of adjudication and registration in relation to the Property ended with its first registration on 4th September 1987 and the question would be whether the matters alleged by Mr. Doxilly would suffice to engage section 98(1) of the LRA. However, for the purposes of deciding the preliminary issue, I make no comment on the merits of Mr. Doxilly’s claim.

⁸ SLUHC VAP2020/0010, delivered 7th October 2021, unreported.

⁹[2009] UKPC 3.

¹⁰SLUHC VAP2011/0026, delivered 21st August 2015, unreported.

¹¹See Matty at para 37.

The LRTP process and its implications

[16] It is important to understand the LRTP process in order to conclude on the issue of when the time begins to run for the purposes of prescription. In the early 1980's, Saint Lucia adopted the Torrens system of registration of title to land. The LAA and LRA were enacted in 1984 to give effect to this new system. A review of the LAA and LRA will reveal a comprehensive regime aimed at ensuring registration and adjudication in respect of all lands in Saint Lucia.

[17] During the LRTP, all persons were invited to submit their claim to land, whatever the basis of that claim, whether they claimed ownership evidenced by deed of sale, as heirs of an ascendant through succession by operation of a last will and testament or the law, or by long possession/prescription.¹² The fact that adjudication of land was subject to various processes of review and appeal is important. Given these avenues available to an aggrieved person under the LRTP, the Board in **Louisien v Jacob** said:

“...[R]ectification is not intended to be an alternative remedy for a claimant under the LAA who, having failed in a contested claim before the adjudication officer, omitted to use the avenues of review and appeal provided for by sections 20 and 24 of the LAA. This conclusion does not depend on *res judicata* or estoppel properly so called; it follows simply from a correct understanding of the statutory machinery.”¹³

[18] The learned Chief Justice in **Matty** reinforced this point and said:

“We would simply add that rectification under the LRA is not an alternative remedy for a claimant who simply failed to avail himself of the processes for making or challenging a claim under the LAA or availing himself in any respect of the avenues for review or appeal provided thereunder.”

[19] Again in **Matty**, Chief Justice Pereira concluded as to the scheme and effect of the LRTP and said:

“In our view the learned judge was right to recognise the intervention of the LRTP which by the conjoint effect of the LAA and the LRA, provided an entirely new all-embracing and comprehensive scheme designed to adjudicate upon and provide registered title to all lands in Saint Lucia... It was a holistic scheme implemented for the purpose of bringing certainty to the ownership and identification of lands in Saint Lucia.”

¹² See **Matty** at para 26.

¹³ **Louisien v Jacob** [2009] UKPC 3 at paragraph 40; **St. Torrence Matty et al v Alicia Francois** SLUHCVP2012/0037 at paragraph 36.

- [20] One final point needs to be made. During the LRTP, any person with an interest in land however derived, could have put in a claim with respect to land. Section 6 of the LAA required the adjudication officer to prepare and advertise notice, inviting claims in respect of each adjudication section and fixing a time limit for submission of claims. The fact of someone's death was immaterial as his heirs or family could have put in a claim on behalf of the estate of the deceased person which was then recorded in the name of the heirs of the deceased person.

The time from which prescription runs

- [21] Mr. Francis' contention is that the prescription period of thirty years runs from the time Mr. Doxilly discovered or would have reasonably been able to discover the mistake. The case of **Franked Investment Income** relied on by Mr. Francis is in my view inapplicable to this case and the preliminary issue to be decided. In that case the test claimants argued that the differences between their tax treatment and that of wholly UK-resident groups of companies breached EU law. They therefore sought repayment of the tax so far as it was unlawful under EU law, dating back to 1973 or alternatively damages. Given the long period limitation was an issue. In order to get around the limitation hurdle that usually related to restitutionary or tort claims, the test claimants relied on section 32(1)(c) of the **UK Limitation Act 1980** ("the UK Limitation Act"). In that case the Supreme Court settled on some key points:
- (i) limitation periods set time limits for bringing claims and apply regardless of whether there is a well-founded cause of action;
 - (ii) section 32(1) of the UK Limitation Act postpones the limitation period beyond the date when the cause of action accrued, in cases where the claimant cannot reasonably be expected to know at that time the circumstances giving rise to the cause of action, by reason of fraud, concealment or mistake;
 - (iii) for section 32(1)(c) to apply to a mistake of law, the claim must be for relief from the consequences of that mistake.

- [22] The Supreme Court held that for section 32(1)(c) to apply, the mistake must constitute an essential element of the cause of action, and not merely form part of the context. In the case, the claimants sought recovery of the tax paid on two grounds: (a) under the Woolwich ground of restitution, where a taxpayer was entitled to recover tax which was paid in response to an unlawful demand; and (b) that tax paid in ignorance of the fact that the legislation under which it was charged was incompatible with EU law. It was only under ground (b) that the mistake of law was an essential element of the cause of action.
- [23] The court in **Franked Investment Income** was of the view that where it was proved that a mistake of law is an essential element of the cause of action, the limitation period would be postponed until the claimant discovers or could with reasonable diligence have discovered their mistake in the sense of recognizing that a worthwhile claim exists. The purpose of the postponement effected by section 32(1) was to ensure that the claimant was not disadvantaged, so far as limitation was concerned, by reason of being unaware of the circumstances giving rise to his cause of action as a result of fraud, concealment or mistake.
- [24] I am of the view that the case relied on by Mr. Francis cannot apply in the circumstances of this present case for the following reasons: (i) the case is not of general application but is specifically concerned with section 32(1)(c) of the UK Limitation Act which allows the postponement of the limitation period which ordinarily would commence from the date the cause of action accrued; (ii) there is no comparable provision to section 32(1)(c) in the provisions of the Civil Code; (iii) there is no provision in the Civil Code for the postponement of the prescription period; (iv) the case appears to be dealing with mistake not in the process of registration as contemplated by section 98 of the LRA as interpreted in the various cases of our Court and the Privy Council but seems to relate to where the individual cannot be expected to know that a cause of action has arisen because of a mistake that he made.

[25] I am of the view that the defendant's submissions on this point reflect the correct position of the law as relates to mistake in the registration process. It is clear based on the pleadings that the defendant engaged the LRTP process and was ultimately registered as proprietor of the Property. This registration would have interrupted any prior claims. It therefore must be that if any alleged competing interests in property arises thereafter, the prescription period must run from the date of that first registration. The submissions of the claimant on the issue of the time from when prescription would run would make nonsense of the LRTP process and create great uncertainty in a system which was designed to bring about certainty in land ownership. To accept the claimant's position would not square with the intention of the LRTP and would mean that there would be no end in sight for a proprietor of land as there would always be the possibility of a lurking claim.

[26] It is clear to me that where a mistake in the registration process relates to mistake otherwise than in the context of a first registration, the prescription period would run from the date on the land register stated as the registration of the particular transaction in relation to that property.

[27] In this current case the date of first registration is 4th September 1987. The defendant has remained registered as proprietor of the Property, undisturbed and uncontested until 25th May 2021 when the claim was filed. It was served on 10th June 2021. Taking the prescription period from the date of first registration, this is some thirty-four (34) years after first registration.

Effect on claim where prescription period has expired

[28] What is the effect of the claim being prescribed? In the well-known case of **Walcott v Serieux**,¹⁴ which remains good law, Peterkin JA said:

“In Article 2122, quoted above, both the right and the remedy are extinguished and therefore there is no question of a party being called upon to choose whether he would plead the defence of limitation. As long as the evidence in a case discloses that the period of limitation has expired, the judge has no discretion in the matter.”

¹⁴SLUHCVP1975/0002, delivered 20th October 1975, unreported.

Conclusion

- [29] In light of the foregoing, I find that the Court has no jurisdiction to entertain and try this claim as it is prescribed by law. There is nothing which permits the Court to extend time or postpone the time when the cause of action arises.

Order

- [30] Consequently, I make the following order:
- (1) The claim is dismissed.
 - (2) Prescribed costs to the defendant in the sum of \$4,125.00 being 55% of \$7,500.00, the claim being assessed on a value of \$50,000.00.

Kimberly Cenac-Phulgence
High Court Judge

By The Court



Dp. Registrar