

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2020/0053

BETWEEN

MONIQUE PRIMUS STEWART
SAMUEL PRIMUS
JOSETTE PRIMUS BRISTOL

FIRST CLAIMANT
SECOND CLAIMANT
THIRD CLAIMANT

AND

MARIE HENRY CAIN
ROHAN JOYLES ALSO KNOWN AS ROHAN GILES
AMOS HENRY

FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT

Appearances:

Mrs. Maferne Mayers-Oliver for Claimants

Mrs. Ronnia Durham-Balcombe for Defendants

Claimants present

Defendants present

2021: 13 July
14 July
15 July (Site Visit)
13 September

Byer, J.:

- [1] When this court considered this case, the reality show “Neighbourhood Wars” came to mind. But this court is very cognizant that this is not a made for television show but real people with real lives. In fact, this is as real as it gets. These two parties are so entrenched in their positions which make the real tragedy that, whatever determination this court makes in this matter, there will never be any reconciliation and neither side will be able to take this road the sole bone of contention with them to the great beyond.

[2] That being said, this court has no difficulty in making this determination and will do so as set out in this decision.

[3] In order to understand the genesis of this discord, it is imperative to take a close look at the history of the ownership of the land in question. This is best done using a chronology.

Chronology of land ownership:

a) In 1965 George Primus conveys parcel of land at Richland Park to Idalyn Lewis recorded as Deed No. 1278 of 1965 (hereinafter referred to as “the Lewis land”).

b) In 1976 George Primus as administrator of Emma Primus conveys a parcel of land at Richland Park to Olive Sampson recorded as Deed No. 1232 of 1976. The schedule conveyed to Olive Sampson states as follows:

*“ALL THAT Lot piece or parcel of land situate at Richland Park in the state of Saint Vincent being in extent two and one-half (2½) lots and butted and bounded on One side by lands of the said George Primus on two (2) other sides by lands of Fenneth Lewis on the fourth side by lands of Minelva Williams or howsoever otherwise the same may be butted bounded known distinguished or described **TOGETHER** with all ways waters watercourses rights lights liberties privileges easements and appurtenances thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto and **TOGETHER also with a four (4) foot road leading from the Public Road over lands of the said George Primus to the said hereditaments hereby assured.**”(My **emphasis added**) (Hereinafter referred to as “the Sampson land”)*

c) In 1983 Olive Sampson conveyed the Sampson land to Patience Giles also known as Marie Giles under Deed No. 1145 of 1983.

d) In 1988 Idalyn Lewis sold the Lewis land to Marie and Charles Joyles under Deed No. 443 of 1988. (The court accepts that Marie Giles and Marie Joyles are one and the same person)

e) In 1988 George Primus died and by Deed of Assent dated 27 August 1997 and registered as Deed No. 2645 of 1997 the remaining parcel of land at Richland Park which he owned was conveyed to his widow. This lot of land is described as:

*“ALL THAT LOT Piece or parcel of land situate at Richland Park Charlotte Parish St. Vincent containing by admeasurement Thirty-nine Thousand Six Hundred and Ninety-six Square Feet and abutted and bounded on or towards the NORTH partly by lands of Marie Joyles and partly by a Right-of-Way SOUTH partly by lands of Stephanie Stowe and partly by lands of Gladys Hector EAST by a stream and WEST by a Sixteen (16) Foot Road or as the same is delineated on Survey Plan C9/45 prepared by Adolphus Ollivierre Authorised Land Surveyor and approved and lodged in the Lands and Surveys Department on 19th April, 1996 and **TOGETHER** with all buildings and erections situate thereon and all ways waters watercourses*

rights lights liberties privileges and all other easements and appurtenances thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto.” (Hereinafter referred to as “the Primus lands”)

- f) In 2012 the Widow of George Primus executed a Deed of Gift to the second claimant under Deed No. 3751 of 2012. He was conveyed:

“ALL THAT LOT PIECE OR PARCEL of land situate at RICHLAND PARK in the Parish of Charlotte in the State of Saint Vincent and the Grenadines being by admeasurement NINE THOUSAND AND THIRTEEN SQUARE FEET (9,013 sq. ft.) as shown on a Survey Plan approved and lodged at the Lands and Surveys Department of this State on the 29th November, 2012 and bearing Drawing Number C22/18 and abutted and bounded on the NORTH by an Existing Four (4’) Foot Road on the SOUTH by lands in the possession of the heirs of Gladys Hector on the EAST by the remaining lands of Lot 2 on Plan C10/2 and on the WEST partly by Lot 1 of Plan C10/2 and lands of Plan C21/102 or howsoever otherwise the same may be butted and bounded known distinguished or described TOGETHER with all ways waters watercourses rights lights liberties privileges and easements thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto.” (Hereinafter referred to as “Samuel’s land”)

- g) In 2013 the Widow of George Primus executed a Deed of Gift to the first claimant under Deed No. 1477/2013. She was conveyed:

“ALL THAT LOT PIECE OR PORTION OF LAND situate at RICHLAND PARK in the Parish of Charlotte in the State of Saint Vincent and the Grenadines being by admeasurement TWELVE THOUSAND THREE HUNDRED AND THIRTY FOUR SQUARE FEET (12,334 SQ. FT.) being Lot 2 on a plan drawn and prepared by Corliss Murray a licensed Land surveyor and approved and lodged at the Lands and Surveys Department on the 17th day of January, 2013 bearing number C22/43 and butted and bounded on the North by a four (4) feet private road and partly by Lot 1 on the South by lands owned or possessed by the heirs of Gladys Hector on the East by a stream and on the West by lands owned and/or possessed by the heirs of Gladys Hector or howsoever otherwise the same may be abutted bounded known distinguished or described together with all waters watercourses rights lights liberties privileges and all other easements and appurtenances thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto.” (Hereinafter referred to as “Monique’s land”)

- h) In 2020 the Widow of George Primus executed a Deed of Gift to the third claimant under Deed No. 1097/2020. She was conveyed:

*“ALL THAT LOT PIECE OR PORTION OF LAND situate at Richland Park in the Parish of Charlotte in the State of Saint Vincent and the Grenadines being Lot Number 1 and admeasuring Eight Thousand Seven Hundred And Nineteen Square Feet (8,719 sq. ft.) and butted and bounded on the North **partly by a Four (4) Feet Private Road partly by a Right of Way** and partly by a stream on the South by lands of the Heirs of Gladys Hector on the East by Lot Number 2 and on the West by lands of Plan C22/18 as the same is delineated and shown on a Survey Plan C22/43 prepared by Corliss Murray a Licensed Land Surveyor and approved and lodged in the Land and Surveys Department on the 17th day of January 2013 or howsoever otherwise the same may be butted bounded known distinguished or described Together with all ways waters watercourses rights lights liberties privileges and all other easements and appurtenances thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto.” (My emphasis added)* (Hereinafter referred to as “Josette’s land”)

- [4] This is therefore the way the lands were divested, however most importantly it has to be noted that not one of the defendants hold the legal title to the land which they occupy. The defendants all claim to be entitled under the unadministered estate of their mother Patience Giles or Marie Joyles. Upon her death and during her lifetime, they all also claim to have occupied all the lands in question in excess of twenty years.
- [5] The issue for this court was therefore the status of the right of way as contained in the deed which conveyed the Sampson land. The contention of the claimants is that they are entitled to use the same and not just use it but to utilize vehicles on the same, while the defendants are adamant that their mother bought it and that the right of way is theirs and the claimants are not at liberty to use it.
- [6] In this court’s mind, there can be no dispute that the Deed that conveyed the Sampson land from George Primus conveyed a four-foot road from the “public road over the lands of George Primus”. It must also be considered that at the time of the conveyance of the Sampson land, the land in boundary (although which boundary was not specified) was still owned by George Primus and none of the boundaries set out was a four-foot road. In this court’s mind it was therefore upon the conveyance of the Sampson lands to Olive Sampson that this access was in fact created for the first time. This court is therefore mandated to consider only the words of the relevant title deed in which this road was conveyed unless the parties could identify that there was some ambiguity in those same words¹. This was not made an issue.
- [7] It is also clear in this court’s mind, that at the time of conveyance of the Sampson lands, this land had no access. There appears to be no demurrer to that. Where the issue however does arise is

¹Halsbury’s Law of England Vol 4 (2020) 2 at paragraph 329

when the claimants then go on to claim that this four-foot road was also created for their use. However, this court accepts that this position can only be maintained if the claimants can satisfy the court that there was an implied reservation on the part of their father George Primus that he and his successors in title would also have access over this road or that usage to the Primus family had occurred by way of prescription.

Prescription

- [8] Under the Prescription Act (hereinafter referred to as “the Act”)² section 2³ makes it clear that a period of forty years is required to make any right of way or other easement an indefeasible entitlement.
- [9] When this court perused the submissions of the claimants it did not appear that they sought to vigorously rely on the provisions of the Act. However there was a submission by counsel for the claimants which they have asked this court to accept, which was that the claimants “always walked that right of way all of their life to get to their lands.”⁴ This was however contrary to the contention of the defendants that there was another egress to the remaining lands of the said George Primus which was not the disputed four-foot road.
- [10] Indeed the submissions of the defendants aver that George Primus having carved out the four-foot access to Olive Sampson retained the balance of the Primus lands and the access to those remaining lands would have been by necessity located elsewhere on the Primus lands. The defendants therefore submitted that the failure of the claimants to secure an access to the Primus lands, by allowing their sibling (who is not a party to the present action) to block the same, could not then mean that the claimants were entitled without more, to use an access that was specifically created for the Sampson lands and those who received title to them. In fact, the defendants made it clear that the claimants in any event could not even rely on long user as they submitted that the said road was not an issue with the claimants until the second claimants sought to build on the Samuel lands in 2020. The defendants therefore submitted that this recent usage did not allow the claimants to claim any accrued rights under the Act and as such the claimants’ claim on this limb must fail.

² CAP 329 of the Revised Laws of Saint Vincent and the Grenadines

³**Section 2 Rights of way and other easements**

(1) No claim which may be lawfully made at the common law by custom, prescription or grant to any right of way or other easement, or to any watercourse, or the use of any water to be enjoyed or derived upon, over or from any Crown land or water belonging to the Crown, or being the property of an ecclesiastical or lay person or body corporate, when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years; but, nevertheless, such claim may be defeated in any other way by which the same is now liable to be defeated.”

⁴ Paragraph 16 of the submissions of the claimants filed 26/7/2021

- [11] In order for this court to assess this contention and to determine whether there is any relevance of the Act to the existing right of way, this court must consider the evidence that this court accepts from the trial on a balance of probabilities. This court accepts the following:
- i) that George Primus in conveying the Sampson land conveyed the four-foot road to Olive Sampson and her successors in title;
 - ii) that the reason for the creation of this right of way was by way of necessity in that the land conveyed had no access it being bounded by the lands of other individuals including the said George Primus;
 - iii) that the road was created over the lands of George Primus, from the main road to the closest boundary of the lot of land conveyed, in other words, that the road did not extend for the entire boundary of the entire lot of land conveyed.
 - iv) that Olive Sampson accessed her lands by way of this four-foot road;
 - v) that the claimants did not use this four-foot road to access the remaining land of George Primus and
 - vi) that the said George Primus would have and could have made other arrangements to access his remaining land.
- [12] That being said, in this court's mind, the provisions of the Act are inapplicable. This court is not satisfied on the evidence that was presented by the claimants that any claim on the reliance of prescription was substantiated. It was indeed telling, that in all the affidavits filed by the claimants in support of the fixed date claim form and the initial application for an injunction that the claimants never saw fit to allege that the road had been traversed by their family in excess of 40 years or for any period at all. The pleadings only sought a declaration that the road was to be used by both the claimants and the defendants but led very little evidence to that effect, it was only on the cross examination of the defendants that the suggestion was made that this road was used by the claimants and their predecessor in title.
- [13] It is without a doubt that the burden of proof resides with the claimants as it did throughout the trial, and it is that burden that this court finds on a balance of probabilities has not been discharged by them.

Implication

- [14] The other method by which a right of way may be created where there is no express grant is by implication. It is indeed clear that the claimants were not given any express grant of a right of way so the only other method which they could have acquired it would have been by implication.
- [15] The claimants' submission on this point was that in assessing the evidence it was clear that the factors that supported the presence of a right of way were at play in this case. In saying so, they submitted that there was both a dominant and servient tenement in that the right of way passed

over Primus lands (hereinafter referred to as “the servient tenement”) which was in aid of the Sampson land (hereinafter referred to as “the dominant tenement”). Secondly, that the dominant and servient tenements were owned by different people. Thirdly, that the right of way was for the benefit of the dominant tenement in that there was no access to the lands save and except that right of way and fourthly and finally, the right of way was well defined and could have been the subject of a grant.

- [16] The defendants on the other hand submit that George Primus in conveying the Sampson lands did not reserve any right to use the said right of way and there was no need to imply the right of way for the rest of the Primus lands to be enjoyed. There being no evidence of either of these, it was therefore clear, they submitted that the claimants had failed to establish a right to use the right of way which was conveyed as part of the Sampson lands which was in turn conveyed to the mother of the defendants.
- [17] It is not denied that there are two general rules regarding the creation or acceptance of the existence of a right of way. These were clearly stated in the case of **Union Lighterage Company v London Graving Dock Company**⁵, “[t]he first of these rules is, that on the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements...., or, in other words, all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted. The second ... is, that, if the grantor intends to reserve any right over the tenement granted, it is his duty to reserve it expressly in the grant.”
- [18] In the case at bar, there is no consideration of whether this was an easement that had been enjoyed by the individual who conveyed the land, that is George Primus and indeed the court has already found that the evidence presented by the claimants did not establish any such inference. Rather the issue must now arise as whether there had been a reservation of the right to pass and re pass or whether there was an inference of such a reservation for the purpose of “necessity”.
- [19] This easement of necessity has been defined as “an easement without which the property retained cannot be used **at all and not one merely necessary to the reasonable enjoyment of that property**.”⁶ (*My emphasis added*) Thus, the necessity must exist that the land cannot be accessed at all, not that there is a less convenient way to access it. That is, that the claimants were land locked and the Primus lands without this access was “absolutely inaccessible or useless.”⁷

⁵ [1902] 2 Ch 557 at 572 per Stirling J

⁶ Ibid at page 573

⁷ **Sweet v Sommer** [2004] EWHC 1504 (Ch) at paragraph 20

- [20] In this court's mind and what the court accepts is that after the right of way was conveyed as part of the Sampson lands, there had been no real attempts to use the right of way save as a pedestrian access by the defendants' predecessor in title. This court also accepts that it was only after the defendants "... took a decision to deliberately perform highly visible work on the right of way for the purpose of making a statement and achieving greater control over the right of way"⁸ that the claimants sought to exert a right over the same.
- [21] So the question for the court must now be, whether there is in fact a right which the claimants are entitled to exercise. For the court to consider whether there was an implication of such a right of way for the purposes of necessity, the "...construction of the relevant grant"⁹ needs to be considered and must "...depend[ing] upon the intention of the parties as implied from the circumstances and not upon public policy."¹⁰
- [22] The grant of the right of way was by the conveyance of the Sampson lands. At that time George Primus still owned lands in the area and the right of way was stated to be expressly over his remaining lands. There was no necessity at the time of the grant, which has to be the operative time period¹¹, for him to have retained use of the right of way or to use it as primarily all the lands in the area belonged to him. In fact, this court accepts that the remaining Primus lands after this conveyance of the Sampson lands, were accessed elsewhere, and the area where the sibling of the claimants has now built and enclosed made perfect sense at the time. This court having visited the site, saw the original steps that were provided from the main road to the access points of several persons who lived in boundary to the main road including the steps that were now part of the house that was on the boundary of the main road that is owned by the sibling of the claimants and who is not part of these proceedings. In this court's mind the claimants have not discharged the burden of establishing that a way of necessity was intended to be reserved or that there was any reservation by implication.¹²
- [23] In this court's mind therefore if there was no easement created by necessity, for what other reason could there have been an implication of an easement in favour of the claimants? The only other manner of implication would be to give effect to the intended use. This is where the "...law will imply a term into a contract where in the light of the terms of the contract and the facts known to the parties at the time of the contract, such a term would have been regarded as reasonably necessary or reasonably obvious to the parties."¹³

⁸**Hotel Chocolat Limited v Mauleen Didier and anr** SLUHCv2008/1130 per Belle J at paragraph 32

⁹Megarry and Wade: The Law of Real Property (Ninth edition) at paragraph 27-013

¹⁰ Ibid

¹¹**Midland Ry v Miles** (1886) 33 ChD 632

¹²Megarry and Wade: The Law of Real Property supra paragraph 27-014

¹³**Moncrieff v Jamieson** [2007] UKHL 42

- [24] When this court examines the instant case, there was no evidence led by the claimants to support a contention that at the time of the conveyance of the Sampson lands, that there was any discussion or that even immediately after that period the way the road was used would suggest that there may have been an implication of this sort. This court further accepts on a balance of probabilities that the claimants were in fact able to access the remainder of the Primus lands over the lands themselves until the claimant's sibling built and enclosed her house. In this court's mind this can be the only logical conclusion. That unfortunately means that the claimants have been ousted from the use of their designated access by the actions of persons of their own blood. This also means that the court can make no order as to the re-opening of this access as against an individual who is not a party to these proceedings.
- [25] However there is no doubt that the claimants have title to several lots of land which are now landlocked. It could not have been the intention of their predecessor in title, their father, that this would be their fate. Thus, this court is empowered to make findings on the evidence before it to bring final determination to matters even when the relief is not prayed for by either party. Therefore, pursuant to section 20 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act¹⁴ this court having heard the evidence of the defendants and having considered all the outstanding matters in the case at bar and accepting that the claimants would have used the four-foot road periodically by foot, this court orders that the claimants are to have access to use the four-foot road but only by way of pedestrian usage. Indeed, this court accepts that the right of way having been established for the use by those persons who were entitled to the Sampson lands and additionally that this court having visited the site is satisfied on a balance of probabilities that the claimants did not donate any land to the widening of the road for the purpose of vehicular traffic, the court is satisfied that the claimants should be limited to use of the same by foot only.
- [26] Having made this determination, this court must also consider whether the defendants are in fact entitled to the prayers as sought in their counterclaim. It is clear, that the defendants are all beneficiaries of Patience Giles also called Marie Joyles. It is on this basis that the defendants have entered into possession of the lands in question at Richland Park, however there was clear evidence that they did not own the land in their own right and there was no evidence led as to the status of the estate and whether the said estate had been administered by anyone.
- [27] The case of **Ingall v Moran**¹⁵ makes it clear that proceedings may not be commenced by a party for the benefit of an intestate when the party does not have a grant of letters of administration. There was no evidence that Patience Giles died intestate or testate, however this court is of the opinion that if the defendants had been relying on the will of their deceased mother as to their entitlement the same would have been central to their claim. That being said, and this court

¹⁴CAP 24

¹⁵ [1944] KB 160

accepting that a counterclaim stands as a claim against the claimants, also accepts there are exceptions to that rigorous rule.

- [28] In the case of **Roberts v Gill & Co and anr**¹⁶ Lord Collins identified those special circumstances in which a claim can be brought without the grant of letters of administration, these were when there is an allegation of fraud on the part of a trustee who has been appointed of an asset of the estate has been made and is either by his actions or inactions depleting the said estate or there is evidence of collusion between that appointed trustee and a third party¹⁷.
- [29] In the case at bar there is nothing before this court which raised the issue of special circumstances to take this matter out of the rigors of the rule in **Ingall v Moran**¹⁸ and as such this court is not in a position to consider the claims brought by the defendants in the counterclaim against the claimants and the counter claim stands dismissed.
- [30] However this court will once again exercise its powers pursuant to the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act order and declare for completeness that the Sampson lands include the four-foot right of way and that the successors in title to that land are also so entitled to the same to the exclusion of all others save in the manner determined by this court.

The order of the court is therefore as follows:

On the claim

1. The claim is dismissed in its entirety save and except that the court orders pursuant to its powers under section 20 the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act that the claimants shall be at liberty to pass and re-pass on the said four- foot road with pedestrian traffic only.
2. Costs to the defendants on the dismissal of the claim on an unvalued claim pursuant to the provisions of Part 65.5 CPR 2000.

¹⁶ [2010]UKSC 22

¹⁷ Applied with approval in **Daphne Frett v Resso Maduro and anr** BVIHCVAP2018/0004

¹⁸ Supra

On the counterclaim

1. The counterclaim is dismissed in its entirety save and except that the court pursuant to section 20 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act orders and declares that the Sampson lands do include the four- foot right of way and that the successors in title to that land are also so entitled to the same to the exclusion of all others save in the manner determined by this court.
2. Costs to the claimants on the dismissal of the counterclaim on an unvalued claim pursuant to Part 65.5 CPR 2000.
3. This court further order in its discretion that those costs orders are to be set off as against each other.

This court therefore hopes that although it is entirely unlikely, that these neighbours can mend the fences as I first posited in this judgment, that level heads and less emotion will now rule and the parties can move on with their respective lives.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar