

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(Civil)**

SLUHCV2014/0456

BETWEEN:

COMPUTRON LIMITED

Claimant

and

ADELAIDE JOSEPH

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Ms. Paulette Francis of Counsel for the Claimant

Mr. Colin Foster of Counsel for the Defendant

2018: June 13;
2019: May 9.

JUDGMENT

- [1] **CENAC-PHULGENCE J:** This claim concerns ownership of the parcel of land registered in the Land Registry as Block 0849D Parcel Number 284 (“the Disputed Land”). The claimant is the registered proprietor of the Disputed Land and claims to be entitled to possession thereof. The defendant is the owner and occupier of a wooden dwelling house situate on the Disputed Land. The defendant claims to have acquired title to the Disputed Land by prescription, and an overriding interest in the Disputed Land by virtue of her actual occupation thereof for over seventy-three years. The defendant further challenges the claimant’s title to the Disputed Land on the basis that the root of its purported title is defective.

Background

The Claimant's Case

- [2] The case for the claimant is simple. The claimant, Computron Limited ("Computron") is represented by Mr. Goddard Darcheville, its managing director, who gave evidence on its behalf. Mr. Darcheville says that Computron purchased the Disputed Land on 6th November 2007 from a Mr. Gilbert Phillip. In support, he produced a copy of the Deed of Transfer and Land Register. He says prior to purchase, Mr. Phillip introduced him to his sister and the defendant herein Ms. Adelaide Joseph ("Ms. Joseph"), who resided on the land in the aforementioned wooden dwelling house. Mr. Darcheville says there were other tenants on the land at the time of purchase. Upon purchase, Computron, as new owner, rented to the tenants their respective portions of the Disputed Land and the tenants paid rent to Computron. However, as Mr. Darcheville intended to commence construction of a commercial building, he served the tenants with notices to quit and they vacated the Disputed Land. He says initially he did not request Ms. Joseph to vacate the land as she was elderly and he had developed a friendship with her.
- [3] Recognising that her house was deteriorating and in need of serious repairs, Mr. Darcheville says he offered to and did construct a new three bedroom wooden house for her to live in, located on another parcel of land owned by another of his companies. This parcel was located to the rear of the Disputed Land, and the new house some 130 feet from her existing house. The location of the new house would not obstruct construction of the commercial building. Mr. Darcheville says Ms. Joseph initially welcomed the idea and even facilitated connection of water and electricity services to the new house in her name. A copy of a letter dated 14th March 2014, addressed to LUCELEC, requesting transfer of her electricity meter to the new house, signed by Ms. Joseph was adduced into evidence. Mr. Darcheville says that he explained to Ms. Joseph that he would give her a life interest in the new house and that her sons could continue to reside with her, but that upon her death, the new house would revert to his company, Computer and Electrical Services ("CES Ltd."), which built and owns the new house. Copy of a letter dated 14th March

2014 signed by Ms. Joseph, and having as its subject 'Agreement between Ms. Adelaide Joseph and CES Ltd.' was adduced into evidence. By this letter Ms. Joseph agreed the following: to occupy a new dwelling house built and owned by CES Ltd; that the land on which the house sits does not belong to her; that she has no vested interest in the house and will have no claim of title to it whether alive or in death; that CES Ltd is the sole owner of the property at all material times; and to make use of the home and upkeep it in the best possible condition at all times.

- [4] Mr. Darcheville says that Ms. Joseph was eager to move into the new house but that her daughter Ms. Betty Alphonse ("Ms. Alphonse") intervened, requesting certain additions to the new house and that title be given to Ms. Joseph's sons, who reside with her. As Mr. Darcheville did not agree to these requests, he says Ms. Alphonse advised Ms. Joseph not to accept the new house. Mr. Darcheville says Computron commenced construction of the commercial building but is being obstructed by the continued presence of Ms. Joseph's existing home. As a result, a Notice to Quit dated 26th March 2014 was served on her on 27th March 2014 but to date she remains on the Disputed Land. This Notice to Quit was also tendered into evidence.
- [5] Mr. Darcheville also alleges that on a number of occasions, Ms. Joseph informed him that she was born and raised on a different parcel of land now owned by Jn. Marie and Sons, and further adduced evidence that Ms. Joseph once owned another parcel of land in the area which she sold to Ray's Refrigeration Services Limited.
- [6] Mr. Darcheville says that Ms. Joseph asserts that she has title to the land by way of prescription but has not taken any steps to petition the court for prescriptive title. He says she has no legal entitlement to the Disputed Land and requires that she vacate forthwith.

The Defendant's Case

- [7] Two witnesses gave evidence on behalf of Ms. Joseph – her daughter, Ms. Alphonse and her grandson, Mr. Philbert Lubrin (“Mr. Lubrin”).
- [8] Ms. Alphonse says that to the best of her information and belief, her mother has lived in her existing house on the Disputed Land since she was six months old, when she was taken in by her Aunt Agnes Labelle and her husband Stephen Etienne Labelle. She says Mr. and Mrs. Labelle owned and occupied the existing house, which they purchased on 1st September 1920 from a Leonise Cassius Joseph. She exhibited a copy of that Deed of Sale. She says her mother has never lived in any other house on any other lot. Ms. Joseph has been in continuous and uninterrupted occupation of her existing house on the Disputed Land for the 78 years of her life.
- [9] Ms. Alphonse says that Mr. Darcheville requested Ms. Joseph to vacate the land before he purchased it and offered to build her another wooden structure. She says Ms. Joseph considered the offer but refused when Mr. Darcheville made it clear she would only have a life interest in the land and refused to paint the structure and build an enclosed bathroom. In cross examination, Ms. Alphonse confirmed that these were the reasons the offer of the new house was refused and not because Ms. Joseph has any interest in the land.
- [10] Ms. Alphonse says that Mr. Darcheville purchased the Disputed Land from Mr. Phillip knowing that Ms. Joseph was in occupation of her existing house. She further says she is informed that Computron does not have good title to the Disputed Land for the following reasons:
- i. The Deed of Sale in respect of Computron's purchase of the Disputed Land is null and void as the land purportedly purchased (and upon which Ms Joseph's existing house is located) forms part of the portion of land which Leonise Cassius Joseph sold to Stephen Etienne Labelle on 1st September 1920;

- ii. The gift contained in the Last Will and Testament of Stephanise Joseph dated 28th November 1980 must fail as the property referred therein is not the property of Stephanise Joseph, given the sale of the house and land to Stephen Etienne Labelle on 1st September 1920. Accordingly the Grant of Probate of the Last Will and Testament of Stephanise Joseph is null and void, insofar as it refers to property sold to Stephen Etienne Labelle, as Stephanise Joseph never acquired property during her lifetime from the lawful proprietor Stephen Etienne Labelle;
- iii. The reference to and inclusion of property sold to Stephen Etienne Labelle in the Vesting Deed and Assent, executed 21st April 1987 and registered on 28th April 1987 in favour of Dan Placide and Gilbert Phillip is null and void.
- iv. Accordingly, the Deed of Sale between Computron Limited and Gilbert Phillip purporting to transfer Block and Parcel No. 0894D 284 is null and void and of no effect.

[11] In cross examination, Ms. Alphonse agreed that her mother had not gone before a Court to nullify the Deed of Sale to Computron; that her mother had done nothing. She said this was because her mother was unable. It was then put to her that she, as her mother's representative, had not commenced proceedings in relation to Computron's Deed. She agreed that she had not. It was put to her that she had done nothing to take back the Disputed Land from Computron. She replied first that the matter had been going on for 3 to 4 years but she only recently got involved and that she knew nothing about it; after which she clarified that she had been appointed next friend of Ms. Joseph in 2014. The record however reflects that Ms. Alphonse's appointment as next friend of Ms. Joseph was by Order dated 10th June 2015.

[12] Mr. Lubrin merely says that he was born on the Disputed Land on 9th February 1983 and lived in Ms. Joseph's existing house until he was two years old. He says he grew up knowing Ms. Joseph's existing house to be exactly where it is today; nothing about the structure or its location has changed. He says he does not know Ms. Joseph to have moved residence but has known her to have lived in continuous

occupation of her existing house on the same lot all his life. Further he has been informed by family members that she did so all her 78 years.

[13] In support of their contention that Ms. Joseph's existing home has been situate on the Disputed Land for some 78 years, both Ms. Alphonse and Mr. Lubrin gave evidence describing Ms. Joseph's existing house by reference to various landmarks of antiquity on the Disputed Land. These include the residence of a Mr. Sylvester Samuel who moved there when he was 5 years old; a 'shack shack tree' which has been standing for over 45 years; and an old military water tank which is over 100 years old.

[14] Ms. Joseph therefore seeks by way of counterclaim, an order that the claimant's claim be dismissed; a declaration that she has an overriding interest in the Disputed Land; a declaration that the Land Register be rectified to reflect that she has an overriding interest in the Disputed Land; and an injunction restraining Computron from continuing to improperly occupy the Disputed Land.

Issues

[15] The issues for determination are whether:

1. Computron has good title to the Disputed Land?
2. Ms. Joseph has acquired title to the Disputed Land by prescription and therefore has an overriding interest in the Disputed Land pursuant to section 28 (f) and/or (g) of the Land Registration Act?

Analysis

Does the claimant have good title to the Disputed Land?

[16] It is not disputed that Computron is endorsed on the Land Register as the registered proprietor of the Disputed Land. The Land Register was adduced into evidence and confirms this. However, Ms. Joseph seeks to go behind the Land Register and challenge the root of the Computron's title, alleging that it is defective.

- [17] Counsel for Ms. Joseph makes several submissions in this regard:
- i. That the Disputed Land devised under the Will of Stephanise Joseph was not owned by her, having been sold by Leonise Cassius Joseph to Stephen Etienne Labelle on 1st September 1920. Therefore the gift under the Will and all subsequent dealings with the Disputed Land arising therefrom are null and void.
 - ii. That in any event, the portion of the Disputed Land upon which Ms. Joseph's existing house is situate devolved upon a Mr. Dan Placide under the said Will and not to Mr. Phillip.
 - iii. The land described in the Deed of Sale and sold by Mr. Phillip to Computron was not properly and sufficiently described therein and does not include the portion of the Disputed Land upon which Ms. Joseph's existing house is situate.

[18] There is no evidence of what transpired in relation to the Disputed Land prior to the land adjudication process save that the adjudication record dated 11th July 1987 shows that Mr. Phillip was recorded as having acquired his title to the said land by way of inheritance. Therefore, I consider the above contentions as to the validity or otherwise of the root of Mr. Phillip's title to be speculation. I am of the opinion that at this point in time, it is a moot point and irrelevant, given the scheme and effect of the Land Registration and Titling Project (LRTP) which took place in Saint Lucia and the nature of the Torrens system of land registration, in particular the principle of indefeasibility of title.

[19] Relying on the dicta of the Privy Council in **Sylvina Louisien v Joachim Rodney Jacob**¹, in the early 1980s, Saint Lucia adopted the Torrens system of registration of title to land. To give effect to this new system, two statutes were enacted in 1984: **Land Adjudication Act**² ("LAA") and the **Land Registration Act**³ ("LRA"). The LAA provided for advertising for and receiving of claims to ownership, investigating

¹ [2009] UKPC 3.

² Cap 5.06 Revised Laws of Saint Lucia.

³ Cap 5.01 Revised Laws of Saint Lucia.

of the claims, and adjudicating on rival claims to the same land. Subject to various processes of review and appeal, the LAA provided for the passing of those results in the form of a certified adjudication record to the Registrar of Lands as the basis for first registration of title under the LRA. The LAA was therefore concerned with the production of adjudication records which were to form the basis of first registration of title under the LRA. The LRA provided not only for first registration of title to land adjudicated under the LAA, but also for the operation of the whole system of registered land for the indefinite future.⁴ It is useful to briefly highlight some of the provisions of the LAA and LRA.

- [20] 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. By section 10, the demarcation officer was to give notice of intended demarcation of boundaries and require every claimant to indicate the boundaries which he claimed. By section 13, the survey officer was responsible for conducting necessary surveys and for coordinating a demarcation index map. Section 14 required the recording officer to consider all claims to any interest in land and after investigation prepare a record in respect of every parcel of land shown on the demarcation map. Section 15, required, in any case in which there was a dispute as to any boundary, or there were two or more claims to any interest in land, the recording officer, if unable to secure agreement between the claimants, to refer the dispute to the adjudication officer. The adjudication officer was required to adjudicate upon and determine the dispute having due regard to any law applicable. Section 19 provided that when an adjudication record was completed, the adjudication officer was required to sign and date a certificate to that effect and give notice of completion thereof and the place and time the record and demarcation map could be inspected. Section 20 provided that any person who was aggrieved by any decision of the demarcation officer, survey officer or recording officer could, within the stipulated time give notice of his or her intention to petition the adjudication officer and such petition be determined by the adjudication officer. Further any

⁴ At paragraphs 2-4.

person who was dissatisfied with the decision of the adjudication officer could within the stipulated time give notice to the adjudication officer of his or her intention to, and appeal against that decision to the Land Adjudication Tribunal. Section 24 provided that any person, aggrieved by any decision of the Land Adjudication Tribunal, could within the stipulated time, appeal to the Court of Appeal. Section 23 provided that the adjudication record, subject to the determination of any petition or appeal, was final. The adjudication officer was required to sign a certificate to that effect and deliver the adjudication record and demarcation map to the Registrar with all documents received in the process of adjudication.

- [21] The LRA would then take effect. Section 10 of the LRA provides that whenever an adjudication record becomes final under section 23 of the LAA, the Registrar shall prepare a Register for the subject parcel and register therein the particulars of the adjudication record. This was the process that led to first registration of land under the LRTP. Section 98 of the LRA confers a circumscribed power of rectification of the Land Register on the Court, limited to circumstances in which the Court is satisfied that any registration, including a first registration was obtained by fraud or mistake. Further limiting that power is the requirement that the register shall not be rectified so as to affect the title of a proprietor in possession or in receipt of rents who acquired the land for consideration, unless such proprietor had knowledge of, caused, or substantially contributed to the fraud or mistake in respect of which rectification is sought. Finally and importantly, section 38 of the LRA provided that any person dealing for consideration with a proprietor shall not be required or in any way concerned to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered; to see to the application of any consideration or any part thereof; or to search any register kept under the provisions of the Eighteenth Book of the Civil Code.

[22] The law on the Torrens system of registration of land and the effect of registered title is well established. In the Belizean Court of Appeal case of **Santiago Castillo Ltd v Quinto and another; Santiago Castillo Ltd v Registrar of Lands**⁵ Morrison JA, reviewed the statutory scheme in Belize, which is similar to that in Saint Lucia, and the relevant authorities. He observed that the provisions of the statutory scheme establish and entrench the Torrens system of land title, whereby title can only be created by registration of a certificate of title to the land. Registration in the Land Register is the sole source, subject only to the exceptions stated in the Act, of rights and obligations with respect to lands falling within its ambit. The statutory scheme was designed to further the objective of indefeasibility of registered title notwithstanding the curious fact that the word 'indefeasibility', did not appear in the legislation. The combined effect of its provisions achieves this result.⁶

[23] Morrison JA observed that the common aim of the Torrens system is:

“to ensure that someone dealing with the registered proprietor of title to the land in good faith and for value will obtain an absolute and indefeasible title, whether or not the title of the registered proprietor from whom he acquires was liable to be defeated by title paramount or some other cause’. It is for this reason that under the Torrens system ‘a registered proprietor may obtain absolute title to land or an interest in land by registration even though there was no title in the person who granted him those rights’.”⁷

[24] In this regard, Morrison JA referred to several cases of the Privy Council: **British American Cattle Co v Caribe Farm Industries Ltd** (1998) 53 WIR 101, **Gibbs v Messer** [1891] AC 248 and **Frazer v Walker** ([1967] 1 All ER 649. Quoting from **Gibbs v Messer**, he said:

“The basic principle was stated as follows:

‘The main object of the Act, and the legislative scheme for the attainment of that object, appears to [their Lordships] to be equally plain. The object is to save persons dealing with registered proprietors from the trouble and expense of going behind the register, in order to investigate the history of their author's title, and to satisfy themselves of its validity. That end is accomplished by providing that everyone who purchases, in bona fide and for value, from a registered proprietor, and enters

⁵ (2007) 71 WIR 156.

⁶ At paragraphs 30 and 42.

⁷ At paragraph 30.

his deed or transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title.'"⁸

[25] In relation to **Frazer v Walker**, Morrison JA has this to say:

"In *Frazer v Walker*, the leading modern case, it was held that registration was effective to vest title in a registered proprietor notwithstanding that he acquired his interest under an instrument that was void. The argument that the instrument in question, which was an admittedly forged mortgage, could not be received for registration or validly registered and consequently that the mortgagee never became entitled to the benefit of registration, was rejected by the Board as being 'destructive of the whole system of registration ... registration once effected must attract the consequences which the Act attaches to registration whether that was regular or otherwise' (at 651 per Lord Wilberforce).

A detailed examination of those sections of the New Zealand Land Transfer Act 1952 said to confer on the registered proprietor indefeasibility of title confirmed their Lordships in the view that 'It is in fact the registration and not its antecedents which vests and divests title' ([1967] 1 All ER 649 at 651)."⁹

[26] In the **Santiago Castillo v Quinto** case, the Quintos owned a parcel of land, Parcel 869. Under the Registered Land Act, in 1981 the area where the land was located was declared a compulsory registration area. In 2004, an Ann Williams, who had no claim to ownership of the land, succeeded in obtaining her registration as proprietor of Parcel 869. She then sold it to a company Santiago Castillo Ltd, which obtained registration in Ann's place. The Quintos and the Registrar of Lands commenced proceedings seeking rectification of the register on the grounds of fraud or mistake, pursuant to section 143(1) of the Act (identical to section 98 of the LRA), which provides that the court may order rectification of the register where it is satisfied that any registration, including a first registration, had been obtained, made or omitted by fraud or mistake.

⁸ At paragraph 43.

⁹ At paragraph 44-45.

- [27] At first instance, Conteh C.J. found for the Quintos and ordered rectification of the register. He held, *inter alia*, that first registration by Ann had been obtained 'at the very least by mistake' which was an enduring mistake that applied equally in the case of the second registration in favour of Santiago Castillo, thereby rendering both registrations subject to rectification by the court under section 143(1); that Santiago Castillo had knowledge of the prior ownership or at least a claim to ownership by the Quintos; the disregard of that knowledge had facilitated and caused or substantially contributed to the mistake that resulted in the first registration of Ann as proprietor; that Ann had acted fraudulently in procuring first registration; and that the Santiago Castillo had had actual knowledge of that fraud. The Chief Justice's judgment was reversed on appeal by the Court of Appeal of Belize.
- [28] The Court of Appeal held that Conteh C. J. had been wrong to hold that the mistake in respect of the first registration in favour of Ann Williams was an 'enduring mistake' so as to render Santiago Castillo's title vulnerable to attack. The Court held that where section 143 referred to 'any registration' having been obtained, made or omitted by fraud or mistake, 'any registration' had to be given a restrictive interpretation so as to apply only to the registration that it was sought to impugn. The Court of Appeal found that there was no mistake that related to the obtaining of the second registration by Santiago Castillo, the allegation of fraud against Mr. Castillo having not been made out. They therefore found that there was no case for rectification.
- [29] The decision of the Court of Appeal was appealed by the Quintos and the Registrar of Lands to the Privy Council. The Board, reversing the decision of the Court of Appeal, held on a plain reading of section 143(1), that the registration in respect of which there has been a mistake or error need not necessarily be the registration in respect of which rectification is sought.¹⁰ The Board, however, did not disturb the findings of the Court of Appeal as to the nature and consequence of the operation of the Torrens system. The Board referred to the provisions relied on in the Court

¹⁰ At paragraph 39 and 4.

of Appeal as entrenching the Torrens system and the principle of indefeasibility of title. It affirmed the principle of indefeasibility of title, while accepting that the proper interpretation of section 143(1) had the effect of diminishing that principle. The Board rationalized that it was nonetheless an appropriate means of balancing justice, considering that the remedy of rectification lies with the Court and is subject to the protection given to the bona fide purchaser in possession by section 143(2).¹¹ To that I would emphasize that the remedy of rectification only arises in the very limited circumstances of proof of fraud, or mistake in the registration process.¹²

- [30] The Board found that the most charitable conclusion that can be drawn about Mr. Castillo's conduct was that, knowing that there was serious doubt as to the propriety of the original registration by Ann Williams, he decided not to clarify the position but to proceed with the transfer regardless. In such circumstances her fraud fell to be ascribed to him. Having imputed this knowledge to him, the company could not hide behind the provision that a purchaser need not go behind the register to investigate the root of title.
- [31] Based on the foregoing, making a claim to land, investigating that claim and adjudication and determination of any dispute in relation thereto was the purview of the land adjudicator and other officers appointed for that purpose during the land adjudication process pursuant to the LAA. That process having been completed and the Disputed Land having been registered under the LRA, that registration is final. The process which was available to all persons who had any claim to land was not utilized by Ms. Joseph. She sat on her rights. Mr. Phillip on the other hand made his claim and the Disputed Land was registered in his name as evidenced by the Land Register. Consequently, as registered proprietor possessed of all the rights of ownership, he sold the Disputed Land to Computron, which he was entitled to do. Mr. Phillip's title to and accompanying rights in the Disputed Land then passed to Computron upon purchase and cannot now be impugned. Neither

¹¹ At paragraph 39.

¹² At paragraph 4. See also *Sylvina Louisien v Joachim Rodney Jacob* [2009] UKPC 3.

mistake nor fraud has been pleaded or proven in respect of the transfer to Computron, which is the only basis on which rectification of the Register could be considered at this time.

- [32] On the basis of the principle of indefeasibility of title which is central to the Torrens system of land registration and in accordance with section 38 of the LRA, even if Mr. Phillip's title was defective, which has not been decided, Computron was not obligated to go behind the register and inquire as to the validity of the root of Mr. Phillip's title. At the time of purchase, Mr Phillip was the registered proprietor noted on the Land Register. It was this fact and not its antecedents that gave him title to the Disputed Land. As Computron was a purchaser for value acting in good faith, it acquired good and indefeasible title in the Disputed Land, notwithstanding any defect of infirmity in Mr. Phillip's title (if any). There is therefore no need to examine whether or not Mr. Phillip's root of title is defective as alleged, and further this Court is not entitled to do so. This aspect of the counterclaim fails.

Has the defendant acquired title to the Disputed Land by prescription?

- [33] The law on prescription in Saint Lucia is governed by the **Civil Code of Saint Lucia**¹³ ("the Code") together with the **Supreme Court - Prescription by 30 Years (Declaration of Title) Rules**¹⁴ ("the Rules"). Article 2103A of the Code read together with the Rules provides that title to land is prescribed by a period of thirty years. Article 2057 requires that "the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal and as proprietor."
- [34] The essence of Ms. Joseph's defence and counterclaim is that she has been in continuous and undisturbed possession of the Disputed Land since 1939. As a result of her long occupation of beyond thirty years, she claims to have acquired a proprietary interest in the Disputed Land, being prescriptive rights, and denies that Computron is entitled to possession thereof. She must therefore satisfy the Court

¹³ Cap 4.01 Revised Laws of Saint Lucia.

¹⁴ Cap 2.01 Revised Laws of Saint Lucia.

that she has been in continuous and uninterrupted, peaceable, and public possession of the Disputed Land for the requisite period of 30 years and that such possession has been unequivocal and as proprietor. She must show that she had evinced an intention to possess the Disputed Land as owner, to the exclusion of all others, including the true 'paper title' owner.

[35] The witnesses for Ms. Joseph in their evidence insist that Ms. Joseph has lived continuously on the Disputed Land for upwards of 75 years and that she has never lived on any other parcel of land. Computron challenges Ms. Joseph's continuous occupation of the Disputed Land, on the basis that she told Mr. Darcheville that she was born and raised on a different parcel of land and that she had owned yet a different parcel which she sold. However, that she previously owned another parcel does not prove that Ms. Joseph has not been in possession of the Disputed Land for the period alleged. There is also no evidence to support Mr. Darcheville's averment that she was born and raised on a different parcel.

[36] Nonetheless, the legal position is that, even if Ms. Joseph has been in possession of the Disputed Land since 1939 as alleged, her possession was interrupted when Mr. Phillip obtained registered title to the Disputed Land on 26th September 1987. It has been affirmed that first registration interrupts prescription by the Privy Council in the case of **Louisien v Jacob**¹⁵ and the Eastern Caribbean Court of Appeal in the case of **Moses Joseph et al v Alicia Francois; St. Torrence Matty et al v Alicia Francois**.¹⁶

[37] In the **Moses Joseph** case, the Chief Justice, after examining the objective of the LRTP and the history and scheme of the LAA and the LRA, and citing **Louisien v Jacob** in relation thereto, concluded:

"[19] The evidence before the learned judge comprised the witness statements of the appellants and other relatives of the appellants filed in 2007. The common theme throughout the witness statements which was

¹⁵ [2009] UKPC 3.

¹⁶ SLUHCV2011/0025; SLUHCV2012/0037.

their evidence in chief was that the appellants lived on the land, some for over 50 years ...

[22] Learned Counsel for the appellants sought to suggest during the hearing of the appeal that the learned judge was wrong as a matter of law to hold that Jacob Fanus' registered title obtained in 1987 interrupted prescription. **He says that the learned judge made no finding as to when prescription started to run and that by 1987 St. Torrance Matty was on the land for in excess of thirty years.** He also relies on Article 1978 of the Civil Code which simply states that "registration does not interrupt prescription". He also contends that the registration process which occurred during the Land Registration Titling Project ("LRTP") does not constitute a judicial demand under Articles 2084 and 2085 of the Civil Code.

[23] With the greatest of respect to counsel for the appellants these arguments, again unsupported by authority, in our view miss the point. They appear to completely overlook the fact that the LRTP was not simply about registration of title but very importantly that all first registrations were predicated upon an adjudication under the LAA. This was so whether it flowed from a contested claim or (as is the case here) an uncontested claim. As the Privy Council said in **Louisen v Jacob** at paragraph 39:

"The LAA and the LRA were intended to operate as two interlocking elements of the process of first registration of title. The LAA was concerned, as its name indicates, with the adjudication of claims to land ownership. If there were competing claims the adjudication officer was to decide them in a quasi-judicial capacity, weighing up the evidence and applying principles of land law. Even if there was no contest between claims, the recording officer still had to subject the claim to scrutiny (section 14 refers to "such investigation as he or she considers necessary") before completing and signing the adjudication record for certification by the adjudication officer. Once it became final the certified record was to be passed to the Registrar (as provided in section 10 of the LRA) for first registration. If the confirmed adjudication record appeared to be in order there would be no reason for the Registrar to seek to go behind it."

[24] It is common ground that Jacob Fanus claimed the Disputed Land by long possession. He alone filed a claim to the land during the Land Adjudication process which was part and parcel of the LRTP. His claim to the land was not disputed by any of the appellants. Neither did any of the appellants seek to submit any claim in relation thereto whether by way of long possession or otherwise. The Disputed Land, following on the Adjudication process was then first registered to Jacob Fanus. He was first registered with provisional title in 1987. His provisional title was only upgraded to absolute title in 2005. During that 18-year period (between provisional title and the title being made absolute), no challenge was made by any of the appellants to Jacob Fanus' title.

[25] 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 provided for a process for hearing disputed claims or claims to the same land by different parties; for the conduct of investigations to ascertain ownership, and finally for appeals from decisions of the adjudicator as to ownership and other rights claimed. It was a holistic scheme implemented for the purpose of bringing certainty to the ownership and identification of lands in Saint Lucia. It provided for a system of land registration (the “Torrens system”) similar to that undertaken and implemented in the 1970s in a number of Commonwealth Caribbean States and United Kingdom Overseas Territories.

[26] In having regard to the entire scheme of the LRTP it is inconceivable that the learned judge should reckon the prescription period for the purpose of defeating the claim of Jacob Fanus as commencing from some period prior to when Jacob Fanus made his claim during the LRTP from which his registered title then flowed. To argue that Jacob Fanus’ title which he himself only obtained by long possession in 1987 pursuant to the adjudication process was by that time extinguished by the appellants having prescribed against him would be nonsensical and an utter disregard for the land adjudication process where registered title could be obtained not only based on documentary title but also by possessory title. Indeed Jacob Fanus’ ‘greater title’ against which the appellants could prescribe only crystallised in 1987 as a result of the adjudication and registration in his name pursuant to the LRTP.

[27] ... Accordingly, the learned judge was right to hold that the relevant period for the purposes of prescription operating as a bar to Jacob Fanus’ claim must be reckoned not from some time prior to the LRTP, but as commencing from the time Jacob Fanus became registered proprietor in 1987. As such, the defence of prescription was bound to fail as this period fell far short of the thirty (30) year period by which the claim could be prescribed.”¹⁷ (my emphasis)

¹⁷ At paragraphs 19-27.

- [38] The **Moses Joseph** case is therefore authority for the principle that first registration interrupts prescription, whether or not at the time of first registration the person claiming prescription had already been in possession of land for in excess of 30 years. For the purpose of defeating a claim, the prescription period cannot be considered as commencing prior to the claim from which registration of title flows. This would make nonsense of the scheme and render grave uncertainty to the system of registration by title, the diametrical opposite of its intended effect.
- [39] It is undisputed that Mr. Phillip made a claim to the Disputed Land during the land adjudication process under the LRTP. After the required investigations had been conducted, the land adjudicator decided that Mr. Phillip was the person entitled to the Disputed Land. Ms. Joseph never challenged Mr. Phillip's claim to the land under the LRTP. Ms. Joseph never submitted her own claim to the land under the LRTP, though she would, according to her evidence, have been in possession of the land for some 48 years at that time. Ms. Joseph further never appealed the land adjudicator's determination that Mr. Phillip was entitled to the Disputed Land to the Land Adjudication Tribunal. Despite her alleged long possession, she did nothing despite ample opportunity to acquire the right to which she now claims she is entitled.
- [40] Only following the land adjudication process which had been decided in Mr. Phillip's favour, was the Disputed Land registered to Mr. Phillip in 1987 pursuant to both the LAA and the LRA. Thus, in order for Ms. Joseph to acquire title by prescription to the Disputed Land, the required 30 years must be calculated commencing from the date of first registration, being 26th September 1987. Notice to quit was given by Computron on 27th March 2014, this claim filed on 26th June 2014 and was served on 30th June 2014. The filing and service of the claim which was done before the lapse of the 30 year period by which prescription could be considered, would have interrupted prescription, Computron's claim to title could only have become prescribed by 30 years on 25th September 2017. Alternatively, Ms. Joseph could have acquired prescriptive title only as of that date. Ms. Joseph's period of

occupation therefore falls short of the 30 years required by law to acquire title to the Disputed Land by prescription.

- [41] Furthermore, on the evidence, I do not find that the quality of Ms. Joseph's possession meets the other requirements, particularly that of being 'unequivocal and as proprietor'. 'Possession' required to make out prescription has been defined in the House of Lords case of **JA Pye (Oxford) Ltd. v Graham**¹⁸ by Lord Browne-Wilkinson:

"There are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control ("factual possession"); [and] (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess"). What is crucial is to understand that, without the requisite intention, in law, there can be no possession."

- [42] In relation to factual possession, Lord Browne-Wilkinson in **Pye**, citing Slade J. in **Powell v McFarlane**¹⁹ had this to say:

"I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question **as an occupying owner might have been expected to deal with it and that no-one else has done so.**"²⁰ (my emphasis)

- [43] As stated by Slade J in **Powell**, 'intention to possess' requires **"an intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title** if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow." (my emphasis)

- [44] Slade J further stated:

"The courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. **If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat**

¹⁸ [2002] UKHL 30; [2003] 1 AC 419 (HL), 435C.

¹⁹ (1978) 38 P&CR 452.

²⁰ at page 436.

him as not having had the requisite *animus possidendi* and consequently as not having dispossessed the owner.”²¹ (my emphasis)

[45] On Mr. Darcheville’s evidence, which has not been contradicted, prior to purchase he was introduced by Mr. Phillip to Ms. Joseph, as intended purchaser it appears. There is no evidence of any objection by Ms. Joseph to that impending sale. Presumably, if Ms. Joseph was in possession of the Disputed Land as proprietor, she would not have allowed her land to be sold without more and certainly not without accounting to her. This is contradictory to Ms. Joseph possessing the land unequivocally as proprietor and with intention to exclude the owner and the world at large.

[46] Also, not challenged is Mr. Darcheville’s evidence there were tenants living on the land. Ms. Joseph has not adduced evidence that these tenants were paying rent to her. On the other hand, according to Mr. Darcheville, upon purchase, the tenants paid rent to him on behalf of Computron. When he was ready to build, he gave all the tenants notice to vacate the land, with which they complied. Ms. Joseph does not appear to have been in possession unequivocally as owner, either from her own perspective or the perception of others. Certainly from the evidence, the tenants did not recognize her as owner; instead they recognized Computron as owner.

[47] According to Mr. Darcheville, he gave Ms. Joseph permission to remain on the Disputed Land until he was ready to commence construction of his commercial building. Ms. Joseph has not challenged this evidence. Where a person’s possession of land is by permission, such person cannot obtain title by prescription.

[48] Most damaging is that on Ms. Alphonse’s own evidence, Mr. Darcheville requested Ms. Joseph to vacate the land and offered to build her another wooden structure. She considered this offer but refused when Mr. Darcheville made it clear she would only have a life interest in the land and refused to paint the structure and build an

²¹ Powell v McFarlane (1978) 38 P&CR 452 Slade J at page 472.

enclosed bathroom. In cross examination, Ms. Alphonse confirmed that these were the reasons Ms. Joseph refused the offer and not because she had an interest in the Disputed Land.

- [49] If Ms. Joseph had possessed the land as owner, she would not have countenanced any of the above acts of ownership by Mr. Darcheville and Mr. Phillip. She would not have allowed other persons to exercise such acts of ownership over her land to her exclusion and detriment. Her possession was not to the exclusion of all others. It was not to the exclusion of the true owner as implicitly by her actions she acknowledged Computron, represented by Mr. Darcheville, as the owner. I find that her occupation of the land was equivocal and not in fact as proprietor.

Has the defendant acquired an overriding interest in the Disputed Land by virtue of either section 28(f) or (g) of the Registered Land Act?

- [50] Section 23 and 28 of the LRA which must be read together provide:

“23. Subject to sections 27 and 28 the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject:

...

(b) Unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register.”

“28. Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register.

...

(f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;

(g) the rights of a person in actual occupation of land or in receipt of the income thereof save where inquiry is made of such person and the rights are not disclosed.”

- [51] Counsel for Ms Joseph submitted that she acquired a proprietary interest in the Disputed Land arising out of a period beyond thirty (30) years of adverse possession. He submits that it is both this proprietary interest, i.e. her prescriptive

rights, together with her actual occupation which would enable her to override the interest of Computron. Counsel submits that in other words, it is the defendant's case that the defendant is entitled to her prescriptive rights under section 28(f) of the LRA.

[52] Sections 28(f) and (g) are distinct provisions. Section 28(f) protects as an overriding interest, specifically, rights acquired or being acquired by prescription. Section 28(g) protects as an overriding interest any proprietary right coupled with actual occupation of land. Counsel has made it clear that the proprietary interest on which Ms. Joseph relies, in relation to section 28(g), is her prescriptive right.

[53] Ms. Joseph's claim to an overriding interest under both sections 28(f) and (g) are hinged on rights acquired by prescription. However, as her claim of having acquired prescriptive rights in the Disputed Land has not been made out, her claim to an overriding interest under both subsections must also fail. There is therefore no need to further consider section 28(f) and (g).

[54] Computron therefore succeeds on its claim and is entitled to possession of the Disputed Land. Ms. Joseph has failed to make out her counterclaim. She has not proven that she has acquired any prescriptive right to the Disputed Land having not been in the possession required for the period of 30 years. She therefore has no overriding interest in the land that can be protected under sections 28(f) of (g) of the **Land Registration Act**.

Conclusion

[55] Based on all the foregoing, I make the following orders:

1. The claimant is the registered proprietor entitled to possession of the land registered in the Land Registry as Block 0849D Parcel Number 284.
2. The defendant shall deliver up vacant possession of the land registered in the Land Registry as Block 0849D Parcel Number 284 within 60 days of the date hereof.

3. The defendant has not acquired title to the land registered in the Land Registry as Block 0849D Parcel Number 284 by prescription and has no overriding interest therein under sections 28(g) or 28(f) of the **Land Registration Act**. The defendant's counterclaim is dismissed.
4. The defendant shall pay the claimant prescribed costs on the claim the sum of \$7,500.00 and on the counterclaim in the sum of \$7,500.00.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar