

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV 2012/0029

IN THE MATTER OF AN APPLICATION BY THOMAS GELLIZEAU FOR A
DECLARATION OF POSSESSORY TITLE OF LAND

AND

APPLICATION FOR DECLARATION OF POSSESSORY TITLE

BETWEEN:

THOMAS GELLIZEAU Applicant

AND

FILIUS ACKIE Respondent

AND

DAVID ACKIE Interested Party

Appearances:

Mr. J. Julian Jack for the Applicant

Ms. Mira Commissiong for the Respondent

Mr. Joseph A. Delves with Ms. Heidi Badenock for the Interested Party

2014: April 1st 2,

JUDGMENT

- [1] **COMBIE MARTYR, J. (Ag.):** On 3rd May 2012, THOMAS GELLIZEAU (the Applicant) filed an Application for a Declaration of Possessory Title by twelve years adverse possession, in respect of a portion of land being Lot No. E 103 measuring 3 acres 3 roods and 35 poles, situate at Belmont, Union Island, pursuant to the Possessory Titles Act Cap 328 Revised Edition of the Laws of Saint Vincent and the Grenadines (the Act).

- [2] The Application was supported by the Affidavits of the Applicant, Stanford Coy and Evrard Gellizeau filed on the 3rd May 2012 and of Kate Danielson Millar filed on the 7th August 2012. Accompanying and other supporting documents were filed in compliance with the Act and relevant Practice Directions.
- [3] On the 30th May 2012, pursuant to Section 9 of the Act, an appearance was entered on behalf of FILIUS ACKIE (the Respondent) opposing the Application and a Claim with supporting documents were filed on the 16th May 2013.
- [4] On the 21st May 2012 pursuant to Section 9 of the Act, an appearance was entered on behalf of DAVID ACKIE opposing the Application. No claim was filed and the appearance was subsequently withdrawn on the 19th December 2012.
- [5] On the 13th September 2013, DAVID ACKIE (the Interested Party) filed an affidavit and supporting documents pursuant to Section 15 of the Act, in which he attested to information in relation to the nature of the possession of the land claimed by the Applicant.
- [6] Affidavits of Dorita Ackie and Fitzroy Ackie in support of the Interested Party were filed on the 27th August 2013.

THE AFFIDAVIT EVIDENCE FOR THE APPLICANT

- [7] In his Affidavit in support, the Applicant stated that he has been in possession of the land for over 35 years, being Lot No. E 103 measuring 3 acres 3 roods and 35 poles, situate at Belmont Union Island, more particularly described in survey plan Gr 1223 drawn by Keith Francis Licensed Land Surveyor and lodged at the Lands and Surveys Department on the 13th September 2011 (subject parcel).
- [8] The Applicant stated that the subject parcel was originally owned by John Danielson (John) and his wife Jayne Ruth Danielson (Jayne) but purchased in the name of Jayne only. John and Jayne in 1971 established Grenadines Development Company Limited (GDCL) for the business of land development-constructing houses on Union Island for sale to foreign investors. The Applicant was employed by the Danielsons as a construction worker and over the years became well acquainted with the Danielsons and their two children Katharine (Kate) and Elizabeth.
- [9] In the 1970's Jayne left Union Island with her children for the United Kingdom and died sometime thereafter, but the Applicant kept contact with the daughter Kate. John got married a second time to Helen Danielson (Helen) and he too left Union Island sometime about 1975 for United States and never returned, leaving Helen to carry on the affairs of the land purchase and development and construction business of GDCL and the other lands.

- [10] According to the Applicant Helen also left Union Island for the United States about the year **1977**, leaving the Applicant in charge of collecting monies owing to John's business and to look after the affairs relating to lands purchased by John and Jayne. Thereafter Helen visited Union Island but showed no interest in the land.
- [11] The Applicant asserts that about **1991**, Kate and Elizabeth on a visit to the island informed him of the death of their father and that the Applicant should look after the affairs of the land belonging to her late mother, including the subject parcel.
- [12] According to the Applicant he has been enjoying uninterrupted, exclusive and undisturbed possession of the said lands for **35 years**, paying property taxes for the subject *parcel and has been looking after all the lands owned by Jayne to date*.
- [13] Affidavits of Stanford Coy and Evrard Gellizeau were not relied on at the trial.
- [14] Kate in her Affidavit attested that she is well acquainted with the Applicant having known him from her early childhood as being employed with her parents who operated a construction business on Union Island from the 1960s to the 1970's. During that time her parents purchased lands and the subject parcel was one such parcel owned by her mother.
- [15] Kate asserted that following the departure of the Danielsons from Union Island from about 1977 and 1991 the Applicant was put in charge to take care of the family lands including the subject parcel.
- [16] Kate further asserted that on her visit to the island in the 1990s, she was informed by the Applicant that he had given permission to the Interested Party to live on a small portion of the subject parcel upon which the Interested Party constructed a wall structure. She stated that she knew the Applicant to be in effective undisturbed possession of the subject parcel since early 1977, paying property taxes and knows of no one else claiming possession of the subject parcel.

THE CLAIM FOR THE RESPONDENT

- [17] The Respondent in his claim filed on the 16th May 2013, confirmed that the subject parcel was in fact Lot No. E103 originally shown on a Plan Gr2 and now Survey Plan No. Gr.1223.
- [18] The Respondent described a detailed history of the business of land development which he and John had embarked upon, comprising the purchase of 19 portions of land from locals in Union Island in Jayne's name only on behalf

of John and herself, for the purpose of construction by the Respondent of houses designed by John for sale to foreign investors. The Respondent posited that some of the lands purchased were transferred to GDCL.

- [19] The Respondent asserted that the business arrangement marked the beginning of a close friendship between John and himself and he became well acquainted with the Danielson family. Further, that the Applicant was employed by him and worked for him during the construction of the houses and roads for the business.
- [20] The Respondent also posits that of the 19 parcels of land purchased, 11 parcels were transferred to the GDCL and the 8 parcels including the subject parcel remained in Jayne's name held on trust by Jayne for GDCL. The Respondent conceded that the subject parcel was originally purchased by Jayne from John De Roche, was not transferred to GDCL.
- [21] The Respondent further stated that Jayne came to Union Island in 1970 and on two visits thereafter. After her final visit in 1973 she left her two girls Kate and Elizabeth with their father for three months during which time the Respondent and his family took care of them. Jayne died in 1974 and before John left in 1975, he resigned from the company and left the Respondent in charge of the company and the land business. Helen left Union Island in 1976-1977 and never returned, leaving the Respondent in charge of the business. The Respondent did not provide any evidence in support of these aforementioned assertions in respect to the GDCL.
- [22] The Respondent constructed a house for the foreign investor Dr. William McCarty on the subject parcel about 1976, who put him in charge of the rental of his property, the payment of the house insurance and construction of a road leading to the house with funds provided by Dr. McCarty. Over the years the house remained unoccupied and was frequently broken into. The Respondent at the request of the Applicant together with the police and neighbours assisted in putting out a fire which partially destroyed the house about 1979. Thereafter Dr. McCarty never returned to Union Island and from about 1979, the Respondent went into adverse possession of the subject parcel.
- [23] Sometime in 1983 the Respondent left Union Island for three years to work on a construction project in Trinidad and according to him he entrusted the Applicant acting on his behalf with some of GDCL'S affairs, returning every three months to check on the business until he finally returned home in 1986.
- [24] The Respondent stated in his claim that the partially burnt house remained unoccupied until the Interested Party his nephew, returned from Trinidad in 1986, sought and obtained permission from the Respondent to move into the house on the subject parcel rent free, but the Respondent continued to exercise rights of ownership, by cultivating the land and tying animals thereon. The

Interested Party with the permission of the Respondent, repaired the house, maintained it and lived there with his wife and children until the Interested Party migrated to Canada about the year 2000 and his wife and children followed a few years thereafter. The Interested Party's house on the subject parcel remained unoccupied for sometime.

- [25] The Respondent asserted and it is not disputed, that he exercised control over and was responsible for all the business of GDCL on Union Island in conjunction with the foreign investors. The Respondent in his claim described the operations of the GDCL and his role as Managing Director, which included rental of the various houses built. The Respondent detailed various court proceedings involving GDCL and lands other than the subject parcel, disposition of the assets of GDCL, reorganization of GDCL and its administration.

THE AFFIDAVIT EVIDENCE FOR THE INTERESTED PARTY

- [26] Mrs. Dorita Ackie in her Affidavit filed on the 27th August 2013 stated that she has lived her entire life in Union Island. Her son the Interested Party on his return from Trinidad about 1987, first rented and then looked for a place of his own and he built his house on the subject parcel.
- [27] Mrs Ackie stated that she knows the Applicant and the Respondent her brother in law, worked for the Danielsons as a watchman and a contractor building houses respectively. Further, that the area on the subject parcel where the Interested Party built was originally a wooden house owned by a foreigner Dr. McCarty and which was completely destroyed by fire.
- [28] Mrs Ackie further asserted that with the permission of the Applicant, a family friend, the Interested Party built a small concrete structure on the subject parcel which he later expanded. She described the land as a 'wilderness' before the Interested Party built. He lived with his wife Marlene and his four children and his wife's brother Bobo. Sometime thereafter the Interested Party left Union Island leaving his wife and children and Bobo. After Bobo died by drowning, Marlene and the children eventually left for Trinidad and the Interested Party left the house in the care of his cousin Seon who went missing a few years later. This was followed by acts of vandalism of the Interested Party's house.
- [29] The evidence for the Interested Party is that he had a fowl farm on the land, reared animals, cut the bushes, planted coconut and plum trees which have since been destroyed. Before the house was vandalized, the Interested Party on visits to Union Island, stayed in his house. Mrs Ackie described the Respondent as a dangerous person, a liar and a cheat and that he never lived on the subject parcel and at that time the Respondent lived in Campbell.

- [30] Mrs Ackie deposed that when the Interested Party commenced his occupation on the subject parcel, the Respondent was still in Trinidad. She further deposed that on the Respondent's return and on meeting the Interested Party in occupation of the subject parcel, the Respondent demanded payment from the Interested Party for the land claiming it to be his. The Interested Party apparently initially paid the Respondent some money but when informed by the Applicant that the Respondent was not the owner, no more money was paid to the Respondent.
- [31] Mrs Ackie stated further that the Respondent's son Cleveland never occupied or was in possession of any land nor did he cultivate or otherwise control any land in occupation by the Interested Party. In fact according to Mrs Ackie, all the Respondent's children live overseas and none of them ever occupied any part of the subject parcel.
- [32] Fitzroy Ackie the Respondent's brother reiterated that it was the Applicant who gave his son the Interested Party, permission to build on the subject parcel. He stated that he took over the house built by the Interested Party after the Interested Party left for Canada and continued to build the house with funds sent by the Interested Party, for that purpose. He stated that he was also in charge of the repairs to the house. He further stated that the Interested Party occupies about one acre of the subject parcel, has a fowl pen and rears sheep and goats and that the Respondent was not in occupation of the land.
- [33] In his Affidavit filed 13th September 2013, the Interested Party stated that he presently resides in Quebec Canada and is in possession of about half an acre of the subject parcel which he referred to as 'my land'. He stated that the subject parcel formerly owned by Jayne is now owned by Kate and her sister by virtue of a Grant of Letters of Administration of the estate of their mother in 1994.
- [34] The Interested Party detailed a history of the subject parcel as evidenced by various exhibits from purchase by Jayne by Deed registered as 796/1970, its claim by the Respondent by virtue of twelve years adverse possession and a transfer of same by Deed of Gift registered as 1158/1998 to his son Cleveland Ackie and then to a company Filmea Investments Limited (FIL) by Deed of Gift registered as 93/99.
- [35] The Interested Party stated that both the Applicant and the Respondent worked for the Danielsons and sometime in 1980's the Applicant told him to go onto the subject parcel and acting on representations from the Applicant that he could live on the land with his family as his home in perpetuity, the Interested Party built his home, a concrete structure.
- [36] He further stated that the site was originally the home of a foreigner Mc Carty who had a wooden house erected thereon which was destroyed by fire and later

abandoned. He described that at the time of construction there was no motorable road and building materials had to be physically carried to the site.

- [37] The Interested Party detailed his possession of that part of the land, from living there with his wife and children and his wife's brother Bobo. After he left for Canada, his wife for Trinidad, his children joined him in Canada, Bobo died and he put his cousin Seon in charge of his house. Seon later went missing and after a period of inoccupation, the house was vandalized and currently his uncle Ruben Badenock looks after the premises for him.
- [38] The Interested Party asserted that whilst his family lived there he reared goats, sheep and had fowl farms and that that from the time he built his house, no one else occupied 'his land'. He denies that his uncle the Respondent or any member of the Respondent's family was in possession or exerted any rights of ownership over his part or any part of the subject parcel.

ORAL TESTIMONY

- [39] Affidavits of the parties and their witnesses (except the Affidavits of Stanford Coy and Evrard Gellizeau) and the Claim of the Respondent were admitted as evidence in chief before this Court.

THE APPLICANT

- [40] The Applicant Thomas Gellizeau stated in evidence that the subject parcel was originally owned by Jayne and has been in his possession from **1976**. The Applicant reiterated the contents of his Affidavit and stated that he paid the arrears of property taxes after receiving a Notice from the bailiff of the non payment. He further stated that he planted a little kitchen garden on the land. He added that he sought the assistance of the Respondent to put out the fire which destroyed the wooden part of the house owned by Dr. McCarty on the subject parcel.
- [41] The Applicant maintained that he put the Interested Party on the subject parcel and gave him permission to build his house on the plot with the wall remaining after the fire. After the Interested Party and his family left Union Island for Canada, the Applicant asserts that he took over possession and has now applied for proper title to the subject parcel.
- [42] On cross examination, the evidence of the Applicant relevant and pertinent to his case for a declaration of title, relates to the Applicant stating that on the return of Helen to Union Island in **1977**, she told the Applicant to take over all 79 acres of land some of which was vested in GDCL and some owned by Jayne, including the subject parcel. The Applicant stayed on and continued to be in

charge of the lands and to ensure that there was no squatting. He stated that no more rent was collected after Helen left Union Island in 1977.

- [43] The Applicant admitted that he lived in Union Island and that he knows the Respondent very well as he was first employed by the Respondent as a labourer when he was himself employed by John as a general foreman to build the living quarters of John. Thereafter the Applicant continued to build other houses for John and a company in the United States.
- [44] The Applicant further stated that his call to the Respondent for help in respect to the fire which destroyed the property of McCarty was because the Respondent was a member of GDCL the only one close by and with whom he had a good relationship.
- [45] The Applicant further stated that both he and the Respondent went to Trinidad to work. The Respondent was there for a number of years and his children attended school in Trinidad. The Applicant asserted that the Respondent was in Trinidad when the Interested Party came to live on the subject parcel with the Applicant's permission.
- [46] Of significance to his case for a declaration of title, is that the Applicant was aware of the Deed in respect of the subject parcel by which Jayne bought and is the same land upon which the Interested Party built his house about 1987, years after the fire which destroyed the wooden part of the house owned by Dr. McCarty, leaving the stone wall foundation. The Applicant admitted that at the time that the Interested Party went onto the subject parcel it was a wilderness. The Applicant agreed that it would have been difficult for John to exercise control over all 79 acres of land especially as lands were purchased over various parts of Union Island.
- [47] The Applicant conceded that the Interested Party lived with his family and Bobo for over 13 years with the Applicant's permission. He conceded further that the Interested Party had animals, fowl pen and fowls on that portion of the subject parcel that the Interested Party occupied, before he moved to Canada about the year 2000. Thereafter his wife and children remained for a number of years, then Bobo, the Interested Party's cousin Seon and now Interested Party's uncle Ruben Badenock, all with the permission of the Interested Party. The Interested Party's house built on the subject parcel he conceded was always in the control of the Interested Party's family on the Interested Party's behalf.
- [48] With respect to the payment of money by the Interested Party to the Respondent for the purchase of the land upon which the house was built, the Applicant asserted that he told the Interested Party sometime in 1990 not to pay any more money to the Respondent as the Respondent was not the owner. He concluded his evidence by stating that the Respondent was not in possession and that he had nothing on the subject parcel. Furthermore the land was never

transferred to GDCL and therefore not under the control of the Respondent after it was purchased by Jayne.

- [49] Kate Danielson Millar stated that she lived on Union Island from 1969-1970. She asserted that she knew the subject parcel as one of her mother's plots of land which was included in the Letters of Administration of her mother's estate granted to her sister and herself in 1994. She stated that as a young girl she knew the Applicant working for her father and spending time at their house. She was about eight years old when she left Union Island for England with her mother and sister about 1970 and that she returned to Union Island at least four times.
- [50] Kate stated that she was acquainted with the Applicant and the Respondent who also worked for her father as a contractor in the business of building houses on Union island for foreigners. On her return to Union island she would discuss the land business with the Applicant and the various pieces that he was in charge of, including the subject parcel. She was aware that the house built for Dr. McCarty had burnt down. She was aware that there were lands owned by GDCL but that the subject parcel was one of the plots in her mother's name. She did not know what happened to the business after they left Union Island.
- [51] On cross examination Kate stated that she did not know the structure of GDCL and the persons involved in the operations of GDCL business. After her father's disappearance from Union Island the Applicant was put in charge of the lands but she was not sure who put him in charge. She reiterated that the Applicant told her that he put the Interested Party on the subject parcel.
- [52] Kate admitted that she was not granted an Aliens License to hold the land comprising her mother's estate following the 1994 Grant of Letters of Administration to them. Further, that her mother had the first and only paper title to the subject parcel by Deed registered as 796/1970. Kate posited that she was familiar with the area where the subject parcel was located, but admitted that she never saw the Interested Party's house constructed on the subject parcel. She stated that she did not give the Interested Party permission to build on the subject parcel and she recalled seeing both the Respondent and the Applicant at their home. Kate denied that the Respondent ever helped to take care of her and her sister.

THE RESPONDENT

- [53] The Respondent stated in evidence that he knew John as a friend and a partner. They were engaged in the construction of houses, land purchase and sale business together and that the two of them owned GDCL. He was responsible for the purchase of land and sale to foreigners and he signed all agreements for sale and Deeds.

- [54] The Respondent reiterated the contents of his claim in terms of the construction of the Mc. Carty house on the subject parcel owned by Jayne. He together with the Applicant who was employed by him constructed the road to the Mc.Carty house, as was evidenced by the pages of the wage book for that period. He recounted his responsibility to collect rent on behalf of Dr.Mc Carty, his relationship with John, both his wives and children whilst they lived in Union Island, until they left in the 1970's.
- [55] He stated that he spent three years in Trinidad 1983-1986, came back every three months to check on the properties and was adamant that on his return from Trinidad in 1986, he gave permission to his nephew the Interested Party to live in the house previously owned by Dr. McCarty on the subject parcel and gave him some building materials to rebuild the house of Dr. McCarty which was partially destroyed by fire. He admitted that he did nothing to the house after the fire.
- [56] On cross examination the Respondent stated that after John left in 1974, the Respondent continued operating the business with Helen and after Helen left the Applicant continued to work for him in the business. He employed all the workers and asserts that he is still operating the business of GDCL selling and purchasing land. According to the Respondent he is currently the sole shareholder and Managing Director of GDCL as well as the company FML.
- [57] The Respondent admitted that some of his children spent time in Trinidad and corrected his earlier statement saying that he went to Trinidad in 1983 and not 1981 and could not recall being in Trinidad in 1990. He admitted that he did not state in his claim that he gave permission to the Interested Party to go onto the subject parcel and is saying that now for the first time in Court. He further stated that the Interested Party had asked him to sell to him the lot on which he built his house but he did not agree. He again admitted that he was saying so for the first time in Court.
- [58] The Respondent admitted that he had not seen the house that the Interested Party built and at a distance some 2- 3 years ago, but that his eyesight is failing. He had not been on the land for a long time, does not know what is happening on the land and will not doubt that there is no motorable road to the house. Despite the fact that the lands owned by GDCL and Jayne, comprise 79 acres in different parts of Union Island, the Respondent maintained that he was in control of the subject parcel.
- [59] The Respondent agreed that the Interested Party could have occupied the house in 1987, but stated that he was the owner of the subject parcel having purchased it from John Roach in the 1970's. The Respondent then corrected himself to state that GDLC or FIL is the owner and admitted that in the Deed he would have said that he and not GDCL was in possession of the subject parcel.

- [60] The Respondent admitted that the Interested Party may have lived on the subject parcel for thirteen years before he left for Canada, leaving his family on the land. He stated that he paid people to look after the land for him and that it is possible that Badenock his nephew in law is looking after the house for the Interested Party.
- [61] The Respondent further admitted to living in Saint Vincent and the subject parcel is in Union Island. He is paying the taxes for the land. He further stated that he never went to the house and does not know that the Interested Party built a wall house and not a wooden house on the subject parcel. The Respondent concluded his evidence by stating that GDCL is his company and that the subject parcel was conveyed by Deed of Gift by him to his children who transferred it to FIL.

THE INTERESTED PARTY

- [62] The Interested Party stated before he built his house on the subject parcel, the land was a forest covered in bush and that it is not true that he received any building materials doors or windows from the Respondent. He returned from Trinidad to Union Island in 1986 and commenced construction of his house in 1987. The Interested Party asserted that at that time the Respondent was in Trinidad and did not return until 1990. No one lived on the subject parcel at the time. After he built he moved into his home with his wife, children and Bobo.
- [63] He stated that after he left for Canada in 2000, his family continued to live in the house until they left and other members of his family with his permission occupied and took care of his house on his behalf.
- [64] He further stated that when his uncle the Respondent returned from Trinidad about 1990, he told him the he owned the land and demanded payment of \$50,000.00 for the land that he the Interested Party occupied. He started to pay his uncle but stopped paying after being told by the Applicant that the Respondent did not own the subject parcel.
- [65] On cross examination the Interested Party stated that he knows the Applicant as he used to visit his parents house. It was the Applicant who showed him the burnt out structure and he chose to build there. He admitted that he paid the Respondent \$10,000.00 and paid no more since and that his parents advised him not to ask for a refund and just leave his uncle alone.
- [66] He further stated that he never paid rent to anyone for the land. The house built on the land is his house, not the Applicant's or the Respondent's. He further stated that there is a lot of land but the land that he occupies is about one acre. He admitted the items in the house were stolen sometime ago and that he never replaced them. He asserted that when he left Trinidad in 1987, the

Respondent's son was in Trinidad and it is not true that the Respondent and his son left Trinidad in 1985.

- [67] Dorita Ackie confirmed that the Interested Party built a wall house on the subject parcel and on cross examination she stated that she knew both the Applicant and the Respondent and both worked for the Danielsons. She was uncertain whether she asked the Interested Party not to ask the Respondent for a refund of the \$10,000.00, but was certain that the Interested Party came onto the subject parcel in 1987.
- [68] Fitzroy Ackie stated that both he and the Respondent worked for John and that the Respondent worked as a contractor. On cross-examination he stated that the Respondent was not on Union Island when the Interested Party built, as both he and the Respondent were in Trinidad in the 1980's, but was unsure when the Respondent returned from Trinidad. He stated that he worked with John for a long time. He remembers a company GDCL but is not sure how GDCL was organized.
- [69] He further stated that he helped the Interested Party build extensions on his house. He further stated that the Interested Party paid the Respondent some money for the land and in conclusion Fitzroy Ackie stated that he was sure that when he went to look at the land with the Interested Party the Respondent was in Trinidad.

WRITTEN SUBMISSIONS FOR THE PARTIES

- [70] Counsel for the parties in their written submissions summarized each party's case as set out in their respective affidavits and oral testimony.

THE APPLICANT

- [71] Counsel for the Applicant submitted that Jayne was the paper title owner of the subject title by virtue of Deed No. 796/1970. The Danielsons operated a property development company GDCL and after the Danielsons left Union Island in 1977 never to return, the Applicant who had worked for the Danielsons was left to look after the affairs of the properties of the Danielson family including the subject parcel and this assertion was supported by the testimony of Kate.
- [72] Counsel asserted that the Applicant took exclusive unmolested possession of the subject parcel about 1977 and claimed the said parcel as of right and as owner. He did so by paying the property taxes about the 1980's. Counsel submitted further that the Applicant also did so when he gave permission to the Interested Party to build his home and occupy a portion of the subject parcel about 1986. Permission to the interested Party was supported by Kate's

testimony but more specifically by the testimony of the Interested Party, Dorita and Fitzroy Ackie.

- [73] The Respondent in contrast according to Counsel substantiated his possession of the subject parcel by stating only that he was a partner in the business with John and involved in the operations of GDCL and that he gave permission to the Interested Party to build and occupy the subject parcel. The latter statement was refuted by all the other witness testimony at the trial.
- [74] Counsel referred to Section 17, certain paragraphs of the schedule to and of the Limitation Act Cap 129 Revised Edition of the Laws of Saint Vincent and the Grenadines and the case of ***Grace Munroe –Okoya and Douglas Browne et al SVGHCV 508/2003*** for the meaning of Adverse Possession as set out in the ***J A Pye (Oxford) Ltd v Graham*** and in the Act.
- [75] Counsel also relied on the definition of “Factual Possession” as per Lord Mcnaughten in the ***Privy Council case of Perry v Clissold (1907) AC 73*** and ‘Animus Possidendi’ as defined by Justice Slade in ***Powell v Mc Farlane (1977) P & CR 452*** and the case of ***Tootsie Persaud*** cited in ***The Incorporated Trustees of the Seventh Day Adventist Church v Delores Jordan No. 48 of 2009***. Counsel concluded that the Respondent did not provide any evidence that he was in factual possession of the subject parcel and that he intended to use the subject parcel in any way as an owner would. In contrast says Counsel, the Applicant satisfied all the elements of Adverse Possession -factual possession and the requisite intent.

THE RESPONDENT

- [76] Counsel for the Respondent in her submissions sought to highlight a number of inconsistencies in the evidence of the Applicant so as to establish the nature of the possession of the Applicant and the Respondent, in respect to the subject parcel.
- [77] Counsel submitted that it has not been disputed that the subject parcel was bought by GDCL and in the name of Jayne for the benefit of the business being run on Union Island by John which involved construction of homes for foreign investors.
- [78] Counsel further submitted that the Applicant acknowledges that all the lands on Union Island in Jayne’s name were held on trust for GDCL and as such the person left in control of GDCL in this case the Respondent, would be the one most likely to have taken control of the subject parcel, he being the only one having knowledge of the operations of GDCL.

- [79] The Court notes that contrary to Counsel's submission, it is the evidence of the Applicant and the Interested Party which is supported by Deed 796/1970, that the subject parcel was bought by Jayne and not by GDCL or transferred to GDCL. Further, that the Applicant did not acknowledge that all the lands on Union Island in Jayne's name and certainly not the subject parcel were held on trust for GDCL.
- [80] Counsel did not consider as relevant the inconsistency of the evidence as it related to the Respondent and Fitzroy Ackie in Trinidad, but what is relevant says Counsel is that the Respondent's testimony was not contradicted when he said whilst he was in Trinidad he returned every three months to check on the business.
- [81] Further the fact that the Interested Party paid the Respondent \$10,000.00 deposit on the land purchase and the decision in the claim 460/1998 established that the Applicant could not have acted as agent for the land in Jayne's name which was not transferred to GDCL. Accordingly posits Counsel, it is more likely that the Applicant was not the person who gave permission to the Interested Party to go on the subject parcel. The Court notes however that the Judgment in claim 460/1998 dealt with specific parcels of land other than the subject parcel.
- [82] Counsel for the Respondent further submitted that the Applicant did not disclose in his Affidavit what he is now stating in his testimony in Court, a fact relevant to his claim for a declaration in his favour, that he planted a kitchen garden on the subject parcel or that he put the Interested Party into occupation of part of the subject parcel or that the Applicant was looking after the lands comprising Jayne's estate.
- [83] Of significance according to Counsel is the admission by the Applicant that at the time the Interested Party went onto the subject parcel it was a wilderness, clear indication that the Applicant himself had not been on the land for sometime, prior to giving the alleged permission to the Interested Party. Thereafter the Interested Party left persons in continuous occupation of his property. For Counsel this is a clear admission by the Applicant that he is no longer in control of that portion of the subject parcel.
- [84] Counsel for the Respondent asserted that the Applicant's grounds for his application for title by 12 years adverse possession are that (1) Kate asked the Applicant to take care of the lands in Union Island in her deceased mother's name and that (2) he paid the taxes for the land. According to Counsel, save for the alleged permission given to the Interested Party to occupy a portion of the subject parcel there is no evidence that the Applicant occupied or adversely possessed any other part of the subject parcel which remained unoccupied.

- [85] Counsel further asserted that the only evidence of the Interested Party which supports the Applicant is that the Applicant put him in occupation of a portion of the subject parcel. Other than that all the other evidence of the Interested Party establishes that at some point he (the Interested Party) began to treat that portion of the land as his own and as owner in possession of a portion of the subject parcel, in full control thereof to date, evidence which has not been refuted by either the Respondent or the Applicant.
- [86] Kate's evidence in Counsel's view did not assist the Applicant and the very Grant of Letters Administration to Kate and her sister in 1994 confirms that Kate never intended the Applicant to claim the land in his own right as owner, but as caretaker of their mother's land for the sisters and this is a clear indication that Kate believed that she and her sister were entitled through their mother, the paper title owner.
- [87] In conclusion Counsel conceded that the Respondent's failure to assert his authority over the subject parcel which he admitted on cross examination, defeats his claim for declaration of title of the subject parcel and as such the Respondent has not satisfied the requirements for adverse possession. and accordingly his claim must fail.

THE INTERESTED PARTY

- [88] Counsel for the Interested Party submitted that it is not in dispute that the Interested Party has been in possession since 1987 and has remained in possession and control of about one acre of the subject parcel for a period of 27 years. Having been put into possession by the Applicant the Interested Party constructed a wall house in which he lived for 13 years with his wife and family before he left Union Island and migrated to Canada.
- [89] After his wife and children left Union Island, the Interested Party put members of his family and currently Pastor Badenock to look after and to take care of his property, thereby establishing that the Interested Party has been in actual physical possession of a portion of the subject parcel.
- [90] According to Counsel, the claim of the Respondent that he put the Interested Party into possession and gave him doors and windows to renovate the McCarty house was clearly shown in cross examination to be either a lie or that he was mistaken. Furthermore, the Respondent never demanded of the Interested Party the balance of the purchase price of the portion of the subject parcel that he occupied neither did the Respondent do anything to evict the Interested Party from the land. Counsel cited the case of *Pye v Graham* as authority for saying that the willingness to pay the Respondent is not inconsistent with an absence of an intention to possess. However the Court notes that this would be relevant if the Interested Party had filed a claim.

- [91] Counsel further submitted that the Respondent clearly does not know what is happening on the subject parcel as he admitted that he pays persons to go and check on the subject parcel and he had no evidence to support this. Further that he was the current owner of the subject parcel because he bought it and paid for it then gave it to GDCL. He later stated that he bought the subject parcel in his name and transferred to Jayne, a clear contradiction in light of the Deed 796/1970 and the Grant of Letters of Administration of her estate which vested paper title in the Administrators of her estate/alien heirs, until forfeited by the crown for want of an Aliens License. Counsel cited the Privy Council case from Saint Vincent & the Grenadines of **Lesline Ho Young et al v Bess et al** -No. 17 of 1993 and the Antigua Court of Appeal case ANUHCVP 2010/0001 of **Colin Turner et al v Terrance Sansom**, as authority for saying so.
- [92] Counsel asserted that the Respondent did not adduce any or sufficient evidence of actual possession and control of the subject parcel and was not the owner by Deed or by possession. Counsel concedes that the possession of the Interested Party is not adverse to that of the Applicant, as it is admitted by the Interested Party that it is the Applicant who gave him permission to occupy the portion of the subject parcel.
- [93] Counsel cited the High Court case SVGHCV 37/2010 of **Ulric Charles et al v Kristy Antoine et al** as authority for saying that it is open to the Court to find that the Interested Party has been in occupation of a smaller area of land that is part of a larger area.
- [94] In this regard, I do not agree with learned Counsel, that the case of **Charles v Antoine** is authority for that proposition, in respect of an Interested Party who has not applied or made a claim for Possessory Title by Adverse Possession under the Act.

ANALYSIS OF THE FACTS AND EVIDENCE AND APPLICATION OF THE LAW ON ADVERSE POSSESSION

- [95] *Section 2 of the Act (Interpretation) provides that in this Act:*
“**adverse possession**” means factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Saint Vincent and the Grenadines for a continuous period of twelve years or more accompanied by the requisite intention to possess the said land as owner thereof.

Section 3 (1) of the Act provides that:

A person who claims to be in adverse possession of a piece or parcel of land in Saint Vincent and the Grenadines shall be entitled to make an application to the Court for a declaration of possessory title to the said land.

Section 7 (2) of the Act provides that:

A person who claims to have an interest in a piece or parcel of land to which an application relates may within one month from the date of the last publication of the notice under subsection (1) enter an appearance at the Registry.

Section 9 (1) of the Act provides that:

A person who enters an appearance pursuant to Section 7 shall within 21 days from the date of the appearance, file in the Registry a written claim setting out the name of the person who has title to the piece or parcel of land and a statement of the facts on which the claim is founded.

Section 15 (1) of the Act provides that:

A person who has information in relation to the nature of possession of the piece or parcel of land by the Applicant, may file an affidavit with the Registrar whether or not he has an interest in the said piece or parcel of land or whether or not he intends to file an opposing claim with the Registrar.

[96] *The Question for determination by the Court is whether by the facts and evidence adduced, the Court can find that the Applicant or the Respondent has been in adverse possession of the subject parcel and whether either of them did in fact exercise acts of ownership with respect to the subject parcel.*

[97] In order to so determine it is necessary to review the evidence, identify and highlight those aspects which relate to the issues raised by Counsel in their written submissions.

1. *Whether it was the Applicant or the Respondent who gave permission to the Intended Party to go into occupation of a portion of the subject parcel measuring about one acre and the consequence thereof.*
2. *Whether the Applicant or the Respondent had factual possession of the subject parcel for a continuous period of 12 years or more.*
3. *Whether either the Applicant or the Respondent displayed the requisite intention to possess the subject parcel as owner in his own right.*
4. *Whether the Applicant or the Respondent has been in exclusive and uninterrupted possession of the subject parcel for a period of twelve years or more preceding the Application for Possessory Title made in the High Court by the Applicant and the Claim filed by the Respondent therein.*

[98] The issue of what constitutes '**possession**' has been defined by Slade J in the case of *Powell v McFarlane* (1977) 38 P & CR 452 and adopted by Lord Browne-Wilkinson in the House of Lords case of **J A PYE (OXFORD) LTD & ORS v GRAHAM AND ANOTHER [2002] UKHL 30** and followed in the Court of Appeal case BVIHCVAP2009/0022 **Winston Molyneaux v Hugh Smith et al** as follows:

“(1) *In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land as being the person with the prime facie right to possession. The law will thus without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.*

(2) *If the law is to attribute possession of land to a person who can establish no paper possession, he must be shown to have both factual possession and the requisite intention to possess (animus possidendi)”*

(3) *Factual possession signifies an appropriate degree of physical control. It must be single and exclusive possession....but broadly I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land on question as an occupying owner might have been expected to deal with it that no one else has done so”*

[99] On the matter of what constitutes ‘**Intention to possess**’ Lord Browne-Wilkinson adopted the requirement of Slade J as follows: as requiring 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*”.

[100] In the Court of Appeal case from Saint Vincent and the Grenadines- Civil Appeal No. 17 of 2010: **MICHAEL FINLAY (duly appointed Attorney on record for Muriel Findlay Small) v ELROY ARTHUR**, the Court stated that Section 2 of the Act requires a ‘*coincidence of factual possession and intention to possess*’.

[101] The evidence before the Court established that Jayne was the paper title owner of the subject parcel from 1970 and that the subject parcel was not transferred to GDCL nor was there any evidence in writing to substantiate the evidence of the Respondent that Jayne held the subject parcel on trust for GDCL and for the business of GDCL.

[102] The only evidence in respect to GDCL was adduced by the Respondent, he being the only one at this time allegedly with knowledge of GDCL operations. However there was evidence before the Court substantiating that the Respondent was employed as a contractor, but the Court noted that the Respondent provided no evidence of his sole ownership of GDCL, John’s resignation, his business partnership with John or purchase of lands by him for GDCL or that he was the Managing Director. Further there was evidence that John acting by virtue of a Power of Attorney by Jayne to him conveyed lands purchased by Jayne to GDCL.

- [103] The evidence before the Court is that both the Applicant and the Respondent were 'put in charge of the business' by Helen before she left Union Island in 1976-1977 and never returned. This Court is of the view that the evidence before it supports the Respondent's contention that after the Danielsons left Union Island the Respondent took over the operations of the business of GDCL and was in charge. Nevertheless the Respondent by his own admission of ongoing litigation to determine who was in actual control of GDCL clearly contradicts his evidence that he is still in charge of the operations of the business of GDCL and carrying on the business of sale of GDCL lands.
- [104] On the other hand the evidence does not support the Respondent that the business operations included the parcels of land owned by Jayne or held on trust by Jayne for GDCL and in particular, the subject parcel, as if that were so, the Respondent could not in his personal capacity in 1998 (by merely stating in the Deed by virtue of his continuous and undisturbed possession for twelve years or more ...) have conveyed the subject parcel by way of Deed of Gift No. 1158/1998 to his son Cleveland Ackie.
- [105] Furthermore the Grant of Letters of Administration of the estate of Jayne which comprised the subject parcel was instructive in informing the Court that up until 1994, not only did Kate not give up her rights in her mother's lands and in particular the subject parcel, but also that Kate could not have given up her rights if any to possession to the Applicant from 1977, as stated by the Applicant in his evidence before the Court.
- [106] In fact the Applicant's evidence is that about 1991, Kate and Elizabeth on a visit to the island appointed him to 'look after the affairs of the lands belonging to her late mother' which included the subject parcel. As such, the Applicant could not have 'taken possession of the land and enjoying uninterrupted, exclusive and undisturbed possession of the said land for 35 years" as he stated in evidence and certainly not do so before the 1994 Grant. The Applicant stated that he planted a 'little kitchen garden' on the subject parcel which according to him was a 'wilderness'.
- [107] The Respondent on the other hand posits that after the fire which destroyed the Mc.Carty house in 1979, Dr. Mc.Carty never returned to Union Island and from 1979 the Respondent went into adverse possession of the subject parcel. The Respondent further stated that he exercised rights of ownership, by cultivating the land and tying animals thereon.
- [108] The Courts have treated cultivation of land as a garden as amounting to possession, provided that there is clear boundary marking out the extent of the land cultivated as in the case of ***Powell v McFarlane 1977 38 P & CR 452***. However, no evidence has been adduced by the Applicant or the Respondent to justify this Court so finding, especially in light of the occupation by the Interested Party, of an area of the subject parcel.

- [109] Moreover, the evidence of the Interested Party was not contradicted by the parties. Of significance is the Respondent's admission that he "has not been on the land for a long time...he never went to the house and does not know that the Interested Party built a wall house and not a wooden house on the land".
- [110] More importantly, the admission of the Applicant that at the time the Interested Party went onto the subject parcel it was a wilderness, he conceded that after the Interested Party's house was built on the subject parcel the house was always in the control of the Interested Party's family, on the Interested Party's behalf. The Court finds that neither the Applicant nor the Respondent exercised any rights of ownership over the whole of the subject parcel. Furthermore neither the Applicant nor the Respondent is in factual possession of the whole of the subject parcel.
- [111] Both the Applicant and the Respondent stated that they paid property taxes. However the Respondent produced no receipts for payment of taxes and the receipts admitted as evidence before the Court for the Applicant do not specifically refer to the lands of Jayne or that payment was related to the subject parcel in particular.
- [112] The Courts have consistently found that the payment of taxes is insufficient to amount to or constitute the factual element of possession or evidence of Adverse Possession. The case of **RICHARDSON V LAWRENCE (1966) 10 WIR 234** is authority for saying so. Nevertheless it has been held that payment of taxes levied on the person in possession is evidence of the *animus possidendi*.
- [113] The Applicant adduced evidence of receipts of payment of property taxes for and on behalf of Jayne and a Notice of the Bailiff dated 11/4/79 in respect to arrears of property taxes owed by Jayne. However the Court was unable to identify definitively any payment receipt by the Applicant relating to the said notice of arrears and as such the Applicant was accordingly unable to establish the requisite '*animus possidendi*' of a person in possession'.
- [114] Whilst this Court is satisfied from the evidence before it that the Applicant and not the Respondent gave permission to the Interested Party to go onto the land to build his house sometime in 1986-1987 and that the Interested Party has been in occupation of a portion of the subject parcel to date, however that is all that can be said in that regard, since the Applicant's evidence is that he was appointed caretaker by Helen Danielson from 1977 and also by Kate and Elizabeth in 1991 and therefore could not have been in adverse possession of same.
- [115] This Court accepts that giving permission to the Interested Party to occupy a portion of the subject parcel is an act of ownership by the Applicant. However the Applicant's conduct in doing nothing more and leaving the portion of land under the full control of the Interested Party from 1987 to date, certainly does not

support 'undisturbed and uninterrupted factual possession' by the Applicant, of the subject parcel.

- [116] Of consequence however is the fact that as a result of the undisturbed and uninterrupted occupation of the Interested Party of a portion of the subject parcel, neither the Applicant nor the Respondent is in possession factual or otherwise or in adverse possession of the whole of the subject parcel, nor has either of them provided any evidence satisfactory to the Court that either of them is in possession factual or otherwise or in adverse possession of the remainder of the subject parcel.

CONCLUSION

- [117] The conclusion of this Court after consideration of all the facts, evidence and submissions of Counsel in this case, are summarized as follows:

1. The Applicant and the Respondent cannot at the same time be in 'exclusive possession' of the subject parcel.
2. Admission by the Respondent that 'he had not seen the house that the Interested Party built, had not been on the land for a long time and does not know what is happening on the land' clearly contradicts his evidence of acts of ownership and asserting rights as owner of the subject parcel.
3. The acknowledgment by Counsel for the Respondent, that on the basis aforementioned, the Respondent's claim for a declaration of possessory title to the subject parcel must therefore fail, is accepted by this Court.
4. The Applicant's claim that 'he paid property taxes for the subject parcel' but not providing any definitive evidence in particular, in respect to the Notice of arrears served by the bailiff or in respect to the subject parcel does not assist the Applicant in establishing an assertion of rights as owner, of the subject parcel.
5. Admission by the Applicant and the Respondent, that the Interested Party has been in occupation of a portion of the subject parcel for a number of years, is an acknowledgement that Applicant and the Respondent are not in exclusive or factual possession of the 'whole' of the subject parcel as claimed.
6. The assertion of the Applicant that he planted a 'little kitchen garden' on the subject parcel and that when the Interested Party came unto the subject parcel, it was a 'wilderness', is incongruous and does not assist the Applicant's claim.

7. Neither the Applicant nor the Respondent are in factual possession of an exclusive and undisturbed nature, of the subject parcel for a continuous period of 12 years and accordingly the necessity or coincidence of factual possession accompanied by the requisite intention to possess the subject parcel as owner, is not manifested.
8. Accordingly, neither the Applicant nor the Respondent has satisfied the provisions and criteria set out in the Act for a Declaration of Possessory Title to the subject parcel to be made in their favour, on the basis of twelve years adverse possession.

ORDER

1. The Applicant's application for Declaration of Possessory Title, fails.
2. The Respondent's claim for Declaration of Possessory Title, fails.
3. I make no order as to costs.

Cynthia Combie Martyr
High Court Judge (Ag)