

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 31 OF 2008



IN THE MATTER OF AN APPLICATION FOR POSSESSORY TITLE

BETWEEN:

WESTFIELD JOHN

Applicant

V

JULIETTE RENNIE AKA GONSALVES

Respondent

HIGH COURT CLAIM NO. 32 OF 2008

IN THE MATTER OF AN APPLICATION FOR POSSESSORY TITLE

BETWEEN:

WESTFIELD JOHN

Applicant

V

JULIETTE RENNIE AKA GONSALVES

Respondent

Appearances: Mr. Joseph Delves for Applicant
Mr. Stephen Williams for Respondent

2008: December 2nd, 17th
2009: February 2nd, 3rd
March 12th

JUDGMENT

BACKGROUND

- [1] **JOSEPH, Monica J. (Ag.):** On 17th July 2008 applicant Westfield John made applications with his affidavit for declarations of title by twelve years adverse possession of land, under section 3 of the Possessory Act 2004 (No. 38 of 2004) (the Act), in respect of two parcels of land (the two parcels). His applications were supported by affidavits of his sons, Michael John and Reuben John and after the entry of appearance, affidavits of Grenville John, a son, Glenmore Yearwood and Jonathan Davis aka Jonathan Plough.
- [2] On 12th September 2008, pursuant to section 7 of the Act, Juliette Rennie-Gonsalves filed entries of appearance opposing the applications of Westfield John for declarations of title. Her claim of ownership is set out in her affidavit filed on 16th December 2008, and supporting affidavit of Michael Wyllie filed on 14th October 2008.
- [3] Michael Wyllie first filed an affidavit in support of Gonsalves' application, then indicated that he was a person interested, followed by withdrawal of that indication and resumption of his stance of supporting Gonsalves' application.
- [4] One application - an area of 4.5335 acres of land, (197,478 sq. ft), boundaries:
North by lands of Emily Caesar and lands of Elsie Merritt on or towards the South by lands of Greenville John, lands of Jacqueline Wright and the existing public road, on or towards the East by the existing public road, on or towards the West by the existing public road as the same is more particularly delineated and shown on a Plan or diagram drawn by Alrick Williams Licensed Land Surveyor and lodged at the Lands and Surveyor Department on 25th June 2008 as Plan No. G2654.
- [5] The other application – an area of 2.8068 acres of land (122,263 sq, ft) boundaries: North by a river on or towards the South by lands of Evesham Primary School lands of heirs of Daniel Charles and lands of Cynthia Farrell on or towards the East by the river on or

towards the West partly by a ravine and partly by the river or as the same is more particularly delineated and shown on a plan lodged in the Lands and Surveys Department on 10th July 2008 No. G2658.

- [6] The two parcels are part of a large portion of land comprising approximately eight acres originally the estate of John Durrant. That original estate is at this date divided virtually into four parcels: two parcels that are the subject matter of this action: one parcel (approximately two and half acres) rented by Doris Wyllie: a parcel (approximately one acre) adjacent to Doris Wyllie's parcel, which is occupied by Ms. Adonis.

WRITTEN SUBMISSIONS on 18TH February 2009 - ISSUES:

- [7] (a) Is Juliette Gonsalves owner of the two parcels?
- (b) Is Westfield John in adverse possession of the two parcels for twelve years?

LINE OF DESCENT - INHERITANCE

- [8] On 4th October 1889 the Attorney General conveyed ten acres of land in St. George's parish formerly part of Evesham Vale Estate to John Durrant by Deed of Conveyance dated October 1889, entered in Land Registry on 4th October 1889 in Liber L at page 524. The acres (now referred to as eight acres not ten acres) include the two parcels, the subject matter of Westfield John's applications.
- [9] John Durant by will of 9th November 1904, grant of probate dated 28th February 1905, devised to his wife Sophie Durrant eight acres of land together with his dwelling house for her lifetime and after her death eight acres to be divided among his six children: Matilda Jane Wyllie (Nellie Wyllie's mother), one acre: Horatio Durrant one acre (which was left by will to Nellie Wyllie: Barbara Durrant one acre: Joseph Durrant one acre: John Sanford Durrant one acre: Mary Beatice Sophia Durrant (Gonsalves grandmother) three acres.
- [10] After her mother Matilda Jane Wyllie's death in 1931, Nellie Wyllie went to Trinidad and lived with an uncle Horatio Durrant (a beneficiary under the will of John Durrant). Horatio Durrant died on 18th April 1942 by will devising his property to Nellie Wyllie.

- [11] Gonsalves grew up with Nellie Wyllie, her aunt Joyce Lucas and other relatives in St. James, Trinidad. Nellie Wyllie died in Trinidad in 1994.
- [12] Gonsalves' father was Durrant Glasgow whose mother was Mary Beatrice Durrant, Gonsalves grandmother. Mary Beatrice Durrant was the daughter of John Durrant, Gonsalves' great grandfather.
- [13] On 31st October 1989 letters of Administration of the estate of John Durrant were granted to Nellie Wyllie, Administratrix, Registration No. 18 of 1989. By Deed of Assent No. 4286/1989 of 1st November 1989, Administratrix Nellie Wyllie, acting by her duly appointed attorney Grenville John, (Westfield John's son) conveyed eight acres of land at Evesham to beneficiary Nellie Wyllie.
- [14] Nellie Wyllie had property in Trinidad and in St. Vincent. By her will dated 7th September 1979, the property in Trinidad was devised to Gonsalves, Joyce Lucas and Grace Georges, the latter two being named executors. The residue of all her real and personal estate whatsoever and wheresoever she devised to Gonsalves, Joyce Lucas and Grace Georges in equal shares absolutely as tenants in common. Gonsalves has received her share of the Trinidad property.
- [15] By Deed No. 1318/2002 dated 7th April 2002, Westfield John conveyed to himself and son Reuben John, seven and a half acres of land at Evesham in joint tenancy.
- [16] By Deed No. 1258/2002 of 16th April 2002, by a declaration of possessory title, Westfield John declared that he is entitled to absolute ownership of a parcel of land containing seven and one half acres at Evesham.

EVIDENCE ON BEHALF OF WESTFIELD JOHN:

- [17] In affidavit of 17th July 2008, Westfield John asserted that the two parcels were owned by Nellie Wyllie who had left St. Vincent many years ago. He stated that he occupied the two parcels from 1965 when, with encouragement from his aging mother, Matilda Robertson, he took charge of the two parcels by maintaining and cultivating them.

- [18] He said that he continued so to do from the time of her death (1976) and continued to cultivate to the present time, paying rent to no one and being accountable to no one. Upon Nellie Wyllie's death in 1990 (should be 1994) he took full and sole control and possession of the land and remained in continuous and exclusive possession recognizing no other person as owner.
- [19] By Deed of Assent No. 4286/1989 dated 1st November 1989, Nellie Wyllie acting by duly appointed attorney on record Grenville John, Administratrix, conveyed eight acres of land to Nellie Wyllie, the beneficiary. It is accepted that the Deed of Assent incorrectly recites that John Durant died intestate. As John Durrant had made a will Michael Wyllie alleges fraud by Nellie Wyllie and Grenville John. I will deal with this point later.
- [20] Grenville John's evidence was that in 1988 while attending a six month course of study in Trinidad he lived in Nellie Wyllie's house: that he held discussions with her relative to obtaining title to some land to enable him to build a house to start a family. Subsequent to those discussions she obtained letters of administration and gave him 8900 sq. ft of land. He chose the area of land from the two parcels to build his house.
- [21] By Deed of Gift No. 365/1990 of 12th December 1989, Nellie Wyllie conveyed to Grenville John 8900 sq. ft. of land. Grenville John stated that the area of 8900 sq. ft is part of the two parcels. 8900 sq. ft was (not is) part of the original two parcels occupied by Westfield John, but was cut from the two parcels as shown on survey plan No. G2654 approved by the Chief Surveyor in June 2008, showing that the area of land cut out for Grenville John was bounded on north and west by lands in the possession of Westfield John.
- [22] From a time (subsequent to 1990) it is reasonable to conclude that Westfield John would have knowledge that Grenville John had obtained the gift of land from Nellie Wyllie. He documented that knowledge in his declaration of possessory title in April 2002 as the schedule giving the boundaries of seven and half acres mentions land in the possession of Grenville John. Westfield John and Grenville John have therefore acknowledged Nellie Wyllie's ownership and possession of the two parcels.

- [23] By Deed of Gift No. 1318/2002 dated 7th April 2002 Westfield John conveyed to himself and Reuben John in joint tenancy, seven and one half acres of land at Evesham, reciting that by virtue of deed 1258 of 2002 dated 16th April 2002, he is seised in fee simple in possession of the two parcels.
- [24] Deed No. 1258/2002 of 16th April 2002 is Westfield John's declaration as to title and possession of a parcel of land containing seven and one half acres (the two parcels)
- [25] Westfield John, in his affidavit filed 1st December 2008, said that his applications for the two parcels do not include the land cultivated by Rawle and Doris Wyllie and her family. In 1985 Westfield John was agent for Nellie Wyllie as seen from Solicitor Ronald Jack's letter to Doris Wyllie dated 19th August 1985 on behalf of Westfield John acting as Nellie Wyllie's agent relative to the land rented.
- [26] Westfield John, in respect of land tenanted by Doris Wyllie, purported to continue as agent after Nellie Wyllie's death. In 2005 Doris Wyllie ceased to pay rent to Westfield John following Michael Wyllie's advice that the agency principle is the agent's authority comes to an end on the death of the principal.

EVIDENCE ON BEHALF OF GONSALVES:

- [27] The claim is that Nellie Wyllie was, at 17th August 1994, the sole living descendant of John Durrant. I have given the family tree earlier to show the link between Nellie Wyllie and John Durrant.
- [28] Gonsalves asserted that she owns the subject matter of this action by inheriting it by will from her adopted mother Nellie Wyllie, but that she holds no title deed and is now trying to obtain one. She stated that the will was admitted to probate in Trinidad in 1995 and resealed in St. Vincent in 2006. When pressed, she admitted that it was not resealed in St. Vincent but she had given instructions to lawyers for resealing of the will.

- [29] Her evidence was that she does not occupy the two parcels: that she visited St. Vincent in December 2008 and, prior to that, in 1980. She stated that Westfield John occupies one parcel approximately four acres on which he farms and rears animals, and Grenville John occupies a parcel.
- [30] Westfield John built a wall house on the parcel and his first wife and their children lived on that land. He had a second family of eight children and she does not disagree that those eight children were born on the land.
- [31] Michael Wyllie (Doris Wyllie's son and Nellie Wyllie's nephew) in his affidavit filed on 25th November 2008, said that Westfield John's mother Matilda Robinson was employed by Nellie Wyllie's parents. Nellie Wyllie permitted Matilda Robinson to occupy the two parcels when she left for Trinidad. His grandparents and parents Rawle and Doris Wyllie paid rent, in respect of the portion they rented, which was a half share contribution towards taxes, to Matilda Robertson (Westfield John's mother) and then to Westfield John, Nellie Wyllie's agent.
- [32] Gonsalves' evidence was that Westfield John and a daughter attended Nellie Wyllie's funeral in Trinidad in 1994. At that time she said Westfield John unsuccessfully approached Joyce Lucas, who was handling Nellie Wyllie's affairs, to purchase the two parcels, which he denies.
- [33] Gonsalves said that Nellie Wyllie on her dying bed begged her to remind Joyce Lucas to have the lands in St. Vincent transferred into the names of Joyce Lucas, Gonsalves and Grace Georges.
- [34] In 2002 she was aware that Westfield John was claiming the two parcels. She did not institute legal proceedings against Westfield John relative to the two parcels between August 1994 (Nellie Wyllie's death) and July 2008 when Westfield John's applications were filed. Gonsalves stated that she contacted lawyers in St. Vincent and that a letter, which was not produced, was addressed to Westfield John.

POSSESSORY TITLES ACT 2004 (No. 38 of 2004) : POSSESSION

[35] Section 3 of the Act enacts 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 application to the Court for a declaration of possessory title to the land. An applicant may apply to the Court to be declared the true owner of the piece of land. The Court determines whether the applicant is in adverse possession which is defined in the 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 12 years or more accompanied by the requisite intention to possess the said land as owner thereof.”

[36] In his affidavit Westfield John said that in 1965, with encouragement of his mother, he took charge of the two parcels by cultivating crops and paying taxes. I believe that his mother lived on the two parcels with her children (including Westfield John) in 1965 and that his cultivating the land was that of a son assisting a mother with chores on the land. The occupation was that of his mother. After her death in 1976 he continued with cultivation of the two parcels.

[37] In 2002 Westfield John declared in his declaration of possessory title:

- “1. My relative Nellie Wyllie owned and possessed a parcel of land situate at Evesham in the State of St. Vincent and the Grenadines as the same is more particularly mentioned and described in the Schedule....”
2. The said Nellie Wyllie died in the Republic of Trinidad and Tobago in the year 1990 immediately after which I moved into exclusive and unmolested possession of the said hereditaments paying all outgoings.
3. According to these presents I am by virtue of my long and exclusive possession of the said hereditaments entitled to absolute ownership thereof.”

[38] In that declaration, Westfield John acknowledged Nellie Wyllie’s ownership and possession to the date of her death in 1990: should be 1994. He swore that it was only after her death that he moved into exclusive and unmolested possession of the two parcels. He is estopped from claiming to the contrary, that is, that he was in adverse possession before Nellie Wyllie’s death.

[39] There is further evidence of permission to occupy the two parcels having been given by Nellie Wyllie to Westfield John coming from Westfield John himself in his affidavit filed on 1st December 2008:

"Nellie had always instructed the family in Trinidad that the lands in St. Vincent are for Westfield (me) and my children and that they should not molest me...In the early eighties on one of my visits to Trinidad, Nellie said to me "you should not be living in a board house. Go back and build a wall house." Soon after, I did build a wall house thereon."

[40] Nellie Wyllie died in 1994. Westfield John swore that declaration of possession on 16th April 2002. 1994 to 2002 gives him eight years possession. Calculating from 1990 as date of death to 2002 gives him twelve years possession. So when he swore the declaration on 16th April 2002 that he had twelve years possession, that was not correct. He had eight years possession.

[41] I think the fact that he swore a declaration for possessory title in 2002 ought to have been disclosed when he applied for possessory title under the Act. In the absence of any evidence to the contrary, I take this to be an oversight. I find that, up to 1994, Westfield John was occupying the two parcels with Nellie Wyllie's permission.

[42] The elements of possession that are to be satisfied by Westfield John are: twelve years factual possession of the two parcels, in addition to the intent to possess the two parcels. In **Powell v McFarlane** (1977) 38 P & CR 452, at p 469, Slade J said:

"Possession of land, however, is a concept which has long been familiar and of importance to English lawyers, because (inter alia) it entitles the person in possession, whether rightfully or wrongfully, to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession.I would for my own part have regarded the word 'possession' as bearing....the degree of occupation or physical control, coupled with the requisite intention commonly referred to as animus possidendi, that would entitle a person to maintain an action of trespass..."

[43] In **Pye (Oxford) Ltd and Others v Graham and Another** (2002) UKHL 30 paras 75:76 Lord Hutton said:

75.".....made full use of the disputed land as if they were the owners – they did everything which an owner of the land would have done.

76. I consider that such use of the land by a person who is occupying it will normally make it clear that he has the requisite intention to possess and that such conduct should be viewed by a court as establishing that intention, unless the Claimant with the proper title can adduce other evidence to a contrary conclusion. Where the evidence establishes that the person claiming title under the Limitation Act has occupied the land and made full use of it in the way an owner would, I consider that in the normal case he will not have to adduce additional evidence to establish that he had the intention to possess."

[44] There is factual possession of the two parcels by Westfield John from 1994 to 2008. Gonsalves admitted that Westfield John cultivates crops on the two parcels, although she was not able to say what crops. She also admitted that he rears goats, sheep and cows on the two parcels. I think that those activities are consistent with what Nellie Wyllie permitted him to do.

[45] Those activities show nothing more than his occupation of the two parcels up to 1994. Added to those activities to 1994 was the permission Nellie Wyllie gave him in the eighties to build a wall house on the two parcels, which he did.

[46] To determine whether Westfield John had the requisite intention to possess the two parcels to the exclusion of others, I look to what he did from August 1994. Although he denies that he approached Joyce Lucas to purchase the two parcels when he attended Nellie Wyllie's funeral in Trinidad I do believe Gonsalves' evidence that he did so. He regarded the land in Trinidad to be for the relatives who lived in Trinidad and the land in St. Vincent to be for him and his children.

[47] It was obvious from the emotion Westfield John displayed at the trial that he felt very strongly that the two parcels belong to him. He even said that Nellie Wyllie gave him the two parcels. He also said Nellie Wyllie put him (not his mother) in charge of the two parcels.

[48] The approach to Joyce Lucas to purchase the two parcels was a pointer towards his intention to own the two parcels. When that approach to purchase was unsuccessful, then

came the intention to possess which is documented in his possessory declaration in 2002, reciting twelve years' possession from 1990, when he had only eight years factual possession from 1994.

- [49] I think that was the rationale (if I may so call it) behind his acts. His intention was to obtain the two parcels by possession. The filing of that declaration was an unequivocal act – claiming adverse possession.
- [50] Gonsalves became aware in 2002 of Westfield John's claiming the two parcels and of the possessory title he had filed. Joyce Lucas who died in 2004 was one of Nellie Wyllie's executors and Gonsalves said that the latter had charged her with responsibility to remind Joyce Lucas to "regulate the land in St. Vincent and give Westfield and family some of the land for being good agent for her all these years."
- [51] It is therefore reasonable to conclude that Joyce Lucas representing Nellie Wyllie's estate would also be aware of Westfield John's claim. After Nellie Wyllie's death he was not required to, and did not, share the farm proceeds of the two parcels with anyone in exchange or payment for occupying the two parcels. He was not required to, nor did he, pay rent to anyone.
- [52] The question to be answered is – Was there proof by Westfield John of a sufficient degree of "sole and undisturbed possession use and enjoyment of the two parcels for twelve years? I think so. Although I have found that, at the time he made the possessory declaration in 2002 time had not run in his favour for adverse possession yet, in that declaration, it is clear that it was his intent to possess the two parcels from the date of Nellie Wyllie's death.
- [53] I find that Westfield John has been cultivating the two parcels from 18th August 1994 to 17th July 2008 a period of almost fourteen years, and has therefore been in possession for that period of time. I also find that he had the intent to possess the two parcels from 1994. I find that he used the two parcels as his own.

- [54] Westfield John holds the two parcels against the whole world except a person with a better title. A person with a better title is someone who holds a paper title, who has not been dispossessed.
- [55] Gonsalves, claiming as owner, challenges Westfield John's application. She does not hold a title deed for the two parcels and she is not in possession of the land, but hopes to obtain title deed for the two parcels from Nellie Wyllie's estate. Nellie Wyllie was in possession up to 1994 through Westfield John to whom she had given permission to be on the two parcels. From her death the personal representatives of her estate did not take possession of the two parcels, and time began to run against the estate of Nellie Wyllie from 1994.
- [56] The right of action to recover land is barred after the passage of twelve years from the date the right of action first accrued. The right of action to recover the two parcels in Nellie Wyllie's possession accrued on 17th August 1994, that is, the date of her death. That right of action was extinguished on 18th August 2006, that is, twelve years after Nellie Wyllie's death.
- [57] Gonsalves was aware in 2002 of Westfield John's claiming the two parcels. Neither she nor the estate of Nellie Wyllie took legal proceedings against Westfield John before twelve years had elapsed. There was a dispossession of Nellie Wyllie's estate from 17th August 1994, the time the right of action accrued, which right of action was lost twelve years from 18th August 1994 i.e. 18th August 2006.
- [58] The Limitation Act (Cap. 90) section 17 enacts:
- (1) "No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."
- [59] The Schedule to section 17(5) and (6) of the Limitation Act (Part 1) reads:
1. "Where the person bringing an action to recover land, or some person through whom he claims, has been in possession of the land, and has

while entitled to the land been dispossessed or has discontinued his possession, the right of action shall be treated as having accrued on the date of dispossession or discontinuance.

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

[60] Section 2 of the Act enacts that an applicant claiming adverse possession who has made an application to the Court, may be declared the true owner of a parcel of land. To establish adverse possession the Act requires an applicant to produce the following documentation:

- (a) Affidavits of applicant and two other persons giving information of occupation of the land for at least twelve years.
- (b) Survey plan of the land..
- (c) Publication of notice to acquire by adverse possession in newspapers (four clippings).
- (d) Certificates of compliance that copies of those notices have been placed in conspicuous places in the Registry and on the Court building of the Magistrate in the district where the land is situated.
- (e) Affidavit of service that a copy of the notice published in the newspapers has been served on adjacent occupiers and owners of the land.

Westfield John, having satisfied the requirements of the Act and provided the necessary evidence of possession, is entitled to a declaration of possessory title.

[61] Michael Wyllie alleges fraud on the part of Nellie Wyllie and her duly constituted attorney Grenville John in the process of the Grant of Letters of Administration, as there is a recital in Deed of Assent No.4286/1989 of 1st November 1989 that John Durrant died intestate when in fact he had made a will. That incorrect information surfaced in Nellie Wyllie's power of Attorney No. 130/1989 to Grenville John of 12th September 1989, repeated in the Deed Assent by duly constituted Attorney Grenville John.

[62] Mr. Delves submitted that that was Nellie Wyllie's information to Grenville John which he repeated and was a situation where the agent repeated what his principal had told him. Michael Wyllie admitted that he is unable to say whether Nellie Wyllie was aware of a will at the time of the processing of letters of administration of John Durrant's estate.

[63] Section 26 of the Act enacts:

"If in the course of any proceedings under this Act any person fraudulently, knowingly or with intent to deceive makes, assists, joins in or is privy to the making of any material false statement or representation, or suppresses, withholds or conceals, or assists or joins in or is privy to the suppression, withholding or concealing from the Court any material document, fact or matter of information, any declaration of title obtained by means of such fraud or falsehood shall be null and void."

[64] I will not go into details of what needs to be proved to establish fraud. Suffice it to say that the incorrect information was not adduced during processing of the applications for possessory title under the Act. That incorrect information surfaced in Nellie Wyllie's power of attorney during the process of applications for letters of administration.

[65] It is interesting to note that the allegation of fraud came from Michael Wyllie, Gonsalves' witness. Grenville John claims title by virtue of a deed from Nellie Wyllie and Gonsalves claims that she inherits by will from Nellie Wyllie, both claims stemming from the same root, Nellie Wyllie. Westfield John's claim is that of adverse possession (not title) of the two parcels of land that had been owned by Nellie Wyllie.

CONCLUSION:

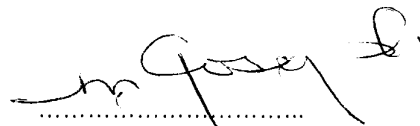
[66] I find that: respondent Juliette Rennie-Gonsalves claims in opposition to the applicant's applications in respect of the two parcels of land - Suit No. 31/2008 an area of 197,478 sq ft (4.5335 acres). Suit 32/2008 an area of 122,263 sq ft (2.8068 acres) - unsuccessful..

[64] I find that applicant Westfield John has been in adverse possession of the two parcels of land for twelve years - Suit No. 31/2008 an area of 197,478 sq ft (4.5335 acres). Suit 32/2008 an area of 122,263 sq ft (2.8068 acres).

[65] Mr. Delves' submission, which I accept, is that this is a claim for a relief other than a monetary sum, the value being \$50,000.00 and that costs be awarded of \$14,000.00.

ORDER:

- [66]
1. Respondent's claims in opposition to the applicant's applications in suits 31/2008 and 32/2008 are dismissed.
 2. Declarations of Possessory title to Applicant Westfield John in suits 31/2008 and 32/2008 are to issue.
 3. Respondent to pay to Applicant prescribed costs under CPR Part 65.5 (2) of \$14,000.00.
 4. Liberty to apply.



.....
Monica Joseph
High Court Judge (Acting)
2nd March 2009.