

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 257 of 1999

BETWEEN

NATIONAL INSURANCE BOARD

Claimant

and

CHRISTOPHER MATTHEW ALSACE

Defendant

Appearances

For the Claimant: Ms. A. Cadie-Bruney

For the Defendant: Mr. D. Theodore

2003: March 3rd, 4th and 14th

JUDGMENT

[1] **Saunders J:** Mr. Joseph Quentin Charles purchased Choc Estate in 1944. Almost twenty years later, he transferred ownership of the estate to Choc Estates Limited. In 1991, the National Insurance Corporation ("the Corporation"), formerly the National Insurance Board, purchased from Choc Estates Limited, two contiguous parcels of land that were dismembered from Choc Estate. The dismembered lands are registered as Block 1251B, Parcels 450 and 579 respectively. They comprise 29.42 acres and are the subject matter of this dispute between the Corporation and Mr. Christopher Matthew Alsace, the defendant. Throughout this judgment I shall refer to the subject parcels as "the said lands".

[2] Mr. Alsace is a carpenter and a farmer. He states that he is an heir of Sir and Dame Toussaint Alsace who, in 1896, acquired, by Deed of Sale, three portions of land

dismembered from the Postlewaite Estate. Mr. Alsace claims that the said lands form part of the Postlewaite lands that are owned by him and his forebears. In any event, he says, he was born and raised on the said lands and he and his ancestors have been in possession of them for over 100 years. He maintains that he is entitled to possession of the said lands.

- [3] The National Insurance Board instituted these proceedings against Mr. Alsace claiming damages for trespass and an injunction to restrain him from entering upon the said lands. The action was also filed against eight other defendants who apparently were lessees of Mr. Alsace. These other defendants have taken no part in the action however and the Corporation did not find it necessary to pursue further the claim against them.
- [4] Four witnesses gave evidence for the Corporation, namely, its present Director, Ms. Emma Hippolyte; Mr. Francis Compton, the Director at the time the Corporation acquired the said lands; Mr. Ferrel Victor Charles, a Director of Choc Estates Limited and the son of Joseph Quentin Charles; and Mr. Foche Modeste, a Land Surveyor who up until very recently held the post of Chief Surveyor of St. Lucia.
- [5] Mr. Charles stated that he was personally well acquainted with the said lands and that he was the representative of Choc Estates who was involved in the discussions prior to the sale to the Corporation. He testified that the portion of land from which the said lands are dismembered was surveyed in 1962, again in 1976 and yet again in 1991. He also said that he periodically visited the said lands between 1962 and 1991 and there were no chattel houses or cultivation or rearing of animals taking place on the same. He knew this because he had to walk the land and approve of the area that was being sold.
- [6] In cross-examination, Mr. Charles was questioned about the manner in which the first registration of the lands was effected. He stated that his company did not attend any adjudication hearing in respect of the said lands during the Land Registration and Title Project (LRTP). In fact, the company was entirely unaware that any rival claim had been made to the land. It was only as a result of the industry of his counsel that several years

later, he discovered that a claim had actually been made to Choc Estate, or portions of the estate, by the defendant. Mr. Charles conceded that Mr. Alsace and his family have occupied some parts of Choc Estate and that they have erected shacks on some portions they have occupied. He maintained however that the land that was sold to the Corporation was free and clear at the time of sale and that the defendant only began incursions into that area some time after 1991.

- [6] Mr. Compton's evidence was that before the purchase by the Corporation from Choc Estates Limited, he, as Director of the Corporation, personally walked the entire boundaries of the said lands in 1991. He saw no visible evidence of occupation by squatters but he did notice signs of wood trees having been cut. He said that after acquiring the said lands, the Corporation employed a labourer to clean and clear the boundaries on a regular basis. The Corporation, he said, had acquired the said lands for a housing project. Choc Estates Limited had already obtained approval of a housing development plan and his Board had re-submitted that plan for sanctioning by the Development Control Authority (DCA). The DCA had approved the plan after requiring of the Board alterations regarding sub-divisions for larger lots and provision for wider roads.
- [7] In response to Defence Counsel, Mr. Compton disagreed that he could not see what was happening in the interior of the said lands. He admitted that he didn't criss-cross the land on foot but insisted that he went in deep enough to observe what was going on. He recalled that there was a track that went through the land from one area to the next and, from a hill on White Rock, he said he had a vantage view of the large areas of the lands.
- [8] Ms. Hippolyte took over as Director of the Corporation some months after Mr. Compton retired in 1997. She said that she first received reports that the defendant was seen on the said lands in about 1999. She made a visit to the area and observed that there were several wooden buildings in the process of being erected. She spoke with Mr. Alsace who told her that the said lands belonged to his grandfather and that he was renting lots to various persons. It was shortly after this that the Corporation commenced these proceedings. Since then most of the chattel houses on the said lands have been removed.

- [9] In answer to Defence Counsel, Ms. Hippolyte stated that when she visited the lands and spoke to the defendant she had with her a copy of a survey plan or map. Mr. Alsace was not found on the said lands but on a property on the other side of the road. He told her that his lawyer had the relevant deeds that could establish his ownership. He gave her a plan number of his property and, when she perused the map, she observed that this plan number corresponded exactly to the property he was occupying on the other side of the road across from the said lands. At the time he had a kitchen garden on those other lands. He now has a Green House there. This witness maintained that when she went on the land she didn't see any signs of the cultivation of crops but she noticed crops next to the house where Mr. Alsace was living.
- [10] The final witness for the Corporation was Mr. Modeste, the former Chief Surveyor. His evidence addressed the location of the Postlewaite lands the defendant says are owned by his ancestors. Mr. Modeste testified that he had examined the documents of title of the defendant's predecessors and in particular the description of the lands set out in the same. He had concluded that the Postlewaite lands were nowhere near the lands purchased by the Corporation.
- [11] Mr. Alsace gave evidence on his own behalf. He is 54 years old. It is not disputed that he has a house and lives on an area of land just across the road from the said lands. In his witness statement he claimed that he and his family have occupied the portion of the Postlewaite Estate that is described in the 1896 Deed for a number of years and that they plant a variety of crops and rear animals on that land. He also testified at the trial that he was born and raised on the said lands which were occupied by his ancestors.
- [12] The defendant stated in his witness statement that in 1984, during the LRTP, he had made a claim to the lands described in the 1896 Deed of Sale but because he had misplaced his receipt he was obliged to complete another claim form in 1985. In 1986 he searched the records and discovered that the land was adjudicated on 8th August, 1985 by virtue of an adjudication record signed by Mr. White, the recording officer.

- [13] In cross-examination, the defendant said that the officials at the LRTP had given him a receipt when he made his application. Some time later, they went on the land with him and he showed them the boundaries. After they gave him the receipt he got a contract to go to America and he left his brother on the land. In 1985 he got a response from the LRTP officials and they told him that the land belongs to him. He testified that he had the land registered in his name in 1985 but he must have been confused when he so testified because that clearly could not have been correct.
- [14] Joseph Christopher gave evidence in support of the case for the defendant. Mr. Christopher is 56 years old and he said that he knows the land in dispute. He said that he was born and raised on land bounded to the lands in dispute but that, having been permitted so to do by the defendant's mother, he has been in occupation of the said lands for a number of years. He said that he lives and has a farm there. Up until 10 years ago he had never known anyone else coming on to the land or laying claim to the same.
- [15] Francis Prescott was the final witness for the defendant. His evidence was similar to the evidence of Joseph Christopher. He too claimed to know the land in dispute and he stated that he has been living on the same for about 30 years. He said that he grows a wide variety of crops and rears cattle on the said lands. He is now 57 years old.
- [16] The claims of the NIC in this matter are simple and clear-cut. The Corporation has a Deed of Sale. It is a registered owner. The defendant is therefore a trespasser.
- [17] The Defence and Counterclaim of Mr. Alsace are not so straightforward. Giving them an interpretation that is most favourable to the defendant, the defendant's case appears to be this. On the strength of the 1896 deed, he and his ancestors are entitled to be registered as owners of the Postlewaite lands described in that deed. The Postlewaite lands and the said lands are identical or, the former wholly encompasses the latter. The LRTP process, by which Choc Estates Limited was registered as owner, was flawed. A mistake was made in adjudicating and recording Choc Estates Limited to be the owner of the said lands. If

these propositions fail, Mr. Alsace contends that he has been in adverse possession of the said lands for a sufficiently long period for him to have obtained title by prescription.

[18] I will address first the contention that the Postlewaite lands encompass the said lands. First of all, the evidence of Mr. Foche Modeste, the ex Chief Surveyor, was not at all challenged on this issue and I accept entirely his evidence that the two sets of lands are distinct and far removed from each other.

[19] I turn now to the allegation that a mistake was made in the LRTP process. I discount the defendant's evidence that he had made a claim to the said lands in 1984. If he had, there ought to have been some documentary evidence presented to this court evincing the fact that this claim had been made. No such evidence was presented. A Land Adjudication Claims Register was exhibited showing that the defendant had made a claim on behalf of the heirs of Toussaint on 27th August, 1985. Under the "Remarks" column of that claim there is the inscription, "Claimant has no rights to land".

[20] The defendant also exhibited a claim form bearing a date stamp of 30th August, 1985. It is not clear whether this Form relates to the item found in the Claims Register. It probably does but it is interesting to note that, on the Form, the basis for the claim is not long possession but rather, the 1896 deed.

[21] Other records exhibited show that on 29th March, 1985, Choc Estates Limited made a claim to the lands that had been acquired by it from Mr. J. Q. Charles. On the 8th August, 1985, the Adjudication Record in respect of this claim was completed by the Recording Officer. It is on the strength of this Record that Choc Estates Limited was subsequently registered as owner.

[22] Counsel for the defendant submitted that, as Choc Estates Limited and Mr. Alsace had both submitted claims to the LRTP, the *Recording Officer* was in the circumstances not entitled to sign and complete the Adjudication Record in respect of the claim by Choc Estates Limited. Counsel argued that there should first have been an adjudication between

the two disputants. The decision in *Webster vs. Fleming, Anguilla Civil Appeal No. 6 of 1993* was cited in support.

- [23] The legislation construed in *Webster's* case is the same as obtains in St. Lucia. In that case Byron J.A. (as he then was) examined and distinguished between the functions of Recording and Adjudicating Officers in the land adjudication and registration processes. The legislation clearly provides that where there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them, the matter should be referred to the Adjudicating Officer so that the latter could adjudicate on the claims made.
- [24] This provision in the law is inapplicable to the instant case because firstly, the claims submitted were in respect of different parcels of land. As noted above, the defendant's claim was to Postlewaite lands and those lands are distinct from the lands that were acquired by the Corporation. But even if that were not the case, the circumstances here differ from *Webster's* case because by the time Mr. Alsace had made his claim, or at any rate the claim that I accept he did make, the Recording Officer had already completed the Adjudication Record in respect of the Choc Estates claim. In other words, from whichever angle it is looked at, there were never co-existing rival claims in respect of the said lands. It cannot therefore properly be said that, while the Choc Estate Limited claim was pending, the Recording Officer ignored the claim of the defendant. If the defendant were aggrieved at the completion of the Adjudication Record in respect of the claim put in by Choc Estates Limited, his recourse was, within 90 days, to give notice of his intention to appeal. See: Section 20 of the Land Adjudication Act. This, he failed to do.
- [25] The only remaining basis for a ruling in the defendant's favour is a finding that he has been in adverse possession of the said lands for a period in excess of 30 years. The defendant is here saying that he has an overriding interest in the said lands based on prescription.

[26] In plain and simple language, the St. Lucia Civil Code lucidly describes the quality or character of possession that a person claiming by prescription should possess. Article 2057 states:

“For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor”

[27] In assessing a claim made by prescription a court focuses not only on the acts and intention of the person claiming by prescription but also on the acts and attitude of the paper title owner. The acts and attitude of the latter can serve to rebut or help to confirm the claim that the person prescribing has enjoyed possession that is continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor. If there is evidence that a documentary owner has discontinued possession or abandoned the land, well that is one thing. But if during the period of possession claimed by the adverse possessor, the paper title owner has evinced an active assertion of title by, for example, carrying out surveys of the land in question, then it is difficult to see how the occupation by the adverse possessor can attain the character required by Article 2057. See: *Brandis vs. Craig* (1981) 30 W.I.R. 136 @145E. .

[28] The evidence in this case discloses that surveys on the said lands were carried out at the instance of Choc Estates Limited in 1962, 1976 and 1991. There is no evidence that the defendant ever challenged or was even aware of the carrying out of these surveys. The surveys were in my view cogent evidence of the paper title owner's continued possession of the said lands.

[29] In any event, weighing the oral evidence given as to possession, I preferred that given by the claimant and its witnesses. Their evidence was consistent and very detailed. I cannot say the same for the evidence of the defendant and his witnesses. My conclusion, having heard the evidence, is that prior to 1991, such occupation as the defendant enjoyed was stealthy, spasmodic and entirely concealed from the true owners of the said lands. Between 1991 and 1997 it probably became less so. When, around 1997, that occupation became public and open however, the true owners took immediate legal action.

[30] In all the circumstances there shall be judgment for the claimant. The counterclaim is hereby dismissed. A perpetual injunction is hereby granted in terms of the prayer for relief contained in paragraphs 2 (i), (ii) and (iii) of the Statement of Claim. No evidence was led by the Corporation on any damages it had suffered and so it is entitled only to nominal damages. The defendant is therefore ordered to pay to the Corporation damages for trespass in the sum of \$100.00. The defendant shall also pay costs to the claimant in the sum of \$10,000.00.

Adrian D. Saunders
High Court Judge