

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

(CIVIL DIVISION)

CLAIM NO. SVGHCV2024/0078

BETWEEN:

[1] PATRICIA WILLIAMS

Claimant

and

**[1] ERWIN NELSON
[2] HOUSING AND LAND DEVELOPMENT CORPORATION
[3] KINGSTON COOPERATIVE CREDIT UNION LIMITED**

Defendants

Before:

The Hon. Mde. Cybelle Cenac-Dantes

Judge of the High Court

Appearances:

Ms. Tonya Da Silva Counsel for the Claimant, Mr. Chrislon Fraser with Mr. Roderick Jones
Counsel for the First Defendant, Ms. René Baptiste Counsel for the Second Defendant, Ms. Patina
Knights Counsel for the Third Defendant

2025: November 17; 18;
2026: January 30 [closing submissions]
March 5.

JUDGMENT

A. Introduction

CENAC-DANTES, J.:

- [1] This is a claim concerning adjoining parcels of land at Largo Heights, Kingstown, being Lots 9 and 10 on Survey Plan G1944.
- [2] On 28 July 1998 the Claimant, Ms. Patricia Williams, purchased Lot No. 9 from the Housing and Land Development Corporation (“HLDC”), the Second Defendant by Deed of Conveyance duly executed and registered. Lot No. 10 lies immediately adjacent to and below Lot No. 9 on the same survey plan. It is not disputed that Lot No. 10 was not included in the claimant’s conveyance and remained vested in HLDC until 28 July 2014, when it was conveyed to the First Defendant, Mr. Erwin Nelson.
- [3] The claimant contends that from the time of her purchase of Lot No. 9 she entered into occupation of the adjoining Lot No. 10 and remained in possession thereof for a period in excess of twelve years. She therefore claims that HLDC’s title to Lot No. 10 was extinguished by operation of sections 17 and 19 of the Limitation Act,¹ and by reason of the alleged extinguishment of title, HLDC was incapable of conveying any valid or effective title to the First Defendant. The claimant seeks declarations to that effect.
- [4] In her closing submissions she further invites the court to grant declaratory relief under the **Possessory Titles Act**, Cap. 328, Laws of St. Vincent and the Grenadines Revised Edition 2009 (“the PTA”) a matter which will be examined later in this judgment.
- [5] The claimant also claims damages against the defendants. It is observed at the outset that no quantifiable or documentary evidence of damage was adduced at trial.
- [6] Following HLDC’s conveyance of Lot No. 10 to the first defendant in July 2014, the first defendant executed a Deed of Mortgage over that parcel in favour of the third defendant, Kingstown Co-operative Credit Union Limited, on 12 April 2016. The claim was subsequently amended to join the

¹ Cap. 129 Laws of St. Vincent and the Grenadines Revised Edition 2009

Credit Union as a party, the claimant seeking, in the event that she established title, consequential relief declaring the mortgage of 12 April 2016 void or of no effect as against Lot No. 10.

[7] During the course of the proceedings, the court directed counsel to address specifically in their closing submissions the status of the HLDC, and in particular, whether it constitutes an emanation or agent of the Crown for the purposes of limitation. That issue assumed central importance, as it bore directly upon whether the applicable limitation period was twelve years or thirty years and whether the statutory bar under the PTA² was engaged.

[8] All three defendants contend, inter alia, that HLDC is an emanation of the Crown and that, by virtue of Schedule II paragraph 10 of the Limitation Act,³ the applicable limitation period is thirty years rather than twelve. If that contention is correct, the claimant's pleaded case necessarily fails on the face of the chronology.

[9] **The issues for determination are therefore:**

- (1) Whether HLDC is properly characterised as an emanation or agent of the Crown for the purposes of the Limitation Act⁴;
- (2) The limitation period applicable to land held by HLDC;
- (3) Whether the Claimant has established factual possession and the requisite intention to possess for the period required by law;
- (4) Whether the relief sought under the PTA⁵ is available in the circumstances of this case;
- (5) What consequential orders arise in respect of the conveyance to the first defendant and the mortgage to the third defendant.

[10] The Court will address these issues in that order.

[11] The Court heard oral evidence from the claimant; from the first defendant; from Nicole Nelson who gave evidence on behalf of the first defendant; from Mr. Kenyatta Alleyne General Manager on behalf

² Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

³ Cap. 129 Laws of St. Vincent and the Grenadines Revised Edition 2009

⁴ Cap. 129 Laws of St. Vincent and the Grenadines Revised Edition 2009

⁵ Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

of the HLDC; and from Sharlene Antoine the representative of the third defendant, Kingstown Co-operative Credit Union Limited.

- [12] A witness statement of Justin Ollivierre was filed on behalf of the claimant. He was not called to give evidence and his statement was not adopted at trial. I therefore attach no evidential weight to its contents.

B. ISSUES

- [13] The first issue which the court must determine is whether the HLDC is, in law, to be treated as an emanation or agent of the Crown for the purposes of the Limitation Act⁶ and, by extension, the statutory bar contained in the PTA.⁷
- [14] Although the claimant did not plead a formal application for title under the Possessory Titles Act⁸, she sought declaratory relief founded upon adverse possession, and in closing submissions invited the court to recognise title pursuant to that Act. The status of HLDC is therefore central to the determination of whether the applicable limitation period is twelve years or thirty years and whether any statutory bar arises.
- [15] That question is decisive. If HLDC is properly characterised as an emanation of the Crown, two statutory consequences follow. First, by virtue of **Schedule II paragraph 10 of the Limitation Act**⁹, the period of twelve years prescribed by **section 17** is to be read as thirty years in the case of land held by the Crown. Second, **section 3(2) of the Possessory Titles Act**¹⁰ provides, in mandatory terms:
- “Without prejudice to the provisions of the Limitation Act, an application shall not be made in respect of Crown lands.”*

⁶ Cap. 129 Laws of St. Vincent and the Grenadines Revised Edition 2009

⁷ Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

⁸ Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

⁹ Cap. 129 Laws of St. Vincent and the Grenadines Revised Edition 2009

¹⁰ Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

- [16] The effect of **section 3(2)** is jurisdictional. It does not extinguish limitation rights; it bars the procedural mechanism of obtaining a possessory title declaration under the Act in respect of Crown lands. The Court may determine, where appropriate, that Crown title has been extinguished after the expiration of the applicable limitation period. What it cannot do, if **section 3(2)** is engaged, is grant declaratory title under the PTA in respect of Crown lands. The relevance of the PTA at this stage is therefore jurisdictional, not evidential.
- [17] The claimant submits that Lot 10 was vested in the HLDC, a statutory corporation with separate legal personality, and not in the Governor-General or the Crown. She contends that the definition of Crown lands under **the Crown Lands Act**¹¹ is therefore not satisfied. In particular, she relies upon **sections 4 to 6 of that Act**, which refer to lands vested in the Governor-General and administered on behalf of the Crown. She further relies upon the definition of “Crown Agents” in the **Interpretation and General Provisions Act**,¹² contending that HLDC does not fall within that definition and therefore cannot be treated as an emanation or agent of the Crown.
- [18] That submission proceeds on an unduly literal footing, and in my judgment, conflates form with substance. The question is not resolved merely by identifying the name in which title is vested. The inquiry is whether, in substance, HLDC is a State instrumentality holding and administering land as part of the governmental apparatus. I therefore do not accept that those provisions resolve the issue. **Sections 4 to 6 of the Crown Lands Act**¹³ address the statutory framework by which Crown lands may be vested, managed and disposed of. They do not purport to exhaustively define the circumstances in which land is to be treated as land of the Crown for all legal purposes. Nor do they preclude the Legislature from establishing a statutory corporation to hold, administer and develop public lands on behalf of the State pursuant to a public housing policy.
- [19] The question before this Court is not whether HLDC is identical to the Crown in form, nor whether Lot 10 was literally vested in the Governor-General. The question is whether, in substance and in law, HLDC holds and administers land as an instrumentality of the State, such that its lands are

¹¹ Cap. 319 Laws of St. Vincent and the Grenadines Revised Edition 2009

¹² Cap. 10 Laws of St. Vincent and the Grenadines Revised Edition 2009

¹³ Cap. 319 Laws of St. Vincent and the Grenadines Revised Edition 2009

properly to be regarded as Crown lands for the purposes of limitation and the statutory bar in the Possessory Titles Act.

- [20] It is well established that incorporation and separate legal personality are not determinative of this question. In **Tamlin v Hannaford [1950] 1 KB 18**, while the case itself held that the statutory corporation in question was *not* a servant or agent of the Crown, notwithstanding ministerial powers of direction, it nevertheless illustrates that incorporation and ministerial direction powers are relevant but not determinative; the statutory scheme must show the requisite Crown character. Similarly, in **Perch v Attorney General of Trinidad and Tobago [2003] UKPC 17**, the Privy Council emphasised that the existence of separate corporate personality does not conclude the inquiry; what matters is the substance of the statutory framework and the degree to which the body performs governmental functions under State control.
- [21] The Privy Council has also recognised that the inquiry is a functional one. In **The Barbuda Council v Antigua Aggregates Limited et al**¹⁴ case, the Court identified three broad considerations: the source of the body's powers, the degree of governmental control, and the nature of the functions being performed. Those considerations must be assessed in context.
- [22] It is against those criteria that HLDC must be assessed.
- [23] Turning to the **Housing and Land Development Corporation Act**,¹⁵ HLDC is established as a statutory corporation for the purpose of implementing housing and land development policy. **Section 23(1)** of the Act is of particular significance. It provides that the Minister may, by order, acquire land in a designated area and vest such land in the Corporation. This is a sovereign delegation of landholding power. It demonstrates that HLDC is a vehicle through which the State holds and administers land for development purposes. **Section 4** provides that its Chairman and members are appointed by Cabinet and their tenure is determined by Cabinet. This is direct executive control.

¹⁴ Civil Appeal No. 11 of 2005 - Antigua and Barbuda (delivered 14th May 2007)

¹⁵ Cap 98 Laws of Saint Vincent and the Grenadines Revised Edition 2009

- [24] **Section 7(1)** provides that:
“The Minister may... give to the Corporation directions in writing of a general character as to the policy to be followed in the performance of its functions whenever it appears to him to be necessary in the public interest.”
That is a statutory power of policy direction by the executive.
- [25] **Section 14** provides that the funds of the Corporation include:
“such sums of money as may, from time to time, be voted... by the House of Assembly.”
Parliamentary appropriation is an express funding source.
- [26] **Sections 35 and 36** exempt HLDC from stamp duty and income tax. Such fiscal immunities are characteristic of governmental bodies.
- [27] The functions conferred by section 6 include acquisition and disposal of land, development of designated areas, and provision of public amenities and housing assistance. These are quintessentially governmental functions in this jurisdiction.
- [28] The Claimant’s own 1998 Deed of Conveyance recites that HLDC’s functions include the development of land and housing schemes with the assistance of monies from the general revenue of the State: *“Under the provisions of the Act the corporation is charged with the responsibility of developing residential housing schemes in designated areas for needy members of the public with the intent that the hereditaments so developed shall be used to construct low income subsidised houses with the assistance of monies from the general revenue of the state.”* That recital is consistent with the statutory scheme and reflects the public character of the Corporation’s mandate.
- [29] The Claimant’s reliance on the **Crown Lands Act**¹⁶ definition does not displace that conclusion. Land acquired under the **Land Acquisition Act**¹⁷ may be vested in HLDC pursuant to **section 23(1)** of the HLDC Act¹⁸. The vesting mechanism does not alter the public character of the land. The

¹⁶ Cap. 319 Laws of St. Vincent and the Grenadines Revised Edition 2009

¹⁷ Cap. 322 Laws of St. Vincent and the Grenadines Revised Edition 2009

¹⁸ Cap. 98 Laws of St. Vincent and the Grenadines Revised Edition 2009

question is not simply in whose name the land is vested, but in whose interest and under whose authority it is held.

- [30] Properly understood, there is no incompatibility between sections **4 to 6 of the Crown Lands Act**¹⁹ and the conclusion that HLDC holds land as an instrumentality of the State. The Legislature may administer Crown lands either directly through the executive or indirectly through a statutory corporation established for that purpose. The existence of separate legal personality does not divest such land of its public character where the statutory scheme demonstrates governmental control and public purpose.
- [31] Nor does the **Interpretation Act**²⁰ definition of “Crown Agents” assist the Claimant. That definition concerns Crown Agents for Overseas Governments and Administrations. It does not purport to define the common law concept of an emanation or agent of the Crown for the purposes of limitation and statutory immunity.
- [32] The Court of Appeal in the Saint Vincent case of **Louise Grant v Daniel Lewis and another**²¹ held that HLDC constitutes an emanation of the Crown, entitled to the privileges and immunities of the Crown. That decision is binding on this Court. I am unable to discern any material distinction between the present case and that authority.
- [33] When these statutory indicia are viewed cumulatively, the degree of governmental control, and the public functions entrusted to HLDC, I am satisfied that HLDC is properly to be treated, for the purposes of the Limitation Act and the Possessory Titles Act, as an emanation or agent of the Crown. Lot 10 therefore falls to be regarded as Crown land within the meaning and policy of the applicable legislation.
- [34] The consequence of that finding is immediate. By virtue of Schedule II paragraph 10 of the Limitation Act, the period of twelve years prescribed by section 17 is to be read as thirty years in the case of land held by the Crown.

¹⁹ Cap. 319 Laws of St. Vincent and the Grenadines Revised Edition 2009

²⁰ Cap. 10 Laws of St. Vincent and the Grenadines Revised Edition 2009

²¹ [1994] ECSCJ No. 68

- [35] Schedule II paragraph 10 of the Limitation Act provides that, in its application to Crown land, the period of twelve years prescribed by section 17 is to be read as thirty years. Section 19 further provides that, upon the expiration of the prescribed period, the title of the paper owner is extinguished. The combined effect of those provisions is that Crown title may only be extinguished after thirty years of adverse possession.
- [36] It follows that the applicable limitation period is thirty years, not twelve years. In addition, **section 3(2) of the Possessory Titles Act²²** bars an application for a declaration of possessory title in respect of Crown lands. Accordingly, the claimant could not obtain relief under the Act in relation to Lot 10, and in any event, the thirty-year period had not accrued by April, 2016.
- [37] Accordingly, the Claimant's case founded upon twelve years' adverse possession is legally unsustainable. On her own pleaded chronology, she entered into possession of Lot 10 in or about July 1998. The statutory period had therefore not matured at the date of commencement of these proceedings. The claim, insofar as it depends upon the extinguishment of HLDC's title after twelve years, must therefore fail as a matter of law.
- [38] Against that statutory framework, the Claimant's attempt in closing submissions to frame her relief under the Possessory Titles Act does not cure the difficulty. Her pleaded case is one of adverse possession for twelve years under the Limitation Act. The PTA establishes a specific statutory procedure for declaration of possessory title, which includes mandatory procedural steps and safeguards. Those steps were not engaged. In any event, even if the claimant had sought to proceed under the Possessory Titles Act, the statute expressly bars that route in respect of Crown Land.

C. Factual Possession and Intention to Possess

- [39] Even though the Crown point is dispositive, I consider it appropriate, in the event that I am wrong on the character of HLDC, to address the claimant's case on its own merits.

²² Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

- [40] Adverse possession requires two elements: factual possession and the intention to possess (*animus possidendi*). The classic formulation in **Powell v McFarlane**²³ is that factual possession signifies an appropriate degree of physical control, and the intention required is an intention to possess, not an intention to own. The possessor must deal with the land as an occupying owner might be expected to deal with it and must exclude the world at large, including the paper owner, so far as reasonably practicable.
- [41] The Claimant's evidence reveals something striking at the outset. When cross-examined, she stated without hesitation: *"I always intended to take Lot 10, not steal. I intended to occupy as my own. So I bought one lot and expected to get two."* The certainty with which that was expressed was notable. I accept that from an early stage she formed the intention to acquire Lot 10. That intention is consistent with her pleaded case. At paragraphs 8 and 9 of her Amended Further Claim, she pleads that she purchased Lot 9 in July 1998 and went into occupation of that lot in that same month, and that she also went into occupation of Lot 10 in July 1998. Her own pleadings therefore place her alleged occupation of both parcels at the same starting point.
- [42] The law does not condemn such intention. The statute speaks in terms of possession and time, not moral virtue. In **Lambert Browne v Theresa Adams**²⁴ it was made clear that the nature and circumstances of entry remain relevant to the overall assessment of intention. The initial mode of entry is therefore not immaterial as it may colour the interpretation of later conduct.
- [43] The law does not penalise intention. A person may deliberately enter land with the hope that time will run in his/her favour. Bad faith does not defeat *animus possidendi*. However, the existence of such intention does not diminish the requirement to prove factual possession of the requisite quality.
- [44] But intention alone does not suffice. The question is whether the claimant's conduct objectively demonstrated exclusive factual possession for the requisite period.

HLDC's Title and Delay

²³ (1977) 38 P & CR 452

²⁴ *Lambert Browne v Theresa Adams et al* Saint Vincent and the Grenadines High Court Claim No. SVGHCv2008/0062 (delivered 25th August 2009)

- [45] The Claimant admitted that when she went “over to lot 10” she knew HLDC owned it. Her evidence is that she did not approach HLDC to purchase it because she did not believe they would sell her another lot. She never returned to enquire and she never applied.
- [46] More significantly, she admitted that she was aware of the **Possessory Titles Act**²⁵ sometime before 2014. She accepted that she knew she could apply. She stated that she did not do so because she believed that once she qualified she could apply “at any time.”
- [47] That evidence is revealing. It demonstrates that the Claimant was aware of the statutory framework and elected not to invoke it at that stage.
- [48] On her own pleaded case, twelve years would have matured in 2010. She took no step then. She did not seek declaratory relief. She did not initiate proceedings. She did not assert title. She did not pay land tax. She did not openly declare her interest to HLDC.
- [49] Instead, she remained silent until March 2016, when the First Defendant commenced active construction.
- [50] The Claimant presented as an educated and knowledgeable witness. In her oral evidence she employed legal terminology, stating, for example, “*I can say they had notice, not actual notice but constructive notice,*” when referring to letters written to financial institutions. That language reflects familiarity with legal concepts relating to notice and proprietary interests. Her evidence further revealed, and she stated, that she was aware that she could apply under the relevant legislation “at any time.” I accept that she was not unsophisticated in matters relating to land and title.
- [51] Her failure to invoke any statutory procedure in or about 2010, when on her own case, twelve years had elapsed, is therefore telling. It permits the inference that she did not consider her position secure at that time and elected instead to allow time to continue running. While there was no direct evidence that she specifically intended to mature a thirty-year period, her conduct is consistent with someone delaying a formal assertion of title until she perceived her position to be stronger.

²⁵ Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

Interruption of possession

- [52] It is important to distinguish between the substantive operation of the **Limitation Act**²⁶ and the procedural mechanism provided by the **Possessory Titles Act**.²⁷ The extinguishment of title under **section 19 of the Limitation Act**²⁸ occurs by operation of statute upon the expiration of the prescribed period. It does not depend upon the making of an application under the Possessory Titles Act. However, until the full statutory period has run without interruption, the paper owner retains the right to re-enter or assert title, and any effective interruption will prevent time from maturing. Notwithstanding, in **Leo Joseph v Judith Joseph**²⁹, the Court observed that the PTA³⁰ establishes a structured and transparent procedure, including advertisement and opportunity for objection, designed to regularise long occupation in an orderly and public manner.
- [53] That observation is not determinative of the present limitation issue. However, the existence of such a structured statutory pathway, of which the claimant admitted awareness, forms part of the evidential context. Her decision not to invoke that machinery during the period she says her title had matured would be consistent with a finding that her occupation was not manifested in a manner openly asserting settled ownership, but limited and interrupted.
- [54] The evidence as advanced does not support uninterrupted, exclusive possession.
- [55] The first defendant paid a deposit for the purchase of Lot 10 in 2001. At paragraph 3 of his witness statement he stated that from that time until conveyance in 2014 he visited the land numerous times to ensure that no one was squatting upon it. In his oral evidence he testified that he returned every six to seven months while on leave from sea, cleared the land and removed crops which he believed had been planted by the claimant. He instructed his sister, who also gave evidence, to visit the property regularly in his absence to ensure that it remained unoccupied, as the parcel stood vacant and undeveloped.

²⁶ Cap. 129 Laws of St. Vincent and the Grenadines Revised Edition 2009

²⁷ Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

²⁸ Cap. 129 Laws of St. Vincent and the Grenadines Revised Edition 2009

²⁹ SVGHCV2022/0014 (delivered 31st March 2025)

³⁰ Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

- [56] I found his evidence measured and credible. He readily corrected aspects of his witness statement where clarification was required. He conceded his periods of absence and did not seek to overstate the frequency or significance of his visits. He admitted observing some crops, including potatoes and other small plantings toward the rear of the lot, but consistently maintained that he removed them. Significantly, he denied observing the mature trees described by the claimant: mango, coconut (save for a single coconut tree), golden apple, pawpaw and plum rose which she asserted had long been established on the land.
- [57] His sister's evidence was conservative and restrained. She corroborated his account of regular visits and the absence of open occupation. She did not embellish her testimony nor seek to exaggerate the condition of the land. Where she did not recall details, she said so. Her evidence was consistent in describing the parcel as largely open and unoccupied, save for occasional crops such as banana plants and what appeared to be potato vines which were removed. I found her to be a credible witness.
- [58] The claimant, by contrast, asserted that she never saw the first defendant on the land prior to 2016. I do not accept that evidence. She lived directly above Lot 10 and had a clear vantage point over it. On the findings I have made as to the first defendant's periodic visits and clearing from 2001 onward, it is improbable that such activity, either by the first defendant or his agents would have escaped her observation over a period exceeding a decade.
- [59] The claimant accepted that the first time she saw the first defendant was in July 2014 on the roadway, when he indicated that he was coming to take over Lot 10. On her own evidence she told him at that time that she had been occupying the lot since 1998. Yet she took no immediate steps to assert her alleged ownership by way of legal proceedings. It was not until approximately two years later, in 2016, that she wrote to the financial institutions asserting an interest in the land and commenced this claim.
- [60] Further, even after the events of 2016, when the concrete structure was demolished and construction activity of the first defendant commenced, she did not invoke the statutory procedure under the

Possessory Titles Act³¹, nor did she claim damages in this action for trespass or destruction of property. That inaction is inconsistent with the conduct of a person confident that title had matured in her favour.

[61] Further, the Claimant accepted that in 2011/2012 surveyors from HLDC entered Lot 10 and placed concrete pegs demarcating boundaries. She did not seek injunctive relief. She did not assert legal ownership. She did not approach HLDC formally, she did not make an application under the PTA³².

[62] In 2003 she said a man named Seymour dug holes on the land. She asked him to leave. She did not sue. She did not complain to HLDC. She took no formal step.

[63] In **Zarb v Parry**³³ and related authorities, it is clear that possession must be sufficiently exclusive to amount to dispossession of the true owner. Repeated entries by the paper owner, if established, may interrupt possession. On the evidence, I accept the first defendant's periodic clearing and assertion of ownership are inconsistent with the claimant having excluded the world at large.

[64] I accept the evidence of the first defendant that from 2001, after paying his deposit to HLDC for the purchase of Lot 10, he returned to the land periodically while on leave and cleared it, including removing crops which he believed had been planted by the claimant. He testified that he did so every six to seven months.

[65] The legal effect of such acts must be properly understood. Adverse possession requires continuous and uninterrupted factual possession for the entire statutory period. Where the paper owner, or a person asserting title under him, re-enters and resumes physical control in a manner inconsistent with the possessor's exclusive dominion, time ceases to run and will only begin to run afresh once exclusive possession is again established.

³¹ Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

³² Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

³³ [2012] 2 All ER 320

- [66] On the claimant's own pleaded case, she entered into possession in July 1998. If the first defendant, acting with the authority or acquiescence of HLDC and asserting an interest derived from it following his payment of a deposit in 2001, first interrupted her possession at that time, the clock would reset. Even if she were thereafter able to re-establish exclusive possession, twelve uninterrupted years would not have matured until 2013.
- [67] However, I do not accept that there was a single interruption only. I accept the first defendant's evidence that he returned every six to seven months and cleared the lot. That pattern of periodic re-entry is inconsistent with the claimant having established continuous and exclusive possession for any uninterrupted twelve-year period.
- [68] I therefore find as a matter of fact that the first defendant acting with the authority or acquiescence of HLDC re-entered and asserted control over Lot 10 at intervals of approximately six to seven months from 2001 to 2014 and from 2014 onward. Those repeated acts of re-entry prevented any continuous twelve-year period of exclusive possession from accruing in favour of the claimant. On that finding alone, the claimant's case of twelve years' adverse possession cannot succeed.
- [69] In addition to the first defendant's periodic clearing from 2001 onward, the evidence establishes further assertions of control inconsistent with exclusive possession.
- [70] This conclusion is further reinforced by the evidence of Mr. Kenyatta Alleyne General Manager, who testified on behalf of HLDC as to its standard procedures. Although he was not the manager at the material time, he explained that where a purchaser is selected for a lot, they are taken to the site and if they are in agreement as to the price HLDC makes an offer to the buyer. That evidence, which was unchallenged, establishes, that in or about 2001 when the first defendant paid his deposit, HLDC representatives and the first defendant would have likely attended upon Lot 10 for a site visit. He testified further, that their standard procedure prior to conveyance, was that a surveyor would attend upon the parcel to view it. He stated that, in this instance, it was reported that crops had been observed on the land and that a letter was issued summoning the claimant to a meeting. The letter itself was not produced in evidence, and the witness was not personally involved at the material time.

However, the claimant accepted that surveyors from HLDC entered the land in or about 2011/2012 and placed concrete pegs demarcating boundaries.

- [71] That sequence is significant. It suggests that any apparent occupation by the claimant came to formal attention in or about 2011/2012, approximately ten years after the first defendant's initial deposit and site visit. The presence of surveyors in 2011/2012 is consistent with HLDC's stated practice prior to conveyance and demonstrates an assertion of ownership and control at that time. It also undermines the suggestion that the Claimant had established long-standing, obvious and exclusive possession of the parcel from 1998 onward. If her occupation had been of the scale and permanence asserted, it is difficult to reconcile that with the absence of formal recognition or objection by HLDC until 2016.
- [72] Similarly, the witness for the third defendant testified that, as a matter of standard practice, the Credit Union conducts both Land Registry searches and a site visit prior to execution of a mortgage. There was no direct evidence as to what was observed during any such visit in this case. I therefore treat this evidence as contextual only. It does not establish what was or was not present on the land, but it forms part of the surrounding circumstances against which the claimant's assertion of long-standing, open and exclusive occupation must be assessed.
- [73] While the absence of recorded objection is not determinative, the combined evidence of HLDC's allocation process, the surveyor's visit in 2011/2012, and the Credit Union's pre-mortgage site inspection is consistent with my finding that the claimant's activities were intermittent and limited, and were neither of the scale nor of the notoriety required to amount to exclusive possession of a residential lot within a statutory housing scheme.
- [74] Each of these acts constitutes a clear assertion of ownership and physical control inconsistent with the Claimant having excluded the world at large, including the paper owner. Where such acts occur periodically, the statutory clock does not merely pause; it resets.
- [75] On the findings I have made, the claimant has never been able to establish twelve continuous and uninterrupted years of exclusive possession. Even on the most generous view of her case, time was repeatedly broken before any twelve-year period could mature.

- [76] The second defendant, among other facts, relied in closing submissions upon paragraph 4 of its defence, which alleged that a wooden lean-to structure existed on Lot 10 and was removed in or about 2013 in preparation for completion of the sale to the first defendant. However, no evidence was led at trial to establish the existence, nature, or removal of such a structure. In the absence of evidential proof, I make no finding in relation to that allegation and attach no weight to it.

The Fence

- [77] The claimant's evidence as to fencing was vague and internally inconsistent. She accepted that Lot 9 itself was not fully enclosed. The alleged fencing of Lot 10 was partial and largely associated with containing goats. Her mother's recollection was uncertain. No photographs were produced.
- [78] The claimant also relied upon fencing as evidence of exclusive possession. In that regard, the evidence was not consistent. The claimant described galvanised fencing. Her mother, by contrast, stated that there was fencing "*on the bottom part of the left side*" and that "*the right side was fenced.*" That evidence confirms that the parcel was not fully enclosed and that any fencing was partial rather than continuous around the lot.
- [79] A fence is not mandatory in every case. But where land is open and unenclosed, the acts relied upon must clearly demonstrate exclusive dominion. That was not shown here. Further, in light of my finding that HLDC entered the land in 2011/2012 to demarcate the boundaries and place concrete pegs, that the first defendant undertook periodic clearing and that both he and his sister visited the land regularly, I am satisfied that the fence relied upon by the Claimant was neither complete nor effective and was incapable of excluding the paper title owner HLDC and the first defendant or establishing exclusive possession.

The Concrete Structure

- [80] The claimant stated that in 2013 she commenced construction of a 24 by 30 foot concrete platform supported by nine columns. She produced no photographs. No receipts. No planning approval. No

contractor evidence. The witness Justin Ollivierre, who might have corroborated the timeline, was not called.

[81] The first defendant testified that the structure was modest, erected over a long weekend in March 2016, and demolished in a matter of hours. I found his evidence credible. It was consistent with the absence of independent proof of a substantial structure existing over a three-year period.

[82] It is inherently improbable that a large reinforced concrete platform capable of parking multiple vehicles, supported by nine columns, would exist for years and be eradicated in a single day without documentary trace.

[83] I reject the claimant's evidence as to the scale and duration of that structure.

Farming and Documentary Proof

[84] The claimant asserted that she engaged in extensive farming activity on Lot 10 from as early as 1998. She stated that although she formally registered as a farmer in 2013, she had been farming prior to that time and had been "*reaping agricultural products for use and sale.*" However, she produced no farmer's identification card, no records of sales, no documentation from the Ministry of Agriculture, and no photographic evidence of sustained agricultural cultivation on the parcel.

[85] Her mother's evidence was generalised and uncertain as to dates. She accepted that she did not remember many details. She candidly acknowledged that she thought all the land was her daughter's until the dispute arose.

[86] The claimant's mother gave evidence that her daughter showed her the entirety of Lots 9 and 10 and that she understood her daughter to have purchased both parcels. That evidence is consistent with the claimant's intention to treat Lot 10 as her own. It does not, however, establish legal ownership, nor does it in itself demonstrate exclusive possession of the quality required in law.

- [87] The mother also stated that she assisted the claimant with crops on the land. That evidence corroborates some degree of use. It does not, without more, demonstrate that the claimant exercised exclusive dominion over the parcel or excluded the paper title holder.
- [88] The mother's evidence was that her longest stay at the property was approximately six months in 2011. She said she did not observe anyone coming to clean the land during that time but also acknowledged that she was inside most of the time. On her own account, her visits were otherwise brief, often lasting no more than one or two nights. The weight to be attached to her observations must therefore be measured.
- [89] Her evidence therefore supports some degree of cultivation. It does not establish exclusive control of the parcel.
- [90] The absence of documentary corroboration over an alleged eighteen-year period of commercial cultivation is telling.

Land Tax

- [91] The Claimant never sought to pay land tax on Lot 10.
- [92] In **Ronald David Caesar v Clement**,³⁴ the Court recognised that payment of land tax is a significant indicator of an intention to possess as owner. Conversely, failure to pay tax, particularly over a prolonged period, may undermine a claim of exclusive possessory intention.
- [93] The Claimant knew the land was not hers. She made no attempt to regularise her occupation through payment of tax. That omission is consistent with user, not ownership.

User, Not Possessor

- [94] What the evidence discloses is intermittent clearing, occasional planting, partial fencing, and a disputed structure erected at a late stage.

³⁴ GDAHCV2011/0198 (delivered 23rd July 2014)

- [95] It does not disclose continuous and exclusive dominion of the quality required to dispossess a paper owner.
- [96] I accept the evidence of the First Defendant and find that he asserted ownership from at least 2001, periodically cleared the land, and objected to the Claimant's activities.
- [97] The claimant's activities amount to user. They do not amount to factual possession of an exclusive and undisturbed character for twelve continuous years.
- [98] It is also necessary to consider the character of the land itself. Both the claimant's Deed of Conveyance for Lot 9 and the first defendant's Deed of Conveyance for Lot 10 contain, in the Second Schedule, a covenant in materially identical terms, namely, that:
"The purchaser hereby agrees with the Corporation that he/she shall use the hereditaments and premises to erect a dwelling house for his/her own occupation and that of his/her heirs..."
That covenant reflects the essential character of the subdivision. The lots were created and conveyed as residential building lots within a statutory housing development scheme administered by HLDC.
- [99] As was observed by Slade J in **Powell v McFarlane (1977) 38 P & CR 452**, what constitutes possession "*must depend on the particular circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed.*" That formulation was approved by the House of Lords in **JA Pye (Oxford) Ltd v Graham [2003] 1 AC 419**. In assessing whether the claimant's acts amounted to factual possession, the Court must therefore consider whether those acts were of a character consistent with exclusive dominion over a residential building lot intended for dwelling construction, or merely consistent with temporary or opportunistic use of open land pending development.
- [100] Cultivation of land can, in appropriate circumstances, found a claim in adverse possession. The law does not require that the use mirror the intended use of the paper owner. However, as explained in **JA Pye (Oxford) Ltd v Graham**, the question remains whether the claimant has exercised exclusive physical control and dealt with the land "*as an occupying owner might be expected to deal with it.*" Where land is earmarked for residential construction within a statutory development scheme,

intermittent planting, partial fencing, and uncorroborated assertions of farming, unaccompanied by payment of land tax, permanent enclosure, or effective exclusion of others, may be consistent with user rather than possession.

- [101] On the facts as I have found them, the claimant's activities on Lot 10 did not prevent the paper owner from asserting his development interest, nor did they amount to the open, exclusive and unequivocal dominion required to dispossess an owner of a residential allotment created for housing within a public development scheme. Her occupation was therefore not of the character required in law to extinguish title.

Damages

- [102] The claimant also sought damages but failed to specify the basis upon which such damages were claimed. No evidence was led on this. No receipts, no invoices, no agricultural records, no photographic record of mature cultivation or of the scale of the alleged structure prior to demolition were produced.
- [103] That absence is not merely a failure of quantification. It corroborates the broader evidential picture. If the land had been cultivated in the sustained and commercial manner described, one would expect some objective trace: records of sale, photographs of harvest, ministry certification, or at the very least credible proof of the volume and value of produce lost.
- [104] The complete absence of such material is consistent with my finding that the claimant's activities on Lot 10 were sporadic and limited. It is also consistent with interruption at various stages by the first defendant's clearing and assertion of ownership.
- [105] A factual possessor does not occupy in secrecy. Possession sufficient to extinguish title must be open, notorious, and inconsistent with the continued enjoyment of the paper owner. The acts relied upon here were not of that character.

- [106] I therefore find that even if the twelve-year period were applicable, the claimant has failed to establish continuous, exclusive, and undisturbed factual possession of Lot 10 for the requisite period.
- [107] She did not enclose the entire parcel. She did not construct a dwelling or permanent structure reflective of settled ownership. She did not maintain continuous and demonstrable agricultural production. When enforcement action was taken by the Planning Department, she took no demonstrable steps to challenge it. When others entered the land, she did not seek injunctive relief. She did not initiate proceedings under the Possessory Titles Act³⁵ at any time during the alleged twelve-year period, notwithstanding her admitted familiarity with its provisions.
- [108] It is not the absence of litigation that defeats her case. It is the absence of acts unequivocally asserting exclusive dominion.
- [109] Clearing bush and planting crops sporadically upon adjoining land may amount to use. It does not, without more, amount to dispossession of the true owner.

Final Observations

- [110] The Possessory Titles Act³⁶ did not emerge in a vacuum. It was enacted in recognition of a social and historical reality in this jurisdiction; that many citizens, through decades of occupation, labour, cultivation and family life, had settled upon land without formal documentary title. The legislation provided a structured and transparent mechanism by which such long-standing occupation could be regularised in a manner fair, both to the occupier and to the public.
- [111] It was not conceived as a device by which adjoining land might be quietly appropriated by design.
- [112] The Claimant's own evidence makes plain that from the moment she purchased Lot No. 9 she knew that Lot No. 10 was not hers. She understood that it belonged to HLDC. She was familiar with the statutory machinery by which title might be acquired through lapse of time. Her intention, as I find on

³⁵ Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

³⁶ Cap. 328 Laws of St. Vincent and the Grenadines Revised Edition 2009

the evidence, was from the outset to allow time to run in her favour. The law does not condemn such intention. But the law requires proof.

- [113] What the evidence reveals is not the settled life of a family who, over decades, built, invested, cultivated and integrated the land into their domestic existence. It reveals instead sporadic clearing, unsubstantiated claims of farming, a partial fence, and a late and incomplete structure erected without planning approval at a time when challenge had become imminent. It reveals no sustained and unequivocal acts of dominion consistent with ownership.
- [114] Her occupation, as I find it, was not open assertion of ownership. It was limited in scope and duration and did not amount to an open and unequivocal assertion of ownership sufficient to extinguish title.
- [115] The stability of land tenure in this State depends upon principled application of limitation law. A remedial statutory framework, designed to address genuine historical inequities, will not be extended beyond its intended purpose so as to defeat established title in circumstances not contemplated by Parliament.
- [116] Where a citizen purchases one lot and, with full knowledge that an adjoining lot was not included in that purchase, proceeds to occupy that adjoining land with the hope that time will run in her favour, the Court must examine the evidence with particular care. The burden remains upon the claimant to prove, on a balance of probabilities, that she established factual possession of the requisite quality and duration. The standard of proof does not change. What changes is the level of scrutiny appropriate to the circumstances.
- [117] In this case, having considered the totality of the evidence, I am not satisfied on a balance of probabilities that the claimant established continuous, exclusive and undisturbed possession for the statutory period. That burden has not been discharged.
- [118] On the evidence it is clear that the claimant's conduct was deliberate and strategic. Her intention to acquire lot 10 was designed to mature time while avoiding open confrontation. But intention alone is

not possession, and a calculated expectation that time will mature in one's favour is not a substitute for exclusive physical control.

[119] The claim therefore fails for two independent reasons. First, the applicable limitation period in respect of Lot 10 is thirty years, and on the claimant's own pleaded chronology that period had not matured at the date of commencement of these proceedings. Secondly, even if the twelve-year period were applicable, I am not satisfied on the evidence that the claimant established continuous, exclusive and uninterrupted possession for that duration.

[120] For these reasons, and for those already given, the claim must fail.

[121] The claimant's claim has failed in its entirety. The general rule is that costs follow the event. There is no reason in this case to depart from that principle.

Costs

[122] This is an unvalued claim for the purpose of prescribed costs. In accordance with the approach applied in this Court, an unvalued claim is treated as having a notional value of \$50,000 for the purpose of calculating prescribed costs. The prescribed costs figure for trial flowing from that notional value is \$10,000.

[123] The question then arises whether that prescribed sum should be awarded once for the proceedings as a whole, to be divided among the defendants, or whether each successful defendant is entitled to prescribed costs separately. In my judgment, the proper course on the facts of this case is to award prescribed costs to each successful defendant.

[124] First, each defendant was a substantive party against whom relief was sought and each had a distinct legal interest to protect. The claimant sought declaratory relief which, if granted, would have undermined HLDC's title, the first defendant's conveyance and registered title, and the third defendant's security interest under its mortgage. These were not nominal interests. Each defendant faced a real risk of adverse orders.

[125] Second, the defendants were not represented jointly and did not advance a single undifferentiated defence. Each defendant was separately represented and advanced arguments directed to its own position. HLDC addressed the Crown and statutory status issues; the First Defendant defended title, interruption and factual possession; and the third defendant defended the validity of its mortgage as consequential relief. Although there was some overlap in submissions, the defences were not duplicative in the sense that one defendant could fairly be regarded as merely riding upon another's case.

[126] Third, prescribed costs are not an indemnity for actual expenditure. They are a tariff fixed by the Rules, intended to provide a predictable and proportionate consequence of success or failure. Where multiple defendants are each successful parties with separate legal stakes and separate representation, it is not contrary to the scheme of the Rules for each to receive prescribed costs, unless the court considers that course unjust or disproportionate in the particular circumstances.

[127] Fourth, I have considered whether the overlap in issues warrants a single award to be shared among the Defendants. I do not consider that approach appropriate here. The claimant elected to frame her case so as to challenge HLDC's title, the first defendant's conveyance, and the third defendant's mortgage. Having chosen to litigate against three Defendants with distinct legal interests and separate counsel, it is neither unfair nor disproportionate that she bear the prescribed consequences of that choice upon failing in the claim.

[128] In those circumstances, I order that each of the first, second and third defendants is entitled to prescribed costs calculated on the notional value of \$50,000, being \$10,000 to each defendant.

Orders

[129] For the reasons set out in this judgment, the Court orders as follows:

- (1) The Housing and Land Development Corporation is, for the purposes of the Limitation Act, to be treated as the Crown, and the applicable limitation period in relation to Lot 10 is thirty years.

- (2) The claimant's claim for a declaration that she has been in occupation of Lot No. 10 on Plan G1944 by adverse possession for a period of twelve years is refused.
- (3) The claimant's claim to set aside the Deed of Conveyance dated 28 July 2014 made between the Housing and Land Development Corporation and the first defendant is dismissed.
- (4) The claimant's claim to set aside the Deed of Mortgage of the 12th April, 2016 in favour of the third defendant is dismissed.
- (5) The claimant's claim for damages is dismissed.
- (6) Each of the defendants is entitled to prescribed costs in the sum of \$10,000.
- (7) The first defendant is to take carriage of the order after judgment.

[130] I wish to thank counsel for their careful and thoughtful submissions, which have greatly assisted the court in the preparation and timely delivery of this decision.

[131] I also acknowledge the assistance of my Judicial Research Assistant Moureeze Franklyn in the research for this judgment. The responsibility for the contents and conclusions herein remain entirely my own.

Cybelle Cenac-Dantes
High Court Judge

BY THE COURT

REGISTRAR