THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2012-04172

Between

RICHARDSON ANDREWS

Claimant

and

NEVILLE RAMSEY

Defendant

Before the Honourable Mr. Justice James C. Aboud

Representation:

Mr Colvin E Blaize instructed by Ms Melina E Blaize for the claimant

Ms Theresa Hadad instructed by Mr Adrian D Ramoutar for the defendant

Date: 8 December 2017

JUDGMENT

Introduction

[1] The claimant, Richardson Andrews, alleges that he is the legal owner of two parcels of land upon which the defendant trespassed when he erected a building thereon. In his defence and counterclaim, the defendant, Neville Ramsey, asserts that he has been in uninterrupted, exclusive occupation of one of the parcels of land for over 30 years and seeks a declaration that he is entitled to possession of this parcel through adverse possession. The dispute therefore concerns the question whether the claimant's legal title to one or two of the lots has been extinguished by the defendant's activities.

The claimant's case

[2] In his Statement of Case filed on 10 October 2012, the claimant claims that by deed of conveyance dated 23 January 1972 he became the owner of two parcels of land in Haven Park, Maracas, described as Lots 19 and 20. Around 2004, while the claimant was abroad, the defendant entered the lands and commenced construction of a building without the claimant's permission. The claimant instructed his attorney-at-law, Mr. Horace Broomes, to write a letter to the defendant to cease his acts of trespass but the defendant continued to do so. In March 2012, the claimant retained the services of a licensed land surveyor, Trevor Koylass, to re-define his boundaries so as to determine the extent of the encroachment. Shortly thereafter this action was filed.

[3] The claimant now claims, among other things:

(1) damages for trespass at the rate of $1,200.00 per month from November 2004 until possession is delivered up;

(2) an order that the defendant removes the structures built by him on the claimant's two lots of land;

(3) possession of both lots; and

(4) an injunction restraining the defendant from entering on the claimant's land.

The defendant's case

[4] In his defence and counterclaim filed on 23 January 2013, the defendant asserts that he has been in uninterrupted possession of Lot 19 since 1980 when his deceased mother purchased Lot 4. On the cadastral sheet Lot 4 is situate east of Lot 19. Upon construction of a home completed around 1982, the defendant and his family occupied the dwelling house situate on Lot 4. Since then, the defendant cultivated long term and short term crops on Lot 19.

[5] Around 2002, after having been in undisturbed possession for about 22 years, the defendant decided to construct a three-storey structure on Lot 19 and occupied the

building with his wife and children. As it later turned out in the evidence, a very small corner of this structure encroaches on Lot 20.

[6] The defendant is therefore seeking, among other things:

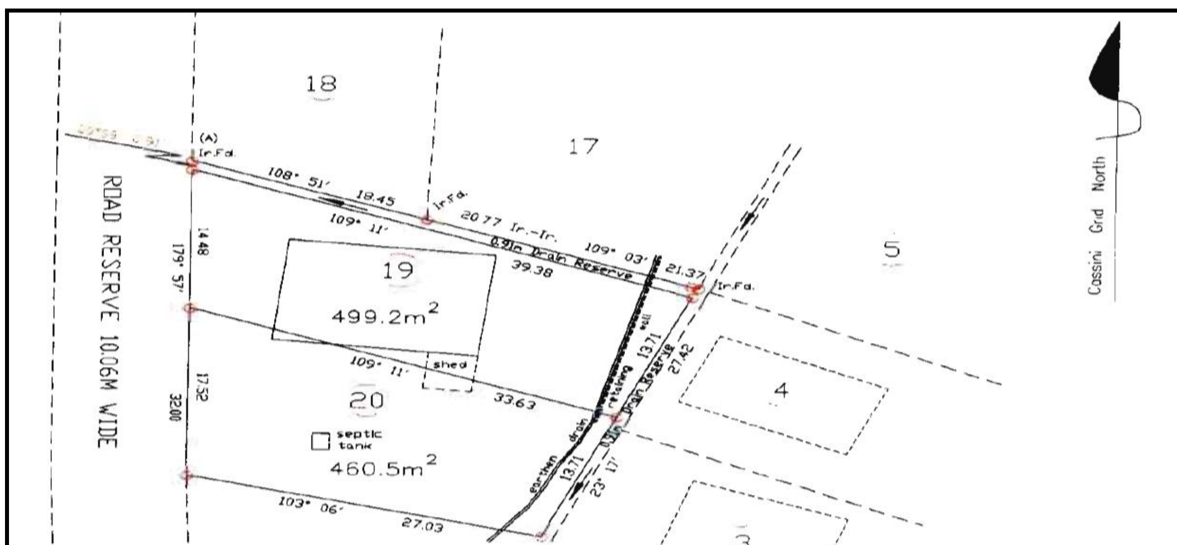
(1) a declaration that he is entitled to possession of lot 19;

(2) an order restraining the claimant or his agents from threatening or harassing him.

[7] On 12 May 2015, just before the start of the trial and after additional efforts at settling this matter had failed, the claimant's attorney at law Mr Blaize raised further evidential objections to any reference to Lot 20 in the witness statements of the defendant's witnesses. This was because the defence and counterclaim only referred to the defendant asserting title to Lot 19, not Lot 20. I therefore ruled that any reference to "Lot 20" or the use of the plural "lots" should be struck out of all the witness statements filed on behalf of the defendant.

[8] In the defence to the counterclaim filed on 14 February 2013, the claimant denied that the defendant was ever in occupation of Lot 19 and denied that the defendant has extinguished his title to Lot 19.

[9] To assist in providing a visual overview of the general layout of the properties in dispute, the following is a portion of the cadastral sheet that the claimant relied upon:



Key

Lot	*Description*
19	Disputed parcel claimed by the defendant and legal title vested in the claimant, showing the defendant's three-storey structure.
20	Legal title vested in the claimant, but small portion of encroachment is visible.
4	Defendant's mother's parcel and their family home.

The issues

[10] In determining whether the defendant has a possessory title to the claimant's land, it first has to be determined:

(1) whether the claimant has proven that he was entitled to possession of Lots 19 and 20 as the legal owner; and

(2) whether the defendant has extinguished the claimant's legal title to lot 19 through adverse possession.

(a) *Whether the claimant has proven that he was entitled to possession of the Lots 19 and 20 as the legal owner.*

[11] The claimant asserts that he is the legal owner of Lots 19 and 20 by virtue of deed dated 23 January 1972 between John Francis, the vendor, and himself as the purchaser. This deed was annexed to his Statement of Case but was not annexed to his witness statement. In his defence the defendant put the claimant to strict proof in relation to proving ownership. Ms Hadad, for the defendant, objected to the deed being adduced into evidence and relied on CPR 29.5(1)(e):

> "29.5 (1) A witness statement must—
> …
> (e) sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document."

[12] However, this deed was included in the defendant's list of documents for standard disclosure filed on 29 July 2013 under Schedule 1 Part 1. Apart from including this deed in their Statement of Case, the claimant's attorneys had also included it in their list of documents for standard disclosure filed on 2 August 2013. Again, counsel for the defendant, in their jointly agreed bundle of documents filed on 16 December 2013 pursuant to my directions, included this deed under "Schedule 1- authentic documents the truth of their contents agreed".

[13] During the trial I admitted the deed *de bene esse*. I do not find merit in the defendant's objection to the deed being adduced. CPR 28.18 says this:

> "28.18 (1) A party shall be deemed to admit the authenticity of any document disclosed to him under this Part unless that party serves notice that the document must be proved at trial.
>
> (2) A notice to prove a document must be served not less than 42 days before the trial."

[14] In *Hector v. Keith,* Civ. App. No 6 of 2010, unreported, the trial judge appeared to have erroneously formed the view that certain documents which facilitated the proving of a statutory tenancy were not annexed to the respondent's witness statement. Counsel for the appellant submitted that the trial judge was wrong to rely on those documents as they were not evidence before her. The Court of Appeal noted that the documents were in fact annexed to the respondent's Statement of Case. The trial judge still considered the documents to be admissible but the Court of Appeal did not address this issue further. The trial judge stated this at paragraph 5 of her judgment:

> 5. I think it is important to remind that documents which are filed in bundles pursuant to case management orders do not automatically

become evidence in the case at trial. In the absence of agreement between the parties as to the admissibility of documents or an agreement as to the procedure for referring to them, witness statements should specifically refer to the documents filed in bundles, identify them and mark them, and the documents should be annexed.

[15] The trial judge went on to state at paragraphs 7-8 of her judgment that:

> 7. While the claimant's witness statements did not refer to these documents, I found that these documents contained in the supplemental list were properly disclosed pursuant to Part 28 of the CPR…The defendant served no such notice. The authenticity of these documents was therefore not in dispute. It was not in issue that they emanated from the relevant government department.
>
> 8. Further to this, these particular documents were in the nature of public documents and therefore admissible under part 22 (1) of the Evidence Act Ch. 7:02."

[16] In the instant case, the defendant has not given any notice to prove the contents of the deed. There is therefore no real dispute as to the authenticity of the deed. Furthermore, the fact that the deed was listed as an agreed authentic document, the truth of its contents not being in dispute by the defendant, I see no reason why I should not admit the deed both for its authenticity and its truth.

[17] Having admitted the deed, I am therefore satisfied that the claimant has proven that he is the legal owner of Lots 19 and 20.

(b) *Whether the defendant has extinguished the claimant's legal title to Lot 19 through adverse possession.*

To resolve this issue of mixed fact and law I will first closely examine the evidence led at the trial.

The evidence of the claimant's witnesses

Richardson Andrews

[18] In his witness statement, the claimant stated that he became the owner of two parcels of land at Haven Park, Maracas, St Joseph in 1972. He lived in a different part of Trinidad. In 2000, when he left Trinidad and Tobago to work and live in Grenada, the parcels were vacant and overgrown with bushes. Sometime between 2000 and 2005, the defendant entered on his land without his permission or consent and commenced the construction of a building. He visited the site in 2005 and found the defendant in the act of putting up a structure and told him that he was building on his land and that he should stop. The defendant responded that the land was his and that he had a deed for it. The claimant indicated that he also had a deed and asked that the defendant provide him with his deed so that the matter could be resolved. The defendant promised the claimant to provide him with the deed but this promise never materialised.

[19] When the claimant returned to Trinidad on another occasion (he did not state what year in his witness statement), he found the defendant continuing his construction and called on him to provide his deed. He then gave instructions to his then attorney at law, Mr Horace Broomes, to write a letter to the defendant concerning the trespass. However, a copy of this letter that Mr. Horace Broome allegedly wrote was not attached to his witness statement. Under cross-examination the claimant stated that he thinks he was given a copy of the letter but he could not find it. He also testified that he called the lawyer's office on one occasion and spoke to Mr Broomes's secretary but nonetheless never got a copy.

[20] Around May 2012, two years after the completion of the house, the claimant retained Mr Trevor Koylass, Licensed Land Surveyor, to re-define his boundaries in order to examine the extent to the defendant's encroachment onto his lands. Following this, he caused his new attorney at law, Mr Colvin Blaize, to write to the defendant calling on him to cease his acts of trespass on the land, which defendant failed to do. The action was filed shortly thereafter.

[21] Under cross-examination, the claimant admitted that in his witness statement, he did not provide any evidence in relation to his land for the period 1982 to 2002. He did not know the defendant's mother or the defendant's sister from the neighbourhood because he did not live there. He came to know the defendant's sister, Marva Thomas, who testified on his behalf, during the period when he encountered the defendant on his land. He was not aware of a dispute between the defendant and his sister. He never fenced the land or lived there. He lived elsewhere in Trinidad and also abroad.

Trevor Koylass

[22] In his witness statement, Mr. Koylass, a licensed land surveyor, indicated that he carried out a survey on Lots 19 and 20.

[23] Under cross-examination, Mr. Koylass admitted that there was a discrepancy between the measurement of Lot 19 on the schedule to the deed which was 5,491 square feet and his measurement which was 5373 square feet. Similarly, Lot 20 was measured at 5,078 square feet while he measured it at 4,956.8 square feet. He explained that calculating an area using dimensions on a survey plan varies depending on the direction of your calculation so that if you go in a clockwise direction from one point and then anticlockwise there would be different measurements.

[24] While a very small portion of the concrete structure as well as a shed is on Lot 20, the precise area of the emergence was not quantified by this witness. He admitted that he cannot give evidence of the encroachment of the structure from Lot 19 into Lot 20.

Raymond Pierre

[25] Mr Pierre, a chartered valuation surveyor, was retained to provide an opinion as to the open market and rental values attributable to the land only in relation to Lots 19 and 20. He concluded that the annual rental value in respect of lot 19 is $8,600 and in respect of Lot 20 it is $8,000.

Jennifer Elias

[26] Ms Elias is the owner of the neighbouring Lot 17 and indicated that she had left to live in the United States in 1972 and would return every couple of years for vacation and to look at her property. When she visited in 1998, the said lots, along with other properties in the area, "were in bush" and she never saw the defendant or any structure there. In 2005, she returned home and noticed that construction of a house had commenced by someone on the lands of the claimant. Under cross-examination Ms Elias stated that she returned permanently to Trinidad and Tobago in 2010 and as far as she recalls the defendant did not reside at that address.

John Francis Jr

[27] Mr Francis has always lived in the neighbourhood where the disputed property lies and knows both parties to this matter. He can see the claimant's land from his home. Around 2003-2004, he observed the defendant cleaning the claimant's land and informed him that the land owner was abroad. His concern was that the defendant was going to build. He admitted under cross-examination that if the defendant was cleaning to plant crops on the lot, then that would have been alright for him since he would have been keeping the bush down. The defendant allegedly told him that there was a strip of land behind his mother's house which was a driveway. However, Mr Francis informed him that the driveway was on Ms Elias' property who was in England at that time. After Mr Francis showed the defendant the cadastral sheet, he insisted that the claimant's lot was a play area and that the other lot was a driveway. He said that before building on the claimant's land, the defendant was never in occupation and the property was vacant and overgrown with bush. He also admitted that the defendant's mother used to plant fig trees on Ms Elias's land to keep the bush down.

[28] This witnesses' understanding of the lot numbers was poor and he seems to have had an entirely different numbering system for the lots. His numbering system was not reflected on the cadastral sheet. The upshot of this is that when he referred to an encroachment on Ms Elias' land, it opened the possibility that he might be referring to an encroachment on

the claimant's land at Lot 19, which adjoins Lot 4. This unfamiliarity or misunderstanding was confusing because Mr Francis's father sold off all the parcels in the 1980s and his understanding was expected to be better.

Marva Thomas

[29] Ms Thomas lives at Lot 4 which is east of the disputed property and is the sister of the defendant. She stated in her witness statement that in 2000, when she returned to live in Haven Park, the claimant's land was vacant and covered in bush. Around 2003, the defendant cut a road from Haven Park Main Road making an entrance through Lots 19 and 20 where he started to construct a dwelling house. She said that the building was completed in 2010 and that the disputed lands were vacant before the defendant began building on it. She stated that the lands only had trees and bush and the defendant was not in occupation before 2003.

[30] Under cross-examination, Ms Thomas stated that her mother did not occupy Lot 19 although her mother said in her will that the defendant occupied it. The wording of the will is included in paragraph [32] below. She conceded that before the defendant occupied Lot 19, her mother cultivated and planted that land for the years she was alive. She admitted that her mother was known for making wines however she said that her mother did not grow the fruits herself— friends would bring fruits for her wine-making enterprise. She and her brother, the defendant, do not get along, and there is latent animosity between them concerning the disposition of her mother's estate.

The evidence of the defendant's witnesses

Neville Ramsey

[31] Mr. Ramsey testified that Lot 4 was purchased by his parents by deed on 23 November 1970. From about 1980 to 1982, the defendant's mother constructed a house on Lot 4 and from the time the property was purchased in 1970, he helped his mother plant on the property and the land behind the property known as Lot 19. The defendant gained access to Lot 19 using Lot 4 and also at a side entrance through a road reserve. He later found

out that the said lot fell on what he described as “trig” on a cadastral map. I did not understand what this referred to. In the early to mid-1970s the defendant’s mother started planting on Lot 19, both long and short term crops, and he said that she always treated the lot as part of her own property.

[32] Around the early 1980s the defendant’s mother told him that she wanted him to have her land as he was her only son. She also encouraged the defendant to start using the Lot 19, which he did. He got married in 1985 and continued to live at Lot 4, and eventually moved out in 1989. However, he stated that he continued to visit his mother and tend to Lots 4 and 19. A tree fence was used as a boundary to keep out squatters. After working on the lot for several years with his mother, she encouraged and gave him permission to build and occupy the lot and eventually willed it to him.

[33] In her will dated 31 January 2005, the defendant’s mother declared that she is “…the owner of the dwelling house situated at No 4 Haven Park, La Seiva, Maracas Royal Road, St Joseph, in the Ward of St. George’s East, in the Island of Trinidad.” The will went on to state:

> I hereby give devise and bequeath unto my children…my said dwelling house for their sole use and benefit absolutely as joint tenants.
>
> I hereby direct that…Neville Ramsey is to occupy the southern side of downstairs portion of that said dwelling house, comprising two rooms and also an appurtenance portion of land to the back of the house measuring one hundred feet and nine (109ft) eleven inches (11’) by forty five feet (45ft) wide which he now occupies…”

[34] In 2002, prior to the date of the will, the defendant began planning the construction of a home on the lot, which he said was completed in 2008. During his occupation of the lot, and the previous occupation by his mother, no one else ever used or occupied the said lot. The first time that the defendant heard about the claimant was when he received a letter from the claimant’s current attorney, Mr Blaize. At no time did anyone speak to him and tell him that he was trespassing or that any other person owned or had an interest in Lot

19. The defendant states that Lot 19 has been in uninterrupted possession and/or occupation by his mother since 1970 and by him since 1980.

[35] Under cross-examination, the defendant stated that his mother gave him permission to build on Lot 19 in 2005 in her will dated 31 January 2005. It was after he saw her will that he began construction in 2005. He said that construction started in 2002 when he began planning, organizing, and gathering materials. He admitted under further cross-examination that his mother gave verbal permission in 2002. His sister, Marva (Ms. Thomas) was present when their mother made a will and would know that the will gave him her consent. He also stated that the first time he saw the claimant is in court. He further said that he did not recall getting a letter from C. Blaize and Co but he recalls having a conversation with an attorney about the claimant, which was after getting the court documents. He later admitted that he heard about the claimant before the case was filed.

Godfrey Frederick Samuel

[36] The defendant's cousin stated that as a boy he frequently visited the home of the defendant's mother at 4 Haven Park, Maracas St. Joseph and the land behind the property included several fruit trees which she planted on the lot. The defendant assisted his mother in tending to her crops on the lot and also recalled the defendant's mother telling the defendant that the lot was for his use. Around the early 1980s, Mr Samuel recalls the defendant as a young man tending to the said lots. After the defendant got married in 1985 and moved out of the property in 1989, he continued to visit regularly and tend to his crops and trees on the lot. The defendant also asked him to assist him in constructing a house on the adjoining lot for him to live, and he did so. During his visits to the property, Godfrey does not recall anyone other than the defendant's mother and the defendant, using and or occupying the said lots.

Anna Ashby

[37] The half-sister of the defendant, who is now deceased and was therefore unable to be cross-examined, indicated in her witness statement that when her mother and step-father purchased the property at 4 Haven Park, her mother subsequently planted fruit trees on

the property and on the lot behind the property. The defendant assisted their mother in tending to her crops both on the property and the adjoining lot. Although she lived elsewhere she visited her mother two to three times per week. Around the mid-1970s, their mother intimated to her that she wanted the defendant to take the adjoining lot as he was her only son. Her mother also encouraged him to start using the adjoining lot. Around the early 1980s, the defendant took over tending to the lot and took care of the plants. Even after he got married and moved out of the property, he would still regularly visit the lot and tend to his crops and trees. About 12 years ago, the defendant began to construct a house on the lot, which he completed a few years later. During her visits to the property, she cannot recall anyone other than her mother and the defendant using and/or occupying the said lot.

The law

[38] The claimant may only succeed in trespass if he proves that the defendant entered on his land and built a structure without his permission unless it can be proven that his title was extinguished by adverse possession.

[39] Section 3 of the *Real Property Limitation Act* Chap. 56:03 ('the Act') says this:

> 3. No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.

[40] Section 22 says this:

> 22. At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished.

[41] In order to successfully extinguish the claimant's title through adverse possession, the defendant must prove that he was in factual possession and that he had an intention to possess Lot 19.

[42] Factual possession requires a sufficient degree of physical custody and control. It must be single and exclusive possession. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question of what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature of commonly used or enjoyed (see Browne-Wilkinson LJ in *JA Pye (Oxford) Ltd & Anor v Graham & Anor* [2002] 3 All ER 865 at para. 41 relying on Slade J in *Powell v Mc Farlane* (1977) 38 P&CR 452).

[43] An intention to possess requires an intention to exercise such custody and control on one's own behalf and for one's own benefit. The necessary intent is to possess, not to own, and an intention to exclude the paper owner only as far as was reasonably possible. (see *JA Pye (Oxford) Ltd & Anor v Graham & Anor* [2002] 3 All ER 865 at para 43).

[44] In the recent Court of Appeal decision in *Lashley v Marchong & Honore* (2017) Civ. App. No. 266 of 2012, the question of joint occupation was discussed. Jones JA, giving the majority judgment, said this:

> This is not, strictly speaking, a case of successive squatters. In the instant case the occupation of the appellant and his mother were not adverse to each other. They occupied the premises jointly. This was a case of single possession exercise by them jointly. Under ordinary principles of law therefore the right of the survivorship would operate. Accordingly the appellant would be entitled to include the period of his joint occupation with his mother in computing the time.

Analysis of the evidence

[45] There is a two-part question of fact to be decided, one objective and one subjective: did the defendant exercise sufficient possession or control of Lot 19 for 16 or more years preceding this action, and did he have the requisite intention to possess it on his own behalf? If the answers to both questions are in the affirmative then the claimant's title to Lot 19 is extinguished. The subjective element is often satisfactorily proven, not by words of intention spoken in court after the fact, but by the possessor's actions at the material time proven in the objective element of the enquiry. In calculating the period of possession I must include the period in which it is alleged that the defendant and his mother were in possession.

[46] The witnesses on both sides were less than perfect in assisting the court to have a clear, unobstructed view of the facts necessary to answer the objective part of the enquiry. As occasionally happens in cases of this type the parties have much at stake in the outcome—the paper owner is at risk of losing his title and the possessor is at risk of losing the investment in his home on the property. In circumstances like these, people often say what they need to say or what they want to believe is the truth. In the absence of archaeological proof of long possession, historical photogrammetric surveys, or even contemporaneous photographs—as was the case in this trial— it is often one person's word against another's. Additionally, witnesses of the parties to these types of dispute often have some apparent or oblique interest to serve, either by way of neighbourly affinity or by friendship or both.

[47] I will first discuss the evidence in support of the claimant. The claimant lived abroad for a substantial period. His witness statement says nothing about land use in the years 1982-2002. Ms Elias likewise lived abroad during the times material to this dispute. Generally speaking, witnesses with a more continuous connection or relationship with the land are preferred to those that are sporadic visitors, but this is not to say that the evidence of every sporadic visitor is unhelpful. As far as these visitors were concerned, Lot 19 "was in bush" or "overgrown" at the times when they visited. This however says little about the state of the land when they were abroad. Ms Elias returned "every couple of years"

and visited in 1998 when she made her observations about the bush on the land. She returned in 2005 and saw a house under construction. These periodic and infrequent visitations by both of these witnesses create lacunae in the narrative. I must also add that I find it difficult to understand how a three-storey house could be constructed over the course of many years before the claimant approached the court. The construction was not done in a clandestine manner and it began some seven years before the action was filed. It is possible that the claimant himself wasn't aware of the boundaries of his own land, and this might say something about his lack of familiarity with it.

[48] Mr Francis, whose father developed the neighbourhood and who was a neighbour in a home with a clear sight of Lot 19 would naturally have been expected to greatly assist the court. But his misunderstanding of the lot numbers (and their location) and his admission that Lot 19 was being cleaned by the defendant must be balanced against his clear evidence in support of the claimant that the land, assuming that it is Lot 19 that he was speaking about, was vacant and overgrown. Again too, he admitted that the defendant's mother used to plant figs on a parcel of land other than on Lot 4, but he said that the fig planting was on Ms Elias's land. I am not sufficiently convinced that he was certain of the proximate boundaries of Ms Elias's land and that of the two parties. Marva Thomas's animosity towards her brother was difficult to hide. She has lived in the family home on Lot 4 since 2000, which is long after the allegations of occupation began, and was clear that the defendant did not occupy Lot 19 when she was there. However, her admission under cross-examination that her mother planted on Lot 19 contradicted the evidence of Ms Elias, and, to a not insignificant extent, Mr Francis. I formed the impression that she came not so much to testify in support of the claimant, but against the defendant. The two other witnesses, the surveyor and the land valuator, did not provide useful evidence of land use or occupation.

[49] The evidence in support of the defendant is likewise open to criticism, but not in a way that created as much doubt. The defendant appeared somewhat weak in cross-examination when he denied discussing the matter of his trespass with the claimant in 2005. His evidence about when he took the decision to build the house was also a bit

weak. Other than this he was believable in describing the uses put to the land by his mother since the 1970s and himself since the 1980s. I feel confident, for example, that his mother made wine and that she used produce that she grew on Lot 4 and Lot 19. Mr Francis's and Ms. Thomas's evidence of fig planting and cleaning suggest, at least at the times they were prepared to admit it, that Lot 19 (or land in the vicinity of Lot 19—Mr Francis's uncertain grasp of the boundaries being taken into account) was being used by the defendant and his mother. I am therefore more confident that the defendant was in the habit of clearing the land of bush, and I see no reason to doubt that produce was grown on it.

[50] I am not sure, judging all the various ways that people are said to use or occupy land without permission that the simple act of clearing it of undergrowth over a long period of time cannot in some cases amount to using and possessing it. It is an "activity" done without the authority of the paper owner and it may—when all the activities are being taken into account— signify some sort of limited domain. It is possible perhaps in some cases that such acts might be held to be voluntary or charitable, or intended to improve living conditions on an adjoining lot. But here there is more activity than mere land clearing involved. The proximity of the two lots—they share a common boundary—and the fact that Lot 4 and Lot 19 were not demarcated by any fence suggests that, over time, Lot 19 became a backyard extension to Lot 4. It is not hard to imagine why. The failure of the claimant to fence off his land is probably the root cause of this dispute. The uses put to the land when the defendant's mother was alive cannot be separated in the calculation of time, as it seems to me that their occupation was a joint enterprise, at least until the time that the defendant came of age. This occupation, beginning in the 1970's preceded, by much more than 16 years, the time when the claimant was first said to complain to the defendant in 2005.

[51] Godfrey Frederick Samuel and Anna Ashby were the other two witnesses for the defendant. Ms Ashby, the defendant's step-sister, died shortly before the trial and therefore her witness statement, although corroborative of the defendant's version of events, is of limited probative value. Mr Samuel's evidence was consistent and free of

doubt. He was quite clear about the uses put to the land and withstood cross-examination to a degree sufficient to create a sense of confidence in his testimony.

[52] At the end of the day, having regard to the strengths and weaknesses I observed in the testimony of the witnesses the court must make a choice between the divergent versions of the facts and it must do so on a balance of probabilities. In my view, on this standard of proof, the defendant has proven factual possession of Lot 19. The facts as they have been proven also confirm in my mind the defendant's intention to possess the land to the exclusion of all others. I say so on the basis of my findings of factual possession and also the uncontradicted act of openly beginning the construction a permanent home over the course of many years.

[53] The court therefore finds that the defendant has extinguished the claimant's title to Lot 19 by his adverse possession of it for a period in excess of 16 years, and a declaration to that effect is granted.

[54] The defendant has not denied that he trespassed on Lot 20 as he limited his defence to Lot 19. He has also not counterclaimed for adverse possession in relation to Lot 20. Therefore, the court finds that the claimant is entitled to damages for trespass to Lot 20 since part of the defendant's house and a small portion of a shed was built on that lot.

[55] The claimant therefore succeeds on his claim for trespass to Lot 20. Damages will be awarded for the trespass (to be assessed in default of agreement), but an injunction to remove the same is refused. I consider it inequitable to grant that injunction now as it will involve the removal of a permanent structure completed many years before the action was filed. Such relief should have been sought as an interim remedy on an emergency basis as soon as construction was noticed. I am however satisfied that the defendant's shed encroaches on Lot 20 and, because it is easily removable, I am prepared to grant an injunction to remove the portion of the shed that encroaches on Lot 20. Save for this, the claim is dismissed. The defendant succeeds on his counterclaim.

Disposition

[56] It is declared that the defendant is entitled to possession of the property known as and situate at Lot 19 Haven Park, La Sieva, Maracas, St. Joseph and more particularly described in Deed of Conveyance dated 23 January 1972 and registered as No. 2078 of 1973 and comprising 5,491 superficial feet and abutting on the North upon Lot 18, on the South partly upon Lot 20 and partly upon a drain on the East partly upon Lot 18 and partly upon a drain and on the West partly by a road reserve 33 feet wide and partly upon Lot 20.

[57] It is furthered ordered that:

(1) The defendant shall pay damages to the claimant for trespass to Lot 20 Haven Park, La Sieva, Maracas, St. Joseph insofar as a small portion of the defendant's structure on the adjoining Lot 19 encroaches on Lot 20 and the said damages for trespass shall be assessed by the Master in default of agreement;

(2) An injunction is granted compelling the defendant to demolish and/or remove that portion of the shed that encroaches on lot 20;

(3) There shall be judgment for the defendant against the claimant on the counterclaim.

[60] I will now hear counsel on the question of costs.

James Christopher Aboud
Judge