REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-00876

BETWEEN

INEZ CHARLES-SARGEANT

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

First Defendant

THE TRINIDAD AND TOBAGO HOUSING DEVELOPMENT CORPORATION

Second Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Friday 27th April 2018

Appearances:

Ms. Beverly Z. Samuel for the Claimant

Mr. Sanjeev R. Lalla instructed by Mr. Brent James for the First Defendant

Mr. Ravi Heffes-Doon instructed by Ms. Tonya Rowley for the Second Defendant

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JUDGMENT

Introduction

1. The Inez Breakfast shed[1] now known as "Louisa's" is a modest vending booth. It is owned by the Claimant, Inez Charles-Sargeant. It is located a few steps away from the Eastern Main Road, Champ Fleurs, in the former compound of the Ministry of Works and Transport[2]. Those lands are now earmarked for development by the Trinidad and Tobago

[1] Referred to in the testimonies interchangeably as a Breakfast shed and a vending booth. For convenience in this judgment the structure will be referred to as the "Breakfast shed".
[2] Owned by the State, the First Defendant.

Housing Development Corporation (HDC)[3] as a car park and the Defendants want her out.

2. Mrs. Charles-Sargeant considers the breakfast shed a valuable business. She says she has been selling breakfast and lunch from the breakfast shed to members of the public since 1984. She has offered to the palate of the public a wide array of dishes; from bake and salt fish to bake and smoke herring; from barbeque and fries, to oil down and cow heel soup. Her shed expanded in size over the years and was converted from a wooden to a concrete structure. She used the surrounding land to plant trees and crops. The famous Bermudez had advertised their logo on her shed announcing boldly "Breakfast is Back". The shed was outfitted with refrigerators, stoves, cupboards, a serving area, bathroom, toilet and a bunk to rest. Her daughter had helped her for a period of time in the business and now Mrs. Charles-Sargeant's sister has joined her. All this may be true but Mrs. Charles-Sargeant's claim is that she has been in exclusive and undisturbed possession for thirty (33) years of 5000 square feet of land[4] on which the breakfast shed is located. In asserting such a claim of adverse possession and that the State's title to the said lands have been extinguished pursuant to section 2 of the State Suits Limitation Act[5], she has taken on the high standard of proving her unequivocal possession of that 5000 square feet of land as her own.

3. It is of course a bold thing to say to the State as a landowner that it has lost its right to ownership to land by someone who has been occupying it without that person paying any compensation for it. But that is the price to pay for the State's inaction where someone else has been in open occupation of the land for a continuous period of thirty (30) years. It is equally bold to say to a person investing in this breakfast shed that it must be demolished after using it for so long a period of time. But that is the price to pay if Mrs. Charles-Sargeant is unable to demonstrate the necessary factual possession and intention to possess for the requisite period.

4. For Mrs. Charles- Sargeant and her family, she has been operating her business from the Inez Breakfast Shed acquired and used by her since 1984. This action having been filed in 2017, the authorities are clear that she must adduce compelling and credible evidence of

[3] The Second Defendant.
[4] Five thousand square feet bounded on the North and on the East by lands formerly occupied by the Ministry of Works and Transport, on the West by lands of the Caribbean Packaging Industries and on the South by Eastern Main Road and known as LPA #191 Eastern Main Road, Champs Fleur in the island of Trinidad.
[5] Amended by the Law Reform (Property) Act No. 51 of 1976.

the use of the 5000 square feet of land as her own, to the exclusion of all other persons for a period of at least thirty (30) years or from 1987. If her actions on the land for that period are equivocal or that she has not made it clear that she intended to use that entire parcel of land for that period of time for her exclusive use, then she cannot obtain title by adverse possession and her claim will fail. Put simply, does her evidence and that from all her supporting witnesses, independent experts and contemporaneous documentation point to her exclusive ownership of 5000 square feet of land? Unfortunately for Mrs. Charles-Sargeant, it does not. Does her evidence demonstrate that she was in exclusive possession of a breakfast shed which has varied in size over thirty (30) years? Yes, but this hardly helps her in her claim for adverse possession as framed in her claim.

5. Mrs. Charles-Sargeant's breakfast shed is a common feature in our communities. They are chattels that can be easily moved or demolished and there is a temporary nature to its structure. At the same time, they provide a viable and fruitful income for persons like Mrs. Charles-Sargeant, whose home-made meals delight passers-by and regular patrons alike. However, unimpeded public access to such a structure is important. In this case, the breakfast shed is located in an open area accessible by all members of the public and just a few feet from the pavement on the Eastern Main Road. Her business was run from the breakfast shed itself and not from the surrounding land. There is nothing on the adjoining land such as a car park developed by her exclusively for her patrons or designated outdoor seating areas or signage and the like. To exclude anyone from coming unto the land to access the breakfast shed would have been counterproductive for her business. There is no suggestion in this case by her that when she closed for the day she intended to keep anyone from entering the land. After serving her last meal for lunch or when the breakfast shed is not in use, the breakfast shed is locked and she returns to her home several miles away in Arima.

6. In my view, from a fair assessment of the evidence presented at this trial, Mrs. Charles-Sargeant was focused on her use and occupation of the breakfast shed since 1984. Indeed, her instinctive response in 2007 to the notices to vacate the premises issued by the Defendants was that she was in occupation of the "vending booth". There is no mention of 5000 square feet of land. Her use of the adjoining lands was not an essential component of the breakfast shed itself nor incidental to its enjoyment exclusively to herself. Put

another way, it was not made altogether clear by her how much land was needed as incidental to the use of the breakfast shed. She has not demonstrated the necessary animus possidendi to use the surrounding lands as her own exclusively from other members of the public who traversed to get access to the neighbouring State lands or businesses. Exclusivity is the essence of possession. It is the breakfast shed of approximately 9 feet x 18 feet which is her valued acquisition in 1984 and she has not been able to demonstrate that she is entitled to possession of 5000 square feet of land by adverse possession for thirty (30) years. Further, the structure that presently exists was erected around the early 1990's less than thirty (30) years before commencing this claim.

7. At this trial, the Claimant led evidence through four witnesses[6] and the Defendants had one witness each[7], all on the question of the nature of the use and occupation of the lands. Each party also led expert evidence and their evidence was not particularly useful to conclusively determine the length of time Mrs. Charles-Sargeant's shed was in existence on the parcel of land. The Defendants had in their pleadings raised the issue that the lands on which the shed was located were part of a dedicated highway and that she had acknowledged the title of the State. Those issues are no longer being pursued.[8] The main question for determination at this trial, therefore, is whether Mrs. Charles-Sargeant has demonstrated on a balance of probabilities:

    (a) exclusive occupation of the said parcel of land for thirty (30) years and

    (b) the requisite intention to possess, the "animus possidendi".

8. While there were unchallenged evidence of acts of possession on the land, it was critical for Mrs. Charles-Sargeant to demonstrate an intention to possess the entirety of the parcel of land as her own as distinct from the breakfast shed itself. I have examined in this

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[6] Franklin Charles the Claimant's brother, Carol Charles the Claimant's daughter, Henry Burton a patron, Carl Cupid another patron.

[7] Shankarah Lessey, Senior Project Engineer at the Trinidad and Tobago Housing Development Corporation and Robert Mohammed, Inspector of State Lands in the Office of the Commissioner of State Lands.

[8] There was no evidence led to demonstrate the dimensions or location of the said highway. In paragraph 14 of the Second Defendant's defence they stated "Further or alternatively, the lands occupied by the booth in or around 2007 and the lands immediately contiguous therefore were situate on State Lands that were dedicated and accepted by the public by use, as a highway, which includes the footways, culverts, sidewalks and the adjoining reserves accessory to the highway pursuant to the Highways Act Chap. 48:01." Further at paragraph 16 of the Second Defendant's defence it is stated "Further and/or alternatively, the Claimant has acknowledged the title of the State to the lands occupied by the booth and the lands contiguous thereto by her letter dated 13 February 2007 which responded to the 8 February 2007 Notice of the Minister of Works and Transport."

judgment the Claimant's claim of adverse possession under the discrete areas of her alleged acts of exclusive occupation and what those acts convey in relation to her intention to possess. I had raised the issue of whether the nature of these vending booths implicitly infer a temporary use of the land as distinct from occupation of the land on which it stands. I agree with Counsel for the parties that whether possession of such vending booths or sheds can amount to adverse possession of land depends on the circumstances. The starting point must be the application of the basic principles of the requisite features of actual occupation and the intention to possess before a claim for adverse possession can be said to have been successfully made out.

Adverse possession-Basic Principles

9. In **Ian Roach and Marjorie Roach v Hugh Jack and Ors.** Civ Appeal No. 132 of 2009 Bereaux JA referring to the leading authority on adverse possession **JA Pye (Oxford) Ltd v Graham** [2002] W.L.R 221 stated at paragraphs 15, 16 and 17:

> "[15] Adverse possession thus means possession inconsistent with the title of the true owner. (See Megarry and Wade, sixth edition page 1308, paragraph 21.016.) Slade J examined the term "adverse possession" in Powell v. Mc Farlane 179 38 P. and C.R. 452 at 469. In a passage subsequently approved by the House of Lords in JA Pye (Oxford) Ltd. v. Graham, [2002] W.L.R. 221, he said: ...
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> > "Possession of land, however, is a concept which has long been familiar and of importance to English lawyers, because (inter alia) it entitles the person in possession, whether rightfully or wrongfully, to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession. In the absence of authority, therefore, I would for my own part have regarded the word "possession" ... as bearing the traditional sense of that degree of occupation or physical control, coupled with the requisite intention commonly referred to as animus possidendi, that would entitle a person to maintain an action of trespass in relation to the relevant land; likewise I would have regarded the word "dispossession" in the Act as denoting simply the taking of possession in such

sense from another without the other's licence or consent; ..."

[16] To establish adverse possession, the squatter must demonstrate that he has taken exclusive control of the property in question. He must also have "an intention for the time being to possess the land to the exclusion of all other persons including the owner with the paper title" (per Slade L.J. in Buckinghamshire County Council v. Moran [1990] Ch 623 at 643). Megarry and Wade (supra) from which that latter authority and passage were drawn, adds at page 1310 paragraph 21-019 that:

> "An intention to own or acquire the ownership of the land is not required, nor is it necessary that the squatter should intend to exclude the true owner in all circumstances. The animus can be sufficiently established even if both the true owner and the squatter mistakenly believe that the land belongs to the latter ...
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> The intention to possess must be manifested clearly so that it is apparent that the squatter was not merely a persistent trespasser but was seeking to dispossess the true owner."

[17] JA Pye (Oxford) Ltd. v. Graham (supra) is the leading authority on adverse possession. In summary, it was held:

> (a) that (approving Slade J's dicta set out at paragraph 15 above) the words "possession" and "dispossession" bore their ordinary meaning, so that "possession" as in the law of the trespass or conversion, connoted a sufficient degree of occupation or physical control coupled with an intention to possess and "dispossession" occurred where the squatter assumed "possession" as so understood;
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> (b) that the phrase "adverse possession" was directed not to the nature of the possession but to the capacity of the squatter. In order to establish factual possession the squatter had to show absence of the paper owner's consent, a single and exclusive possession and such acts as demonstrated that he had dealt with the land as an occupying owner might normally be expected to do and that no other person had done so;
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> (c) that the requisite intention was not to own or acquire ownership but to possess and on one's own behalf, in one's own name, to exclude the world at large including

the paper title owner, as far as reasonably possible; and that it was not therefore inconsistent for a squatter to be willing, if asked to pay the paper title owner while being in possession in the meantime."

10. A useful summary of the principles of adverse possession was set out in **Balevents Ltd and another v Sartori** [2014] EWHC 1164 (Ch)[9]:

    (a) There is a presumption that the owner of land with a paper title is in possession of the land;

    (b) For a person to show that he is in factual possession of the land, he must show that he has an appropriate degree of physical control of the land, that his possession is exclusive and that he has dealt with the land in question as an occupying owner might have been expected to deal with it and no-one else has done so.

    (c) Whether a person has taken a sufficient degree of control of the land is a matter of fact, depending on all the circumstances, in particular the nature of the land and the manner in which such land is commonly enjoyed.

    (d) The person claiming to be in possession may be in possession through his tenant or licensee, if that tenant or licensee has, on the facts, sufficient control of the land to amount to factual possession.

    (e) The person seeking to show that he has had possession of land must show that he had an intention for the time being to possess the land to the exclusion of all other persons, including the owner with the paper title.

    (f) The relevant intention is an intention to possess and need not be an intention to own.

    (g) The intention to possess must be manifested clearly so that it is apparent that the person now claiming to have been in possession was not merely a persistent trespasser.

    (h) If the acts relied on are equivocal then they will not demonstrate the necessary intention.

    (i) It is possible in some cases for a person in possession to add to his own period

[9] **Balevents Ltd and another v Sartori** [2014] EWHC 1164 (Ch), paragraph 79.

of possession, the period of time during which his predecessor was in possession; this applies in particular where the predecessor relinquishes possession to a person who then takes possession.

Adverse Possession- Intention to possess

11. In **JA Pye (Oxford) Ltd v Graham**, the Court in commenting on the "intention to possess" applied the judgment of the **Moran case** (1988) 86 LGR 472, 479 where Hoffmann J had pointed out that what is required is "not an intention to own or even an intention to acquire ownership but an intention to possess".

12. In this case the evidence disclosed a number of activities by Mrs. Charles-Sargeant on the land. The planting of trees, hedges, short crops, clearing of land, the expansion of the breakfast shed to name a few. As Lord Hope explained in **JA Pye**, occupation of the land is not enough nor is an intention to occupy which is not put into effect by action. Both aspects must be examined and they are each "bound" to the other. "Acts of the mind can be and sometimes can only be demonstrated by acts of the body". The best evidence of intention is not the self-declared intention of the occupier but of her actions.[10]

13. In **JA Pye** Lord Hope commented:

> "**71.** The question as to the nature of the intention that has to be demonstrated to establish possession was controversial, particularly among jurists in Germany: see, for example, Henry Bond, "Possession in the Roman Law" (1890) 6 LQR 259. But it is reasonably clear that the animus which is required is the intent to exercise exclusive control over the thing for oneself: Bond, p 270. The important point for present purposes is that it is not necessary to show that there was a deliberate intention to exclude the paper owner or the registered proprietor. The word "adverse" in the context of section 15(1) of the Limitation Act 1980 does not carry this implication. The only intention which has to be demonstrated is an intention to occupy and use the land as one's own. .... The possession that is required for that purpose is possession "openly, peaceably and without any judicial interruption" on a competing title for the requisite

[10] See Lord Hope's judgment in **JA Pye**.

period: Prescription and Limitation (Scotland) Act 1973, section 1(1)(a). So I would hold that, **if the evidence shows that the person was using the land in the way one would expect him to use it if he were the true owner, that is enough.**"[11]

14. There must be a subjective intention to possess and an outward manifestation of that intention making it clear to the world at large. There must be tell-tale signs which one would expect a person to act if she was the true owner of the land.

15. The standard of proof of demonstrating these elements is a high one. Slade J in Powell **Powell v McFarlane** (1977) 38 P & CR 452 stated at 472:

> "If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner."

16. Slade J went on to explain at 471-472:

> "What is really meant, in my judgment, is that the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."

17. The evidence to be adduced to prove adverse possession must be logical, cogent and compelling. A typical aspect of the requirement to demonstrate such cogent evidence is the need to clearly demarcate the disputed land. This must not be left to speculation or guesswork for the Court to manufacture boundaries. The user must establish through tell-tale signs of usage the actual dimensions of the land being occupied.

18. Mann J in **Port of London Authority v Tower Bridge Yacht and Boat Co Ltd** [2013] EWHC 3084 (Ch) stated at paragraph 273:

> "The first is a general reason which is more procedural than substantive. The Defendant claims a limitation title to very small defined areas. Yet it has not proved where those areas are, with sufficient clarity for these purposes. Someone claiming a possessory title (as I shall call it, for the sake of convenience) should be able to point to

[11] **JA Pye (Oxford) Ltd v Graham** [2003] 1 AC 419, paragraph 71.

the physical extent of the land to which possession is claimed. The Defendant cannot do that. All it can do is to point to approximate positions in which a root can be found (save for 2 roots where the position is apparent). The position is approximate because it is not possible (or, if possible, it has not been done) to define precisely where the roots are. Mr. Honey could not do it, and (as I have observed before in this judgment) all the previous charts and plans probably do no more than show where chains go into the mud (or water), not where the roots are. Furthermore, even if the position could be shown, the physical extent of the space cannot be identified. The root may be stones of various shapes; or a concrete block; or an engine block; or an oddly shaped piece of wood; or something which has decayed over time so that it now has a different shape. In the case of the new roots it is the shape of an anchor, but that shape has not been specified. While resolving some of these uncertainties might just about make it appropriate to make a finding (or register a title) in terms which achieve sufficient clarity and certainty (as to which I make no determination), cumulatively they present a picture in which the position and extent of the land claimed has not been proved sufficiently."

19. Put bluntly, "if you cannot point out what land you are claiming adverse possession of, you cannot get a declaration that you are entitled to anything" (per Mann J). Such an approach was taken in **Fareeda Mohammed v Rooplal Russell Ramlal et al** CV2017-01816 Mohammed J commented at paragraph 63 and 64:

> "63. The First Supplement to Second Edition of the text Adverse Possession at pages 17 and 18 under the rubric "Must the Land Being Claimed Be Capable of Definition" identifies the judgment of Mann J in Port of London Authority v Tower Bridge Yacht and Boat Company Limited which gives the rationale for requiring persons claiming adverse possession to be clear as to the extent of the land claimed.
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> 64. In my opinion the Claimant's pleading fails to set out the boundaries of the disputed property which she seeks to have the Court extinguish from the Defendants paper title and the submission by her Counsel that the Court must take into account her financial hardship in determining the weight to attach to the evidence on the boundaries is without merit."

20. In this case, the Claimant disclosed a survey plan for the purpose of standard disclosure and reference is made to it in her expert's report[12]. However, no attempt was made by her to adduce the plan into evidence or to have the surveyor explain how he arrived at the boundaries. Further Mrs. Charles-Sargeant does not even refer to the conduct of any survey in her testimony or how she confirmed the boundaries of her property.

Adverse possession-User vs Possession

21. **Port of London Authority** is a useful authority to make that distinction between the intention of the occupier as to use of the land temporarily or an intention to possess the land. I had raised the question of whether vending booths of the nature of the Inez Breakfast Shed may give rise to any special features of an occupier's usage of the land temporarily rather than an intention to possess the land. I accept it would be wrong to adopt a broad approach to such structures with a presumption that no permanent intention to possess arises. **Port of London Authority** usefully explains a scenario of no less a movable object such as a boat moored in a river being subjected to the general principles of actual possession and animus possidendi. That case concerned the nature and extent of mooring rights on the Thames in an area known as Downing Roads. The Claimant in whom the bed of river was vested claimed that the Defendant had no entitlement to mooring rights. The Defendant did not have a licence by the Port of London Authority but contended that it did not need one by virtue of the exception contained in section 63 of the Port London Act 1968 in that its mooring roots fall within the expression "a mooring chain placed in the Thames before 29th September 1957."

22. One of the issues arising in that case was whether the Defendant had acquired any Limitation Act title in relation to any of its moorings, whether ancient or modern.

23. Mann J explained:

> "**[280]** However, what rules it out, in this case, is the quality, nature and purpose of acts of alleged occupation, all of which are affected by the position and size of the land claimed, coupled with the nature of its use. When the original depositor of a mooring block puts down the block it is being done not so much as to take possession of the land in question but to facilitate the activity of the mooring above. It is then forgotten

[12] Expert Report of Mr. Dexter Davis filed 30th November 2017.

(except for the purposes of maintenance), and can be safely buried more and more under silt so that its position becomes hard to identify, if it degrades to as to become less than useful it is usually not dredged up so that the same "plot" of land can be occupied, but another root is put down. If it drags, or otherwise shifts position, the moorer does not assiduously put it back. He either lives with it, or he puts down another one. The same is true of an anchor, save that the moorer is more likely to want to retrieve the anchor, if he can, for re-use.

[281] All this means, in my view, that there is no real possession of the land. As Neuberger LJ pointed out in *Tower Hamlets LBC v Barrett* [2006 1 P & CR 9 at 54) "Factual possession involves some sort of physical presence or at least being in physical control in some real way."

He then went on to day at paragraph 283:

"**[283]** In any given case (and this is one of them) deciding which concept applies is a judgment which looks at all the facts and assesses the quality of the acts and the quality of the intention in the relation to the activities. Doing that in this case I find that those acts were more in the nature of user (or mere occupation, though I prefer user) and not the taking of possession necessary to constitute adverse possession..."

24. Even with simple or small structures that may appear to be temporary, the inquiry remains focused on the quality, nature and purpose of acts of alleged occupation. In **Purbrick v Hackney London Borough** [2003] EWHC 1871, the subject property appeared to be a small abandoned building. The disputed building was in the corner of the Defendant's property which was now a car park after the property was destroyed by a fire. The disputed building was not demolished during the construction of the car park but was a "burnt out shell". It was a small structure of 4m wide, 6m long and 4m high. It had a doorway but no door and rubbish was dumped inside. In 1988, the Claimant cleared the rubbish and began to store ladders and other equipment in the building. He also placed a sheet of corrugated iron across the doorway and secured it with a chain and two padlocks. He was reluctant to carry out more renovations in the event someone tried to stop him from using the building. However in 1992, he installed a door, restored the first floor and remained in occupation. In 2002, the Deputy Solicitor to the Land Registry determined that the Claimant had not made out a case for adverse possession because he could not rely on his occupation from

1988-1992 since his intention to possess the building at that time was not apparent. On appeal, it was held that the Claimant had acquired the property by adverse possession. The Claimant had full and real occupation of the property and his nature of occupation was unequivocally consistent with possession. It was further stated that the fact that the Claimant was aware that he was liable to be dispossessed as a right did not prevent him being in possession. Of course, in that case, there was no uncertainty of the dimensions of the property over which the Claimant assumed possession and his acts of possession were unequivocal. It would be wrong to submit as Counsel for the Claimant has done that **Purbrick** makes the case for Mrs. Charles-Sargeant. It does quite the opposite. In that case the claimant clearly demonstrated acts of possession of a structure 4m x 6m x 4m for the requested period. Mrs. Charles-Sargeant has not done the same for her 5000sq.ft of land. It also illustrates that in any event, determining adverse possession is a fact sensitive enquiry.

25. A bit closer to the mark is **Balevents** which examined whether the user or owner of a breakfast van and trailer could claim possession of the pavement on which it was situated. In that case, the property had been used as a jazz club and then as a lap-dancing club. A dispute arose about part of the pavement (the disputed area) in front of the club. The Defendant who was the general manager of Balevants contended that his father had run a sandwich bar on the disputed area from 1974. The Defendant took over the sandwich bar around 1986 and continued to run it until 1991. In 2009 the Defendant applied for the registration of the possessory title for the disputed area. The Claimants contend that the Defendant, as the then general manager of Balevents, held his registered title on a constructive trust for one of the Claimants and that the register should be rectified to reflect same. One of the issues was whether Balevants was entitled to ownership of the disputed area. It was held that the Defendant was unable to show that he had been in possession of any part of the disputed land for ten years (pursuant to the Land Registration Act 2002) and that Balevants also could not show that any part of the disputed area of land was held on trust for it when the Act came into force.

26. Again each case is to be determined on the outward acts of the user and whether it signalled a manifest intention to exclusively occupy the land.

27. What is clear, therefore, is that there could be no broad brush approach. What is needed is

a critical analysis of the available evidence to determine the true intention of the occupier by the obvious acts of possession. In cases with open fields, of course, the task for the occupier is harder but not impossible. In **JA Pye** an open field could also be demarcated for exclusive possession by the acts of possession such as fencing. Again, it depends on the character of the usage of the land. The recent case of **Gayadeen and another v The Attorney General of Trinidad and Tobago** [2014] UKPC 16 is a classic case on point.

Adverse Possession-Open Areas – Gayadeen and another v The Attorney General of Trinidad

28. The Privy Council decision in **Gayadeen and another v The Attorney General of Trinidad and Tobago** is quite instructive. In that case, as in this one, the State did not lead evidence to contradict the user of the disputed property. The evidence of the occupiers was largely uncontradicted. In that case the evidence of user was in the uncontradicted form of a clearly defined car park which was created by Mr. and Mrs. Rambarran (the first appellant's parents) by laying down compacted gravel in about 1953; they had concreted it in the late 1960s; they had built a slip drain in the 1960s to remove water from the concreted car park; they and the appellants had regularly cleaned and maintained it, and they and the appellants had sought to restrict parking in the car park to customers of their business, although sometimes others used the space to park their vehicles. The first appellant gave evidence that her parents, she and her husband had asked non-customers who parked there to move their vehicles and that they did not allow vendors to park and sell their wares. A sign was also put up on the doors of their garage that parking was for customers only. Even though the first appellant could not have spoken to the control of the car park when she was at school, there was evidence of a course of conduct by Mr. and Mrs. Rambaran and the appellants and there was no contradictory evidence. Those facts meet the requirement of unequivocal open acts of possession of clearly defined property consistent with an intention to possess it as one's own.

29. I turn now to the evidence in this case adduced by the parties.

Title to the lands

30. There is no contest that the State is the title holder of the subject parcel of land. The State is the owner of approximately 1.5995 hectares of land situated at Eastern Main Road (Parcel

B)[13]. In 1978 Parcel B was allocated to the Ministry of Works and Transport for its exclusive use and possession and the Ministry of Works and Transport remained in possession of same until 2016.

31. On 10th March 2016, the Cabinet of Trinidad and Tobago agreed to transfer Parcel B to the 2nd Defendant for the construction of a multi-family residential development. In September 2016, the Ministry of Housing and Urban Development was given possession of Parcel B. On 6th September 2016, the 2nd Defendant was appointed as an agent of the State for the purpose of taking possession of parcel B. The subject lands are located to the south west of parcel B as shown on the survey plan dated 13th March 2017.

32. HDC has now earmarked the subject lands for use as a carpark and has obtained the requisite Town and Country Planning approvals to develop same.

User of the lands since 1984

33. Mrs. Charles-Sargeant's case is that she is in adverse possession of 5000 square feet of land. However, there is no proper evidence (save for reference to a survey plan in her expert's report) identifying this portion of land nor identifying exactly where on this parcel of land any acts of possession, quite apart from using a breakfast shed, was carried out over the years.

34. The picture painted of the user of the lands by the testimony of all Mrs. Charles- Sargeant's witnesses are as follows. The breakfast shed was purchased on 23rd January 1984 by her brother who transferred it to her for her use and ownership. Since then she used the breakfast shed to sell breakfast and lunch to employees from the Ministry of Works and the general public. She also used and maintained the land surrounding the breakfast shed.

35. In 1984, the back area of the property was overgrown with grass and contained old car parts and debris. She found there on the land two mango trees to the east of the breakfast shed which Mrs. Charles-Sargeant used to make curried mango and mango chutney to serve in her breakfast shed. She does not suggest that the mango trees were hers alone to use. She eventually cleared the back area and started planting long and short term crops.

[13] 1.5995 hectares of land situate at Eastern Main Road, Mt. Hope, in the Ward of St. Ann's, County of St. George shown as Parcel B on the Cadastral Sheet B.17 K, 23C/1/b and which is bounded on the North by a drain reserve and another parcel of land vested in the State, on the South by the Eastern Main Road, on the East partly by lands of Shaikh Hosein, a Road Reserve and lands of B.S Maharaj and on the West by State lands.

This back area was about 4 feet to 6 feet from the shed. She also paved the front of the property and built concrete steps to access the property from the Eastern Main Road. This was done with the assistance from her family and customers.

36. Her daughter, Carol Charles worked with her up to 1997. They planted a number of trees including Fig Trees, Lime Trees, a Noni Tree, an Almond Tree and Dasheen bush to the back of the property. They also planted decorative trees to form a hedge to enclose the back area of the land which distinguished it from the lands owned by the Caribbean Packaging Industries Limited (CPI). She also planted pimentos, hot peppers and Spanish thyme. These crops were utilized in her daily cooking.

37. In response to several break-ins, in 1989 she extended the breakfast shed using concrete. By 1993-1994, the breakfast shed was converted to a concrete structure. It is now approximately 20 feet by 15 feet[14]. In 1990, Carol applied for the electrical connection for the breakfast shed to be transferred to her name and the Trinidad and Tobago Electricity Commission (T&TEC) established same in her name on 24th October 1990.

38. Mrs. Charles-Sargeant outfitted the breakfast shed with two refrigerators, one 30" stove, a three burner ring stove, cupboards, a serving area, bathroom, toilet and a bunk area for sleeping. Mrs. Charles-Sargeant was also approached by the Sales Manager of Bermudez Company to advertise their products on her breakfast shed and in return they would paint the shop for her which she accepted. The breakfast shed bears the logo of Bermudez with the words "Breakfast is Back" emblazoned on it. This indeed is a good indicator of the long standing relationship she had with the biscuit company.

39. In 1998, she applied and received a Certificate of Registration from the Ministry of Health for the operation of her business.

40. On 8th February 2007, she received a Notice from the Ministry of Works and Transport ordering her to remove the breakfast shed on the land. She replied to the notice indicating that she had been in occupation of the property for over twenty seven (27) years and requested a meeting to discuss the matter. She did not receive a response to her letter.

41. On 7th April 2010, her brother Franklin Charles wrote a letter informing everyone that he

[14] Paragraph 5 of the witness statement of Robert Mohammed filed 27th March 2018.

had given Mrs. Charles-Sargeant the breakfast shed in 1984 with the intention that he did not want anyone thinking they had any rights to the breakfast shed since he purchased same for Mrs. Charles-Sargeant. Importantly, in that letter there is heavy reliance on the fact that they were owning the breakfast shed.

42. In 2012, Mrs. Charles-Sargeant's sister, Louisa, joined her in the business. In 2014, acting on the advice of the police, Mrs. Charles-Sargeant cleared the trees at the back of the breakfast shed to prevent people from using it as a cover to steal from her breakfast shed. The Almond tree is however still there.

43. Mrs. Charles-Sargeant contends that her business earns approximately $800.00 a day. Her menu comprises bakes, smoke herring, salt fish buljol, chow mein, cheese, sausages and eggs for breakfast. She also sells soups, oildown, stews, lentils, rice, meats, pies and other lunch items. On Fridays, she would sometimes sell barbeque and fries which earned the business approximately $1000.00 and $2000.00. From her earnings, she is able to meet her daily expenses and medical expenses since she sometimes suffers from a low blood count and was recently diagnosed with kidney stones.

44. Mrs. Charles- Sargeant contends that the breakfast shed is a necessary source of income for Louisa to maintain her household. It was only in 2016 that HDC forcibly removed her from the land and stopped her business from which she and her sister earned their livelihood. Employees of the Ministry of Works were customers of long standing of the shed such as Mr. Carl Cupid and Mr. Henry Burton who gave uncontested evidence in this case of the longitivity of the breakfast shed.

45. What was clear about the Claimant's evidence as to user of the land was that (a) she acquired the breakfast shed in 1984 (b) she made continuous use of the breakfast shed until the date of her action (c) she used parts of the surrounding land over the years. However, equally, are the following material facts (a) all the cultivation was not necessary for the business nor was it properly defined (b) members of the public had access to the land and she was unable nor had any interest in preventing persons from accessing her land (c) her sole concern was to maintain the safety and integrity of the breakfast shed itself over the years (d) the breakfast shed itself grew in size in 1989-1994.

46. An analysis of various aspects of the operation of the Claimant's breakfast shed

demonstrates that her claim of continuous user for thirty (30) years with the requisite intention is unsustainable.

The acquisition of the Breakfast Shed

47. Franklin Charles, the Claimant's brother, bought the parlour, the breakfast shed alone. As far as he was concerned, the only property acquired and used is the breakfast shed. In fact his letter of 7th April only addressed the breakfast shed (referred to as the vending booth):

> *"To Whom it may Concern*
>
> *I hereby write to inform you that on the 23rd day of January 1984, I bought a Vending Booth situated on the Eastern Main Road, Mount Hope outside the Mechanical Services Compound, Ministry of Works and Transport.*
>
> *Immediately thereafter I gave the said vending booth to my sister INEZ CHARLES-SARGEANT who has been using it as a Breakfast Shed since that time."*

48. Notably, the seller did not point out to him the boundaries of the land that was being acquired. Something one would expect a person purchasing land would enquire about. Neither had Franklyn volunteered this information in his testimony.

The dimensions of the Breakfast Shed and Land

49. There were no dimensions offered by Mrs. Charles-Sargeant of her breakfast shed although it grew in size over the years. At present, the breakfast shed is approximately 20 feet by 15 feet and which rest on approximately 648 square feet of the south-western area of the lands which comprise Parcel B[15]. The shed is at the edge of a major thoroughfare with surrounding business places. Under cross examination neither Mrs. Charles-Sargeant nor her daughter could verify the dimensions of either the breakfast shed or the amount of land possessed by them. While in some cases this may be of no moment, in a case of open land where there was no attempt to identify clear markers representing the boundaries, their ambivalence on dimensions is fatal.

50. By way of illustration, they describe the boundaries to the North and East by lands of the Ministry of Works and Transport. However, it is accepted that the breakfast shed stands

[15] Paragraph 5 of the Witness Statement of Robert Mohammed filed 27th March 2018

on lands owned by the Ministry of Works and Transport. It begs the question, how far North and East do those boundaries go from the breakfast shed, was it one (1) inch or one hundred (100) feet? Neither the Claimant nor her sister have provided that detail.

51. Whatever the size of breakfast shed or occupied land the nature of this business, demonstrate its open access. It was available and open to the public. It was easily accessible. There was what appears to be a pathway near the lands from the aerial photos. It was not secured. There was no fencing. Counsel for the Second Defendant was right to pin point a fatal aspect of Mrs. Charles Sargeant's evidence:

    Mr. Heffes Doon: Because of the position of the booth anyone could have just walked in.

    Mrs. Charles-Sargeant: Yes

    Mr. Heffes-Doon: You were not able to prevent persons from coming unto the land around the booth?

    Mrs. Charles-Sargeant: No

    Mr. Heffes-Doon-: People would come regularly onto the land around the booth

    Mrs. Charles-Sargeant: Because it was an open space

52. The hedge to the "back" of the breakfast shed was only decorative and to separate the breakfast shed from CPI which only emerged in the 1990's. The hedge, therefore, was not in existence as a boundary in the 1980s. Despite Mr. Cupid's evidence, Mrs. Charles-Sargeant was unspecific with the dates when this "boundary" hedge was established. Making matters worse, there is no evidence now of where exactly it ever existed.

53. This breakfast shed was not present on the 648 square feet of lands on the south-western area of Parcel B since 1984 as demonstrated on a Survey plan dated 4th January 1990. While it can be inferred that the surveyor would have identified the breakfast shed on the plans in 1990 if it had existed, without cross examining the surveyor it would be difficult to determine the reasons why he did not identify the breakfast shed at that time. When balanced with the first-hand accounts of the patrons of the breakfast shed whose evidence was not challenged, it is not plausible that the breakfast shed did not exist in 1990. What it does suggest is that the structure may have been insignificant for the surveyor to have

mapped it on his survey.

Cultivation

54. The evidence provided on the cultivation of the land was vague, open ended, lacking in cogency, unspecific and insufficient to demonstrate physical, exclusive control of 5000 square feet of land. There is no proper indication of the time when the land was cultivated with various crops. Nor are there any dimensions of the areas cultivated provided. It is doubtful that the entire 5000 square feet of land was utilised and in any event, no evidence of crops was picked up in the aerial photography or in the survey plans.

55. In paragraphs 3, 4 and 5 Mrs. Charles-Sargeant consistently referred to clearing and planting the "back area". This was clarified by Counsel for the Claimant as the area between the breakfast shed and Caribbean Packaging Limited. That in itself was not a large piece of land as described by Franklin Charles of a few feet and as illustrated by him in Court. There is no activity to the North of the breakfast shed. She cleared and paved the front of the structure. That would be to the East of the structure. There are no dimensions of such clearing and paving. The photographic and video evidence does not evince any such paving of significance. Her reference to pimentos, hot peppers and Spanish thyme were without reference to location, size and time when they were planted.

Contemporaneous documents

56. The contemporaneous documents included a letter from Bermudez, her certificate of Registration in 1989, her letters in 2007, Franklin Charles' letter in 2010 and a letter from T&TEC in 2016. None of these documents help Mrs. Charles Sargeant. They reveal a number of features of her case which creates ambiguity and uncertainty as to the extent and nature of her occupation. First there is no consistency of an address of the property either by reference to a LP number as in the letter from T&TEC or a generic address as in the letter from Bermudez. Second, it is remarkable that having claimed to operate a business selling food in 1984 she would only procure registration under the Public Health Ordinance to sell food in 1989. Third, the Claimant's interest was in the breakfast shed only. Fourth, it is not altogether clear if there was any substantial structure on the land in the early period of occupation. The contemporaneous documents in any event bear out the description of what was being used by the Claimant as described by the witnesses as "a

shed" "a parlour", "a small business place", "a wooden structure".

57. No one volunteered that she was using 5000 square feet of land save for the Claimant and her daughter and she was unsure of the actual dimensions.

Surveys

58. As indicated earlier, the Claimant adduced no evidence of a surveyor clearly identifying the boundaries of her land said to be in occupation by her. There is reference to a survey plan by Mr. John De Sormeaux dated 28th March 2017 referenced in her expert's report of Mr. Dexter Davis. There is no explanation by any witness as to how this survey was carried out and how the boundaries of the parcel said to be occupied by Mrs. Charles-Sargeant was pointed out. What is evident about that survey plan, however, is that a paved car park exists to the East of the breakfast shed. There are no discernible boundaries to the North of the property. To the "back" or West of the property are walls and fences not referred to in the Claimant's testimony. There are three trees identified in close proximity to the breakfast shed. It is only in the 1994 photographic surveys that any evidence of walls or fences emerge and they were not in existence in previous photographs.

59. The Survey plan dated 4th January 1990 of Leslie Akum Lum identified three structures which were to the West of the area said to be occupied by the Claimant. Those structures formed part of the government quarters and an outhouse. They were not the Claimant's structures. There is no breakfast shed marked on that survey plan.

60. The survey plan dated 13th March 2017 did not identify any discernible boundaries near to the booth save for the property belonging to CPI.

Expert Evidence on user

61. Three experts provided their assessment of the physical evidence contained in aerial photographs, Dr. Paula Drakes, Mr. Glenn Wilkes and Dr. Dexter Davis. Dr. Drakes was cross-examined and helpfully pointed out several aspects of the photogrammetric evidence. Photogrammetry is the science of using pairs of overlapping photographic images for metrology (or measurement). When used for aerial mapping it also deals with recognition and identification of the features of the land depicted in the photographic material, such as shape, size, shadow, pattern, tone, texture and location relative to other

features, to add value and intelligence to information seen on the photograph.

62. The following photographs of the subject area for the years 1980, 1986, 1994, 1998, 2003 and 2014 were provided to the Court.

63. The experts met and prepared a joint report[16]. Their joint conclusions can be conveniently summarised as follows:

    (a) The tree cover was a major deterrent in arriving at any reliable conclusion to confirm either the presence of absence of a structure or of cultivation.

    (b) For the 1986 photography Mr. Glenn Wilkes and Ms. Paula Drakes used the cadastral plan prepared in 1990 by Leslie Akum Lum. Dr. Dexter Davis did not have the 1990 survey plan to confirm the exact location of the structures relative to the boundaries. Mr. Wilkes identified one structure and Ms. Drakes and Dr. Davis identified two structures. The proximity of the two structures shown on the Leslie Akum Lum survey plan is the probable merging of roof-lines.

    (c) For the 1994 photograph all three experts agreed that the foliage was a major impediment in viewing the site and that no structure was clearly identified as the object of interest.

    (d) For the 2003 photography Dr. Davis did not see a feature that was faintly discerned by Mr. Wilkes. It was agreed that the higher resolution of Mr. Wilkes' printed imagery is likely the reason for his ability to faintly discern the feature.

    (e) For the 2014 imagery, the three experts agreed that the object of interest could be partially seen under the tree foliage.

64. The experts safely do not contradict the case of the Claimant that she did acquire the shed in 1984 or that it did exist in 1984 nor does it confirm it. It certainly could not be seen under the foliage in 1986. At the earliest, one expert was able to identify the shed in 2003 with the photography which either meant the foliage changed or the breakfast shed was larger or had moved. Importantly, there were mapped paths over the subject land suggesting that it was not being exclusively used for the breakfast shed. There is no evidence before the Court to demonstrate actual use and occupation of 5000 square feet

[16] Joint report filed 30th January 2018.

of land of the present breakfast shed for thirty (30) years.

65. There is no proper explanation of 5000 square feet of land demarcated clearly by boundaries evidencing her intention to occupy same acquired in 1984. There is no reference to the acquisition of land in 1984, merely a breakfast shed. There is no evidence of when the acts of possession of the lands to the extent of 5000 square feet took place over the relevant period. The large trees were enough to cover the breakfast shed and suggested its close proximity to it and negates any usage of 5000 square feet. The photos do not reveal any short crops. The photos reveal that the area near to the vending booth was being used as a car park suggesting an equivocal user of the property.

66. The evidence does not demonstrate any credible evidence of use exclusive of 5000 square feet of land for thirty (30) years by Mrs. Charles-Sargeant.

Intention to possess

67. From this available evidence of user, there is equally no evidence by Mrs. Charles-Sargeant to suggest the she intended to exercise a degree of control of the 5000 square feet of land to the exclusion over others or for her exclusive use.

68. There are too many variables and open-ended questions about the Claimant's evidence for this Court to reliably conclude an intention to possess 5000 square feet of land. The occupation appeared temporary for the purpose of the sale of breakfast and lunch to workers suggesting a work week and not calendar week. The breakfast shed was secured and not the land. Indeed in paragraph 14 of her evidence Mrs. Charles-Sargeant confesses that up until she was forced off the land she went to the shop three times a week on average. There was no attempt to indicate to the world at large that 5000 square feet of land was hers. The breakfast shed itself grew in size over the years. The exact location and timing of the cultivation on the land was uncertain. In any event, it was planted in the open with no attempt to exclude others from it.

69. The evidence suggests that at its highest her intention to possess for thirty (30) years was limited to the breakfast shed itself which was originally approximately 9 feet x 18 feet in 1984. Even that estimation is unreliable based on the admission of both Carol and Mrs.

Charles-Sargeant.

Conclusion

70. I have given consideration to whether an order could be made to recognise the Claimant's usage of the original vending booth for a period of thirty (30) years from 1984. However, that would be an exercise of futility and speculation. Firstly, the Court was starved of the actual dimensions and location of the original breakfast shed which was in existence of thirty (30) years. Second, the case as framed was focused on the entirety of 5000 square feet of land and no details were provided for a smaller area. For the reasons set out in this judgment the claim will be dismissed and there will be judgment on the First Defendant's counterclaim for:

    (i) A declaration that the Claimant has no right, title or interest in the said lands occupied by her which can defeat or extinguish the reservation of the same as a public right of way.

    (ii) A declaration that the Claimant has no right, title or interest in the said lands occupied by her.

    (iii) An order that the Claimant do immediately give vacant possession of the said lands to the State.

    (iv) An injunction restraining the Claimant whether by her servants and/or agents from occupying and/or attempting to occupy and/or continue to occupy the said lands at Eastern Main Road, Mt. Hope.

71. It is true that over the years the Inez Breakfast Shed with the bold declaration "Breakfast is Back" served workers at the Ministry of Works and passers-by alike. I did ask the Defendants whether there were any alternatives open to them and I do regret not sending a matter such as this to mediation. However, I recognise the logistical difficulties faced by the Defendants in negotiating with the Claimant though they are not insurmountable. The breakfast shed is now closed, breakfast would no longer be back for its patrons. A new HDC development will take its place.

72. Perhaps in the future when the needs of development clash with the needs of occupiers found on lands ear-marked for such development, suitable negotiations can be engaged at

an early stage to avoid conflicts. The invitation was extended by Mrs. Charles-Sargeant in her letter at an early stage. It is not beyond the authorities in the future to work out matters such as these within the boundaries of reason of all the parties affected and legislative planning requirements.

Vasheist Kokaram
Judge