

The Republic of Trinidad and Tobago

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. CV2016–02514

BETWEEN

WILHELM CHADEE

LENA CHADEE

CLAIMANTS

AND

JOANN CHARLES

DEFENDANT

Before the Honourable Madame Justice Margaret Y. Mohammed

Date of delivery: December 13, 2018

APPEARANCES:

Mr. Glen Bhagwansingh Attorney at law for the Claimants.

Mr. Philip Lamont instructed by Ms. Doril Ann Beckles-Lamont Attorneys at law for the Defendant.

JUDGMENT

1. This matter involves a boundary dispute between two neighbours residing in Kelly Village, Caroni. Sometime in 1991 the Claimants became the registered fee simple owners of a parcel of land known as “Lot 8”. The Defendant is a life tenant in property known as “Lot 9” which is the

Claimants' neighbour on the western side of Lot 8. The Claimants and Defendant enjoyed a cordial existence as neighbours until 2016 when a boundary dispute erupted which sparked the instant action.

2. The Claimants contend that the Defendant broke down a galvanized fence previously in existence on the eastern side of Lot 8 and separating the two Lots and planted new fence posts that are encroaching on Lot 8. The Defendant denies the Claimants' claim and contends that the said fence existed since the 1960's.
3. The Claimants have brought this action seeking the following reliefs against the Defendant:
 - (i) A Declaration that the Claimants are entitled by virtue of their absolute title to possession of ALL AND SINGULAR that certain piece or parcel of land situate in the Ward of Tacarigua in the Island of Trinidad (being portion of a larger parcel of land comprising thirty acres and twelve perches formerly forming part of "La Solita Estate") comprising FIVE THOUSAND FOUR HUNDRED AND FORTY-ONE SUPERFICIAL FEET and abutting on the North upon lands formerly of Yip Chuck now of Declé; on the South upon Caroni South Bank Road; on the East upon Lot No. 9 and on the West upon Lot No.7 which said piece or parcel of land is delineated and numbered "8" on the Plan marked "A" attached to Deed of Partial Release dated the 17th day of February, 1960 and registered as No. 2532 of 1960 and made between Albert Ammanuel Herrera of the One Part and Lewis Ojah Reesal of the Other Part together with the buildings thereon and the appurtenances thereto belonging (" Lot 8");

- (ii) An Order that the Defendant demolish a chain link fence erected on Lot 8;
- (iii) An Injunction restraining the Defendants whether by themselves their servants or agents or tenants or licencees or otherwise from trespassing or attempting to enter on Lot 8;
- (iv) An Injunction restraining the Defendants whether by themselves their servants or agents or tenants or licencees or otherwise from any conduct by words and or deeds that interferes with or is likely to interfere with the Claimants' quiet enjoyment of Lot 8;
- (v) Damages for trespass.

4. The Claimants also claim interest and costs.

THE CLAIMANTS' CASE

- 5. The Claimants purchased Lot 8 in September, 1991 and the Defendant was already residing on Lot 9, which is located on the eastern side of Lot 8. The northern and southern boundaries were open, with a concrete block wall bordering Lot 7 on the western side, and a galvanized fence bordering Lot 9 on the eastern side.
- 6. The Claimants contend that the access from Lot 9 to the Main Road was by means of a walkway approximately 3 feet wide and cast in concrete and that said walkway was unable to facilitate vehicular traffic.
- 7. The Claimants aver that in the early part of 2011, they verbally informed the Defendant of their intention to build a concrete wall on the eastern side of Lot 8 replacing the galvanized fence between Lot 8 and Lot 9. However, on returning to the jurisdiction after 21 days abroad, the galvanized fence was removed and replaced with new fence posts, with

pieces of wire, wood and a bed frame between the fence posts to create a new boundary line. The Claimants state that it appeared to them that encroachment had taken place as the new fence posts were within the boundary line of Lot 8. The Claimants also stated that a new bridge had been built to replace the walkway which was used by the Defendant to access the Main Road, and that the said bridge extended onto Lot 8.

8. The Claimants further stated that in 2011, they acquired a dog and they placed sheets of galvanize and chain link wire to shore up the new fence in an effort to keep their dog within Lot 8.
9. In or about February 2015, the Tunapuna Piarco Regional Corporation ("the TPRC") broke the bridge and rebuilt it, with approximately six feet of the said bridge falling within the boundary of Lot 8. The Claimants contend that the Defendant has claimed the bridge as their own.
10. In February 2016, the Claimants purchased materials to construct a wall between Lot 8 and Lot 9 but due to lack of agreement on the boundary line, the Claimants retained the services of Mr. Nasser Abdul, a land surveyor to determine the exact boundary line. The survey was conducted on the 5 March, 2016.
11. The Claimants contend that in March, 2016 the Defendant installed new fence posts and a new chain link fence between the two properties which resulted in further encroachment onto Lot 8.
12. The Claimants state that the said Mr. Nasser Abdul prepared a cadastral sheet which the Claimants contend shows encroachment by the Defendant

onto Lot 8. The said encroachment being negligible to the northern side of Lot 8 but increasing to approximately 10 feet to the southern side of Lot 8.

13. The Claimants further contend that there have been several acts of the Defendant or her agents or servants or tenants or licencees which have interfered with their quiet enjoyment of Lot 8. These include:
 - (i) Verbal abuse and harassment which resulted in police officers being present on the date of the above-mentioned survey;
 - (ii) The Defendant placing a PVC pipe to face Lot 8 which results in waste water entering Lot 8;
 - (iii) Mr. Sean Woods, one of the persons living in the house of the Defendant, threatened the Claimants and their daughter and subsequently entered Lot 8 and broke the television antennae.

THE DEFENDANT'S CASE

14. The Defendant states that a building was erected on Lot 9 in 1953 by Darwin Ollivierre and Doris Alexander and in 1977, the Defendant became a life tenant of Lot 9.
15. The Defendant contends that when the Claimants moved into Lot 8 in 1991, it was fenced on all four sides but that they removed the fence on both their western and eastern boundaries over time. The Defendant further contends that there was a space between the western boundary of Lot 9 and the eastern boundary of Lot 8.
16. The Defendant avers that a chain link wire fence and metal posts existed on the western side of Lot 9 since the 1960's and it was reinforced and repaired using galvanize and a discarded bedframe. The Defendant denies that a new fence with new posts and chain link wire was erected in 2011

and contends that there was no encroachment onto Lot 8 in 2011 and 2016. Further only one new post was installed on 6 March, 2016 and that on the same day a new chain link wire fence was installed on the fence posts in the same location that it has been since the 1960's, due to the unauthorized removal of parts of the fence by the Claimants.

17. The Defendant denies that the access way was only a walkway and states that in 1986, she and her husband obtained a vehicle which was frequently driven unto the bridge. She also stated that in 2000 her son in law, Sean Woods, obtained a vehicle which he daily drove across the bridge.
18. The Defendant denies that it was the Claimants who blocked up the fence to keep the dog out and contends that Sean Woods also had a dog and he shored up the fence.
19. The Defendant denies that she has claimed ownership of the bridge, which she states was built by the Ministry of Works and Transport and not the TPRC. The Defendant also denies that the parties were unable to agree on the exact boundary in February 2016, but rather the Second Claimant had asked the Defendant to remove the fence on the western boundary of Lot 9 to allow the Claimants to build a wall in the exact location of the fence, and such permission was refused. The Defendant contends that the Claimants then dug a trench alongside part of the said fence in February, 2016.
20. The Defendant denies that there is any encroachment on Lot 8 as indicated by the Claimants from the Cadastral Sheet prepared by Mr. Nasser Abdul. The Defendant further denies the Claimants' contention that the newly built bridge is located within six feet of the boundary of Lot 8.

21. The Defendant states that several months after receipt of the Pre-Action Protocol Letter from the Claimant, in November, 2016, the Defendant's attorney at law engaged the services of Paul Williams, Registered and Licensed Trinidad and Tobago Land Surveyor and Photogrammetric Engineer to provide evidence of the existence of the fence on the western boundary of Lot 9 ("the Paul Williams Report¹"). The Defendant states that a copy of the Paul Williams Report was delivered to the Claimants' attorney at law.
22. The Defendant further denies claims by the Claimants that she has been verbally abusing the Claimants and contends that the Second Claimant has been abusive to the Defendant and visitors of Lot 9. She further denies placing a PVC to face Lot 8.
23. The Defendant counterclaimed for:
- 1) A declaration that the title, if any, of the Claimants to that portion of land amounting to 43.5 sq. metres ("the triangular area of land") shown on the survey report by Mr. Colvin Blaize , land surveyor dated July 2017 ("the Blaize Report) as lying between the boundary lines drawn in black, and red and black, has been extinguished by the possession thereof of the Defendant and her predecessors in title since the 1960's and by the effect of sections 3 and 22 of the Real Property Limitation Act²;
 - 2) Costs; and
 - 3) Further and/or any other reliefs that the Honourable Court may deem just.

¹ Dated 19 December 2016

² Chapter 56:03

THE DEFENCE TO COUNTERCLAIM

24. The Claimants denied that the Defendants have been in continuous occupation of the triangular area of land shown on the Blaize Report since the year 1991 and as such their rights have not been extinguished in accordance with sections 3 and 22 of the Real Property Limitation Act.

THE WITNESS

25. At the trial, both Claimants gave evidence and their daughter Cindy Chadee was also a witness for the Claimants. The Defendant gave evidence and her witnesses were her son in law Sean Woods, Geides Squires, a tyre repairman, Ann Simon, a URP worker and John Mitchell, a mechanic.

EXPERT REPORTS

26. There were two expert reports which were admitted into evidence by hearsay notices. The Paul Williams Report was commissioned by the Defendant and it was admitted into evidence since at the time of the trial Mr. Williams had passed away. Mr. Williams expertise was in photogrammetry. According to the Williams Report, Mr. Williams examined aerial photographs for the years 1986, 1987 and, 1994 which he obtained from the Lands and Surveys Division. He obtained digital mapping and digital Orthophotos prepared from the 1994 aerial photography from the Lands and Survey Divisions and he visited the site. The Paul Williams Report concluded that the existing boundary fence, or an older version, existed in the same position since 1986.
27. Mr. Colvin Blaize is a certified land surveyor. The Blaize Report was commissioned jointly by both parties during the instant action. The Blaize Report is annexed as Appendix A. Mr. Blaize conducted a survey in April

2017 and the Blaize Report is dated July 2017. The Blaize Report examined all relevant survey plans, from the Director of Surveys and the Office of the Registrar General Department and he also examined all documents which were provided by the parties which included a plan by Mr. Nasser Abdul, land surveyor dated 11 March 2016. The Blaize Report concluded that the fence erected between Lot 8 and Lot 9 did not run along the actual boundary line but has been constructed in such a manner that has caused Lot 9 to be encroaching on Lot 8. The area of the encroachment of Lot 9 onto Lot 8 is the triangular area which represents the area of land between the fence and the correct location of the boundary between Lot 8 and Lot 9.

28. There was no report by Mr. Nasser Abdul the surveyor who identified the boundary between Lot 8 and Lot 9 to the Claimants in 2016.
29. The conjoint effect of the Paul Williams Report and the Blaize report was that since 1986 the existing fence has not been on the correct boundary line between Lot 8 and Lot 9 and that since 1986 there has been encroachment on Lot 8 from Lot 9.

THE ISSUE

30. It was not in dispute that the Claimants are the paper title owner of the triangular land between the black line and the red and black line on the Blaize plan. The issue is whether the Defendant has been in continuous undisturbed occupation of the triangular land for the past 16 years prior to 2016 when the dispute between the parties erupted.

THE LAW ON ADVERSE POSSESSION

31. The law on adverse possession is well settled in this jurisdiction. Section 3 of the Real Property of Limitation Act prevents the paper title owner from the right to recover lands either by action or entry within 16 years from the time when the right to bring the action or make an entry first accrued. Section 22 provides that where after the expiration of the limitation period prescribed by section 3 (i.e. 16 years) the person entitled to do so has not brought an action or made an entry for the recovery of the land his right and title to the land shall be extinguished. The conjoint effect is the person making the claim extinguishes the right of the title of the paper title owner to the land at the end of the statutory period. Time stops running when the owner either makes an effective entry on the land or takes legal proceedings.
32. Slade J. in **Powell v. McFarlane**³ is instructive in providing guidance on what constitutes “possession”. The Court stated that:
- “(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.
- (2) **If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (“animus possidendi”).** (Emphasis added).

³ [1977] 38 P & CR 452

33. “Factual possession” was described by Slade J. in **Powell v. McFarlane** as:
- “Factual possession signified an appropriate degree of physical control. It must be single and conclusive possession, though there can be a single possession exercised by or on behalf of persons jointly. 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 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 the land of that nature is commonly used or enjoyed. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. “What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants”: **West Bank Estates Ltd. v. Arthur [1967] AC 665, 678, 679; [1966] 3 WLR 750 PC, per Lord Wilberforce**. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession...Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might

have been expected to deal with it and that no one else has done so.”

34. The “intention to possess” was described by Slade J as:

“The animus possidendi, which is also necessary to constitute possession, was defined by Lindley MR in **Littledale v Liverpool College [1900] 1 Ch. 19, 23 C.A.**, as “the intention of excluding the owner as well as other people.” This concept is to some extent an artificial one because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. **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.**” (Emphasis added)

35. The onus is on the Defendant to demonstrate that she had factual possession and she intended to possess the triangular land for 16 years prior to 2016 to the exclusion of others, in particular the Claimants. In order to make this finding there are three disputes of facts which are to be resolved namely: (a) the location of the fence between 1991 to 2011; (b) the location of the fence in 2016; and (c) the location of the bridge/access for Lot 9. The resolution in a large part turns on the credibility of the evidence from the witnesses.

36. The aforesaid issues are primarily questions of fact. In determining the version of the events more likely in light of the evidence, the Court is obliged to check the impression of the evidence of the witnesses on it against the: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions. (**Horace Reid v Dowling Charles and Percival Bain**⁴ cited by Rajnauth-Lee J (as she then was) in **Winston Mc Laren v Daniel Dickey**⁵).
37. The Court of Appeal in **The Attorney General of Trinidad and Tobago v Anino Garcia**⁶, took the position that in determining the credibility of the evidence of a witness any deviation by a Claimant from his pleaded case immediately calls his credibility into question.

The location of the fence between 1991 to 2011

38. The Claimants case is that when they went to live on Lot 8 in 1991 there was a galvanized fence. The Defendant moved the fence in 2011 when the Claimants were out of the jurisdiction. The evidence by the Claimants and their witness Cindy Chadee was in essence the same matters pleaded in their statement of case.
39. In cross-examination, the First Claimant stated that Lot 9 was abandoned after the death of the Defendant's mother, Ms. Ollivierre, and that Sean Woods, the Defendant's son in law and the Defendant's daughter, Peggy moved in in 2011. However, the Claimants did not plead that Lot 9 was abandoned after the death of the Defendant's mother. The First Claimant also testified that he had a good relationship with the Defendant and her family who lived on Lot 9 until 2016 when he wanted to build a concrete

⁴ Privy Council Appeal No. 36 of 1897

⁵ CV 2006-01661

⁶ Civ. App. No. 86 of 2011 at paragraph 31

wall on the eastern side of Lot 8 and they refused him permission and it was at that time that he employed a surveyor and found out about the boundary. The First Claimant also testified that the fence was moved in 2011 at which time he made a police report, upon his return to Trinidad. He did not inform his attorney at law of any police report and he did not get any letters written by his attorney at law to the Defendant concerning the movement of the fence in 2011.

40. The First Claimant's evidence at the end of his cross-examination changed on the location of the fence. First, he said that there was no fence between Lot 8 and Lot 9. This was inconsistent with his case and his evidence in chief that there was always a fence. Then he said that there was a fence which was his fence, which was consistent with his case. Then he said that the Defendant moved his fence and that he did not move the fence but that it was moved. It was put to the First Claimant that the fence did not move in 2011, he denied this and said it did move. When asked how many times it moved, the First Claimant agreed with Counsel that it was moved once.

41. In my opinion, the First Claimant's changing of his position in cross-examination with respect to the movement of the fence from 1991 to 2016 demonstrated his lack of credibility on this issue. The only credible evidence of the First Claimant was that there was a galvanized fence between Lot 8 and Lot 9 in 2011. This was the same fence which was there when he moved into Lot 8 and there was no movement of the said fence in 2011. The evidence that he made a police report in 2011 was a fabrication since by his own admission the first dispute concerning the fence was in 2016. In my opinion if the first dispute was in 2016, there would have been no need to make a police report in 2011.

42. The evidence of the Second Claimant in cross-examination was that she moved into Lot 8 in 1991 and she could not recall there being a fence on all sides of Lot 8 but she recalled that there was a fence on the eastern side of Lot 8. She testified that the fence moved in 2011 which she and the First Claimant observed when they returned to Trinidad. The fence was moved because it was not a straight fence, it was originally slanted, but that it was now straight. She indicated they complained to the neighbours about the fence being moved in 2011. She testified that they went and made a report to the Caroni Police Station and that the Defendant and her daughter was present when they made the report. The Second Claimant when was asked if that fence was the neighbour's fence, she said that it was there when they bought Lot 8 and she was unaware of who it belonged to. She said that the fence was moved again in 2016 the day after the survey. She stated that they had a dog in 2011 and that they had put galvanize to prevent the dog from going into Lot 9.
43. The Second Claimant's evidence that the fence moved in 2011 and that a police report was made was also not credible. If the fence was moved in 2011 and such a report was indeed made, then the relationship between the parties would have broken down since 2011. But there was no evidence that the relationship was broken down in 2011.
44. Cindy Chadee' evidence in cross-examination was that she could not recall there being a fence around Lot 8 at the time she moved in, being aged 3 or 4 years. In my opinion, Cindy Chadee's evidence with respect to 2011 was of little value since she was too young to recall there being a fence in 1991 and the movement of the fence in 2011 was based on information from her parents.

45. All three Claimants referred to three photographs which were taken by Cindy Chadee. The coloured copies of the photographs were annexed as WC3; WC 7; and WC 9. According to the Claimants, WC 3 is a photograph of a 3 feet wide walkway which the Defendant used to access Lot 9. I attached no weight to WC 3 since there was no date stated on the photograph and Cindy Chadee who took the photograph did not state in her witness statement when she took it. WC 7 are 5 photographs which Cindy Chadee said she took on the 6 March 2016 when she observed the Defendant and her family digging holes and putting new fence posts between Lot 8 and Lot 9. According to Cindy Chadee the new fence posts encroached on Lot 8. There are no dates imprint on the 5 photographs to verify that the date Cindy Chadee said she took them. The 5 photographs show persons erecting a wire fence but there is no indication that the location where the fence is being erected was an encroachment on Lot 8. Therefore, I have attached no weight to the assertion that the 5 photographs at WC 7 demonstrate encroachment by the Defendant in 2016.
46. WC 9 is a photograph of a paved concrete area. Again, there is no date imprint on this photograph to verify the date it was taken. According to Cindy Chadee this was a photograph which she took in 2015 when the TPRC broke the bridges in the area, including the bridge to Lot 8 and built new bridges. She testified that approximately 6 feet of the bridge was within Lot 8 and the boundary marker was orange in colour. I have attached no weight to this photograph since the orange boundary marker was not discernible from the said photograph. Further, based on the Claimants evidence, they only found out the correct boundary between Lot 8 and Lot 9 in March 2016 when Nasser Abdul did his survey. Therefore, in 2015

Cindy Chadee would not have known the correct boundary line between Lot 8 and Lot 9 to arrive at this conclusion.

47. The Defendant's evidence in chief was also a reflection of her Defence. She stated that when she and her parents moved into Lot 9, Lot 8 was unfenced and that in the 1960's the former neighbours moved in and fenced around Lot 8. A fence was erected on the eastern side of Lot 8 next to the fence her father had put up on the western side of Lot 9 so that there were 2 chain link fences separating the 2 lots, with a small space between them in the shape of a "V". She recalled both families going between the 2 fences to clean their respective sides of the fence. The occupation of the space continued until the Claimants' moved into Lot 8 in 1991 at which time the Claimants' removed the fence on the eastern side of Lot 8, so that only the fence her father had put up existed and that to date this fence is in the same position. She states that the fence her father erected was initially attached to iron posts cast in concrete blocks. She recalled the Claimants' owned a dog which came over into Lot 9 and Sean Woods placed galvanize to prevent this and that the Claimants' also placed galvanize along the fence.

48. In cross-examination the Defendant testified that there were 2 fences and that her fence was built first and that the former neighbour had built the fence on Lot 8. There was a space between the 2 fences through which she could pass. She indicated that it was her fence that had been shored up since the Claimants had removed their fence shortly after moving into Lot 8 and that the space between the fences was claimed by the Claimants as they had placed a piece of wire against her fence preventing her from passing.

49. She denied encroaching on Lot 8 and she said that the fence is and has always been in the same position from since she began living there.
50. The Defendant's evidence on the location of the fence between 1991 and 2011 was more credible than that of the Claimants since her evidence was consistent with her case and was unshaken in cross-examination.
51. Sean Woods' evidence in chief was that he has been living at Lot 9 since 1994 and there was a chain link fence separating Lot 8 and Lot 9. He indicated that he placed galvanize along the fence to block holes made by the Claimants' dog and that the Claimants also placed galvanize on their side. He stated that neither the fence nor the fence posts which he met in 1994 were moved until the Claimants' moved their fence in 2016.
52. In cross-examination Sean Woods indicated that he has been living at Lot 9 for approximately 23 years but could not say whether there were 2 fences separating Lot 8 and Lot 9. He indicated that he met a chain link fence there and had himself changed one of the posts. He denied knowledge of encroachment in 2011.
53. Mr. Woods' evidence corroborated the Defendant's evidence to the extent that the fence he met in 1994 was the same fence in 2011.
54. Mr. Squires evidence in chief was that he was 58 years in 2017. He was familiar with Lot 9 from childhood and he could not remember it ever being without a fence. He stated that the fence separating Lot 8 and Lot 9 is in the same place and it runs along old iron posts and fig trees next to the fence. In cross-examination, Mr. Squires maintained his position as stated in his examination in chief, but he admitted that within the last 4-5 years

he visited Lot 9 less frequently. His evidence corroborated the Defendant's evidence with respect to the location of the fence in the 1990's.

55. Ms. Simon testified in her evidence in chief that she was 63 years old in 2017. She was familiar with Lot 9 from childhood and that it was always fenced. She stated that the previous owner of Lot 8 had fenced the entire Lot so that by the time the Claimants moved in, Lot 8 was already fenced. She stated she could not recall a time when there was not a fence.
56. In cross-examination, Ms. Simon stated that although she was familiar with Lot 8, many years ago after the Defendant's mother passed away. She visited it on fewer occasions. She indicated she was unaware of what was happening over the last 2-3 years on Lot 9. She could not recall if there ever were 2 fences, or if Lot 8 was fenced.
57. Mr. Mitchell's evidence in chief was that since the 1990's he visited Lot 9 on several occasions to fix Sean Woods motor vehicle. He testified that Lot 9 was fenced from the time he started visiting in the 1990's and he has never seen any change to the position of the fence. In cross-examination Mr. Mitchell admitted that his familiarity with Lot 9 was in the 1990's but indicated he is now a less frequent visitor. He recalled a chain link fence with galvanize running from North to South with fence posts separating Lot 8 and Lot 9. He indicated that he never saw more than one fence separating Lot 8 and Lot 9.
58. I have preferred the evidence of the Defendant of the location of the fence between 1991 and 2011 since it remained consistent with her case and it was corroborated by the Paul Williams Report and her witnesses. For this reason, I have concluded that there was fence between Lot 8 and Lot 9

when the Claimants moved into Lot 8 and it was the same fence which remained at the same location from 1991 to 2011.

The location of the fence in 2016

59. The Claimants case is that in February 2016 they informed the Defendant that they intended to construct a wall between Lot 8 and Lot 9 but due to lack of agreement on the boundary line, the Claimants retained the services of Mr. Nasser Abdul, a land surveyor to determine the exact boundary line. The survey was conducted on the 5 March, 2016. However, in March, 2016 the Defendant installed new fence posts and a new chain link fence between Lot 8 and Lot 9 which resulted in further encroachment onto Lot 8.
60. The Claimants state that the said Mr. Nasser Abdul prepared a cadastral sheet which shows encroachment by the Defendant onto Lot 8. The said encroachment being negligible to the northern side of Lot 8 but increasing to approximately 10 feet to the southern side of Lot 8.
61. Cindy Chadee's evidence in chief was that in 2016 her parents hired a land surveyor due to the Claimants inability to find the boundary line to allow them to build a new fence. In March, 2016, she noticed the Defendant and her family digging holes and putting new fence posts between Lot 8 and Lot 9 and she took photographs. In 2016, the Defendant placed a PVC pipe facing Lot 8 which filters out their waste onto Lot 8.
62. The First Claimant's evidence in chief was that in 2016 the Claimants hired a land surveyor due to their inability to find the boundary line to allow him to build a new fence. In cross-examination the First Claimant testified that in 2011 he had a good relationship with the Defendant and her family who

lived on Lot 9 until 2016 when he wanted to build a concrete wall on the eastern side of Lot 8 and they refused him permission and it was at that time that he employed a surveyor and found out about the boundary. He denied that the fence which was situated between Lot 8 and Lot 9 was the same fence from 1991 when he moved into Lot 8.

63. The Second Claimant's evidence in chief was the same as the First Claimant's. In cross-examination she testified that they wanted to erect a concrete wall between Lot 8 and Lot 9 and upon refusal by the Defendant, they hired a surveyor and it was discovered that the boundary was not correct and so they decided to reclaim that piece of land. She testified that after the survey in March 2016, the Defendant moved the fence on the following day to where the fence is presently located.
64. The Defendant's evidence in chief was that in 2016, parts of the fence were removed by the Claimants' without her permission and they started to dig a trench. She testified that they were digging the trench on Lot 9 and she told them to dig it on their side to which the Second Claimant told her they would get a surveyor. In March 2016, she replaced the fence which was moved with a new chain link fence and replaced one rotted post, the concrete moulding of which still remains in the ground. She repaired only the fence, not the driveway. She testified that she commissioned the Paul Williams Report which showed that the boundary fence between Lot 8 and Lot 9 existed in the same position at least since 1986.
65. In cross-examination, the Defendant stated that in 2016 she put up a new fence and changed one of the iron posts by replacing it with another iron post that was from another part of the fence in her yard. She did this since the Claimants had removed the fence causing Lot 9 to be open. She

decided to buy wire and run the fence back on said post. She denied encroaching on Lot 8 and said that the fence is and has always been in the same position from since she began living there.

66. I have preferred the Defendant's version of the location of the fence in 2016 over that of the Claimants since there was no evidence from any independent source such as a surveyor of any further encroachment which the Claimants alleged took place after the 2016 survey by Mr. Nasser Abdul. On the other hand, the Defendant relied on the Paul Williams Report as the basis for the location of the fence which she replaced in 2016 and it is highly plausible based on the findings of the Paul Williams Report that the fence which the Defendant put up in 2016 was on the same location as the fence in 2011.

The location of the bridge/access for Lot 9

67. The location of the access to Lot 9 has a direct bearing on the location of the fence during the period 1991 to 2016.
68. The First Claimant's evidence in chief was that Lot 9 did not have a driveway in 1991 but it had a walkway about 3 feet wide. A bridge was built in 2011 to replace the walkway by the Defendant. In 2015 the TPRC broke down the bridge and rebuilt it, approximately 6 feet into Lot 8.
69. In cross-examination the First Claimant did not agree that Sean Woods had a car which he used to drive into Lot 9 in 2000. The First Claimant said that the bridge/ access was about 3 feet and that cars did not go onto Lot 9.
70. The Second Claimant's evidence in chief on the access way to Lot 9 was the same as that of the First Claimant. In cross-examination, the Second

Claimant could not recall Sean Woods having a vehicle at that time or in the year 2000, neither could she recall the Defendant having a vehicle. She further stated that no vehicle could be driven onto Lot 9 since there was only a 3 feet wide entrance.

71. The Defendant's evidence in chief was that Lot 9 always had a driveway which accommodated vehicular traffic. She stated that the bridge was never 3 feet wide and is within Lot 9. She testified that in 1986, she and her husband purchased a vehicle which was frequently driven onto the driveway of Lot 9 and that in 2000 Sean Woods purchased a vehicle which he drove over the bridge and parked in the driveway of Lot 9.
72. In cross-examination, the Defendant had problems describing whether and when the access way was made of wood and/or concrete. She stated that it was between 15-20 years and the top was made with concrete. She was shown the photograph WC 3 to identify the access way but she said that from the angle the photograph was taken she was unable to identify it due to the location of the trees in the photograph.
73. Sean Woods evidence in chief was that in 2015 the TPRC broke down and rebuilt the bridge in the same position it was in prior. He stated that the access way to Lot 9 was not 3 feet wide and that it was approximately 7 feet wide and it always accommodated vehicular traffic from the time he lived there.
74. In cross-examination he testified that he had several vehicles during his time living at Lot 9, and when he moved in 23 years ago, the access way was concrete and approximately 7 feet wide but he was unaware of when it was built. He was shown the photograph WC 3 which was shown to the

Defendant, but he indicated that he was unable to indicate from the photograph if the access way was in concrete or wood.

75. Mr. Squires' evidence in chief was that the gateway and bridge for Lot 9 are in the same place as it always was and although the bridge was narrower it could have accommodated a car. He stated the gateway and bridge are in the same place as it always was and though the bridge was narrower it could have accommodated a car. He stated the bridge is wider now, but the gate is in the same place. In cross-examination Mr. Squires maintained that the bridge was always able to accommodate vehicles.
76. Ann Simon's evidence was that there was always a bridge over Lot 9 which cars would go over since the 1980's. In cross-examination Ms. Simon indicated that she was unaware of what was happening over the last 2-3 years on Lot 9. She recalled there always being a concrete bridge over which a truck would pass.
77. John Mitchell's evidence in chief was that he has been to the home on several occasions to fix Sean Woods car starting in the 1990's. He testified that when he visited the home he would drive into the yard as he did not like parking on the main road. He recalled the TPRC broke down and rebuilt the bridge but says that it was rebuilt in the same place. He stated that the driveway to enter Lot 9 has never moved, the gateway is the same, and the posts are the same and the posts are in the same position for as long as he knows.
78. In cross-examination Mr. Mitchell indicated his familiarity with the property as he used to fix Sean Woods car in the yard in the 1990's but indicated he is now a less frequent visitor. He recalled there always being a concrete bridge wide enough to accommodate a car and could possibly

accommodate a truck. He also indicated that the fence was far enough from the house on Lot 9 to permit a vehicle to pass and that he would be able to tell if a fence post was moved as he would not be able to pass with a vehicle.

79. I have concluded that the TPRC rebuilt the bridge/access way to Lot 9, 6 feet into Lot 8 not to be plausible since there was no independent evidence to corroborate this self-serving evidence by the Claimants. Further there was no evidence that the Claimants protested to the TPRC or the appropriate party which was constructing the bridge that it was being built on part of Lot 8. In my opinion if the Claimants were confident in 2015 that there was such encroachment, they would have lodged such protest. I have also concluded that given the consistent evidence of the Defendant which was corroborated by her witnesses that even if the bridge was narrower than that which was rebuilt in 2015, the pre-2015 bridge was still able to accommodate vehicular traffic and it was rebuilt in more or less the same location as the previous bridge.

CONCLUSION

80. I have preferred the evidence of the Defendant which was unshaken and consistent, and corroborated by her witnesses, and the expert reports.
81. I have therefore found that the fence between Lot 8 and Lot 9 between 1991 and 2011 was in the same location; the fence which was rebuilt by the Defendant in 2016 was more or less on the same location as the fence in 1991 and that the bridge which was rebuilt to Lot 9 was not built on part of Lot 8 but on the same location as the previous bridge. Therefore, the triangular area of land on the Blaize report, although it encroached on Lot 8, I have concluded that the Defendant has been in continuous

undisturbed possession of it since at least 1991. As such, the Claimants right to title to this area has been extinguished.

82. The Defendant has successfully proven that the land in dispute has been adversely possessed by her for more than 16 years prior to this claim and so she is legally entitled to same.

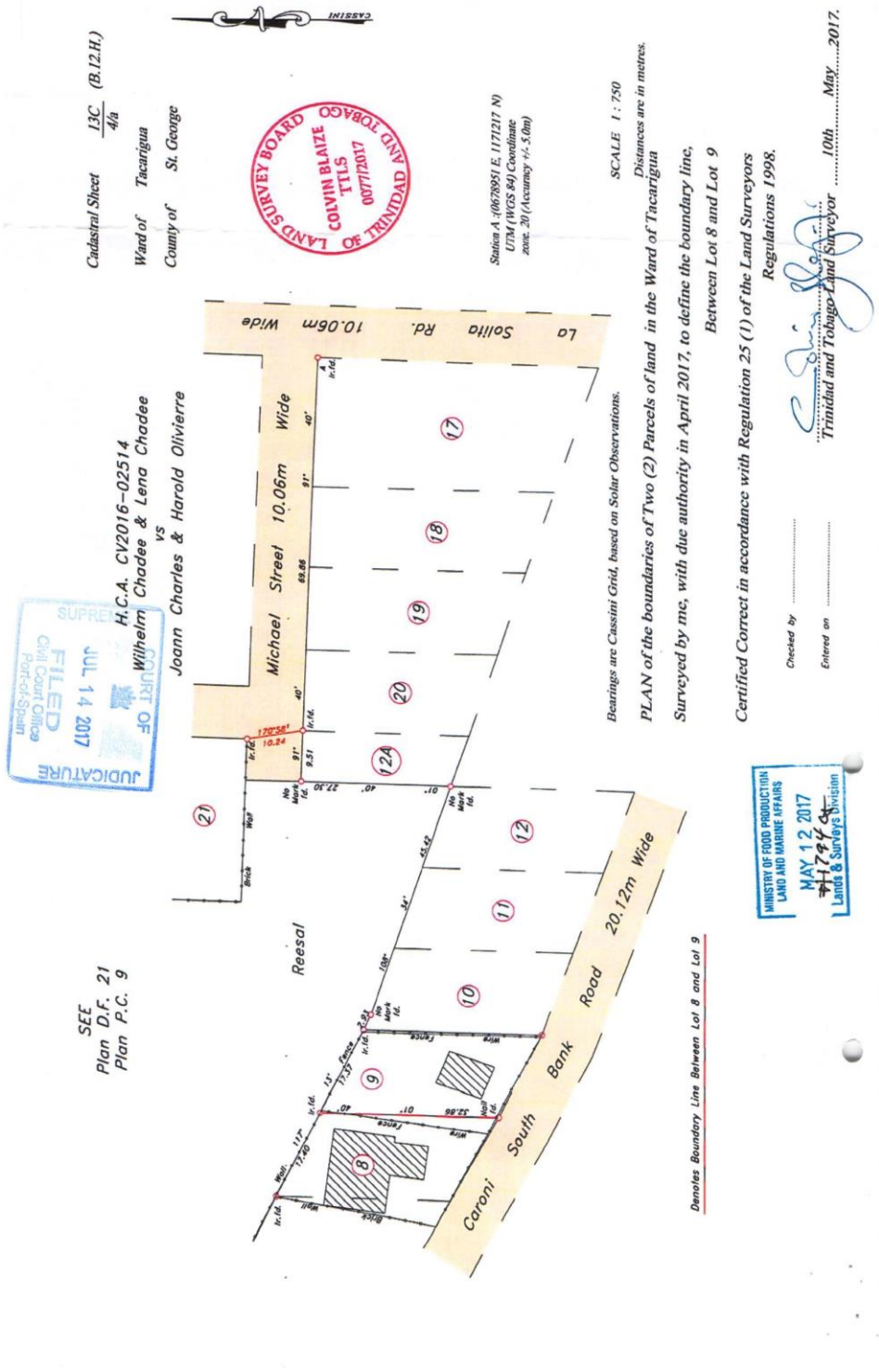
ORDER

83. The Claimants action is dismissed.
84. Judgment for the Defendant on the Counterclaim namely it is declared that the title of the Claimants to that portion of land amounting to 43.5 sq. metres shown on the survey report by Mr. Colvin Blaize , land surveyor dated July 2017 as lying between the boundary lines drawn in black, and red and black, has been extinguished by the possession thereof of the Defendant and her predecessors in title since the 1960's and by the effect of sections 3 and 22 of the Real Property Limitation Act⁷;
85. The Claimants to pay the Defendant costs of the claim in the sum of \$14,000.00 and the counterclaim in the sum of \$14,000.00.

Margaret Y Mohammed
Judge

⁷ Chapter 56:03

APPENDIX A



Cadastral Sheet 13C (B.12.H.)
4/a
Ward of Tacarigua
County of St. George

H.C.A. CV2016-02514
Wilhelm Chadee & Lena Chadee
vs
Joann Charles & Harold Olivierre

JUDICATURE
FILED
CIVIL COURT OFFICE
Port-of-Spain
JUL 14 2017

SEE
Plan D.F. 21
Plan P.C. 9

LAND SURVEY BOARD
COLVIN BLAIZE
TTLS
00772017

Station A (0678951 E, 1171217 N)
UTM (WGS 84) Coordinate
zone: 20 (Accuracy +/- 5.0m)

SCALE 1 : 750
Distances are in metres.

Bearings are Cassini Grid, based on Solar Observations.
PLAN of the boundaries of Two (2) Parcels of land in the Ward of Tacarigua
Surveyed by me, with due authority in April 2017, to define the boundary line,
Between Lot 8 and Lot 9

Certified Correct in accordance with Regulation 25 (1) of the Land Surveyors
Regulations 1998.

Checked by
Entered on
Colvin Blaize
Trinidad and Tobago Land Surveyor 10th May 2017.

MINISTRY OF FOOD PRODUCTION
LAND AND MARINE AFFAIRS
MAY 12 2017
1794
Lands & Surveys Division

Denotes Boundary Line Between Lot 8 and Lot 9