

**REPUBLIC OF TRINIDAD AND TOBAGO**

IN THE HIGH COURT OF JUSTICE

CV2014-04682

BETWEEN

**PER LIMITED**

Claimant

AND

**TESSI REBECCA THOMAS**

First defendant

**LEROY PAUL**

Second defendant

**Before the Honourable Mr. Justice R. Rahim**

**Appearances:**

Mr. L. Elcock instructed by Mr. N. Campbell for the claimant

Mr. R. Simon holding for Ms. S. Campbell for the first defendant

## Judgment

1. The claimant is a holding company for both commercial and private land development in Trinidad and Tobago. This claim is one for possession of land situate at Cascade in the Ward of St. Anns comprising seven hundred and seventy-four point six square metres (774.6m<sup>2</sup>) (“the subject land”). It is undisputed that by Deed of Conveyance dated the 19<sup>th</sup> January, 2004 and registered as DE200400446080D001 (“the 2004 deed”), the claimant became the fee simple owner of the subject land. The subject land is a portion of a larger parcel of land measuring about 8,338 square feet which is roughly 3,000 square feet more than what is considered to be the average lot size. It is however, on the claimant’s case, a part only of the larger parcel which was subdivided many years ago in the manner set out later on in the evidence. The second schedule of this deed describes the subject land as follows;

*“All and Singular that piece or parcel of land situate at Cascade in the Ward of St. Anns, in the Island of Trinidad comprising SEVEN HUNDRED AND SEVENTY FOUR POINT SIX (774.6) SQUARE METRES (being portion of a larger parcel of land described in the Schedule to Deed registered as No. DE200201489571D001) and bounded on the North by a Road Reserve on the south by Lot 2 on the East by Lot 2 and on the West by partly Sunland Avenue and partly by lands of Deposit Insurance Corporation (D.I.C) which said piece of parcel of land is shown delineated and coloured pink as Lot No. 1 on the Plan hereto annexed and marked “A” together with the dwelling house and buildings thereon and the appurtenances thereto belonging.”*

2. The claimant alleges that in early 2014, the defendants unlawfully entered upon the subject land and began erecting a wooden structure on same. By pre-action protocol letter dated the 3<sup>rd</sup> July, 2014, the claimant’s then attorney-at-law informed the defendants of the claimant’s entitlement to the subject land and demanded that the defendants remove all structures, plant, machinery or anything else placed on the subject land and vacate same on or before the 17<sup>th</sup> July, 2014. According to the claimant, to date the defendants have not ceased occupation of the subject land. Consequently, by Fixed Date Claim Form filed on

the 11<sup>th</sup> December, 2014 the claimant claims an injunction, damages for trespass and a declaration that it is entitled to possession of the subject land.

3. By Defence and Counterclaim filed on the 15<sup>th</sup> October, 2015 the first defendant claims that she has acquired a possessory title to the subject land since she and her family members have been in continuous, undisturbed possession and occupation of same since 1962. As such, the first defendant counterclaims for a declaration that she is entitled to possession of the subject land.

### **Issues**

4. The issues that fall to be determined by the court are as follows;
  - i. Whether the defendants entered upon the subject land in 2014 as claimed by the claimant or whether the first defendant and her predecessors were in possession of the subject land from 1962 as she claims; and
  - ii. If the first defendant was in possession of the disputed land since 1962 was she in adverse possession. Should this be the case then the second defendant is lawfully in occupation of the subject land.

### **The case for the claimant**

5. The claimant called seven witnesses, Jane Gonzales, Kathleen Serrette, Winston Riley, Taran Seegobin, Fitzherbert Reyes, Mervyn Thompson and Dexter Davis.
6. **Jane Gonzales** (“Jane”), a self-employed seamstress was born on the 21<sup>st</sup> August, 1960. From the date of her birth, she lived with her parents, Sylvester John-Baptiste (“Sylvester”) and Lucy John-Baptiste (“Lucy”) and her siblings at their family home situate at L.P. #112 Morne Coco Road, Petite Valley Diego Martin. In or about 1976, Jane’s parents separated. Sylvester left the family home and moved to Fort George. Subsequently, he left Fort George and moved to L.P. #4 Sunland Avenue, Cascade which is situated on part of the

land. For the sake of easy identification, the entire plot of land will be simply referred to as “the land” as distinguishable from the lot that is the subject of this claim which is known as “the subject land”.

7. According to Jane, in or about 1988 when she was twenty-eight years of age, she took her son, Maurice who was about three years old at that time to visit Sylvester at his house at the land which was a galvanize structure consisting of two rooms and an outhouse. At this time Sylvester was living with a woman known to Jane as Irene. After this meeting, Jane visited Sylvester every two months. During cross-examination, Jane testified that when she first visited Sylvester in 1988, there were persons living in an old house about forty to fifty feet away from Sylvester’s house but that the old house was not located on the land.
8. Jane testified that in or about 1989, her sister Kathleen Serrette (“Kathleen”) constructed a concrete house next to Sylvester’s house on the lands. According to Jane, the concrete house was slightly larger than Sylvester’s house even though it also consisted of two rooms. Sylvester and Irene moved into the concrete house as soon as same was completed and the galvanize house was demolished thereafter. The T&TEC bill for the concrete house which carried the address of L.P. #4 Sunland Avenue, Cascade was registered in Sylvester’s name.
9. According to Jane, Sylvester was a caretaker or watchman for a man named Ram Kirpalani (“Kirpalani”). The court takes judicial notice of the fact that Ram Kirpalani was the owner and operator of one of Trinidad’s first large department stores, Kirpalani’s as far back as in the 1970’s and well into the 1980’s and perhaps early 1990’s, so that it is likely that that was the man to whom Jane referred. Jane testified that during the period of 1988 to 2000 when she visited the land, she saw an old Bedford truck and many larges cylinders or pipes on the land. She further testified that besides Sylvester’s galvanize house, the concrete house, the cylinders and the pipes, there were no other structures on or in the immediate vicinity of the land.

10. In late 2000, Sylvester vacated the concrete house and went to live with another one of Jane's sisters, Andrea Lopez ("Andrea"). During cross-examination, Jane testified that Sylvester vacated the concrete house in or about October or November, 2000. Irene also vacated the concrete house in late 2000 and went to live with her daughter. Jane testified that this move occurred because in or about 1988 or 1989, Sylvester's left leg was amputated and Irene was unable to provide the care he needed. Sylvester died on the 3<sup>rd</sup> March, 2001.
11. After both Sylvester and Irene left, Kathleen suggested that Jane and her family occupy same. On or about the 13<sup>th</sup> December, 2000, Jane, her husband Arnim Gonzales ("Arnim") and their two children, Maurice and Marissa moved into the concrete house. Jane testified that prior to moving into the concrete house, Arnim and she constructed a toilet and bath and demolished the outhouse. During cross-examination, Jane testified that the concrete house was not unoccupied before she occupied same as one of Arnim's friends, namely, Nash stayed at the house during the night time. She further testified that Nash stayed at the house because he was helping Arnim prepare the site for the construction of the toilet and bath. Arnim and Jane had their third child, Marie shortly after they moved into the concrete house.
12. During cross-examination, Jane testified that she did have neighbours whilst living at the land but that the only neighbour she spoke with was a woman named Bianca. She also testified during cross-examination that the land was located on a short street and that there were houses on each side of the street. She further testified that there was no fence between the land and the other houses but that the concrete house was the only house on the land.
13. By letter dated the 18<sup>th</sup> July, 2001 Jane and Arnim were informed that Deposit Insurance Corporation, as Liquidator of Trade Confirmers Limited intended to enforce an order for sale of the land which had been made by Mr. Justice Carlton Best on the 9<sup>th</sup> February, 2001. The letter also gave notice to Jane and Arnim that they had twenty-eight days to vacate the land.

14. According to Jane, at the time Arnim and she could not afford to purchase the land so she spoke to her brother, Gerard Baptiste (“Gerard”) who agreed to purchase same and allow she and her family to continue to reside at the concrete house. During cross-examination, Jane testified that Gerard is alive and does not have any illness which would have prevented him from attending court.
15. By Deed of conveyance dated the 31<sup>st</sup> January, 2002 and registered as DE200201489571D001, Gerard purchased the land which comprised thirty-three thousand, five hundred and twenty-five (33,525) superficial feet for the sum of one hundred and fifty thousand dollars (\$150,000.00). When converted the area of the land amounts to approximately 3,115 square metres.
16. According to Jane, after Gerard purchased the land, he decided to sub-divide same into two lots. While referred to as lots, both parcels of land proposed were in fact not the traditional sized lots. Gerard hired Albert Haynes (“Haynes”) a land surveyor for the purposes of the sub-division. By survey plan of Haynes dated the 2<sup>nd</sup> May, 2003 the land was subdivided as follows;
  - i. Lot 1 comprising 774.2 square metres which is the subject land of these proceeding upon which the concrete house stood; and
  - ii. Lot 2 comprising 2,342.3 square metres (“lot 2”).
17. Jane testified that she did not know whether the land was ever sub-divided in accordance with the survey plan of Haynes. Another witness, Winston Riley, a director of the claimant, has testified in this case that the land was in fact never subdivided in keeping with the Haynes survey.
18. According to Jane, in or about 2003 Winston Riley (“Riley”) visited the land and informed her that he was interested in purchasing same. She referred Riley to Gerard. She testified that in or about October or November, 2003 Gerard informed her that he intended to sell both the subject land and lot 2 and so she and her family had to vacate the concrete house

which they did in or about January, 2004. During cross-examination, Jane testified that when she vacated the concrete house, there were no other structures on the land. She further testified that the old house that was located about forty to fifty feet away from Sylvester's house was still standing but that it was unoccupied.

19. As such, Jane testified that during the period from about 1988 to about January, 2004 neither the first defendant nor her family members occupied any dwelling on or in the vicinity of the land or cultivated on or in the vicinity of the land.

20. **Kathleen Serrette** ("Kathleen") is a retired caretaker. As mentioned above, Kathleen is Jane's sister. Most of her evidence was the same as Jane's and it is therefore unnecessary to traverse it in detail.

21. According to Kathleen, sometime between the years 1982 to 1984, Sylvester and Irene left their apartment in Fort George and moved into the galvanize house located at the subject land. She testified that Kirpalani provided Sylvester with the galvanize house and that when she visited Sylvester shortly after he moved into same, she saw a bulldozer, a tractor, a 20 by 40 foot container and approximately three to six large steel cylinders or pipes within the vicinity of the galvanize house. She further testified that at that time, it appeared that the hillside land at Sunland Avenue was in the process of being cleared and cut. She visited Sylvester on a weekly basis to carry groceries for him and to take him to the doctor.

22. Kathleen testified that prior to the amputation of Sylvester's leg, he cultivated cassava, banana, plantain, pigeon peas, sorrel and dasheen in the vicinity of the galvanize house.

23. In or about 1998, Kathleen migrated to the United States of America. She testified that immediately before migrating, she visited Sylvester and that other than the concrete house, there were no other houses on the land or in the vicinity of same. During cross-examination, Kathleen testified that in 1998 there were neighbours around the land however she was not familiar with any of the names of those neighbours. Further, during cross-examination, she testified that she returned to Trinidad in 1999 and visited Sylvester at the land.

24. As such, Kathleen testified that from about 1982 or 1984 to about 1998 neither the first defendant nor her family members occupied any dwelling at or in the vicinity of the land and/or cultivated on or in the vicinity of the land.
25. **Winston Riley** (“Riley”) is a Civil Engineer and one of the Directors of the claimant. According to Riley, in 2003 he visited the land about three or four times. He testified that on one of those occasions, he distinctly remembered speaking to Jane who referred him to Gerard who was the former owner of the land. Riley testified that during his visits in 2003, he did not meet any other person(s) save and except Jane and her family who were occupying and/or cultivating the subject land. During cross-examination, Riley testified that the land was advertised in the newspaper for sale by a real estate agent.
26. During cross-examination, Riley testified that he also saw the old wooden unoccupied house that was about fifty feet away from land.
27. Subsequently, Riley acting on behalf of the claimant entered into negotiations with Gerard for the purchase of land which as mentioned before includes the subject land. As mentioned before by deed of conveyance dated the 19<sup>th</sup> January, 2004 and registered as DE200400446080D001, the claimant purchased the subject land from Gerard for the sum of four hundred thousand dollars (\$400,000.00). Further by deed of conveyance also dated the 19<sup>th</sup> January, 2004 and registered as DE200400446101D001, the claimant purchased lot 2 (the land adjoining the subject land) from Gerard for the sum of one million, two hundred thousand dollars (1,200,000.00). During cross-examination, Riley testified that the claimant would have instructed that a title search be conducted on the land prior to the purchase of same.
28. According to Riley, subsequent to the purchase of the land, the claimant applied to the Town and Country Planning Division for development permission to build nine townhouse units. By Notice dated the 31<sup>st</sup> May, 2005 from the Town and Country Planning Division, the claimant was granted permission to develop the land subject to certain conditions.



29. Riley testified that the claimant also informed T&TEC that it had purchased the land and thereafter all T&TEC bills in respect of same were sent to the claimant at its registered office situate at 53 Park Street, Port of Spain.
30. During cross-examination, Riley testified that subsequent to the purchase, the land was surveyed by Fitzherbert Reyes (“Reyes”) for the purpose of ensuring that the boundaries were accurate. He was then asked whether Reyes’ testimony that the lands were surveyed to bring same under the Real Property Ordinance (“RPO”) was inaccurate. Riley then testified that after Reyes surveyed the land, he (Reyes) advised that same should be brought under the provisions of the RPO.
31. According to Riley, in or about early 2006 the claimant retained the services of Rose & Company, Attorneys-at-Law, to undertake title search in respect of the land. By letter dated the 2<sup>nd</sup> February, 2006 the claimant’s attorney provided it with a search report undertaken by M. Hamel-Smith & Co. which set out the chain of title as follows;
- i. By deed of conveyance dated the 17<sup>th</sup> April, 1975 and registered as No. 5223 of 1975, John Lush conveyed the land to Prefabin Limited.
  - ii. In *the Matter of Trade Confirmers Limited, In the Matter of the Companies Ordinance Chapter 31 No. 1 and In the Matter of the Financial Institutions (Non-Banking) Act 1979, the Humble Petition of Henry Victor Jeffered, No. W14 of 1986.* Justice Edoe ordered that Trade Confirmers Limited be wound up and that Deposit Insurance Corporation be appointed liquidator.
  - iii. On the 11<sup>th</sup> April, 1994, Trade Confirmers Limited (In Liquidation) obtained judgment against Prefabin Limited in High Court Action No. 1126 of 1994 Trade Confirmers Limited (In Liquidation) v Prefabin Limited (“the action”) for the sum of \$10,816,823.29 together with interest and costs.
  - iv. De Noriga, Innis & Co., the Attorneys-at-law for Trade Confirmers Limited (In Liquidation) registered the said judgment as a final judgment at the Registrar General’s Department on the 12<sup>th</sup> April, 1994 and re-registered same on the 7<sup>th</sup> May, 1998 and on the 4<sup>th</sup> May, 2001.

- v. By Order dated the 9<sup>th</sup> February, 2001 made in the action, Justice Best ordered inter alia that, Trade Confirmers Limited (In Liquidation) be at liberty to put up for sale the beneficial interest of Prefabin Limited in several parcels of land.
  - vi. By deed of conveyance dated the 31<sup>st</sup> January, 2002 between Trade Confirmers Limited (In Liquidation) acting by the Liquidator, Deposit Insurance Corporation conveyed the land to Gerard Baptiste,
  - vii. By deed of mortgage dated the 22<sup>nd</sup> January, 2002 and registered as DE200201489692D001, Gerard Baptiste mortgaged the land to Scotiatrust and Merchant Bank Trinidad and Tobago.
  - viii. By deed of release dated the 1<sup>st</sup> December, 2003 and registered as DE200400389460D001 Scotiatrust and Merchant Bank Trinidad and Tobago released and re-conveyed the land to Gerard Baptiste.
  - ix. By deeds of conveyance both dated the 19<sup>th</sup> January, 2004 and registered as DE200400446080D001 and DE200400446101D001, Gerard Baptiste conveyed the land to the claimant.
33. During cross-examination, Riley testified that the claimant was hearing rumors about the land from persons in Cascade and so it decided to undertake the above mentioned title search on the land to verify the accuracy of the first title search. This first title search was not provided to the court.
34. According to Riley, subsequent to the purchase of the land, he hired Ultra Security Services Limited, to warn off any trespassers. During cross-examination, Riley testified that it was based on the rumors that the claimant decided to hire a security guard for the land. Riley testified that on the night of the 28<sup>th</sup> March, 2006, several unknown persons invaded the land and drove off the watchman, David Timothy (an employee of Ultra Security Services) who was residing in the concrete house that had been previously been occupied by Jane and her family.
35. A few days after, the claimant with the assistance of several police officers re-took possession of the land and drove off those individuals who were illegally occupying the

concrete house. During cross-examination, Riley testified that after this incident, a watchman would visit the land occasionally.

36. Riley testified that in April, 2006 he hired Coral & Associates Limited to demolish the concrete house. According to Riley, on the 7<sup>th</sup> April, 2006 he visited the land and saw that the concrete house was demolished. Thereafter, he received invoice #231 dated the 12<sup>th</sup> April, 2006 from Coral & Associates Limited for the sum of five thousand dollars (being the fees for demolishing the concrete house).
37. In or about November, 2006, Riley instructed Linden Scott & Associates Limited to prepare a valuation report on the land. In or about late December, 2006, he received a valuation report dated the 18<sup>th</sup> December, 2006 from Linden Scott & Associates. This report stated that the land was vacant. He testified that one of the photographs attached to the valuation report shows evidence of a demolished structure.
38. Riley testified that in or about early 2014, it came to his attention that two persons had illegally entered upon the subject land and begun erecting a wooden structure. He further testified that in or about March or April, 2014 he and another of the claimant's directors visited the subject land and observed that a flat board house had been erected on the subject land by persons then unknown. The inference to be drawn from this evidence is that the board house belonged to the defendants. Riley further observed that the board house was connected with electricity. During cross-examination, Riley testified that he did not visit the land between the period of 2006 and 2014.
39. On Riley's instructions, the claimant's former attorney-at-law, wrote to T&TEC by letter dated the 14<sup>th</sup> April, 2014 demanding that the electricity supply to the board house be immediately disconnected. This letter also demanded the disclosure of any application and supporting documents that may have been lodged with T&TEC in relation to the electrical connection. Quite astonishingly, by letter dated the 13<sup>th</sup> June, 2014 T&TEC informed the attorney that the first defendant's attorney asked for an extension of six weeks to inter alia acquire the documents pertaining to the electricity supply. The inference is that T&TEC

was not in possession of any documents whatsoever in support of the application for the electricity connection and therefore T&TEC contacted attorney at law for the defendants.

40. By pre-action protocol letter dated the 3<sup>rd</sup> July, 2014 the claimant's attorney demanded that the illegal occupants of the subject land vacate same on or before the 17<sup>th</sup> June, 2014. By letter dated the 15<sup>th</sup> July, 2014 the first defendant's attorney acknowledged receipt of the claimant's pre-action letter and informed the claimant that the first defendant was the lawful owner of the subject land and that same has been in her family since the early 20<sup>th</sup> century. The letter further informed the claimant that a title search was to be conducted on the subject property.
41. During cross-examination, Riley testified that he does not know the first defendant and has never spoken to her.
42. **Tarran Seegobin** ("Seegobin") is a Chartered Accountant and Business Executive. From about 1970 to about September, 1985 Seegobin was the Financial Director and an Executive Director of Kirpalani's Holdings Limited ("KHL"). Seegobin testified that Ram Kirpalani who died in August, 1985 had the controlling interest in KHL.
43. According to Seegobin, KHL owned thirty-six percent of the shares in Trade Confirmers Limited ("TCL"). During the period from about 1976 to about 1986, Seegobin was the Managing Director and Chief Executive Officer of TCL. He testified that during that period TCL loaned millions of dollars to Prefabin Limited ("Prefabin"). Seegobin was also a director of Prefabin during the period from about 1975 to about 1982.
44. Seegobin testified that Prefabin was in the business of real estate development and acquired lands in Cascade, St. Anns and St. James. During his tenure at TCL and Prefabin, he visited various parcels of land and/or properties which Prefabin was interested in acquiring which included the land. Seegobin testified that he distinctly remembered that on one of his visits to the land in 1973, he was introduced to the owner of same, John Lush. Thereafter,

Seegobin visited the lands on two or three occasions during the period from about 1974 to about 1976.

45. According to Seegobin, the land comprised some five acres of undeveloped hillside land stretching from Sunland Avenue to the Lady Young Road. He testified that on more than one of his visits to the land, he accessed same via Sunland Avenue and was able to observe from that vantage point that the land was covered in bush and that there were no structures on same. He further testified that on one of his visits to the land, he accessed same via the Lady Young Road and was able to observe from that vantage point that the land was covered in bush and that there were no structures thereon.
46. **Mervyn Thompson** (“Thompson”) is a Chartered Valuation Surveyor who has been in the profession since 1969. In or around late June, 2000, Thompson was instructed by Denis Cox, Assessment Officer of Deposit Insurance Corporation to prepare a report and valuation in respect of several parcels of lands situate at Sunland Avenue, Cascade belonging to Prefabin Limited. Thompson testified that one of those parcels of land was the subject land.
47. On the 3<sup>rd</sup> July, 2000 Thompson visited the subject land and inspected same for the purpose of preparing his report and valuation. During the course of his inspection, he observed that a single concrete house was situate on the subject land. He did not however inspect the concrete house as he was not required to. Thompson testified that he spoke to a woman who informed him that Kirpalani had given her and her husband who was a caretaker permission to occupy the concrete house.
48. Thompson prepared a report and valuation dated the 5<sup>th</sup> July, 2000 in respect of the subject land. This report was submitted to Deposit Insurance Corporation. The subject land is identified as item number ten in the report.
49. **Fitzherbert Reyes** (“Reyes”) has been a Licensed Land Surveyor for the past twenty years. In or around 2006, he was instructed by a representative of the claimant to survey the land

for the purpose of bringing same under the provisions of the Real Property Ordinance. During cross-examination, Reyes testified that there was no dispute in relation to the boundaries of the land.

50. In order to redefine the boundaries set out in the 2004 deeds, Reyes examined several documents namely Ward Sheet A.20.C and survey plans prepared by Winston Sylvester, Albert Haynes, Fred Farrell, J.G. Reece, Gill Thompson and Leslie Akum Lum. A few days after he examined all the aforementioned documents, he conducted a site visit so as to speak with the persons occupying and abutting the land, gather surveying information and note any objections or other matters of concern. Reyes testified that the only person he was able to speak to was Rita Guy, whose property abutted to the north of the Road Reserve shown on the survey plan prepared by Haynes.
51. According to Reyes, during the period from the 24<sup>th</sup> to the 28<sup>th</sup> April, 2006, he gave notices to occupiers of all properties abutting the land, notifying them of his intention to survey. He conducted the survey on the land on the 6<sup>th</sup> and 13<sup>th</sup> May, 2006 and on the 10<sup>th</sup> June, 2006. Reyes testified that no objection was raised on any of those days by anyone. He noted that there was no house situate on the land or on the subject land in particular. However, he did observe that there was evidence (discarded plumbing fixtures and broken masonry) of a structure having previously been on the subject land and which appeared to have since been demolished.
52. Subsequent to his survey of the land, he prepared a survey plan dated the 19<sup>th</sup> May, 2010 and submitted same to the Director of Surveys.
53. In August, 2014, the claimant's former attorney, contacted Reyes for the purpose of ascertaining whether the first defendant was in occupation of the subject land. Reyes in the company of Baliff, Edward Soon conducted a site visit of the subject land on the 26<sup>th</sup> August, 2014. Based on his examination on the 26<sup>th</sup> August, 2014, Reyes concluded that the first defendant was in occupation of the subject land and that the house she occupied was not present on the land when he conducted his survey in May and June, 2006. Reyes

prepared a report dated the 15<sup>th</sup> September, 2014 wherein he set out his conclusions and submitted same to attorney for the claimant.

54. **Dexter Davis** (“Davis”) is a Geomatics Consultant/Lecturer. He was retained by the claimant to assess the historical characteristics of the subject land from 1962 to the 11<sup>th</sup> December, 2014 via photographic evidence and techniques. Based on his instructions, he prepared a Photogrammetric Survey Report dated the 26<sup>th</sup> October 2016 on the subject land. The material parts of the report provided as follows;

- i. The photogrammetric analysis was done based on aerial photographs obtained for the years 1969, 1975, 1986, 1994, 1998, 2003 and 2014. The assessment was also supported by the relevant cadastral information and satellite imagery for the area under investigation.
- ii. An examination of the 1969 photography showed that the subject land was covered with vegetation and different types and ages of trees. There was no evidence of any built structures, occupation or patterns that were consistent with agricultural or horticultural practices on the land.
- iii. An examination of the 1975 photography showed that the subject land was in a generally hilly area with a steep slope to the south of it. The land further appeared to be generally covered by different types and ages of trees and some benching of the land in the general area was seen to the south of the site. Due to the sloping of the land to the south, much of same in the imagery appeared to be covered in shadows, so there was no distinct evidence of any built structures, occupation or patterns that were consistent with agricultural or horticultural practices on the land.
- iv. An examination of the 1986 photography again showed that the subject land was in a generally hilly area. The land appeared to be generally covered by different types and ages of trees and the benching of the land that appeared in the 1975 imagery was more distinct. A small structure was observed on the land at this time. There was no other distinct evidence of any built structures of significant size, occupation or patterns that were consistent with agricultural or horticultural practices on the land.

- v. An examination of the 1994 photography again showed that the land was in a generally hilly area. Some parts of the land appeared to be cleared as there were less trees on same. The benching of the land that appeared in the 1975 and 1986 imagery was more distinct and what was a small structure appeared on the land. It was noted that the structure was smaller than other structures in the area that were residential houses and that it was in a slightly different location than the structure that appeared in the 1986 image. There was no other evidence of occupation or patterns that were consistent with agricultural or horticultural practices on the land.
- vi. An examination of the 1998 photography showed similar pattern of built and vegetative features as the 1994 imagery. Some parts of the land in the 1998 imagery appeared to be cleared as there were less trees. The benching of the land that appeared in the previous imagery was more distinct and what was potentially a small structure was observed on the land in the same location as the structure that appeared in the 1994 imagery. There was no other evidence of occupation or patterns that were consistent with agricultural or horticultural practices on the land.
- vii. An examination of the 2003 photography generally showed a similar pattern of built and vegetative features as the 1994 and 1998 imageries. In the 2003 imagery, more trees was seen on the land and its general surroundings. Even the land that was benched in the previous imagery appeared to have more vegetation coverage. The same small structure that was observed in the previous imageries also appeared in the same location. There was no other evidence of occupation or patterns that were consistent with agricultural or horticultural practices on the land.
- viii. The 2014 photography provided a significantly larger scale representation of the subject land. In this imagery, a significant structure was clearly seen on the land which was consistent in size with other residential houses in the area. It was noted that the structure appeared larger and in a slightly different location to the structure that was identified in the previous imageries. Additionally, significant sections of the land appeared to be cleared as there were relatively few mature trees on same. The benching of the land to the south of site also appeared less distinct.



57. During cross-examination, Davis testified that there are no aerial photographs for the period between 2003 and 2014.

### **Case for the defendants**

58. The defendants gave evidence for themselves and called three other witnesses, Brian Thomas, Denzil Thomas and Ronald Thomas.

59. The first defendant is fifty-four years of age. She and her common-law husband, the second defendant presently reside at the subject land in a partially wooden and partially concreted house measuring 39 feet by 27 feet in width and 10 feet in height. During cross-examination, the first defendant testified that the subject land was never fenced and that she does not know the boundaries of the land. She further testified that she does not know the square area of the land.

60. According to the first defendant, her great uncle, Hector Lewis (“Hector”) was in control of the subject land until the year 1979. Thereafter, another great uncle of hers, Jutus Matthew Louis also called Joshua Lewis (“Justus”) took over control of the land until 1995. She further testified that Justus cultivated citrus trees which included cashew, pommecythere and shorts crops on the land. Hector and Justus died on the 20<sup>th</sup> October, 1974 and the 5<sup>th</sup> March, 2009 respectively.

61. In 1975 her cousin, Denzil Thomas (“Denzil”) erected a structural building on the subject land in which he housed and managed the Soul City Pan Steel Orchestra. Denzil did that until 1995. It is to be noted that the first defendant testified as to a structural building but did not say whether it was made of galvanize, wood or concrete and the phrase structural building is highly ambiguous and possibly repetitive.

62. According to the first defendant, in 1995 her uncle, Kenneth Thomas (“Kenneth”) erected a wooden house on a concrete foundation. She testified that this house which measured 39 feet by 27 feet consisted of a living room, two bedrooms, a kitchen and a toilet and

bathroom facility. She further testified that in 1995, Kenneth obtained an electricity connection for the house. She attached a T&TEC bill dated the 8<sup>th</sup> December, 1995 in the name of Kenneth which displayed the address of LP 3 Sunland Avenue, Cascade. She further attached receipts in Kenneth's name for a material he purchased to build the wooden house. Kenneth died on the 14<sup>th</sup> June, 2014.

63. Kenneth occupied the wooden house until 1996, when the first defendant's nephew, Wendell Ramnath ("Wendell") began residing in same. Wendell continued to reside at the house until 1998. During 1997 to 2002, her uncle, Barry Carter ("Barry") conducted a Woodwork shop in a wooden shed erected to the back of the wooden house. Barry fixed all types of furniture in the shop.

64. According to the first defendant, in 1998 she and her then male companion, Ivan Thomas began residing at the wooden house. Her brother, Ronald Thomas ("Ronald") also resided at the house with them. The first defendant testified that she planted citrus trees and short crops in the area surrounding the wooden house.

65. It was the testimony of the first defendant that the wooden house began to fall apart which made it unsafe for three persons to continue to reside in same. She testified that in the year 2000, Ronald and she began to embark upon the structural re-enforcement of the north-eastern portion of the wooden house which housed one bedroom and a toilet and bath. This was done in order for Ronald to continue living in the house. According to the first defendant, this portion of the house still stands on the concrete foundation to date. She further testified that while efforts were made to totally rebuild the rest of the wooden house, because of its totally dilapidated condition, it continued to rapidly fall apart which caused the existing concrete foundation to be exposed to the elements.

66. According to the first defendant, she remained in possession of the subject land by cultivating additional crops such as pommecythere, fig, avocado and coconut whilst Ronald resided in the one bedroom structure on the north-eastern portion of the concrete foundation. This arrangement continued until the latter part of 2007 since in 2006 she

started to rebuild a concrete structure on the exposed concrete foundation. The concrete structure was therefore according to the first defendant joined to the one bedroom structure. She further testified that the concrete house was completed in 2007 and consisted of two bedrooms, a living room, a kitchen, and a toilet and bath facility with an adjoining washroom to the back of the house. She exhibited receipts in her name for materials she purchased during the construction of the concrete structure.

67. It was the testimony of the first defendant that in 2007, the second defendant and she joined Ronald in occupying the house situate on the subject land. Also in 2007, the first defendant transferred the electricity account from Kenneth's name onto her name. She exhibited a T&TEC bill dated the 15<sup>th</sup> April, 2015 which appears to confirm that which she stated.

68. According to the first defendant, at no time prior to this action did anyone approach her or any of her family members who were occupying the subject land and make any claims in relation to same. She testified that the claimant exercised no acts of ownership over the subject land and only made a mere assertion of being the true paper title owner of same when this matter was initiated against her which was more than sixteen years after her deceased uncle, Hector first entered into possession and exclusively occupied the subject land.

69. She further testified that since 2014, when the claimant asserted to be the true paper title owner of the subject land, she has been continuously harassed by persons unknown to her and the second defendant who have visited the land to take photographs of same. She viewed the harassment as an attempt to intimidate her and her family and to force them off of the land.

70. As such, it was the testimony of the first defendant that she and her family members have been in continuous, uninterrupted, undisturbed and successive adverse possession of the subject land since 1962. She testified that she is relying on the continuous, undisturbed occupation of all her family members together with her subsequent occupation of the land

to date to show that it was always the intention that the subject land remain in their possession.

71. During cross-examination, she testified that neither Sylvester nor Jane occupied the subject land. She further testified that to her knowledge the subject land belonged to her great grandmother, Nancy Paul and that there is a deed for the land executed in favour of Nancy Paul. No such deed was produced in this case.
72. Moreover, during cross-examination the first defendant testified that she did not have any knowledge that someone visited the subject land in 2006 to conduct a valuation on same. She further testified that she has no knowledge of anyone invading the subject land in 2006.
73. **The second defendant**, a Mason is fifty-three years of age. There was no material difference between his evidence and that of the first defendant so that the evidence does bear repeating.
74. **Ronald Thomas** (“Ronald”), a retired surveyor is sixty-one years of age. Once again there was no material difference between the relevant evidence in relation to Ronald and the evidence of the first defendant. There were however minor inconsistencies. In his witness statement, Thomas testified that the wooden house built by Kenneth was constructed on a concrete foundation. However, during cross-examination he testified that the wooden house did not have a concrete foundation. He also testified that there was no galvanize structure on the land. Moreover, during cross-examination Ronald testified that no one visited the subject land in 2006 to do a valuation on same. He further testified that he did not know that police officers chased persons off of the land in 2006.
75. **Denzil Thomas** (Denzil) a Carpenter is sixty-nine years of age. Some of his evidence was the same as the first defendant’s evidence and as such there was no need to repeat that evidence. He testified that in 1962, his great uncle, Hector took possession of the subject land without the permission, license or consent of any person claiming ownership to the land. According to Denzil, at that time the subject land only consisted of overgrown bushes

which Hector cleared in preparation for cultivation. Denzil testified that Hector cultivated various crops on the land such as coconut, fig and mango. He further testified that Hector erected a wooden shed on the land to store his tools and produce.

76. Denzil was the Captain and Manager of Soul City Pan Groove (“the steel band”) from 1975 to 1995. According to Denzil, in 1975 with the consent of Hector who was in possession of the subject land at that time, he (Denzil) constructed a structural building on the subject land. Denzil testified that for the twenty years the steel band occupied the subject land as rehearsals were conducted in the building. He further testified that the land was then known as the “pan yard” of the steel band.

77. According to Denzil, every year the band practiced for Panorama, persons within the community would often visit the subject land to enjoy the sweet rhythm of the music. Denzil testified that in 1995 the steel band relocated to Mount Hololo.

78. Denzil testified that in 1997, his cousin Andy Thomas (“Andy”) took over the building that housed the steel band and used it as a workshop to fix furniture. Andy occupied and conducted his trade at the building until 2002.

79. During cross-examination, Denzil testified that in 1984 he did not see Sylvester and Irene living on the subject land in a galvanize house.

80. **Brian Thomas** (“Brian”) a part time Taxi Driver is sixty-three years of age. He is the cousin of the first defendant. According to Brian, during his uncle, Hector’s exclusive possession of the subject land, he (Hector) cleared, prepared and cultivated crops such as coconut, fig, mango, tonca bean, peewa, cassava, plantain and sweet potato on the land. Brian also testified that Hector constructed a wooden shed on the land to store his tools and produce.

81. Brian testified that during 1965 to 1979, he often visited the subject land and stayed with Hector to assist him in the clearing and cultivating of the land. After harvesting the crops, Hector and Brian would sell the harvest at Charlotte and George Street Market.

82. In his witness statement, Brian testified that the wooden house built by Kenneth was constructed on a concrete foundation. However, during cross-examination he testified that the wooden house was not constructed on a concrete foundation. According to Brian, the subject land is often described as “the Thomas land”.

83. During cross-examination, Brian testified that there was never a fence around the subject land. He further testified that he does not know the square area of the subject land and that he never saw Sylvester and Irene occupying the land.

### **Adverse Possession**

### **Law**

84. In relation to the principle of adverse possession, **Section 3 of the Real Property Limitation Act Chapter 56:03** provides as follows;

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

85. Further, **Section 22 of the Real Property Limitation Act** provides as follows;

*“At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or*

*rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished.”*

86. In the case of **Grace Latmore Smith v David Benjamin Civ. App 67 and 68 of 2007 at paragraph 48**, per Mendonca JA it was recognized that in order for a claim in adverse possession to be made out, there must be an absence of consent of the paper title owner or his predecessor in title, factual possession and an intention to possess by the occupier. In Grace Latmore supra it was accepted that the principles set out in the authority of **JA Pye (Oxford) Ltd v Graham [2002] UKHL 30** applied in this jurisdiction. Factual possession signifies a degree of exclusive physical custody and control and the question of whether the acts of the occupier are sufficient to meet this must depend on the circumstances of the case. The intention to possess means “*an intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with paper title ....so far as is reasonably practicable and so far as the processes of the law will allow.*”: **See JA Pye supra, Lord Browne-Wilkinson, paragraph 43.**

## **Issues 1 & 2**

### **Submissions of the claimant**

87. The claimant relied on the authority of **ACLA: Works Limited and Skinner & Joseph OS Practice v The university of Trinidad and Tobago CV2010-05157** wherein Justice Boodoosingh stated the following at paragraph 6;

*“The court, notwithstanding that there was no cross-examination and that the defendant led no evidence, is duty bound to carefully examine the evidence presented and make a determination based on it. The court is not obliged to accept even the unchallenged evidence of a witness, including an expert. Where, however, witnesses have given detailed and comprehensive evidence and reasoned conclusions for the opinions expressed, and where those witnesses are more than properly qualified and experienced to give such evidence, the court would be acting arbitrarily to reject such evidence for no good reason.”*

88. According to the claimant, the evidence of Davis and Seegobin was unchallenged therefore it was submitted that the unchallenged evidence of Davis and Seegobin called into question the veracity of the allegations made by the first defendant in her pleadings and in the evidence given by she and her witnesses. The claimant further submitted that on its evidence, there was no occupation and/or cultivation of the subject land by anyone during the period of 1962 to 1976. As such, the claimant submitted that the first defendant's evidence was tainted by the findings of the expert, Davis and therefore cannot be relied upon.
89. Moreover, the claimant submitted that the most telling and damning evidence adduced by the first defendant was her confession during cross-examination that 1) she was completely ignorant of the area of the land she was claiming to have been in continuous and uninterrupted possession of for over fifty-five years, 2) the subject land was never fenced, and 3) she did not know the length of any of the boundaries of the subject land.
90. Consequently, the claimant submitted that there was no credible evidence on which this court could find that the first defendant and/or her predecessors were from 1962 in possession and occupation of the subject land.
91. The claimant submitted that it adduced independent evidence from Jane and Kathleen who were unshaken during cross-examination. According to the claimant, Davis' report substantiates Jane's and Kathleen's evidence that in or about 1989 the galvanize house was demolished and a concrete house was constructed on the subject land. The claimant further submitted that its other witness, Thompson whose evidence was also unchallenged, also corroborated Jane's and Kathleen's evidence that Sylvester and Irene were living on the subject land in 2000.
92. According to the claimant, the evidence given by its witness, Reyes supported Riley's evidence that the concrete house in which Jane and her family lived was demolished on the 6<sup>th</sup> April, 2006. The claimant submitted that the fact that the concrete house on the subject



land was demolished on the 6<sup>th</sup> April, 2006 was further evidenced by the valuation report prepared by Linden Scott & Associates Ltd. dated the 18<sup>th</sup> December, 2006. According to the claimant, the two pictures which were attached to the report depicted the demolished structure and that the subject land was vacant.

93. Moreover, the claimant submitted that Davis' report substantiated Riley's evidence that in or about early 2014 two persons had illegally entered upon the subject land and began to erect a wooden structure thereon. As such, the claimant submitted that neither the first defendant nor her predecessors were in possession of the subject land from in or about 2004 to in or about early 2014.

#### The submissions of the defendants

94. The defendants submitted that it is clear from the evidence that since in or about 1975, the first defendant through her family members have been occupying and cultivating the subject land. According to the defendants, the aforementioned was confirmed by the 1986 imagery in Davis' report which depicted a structure on the subject land. The defendants further submitted that Davis' evidence confirmed that in the 1975 imagery there was little clearing and/or excavating taking place on the subject land. As such, the defendants submitted that the Davis' evidence confirmed the first defendant's evidence that there was clearing and cultivation of the subject land whilst her family members enjoyed occupation and possession of the land.

95. The defendants submitted that the Seegobin's evidence that during the period 1973 to 1976 the subject land was covered in bush contradicts Davis' evidence that during that time there was clearing and excavating taking place on the subject land. As such, the defendants submitted that on this issue, the court should accept their evidence and not that of the claimant's.

96. The defendants submitted that Jane stated that in or about 2002, quite conveniently, Gerard (who was not called as a witness) purchased the subject land. According to the defendants,

the court should question why Gerard was not called as a witness for the claimant's case when it was admitted that he is alive and well. Jane also stated that in 2003, a representative from the claimant approached her and indicated his interest in purchasing the subject land and she referred him to Gerard who subsequently sold the land. As such, the defendants submit that the aforementioned evidence given by Jane was incredible since she was basically giving up the roof from over her and her family's head. Consequently, the defendants submitted that the claimant's evidence was simply too good to be true and was therefore manufactured to frustrate their claim.

97. The defendants submitted that the services of Reyes were sought to strengthen the claimant's claim. According to the defendants, Reyes testified that in 2006, his services were retained by the claimant for bringing the lands under the RPO but thereafter the claimant left the lands laying idly for nine years before it called Reyes again in 2014 to produce another report on the lands. As such, the defendants submitted that the evidence of Reyes should be entirely discredited on the basis that the alleged purpose for the retention of his services was manufactured.
98. The defendants submitted that the evidence of Riley was even more incredulous. According to the defendants Riley being a prudent businessman purchased the lands for a grand sum of one million, six hundred thousand dollars without verifying who the true owners were as he only retained the services of Rose and Co. in 2006 which was subsequent to the purchases.
99. The defendants further submitted that according to Riley the only occupiers of the lands were Jane and her family but he was obliged to hire Ultra Security Services to warn off would be trespassers from the lands. As such, the defendants submitted that it was clear from this act that the claimant was fully aware that there were other persons in occupation of the lands at the time of purchase with whom the claimant knew confrontation would have arisen.

100. Moreover, the defendants submitted that the fact that the claimant obtained Town and Country planning for the lands in 2005 but left same laying idly for at least ten years demonstrates that there were other occupiers of the lands which included the defendants.

101. The defendants therefore submit that the first defendant and her family members have been in occupation and possession of the subject land from 1962 to date and that the claimant purchased same with the full knowledge that the defendants and their family members exclusively occupied the subject land.

#### The claimant's submissions in response

102. The claimant submitted that the defendants' interpretation of the phrase "*little clearing or excavation*" was inaccurate. According to the claimant, the phrase when taken in the context of the report done by Davis means that there was no clearing or excavation of the land. The claimant further submitted that the evidence of Davis that a structure can be seen in the 1986 imagery was perfectly consistent with the evidence of Kathleen that sometime between the years 1982 and 1984 Sylvester and Irene moved into the galvanize house located on the subject land.

103. According to the claimant, the defendants again used the wrong interpretation of the evidence of Davis in an attempt to refute the evidence of Seegobin that during the period of 1973 to 1976 the subject land was covered in bush.

104. The claimant submitted that the defendants have attempted to impugn the evidence of its witnesses, Reyes and Riley by putting forward a great deal of speculation in relation to the reason why Riley hired Reyes. According to the claimant, those submissions of the defendant were basically worthless and baseless as they are attempts to question evidence that was not questioned when there was an opportunity to do so in cross-examination.

#### Findings

105. Seldom does a case of this nature come before this court in which there are two diametrically opposed set of material facts. Both versions of the facts cannot be true having regard to the geographical impossibility of both parties having lived in the same spot at the same time. The two versions are wholly inconsistent with each other. It therefore means that someone is not telling the truth. To ascertain this, the court must look at that which is plausible and which finds support within the walls of the evidence of experts. Upon an examination of the evidence, the court finds that the expert evidence supports the case of the claimant and in so supporting demonstrates the implausibility of the defendants' case. The following is a discussion of that evidence.

106. According to Denzil, (one of the first defendant's witnesses), Hector, the first defendant's great uncle took possession of the subject land and began cultivating upon same in 1962. It was the testimony of Denzil that around that time Hector built a wooden shed on the land to store his tools and produce. Denzil and the first defendant both testified that he (Denzil) built a "*structural building*" on the subject land in 1975 to house steel band rehearsals. Brian, another witness of the first defendant testified that during the years 1965 to 1979, he often helped Hector in cleaning and cultivating the subject land.

107. Mr. Davis prepared a photogrammetric survey report ("report") on the subject land. This report was done based on aerial photographs obtained for the years 1969, 1975, 1986, 1994, 1998, 2003 and 2014. The report was also supported by the relevant cadastral information and satellite imagery for the area under investigation. According to Davis' report, an examination of the 1969 and 1975 photographs showed no evidence of any built structures, occupation or patterns that were consistent with agricultural or horticultural practices on the subject land.

108. Having regard to the above, it is clear to the court that the evidence given by the first defendant and her witnesses of the activities allegedly carried out by her predecessors on the subject land during 1962 to 1975 was both implausible and untrue. The court therefore finds that Hector was not in possession of the subject land in 1962 and that neither Denzil nor Brian were in occupation of the subject land in the manner that they alleged.

109. It must be noted that the court does not accept the submission of the defendants that the evidence of Seegobin, (that when he visited the subject land from about 1973 to about 1976 it was covered with bush and there were no structures thereon), contradicts the evidence given by Davis via his report. Upon analysis of Davis' report, the phrase "*little clearing or excavating*" could only mean that there was no evidence of clearing or excavating as a matter of pure common sense and any attempt to obfuscate the meaning is in the court's view disingenuous. The court therefore agrees with the submission of the claimant that the defendants' interpretation of the phrase was wholly inaccurate.
110. According to the first defendant, her great uncle, Justus took possession of the subject land from about 1979 to 1995. She testified that Justus cultivated citrus trees and shorts crops upon the subject land. She further testified that in 1995 her uncle, Kenneth erected a wooden house on the subject and that she, her brother and her former male companion began residing in that house in 1998. It was her testimony that in 2000, she and her brother, Ronald structurally reinforced the wooden house.
111. Upon examining the 1986 imagery, Davis observed a small structure on the subject land at that time. He further observed that there was no other distinct evidence of any built structures of significant size, occupation or patterns that were consistent with agricultural or horticultural practices on the land. In that regard, the evidence of Davis was highly consistent with the evidence of the claimant's witness Kathleen who testified that sometime between the years 1982 and 1984 Sylvester and Irene moved into a galvanize house located on the subject land.
112. In examining the 1994 imagery, Davis again observed a small structure on the subject land but recognized that the structure was in a slightly different location than the structure that appeared in the 1986 image. He further observed that there was no other evidence of occupation or patterns that were consistent with agricultural or horticultural practices on the land. The court finds that this evidence of Davis was in sync with and supports the evidence given by the claimant's witnesses that in 1989 Kathleen constructed a concrete house next to the galvanize structure which was demolished in 1989. The

foregoing evidence perfectly explains why the structure shown in the 1994 imagery was in a slightly different location from the structure shown in the 1986 imagery. The court therefore finds that the evidence of the claimant was more plausible and wholly more reliable and credible than that of the defendants. As such, the court accepts the claimant's evidence that Sylvester and Irene began residing at the subject land sometime between the years 1982 and 1984 and that in 1989 Kathleen constructed a concrete house next to the galvanize house.

113. Further, an examination of the 1998 and 2003 photographs also showed the same small structure in the same location as observed in the 1994 imagery. This evidence therefore proves by inference that Kenneth could not have constructed a house on the subject land in 1995 since if he did two houses would have appeared in the 1998 and 2003 photographs. The court therefore rejects the defendants' evidence that in 1995 Kenneth constructed a wooden house on the subject land, that the first defendant went to live in same in 1998 and that she and Ronald structurally reinforced the house in 2000.

114. According to Davis, in the 2014 photography a significant structure was clearly seen on the land which was consistent in size with other residential houses in the area. It was noted that the structure appeared larger and in a slightly different location to the structure that was identified in the previous images. It as clear as night follows day that the inescapable inference to be drawn from this evidence is that this is the house in which the defendants currently reside and the court so finds. The issue therefore becomes one of when was this house erected.

115. Riley, one of the claimant's directors testified that the concrete house in which Sylvester lived was demolished on the 6<sup>th</sup> April, 2006. The court agrees with the submission of the claimant that the valuation report prepared by Linden Scott & Associates Ltd. dated the 18<sup>th</sup> December, 2006 corroborated Riley's evidence in relation to the demolition of the concrete house. The court further agrees with the submission of the claimant that the defendants' attempt to impugn the evidence of Reyes (another of the claimant's witnesses) is based purely on speculation. The court therefore found that Reyes'

evidence also supported Riley's evidence of the house being demolished in 2006. The court therefore accepted Riley's evidence that the concrete house was demolished on the 6<sup>th</sup> April, 2006.

116. During cross-examination, Riley testified that he did not visit the subject land between 2006 and 2014. The first defendant testified that in November, 2006 she and her common-law husband built a concrete structure on the subject land adjoining the wooden structure (which the court found was not in existence). She also exhibited receipts for materials she purchased to build the concrete structure with the earliest one dated the 7<sup>th</sup> January, 2007. Therefore, based on the evidence the earliest time at which the defendants could have entered into possession of the subject land and begin to erect the house thereon was in late 2006. The court therefore finds that the defendants would have entered the subject land and began the process of building sometime between 2006 and 2014.

117. By letter dated the 3<sup>rd</sup> July, 2014 the claimant demanded that the defendants do vacate the subject lands. At that time the defendants would have been in occupation of the subject land for approximately eight years and at the time of the initiation of this action, the defendants would have been in occupation of the land for approximately nine years. Consequently, the defendants' counterclaim for adverse possession in a nonstarter and must fail since they have not been in possession of the subject land for the requisite sixteen-year period.

118. While the court makes no finding thereon, when there is such a stark difference in the facts of a case, one attempts to make sense of it by recourse to plausible explanations in keeping with common sense and the knowledge and experience of human behaviour. In so saying, having examined the facts, it may well be that the first defendant and her predecessors may have occupied another parcel of land close by and having moved into the subject land sometime between 2006 to 2014, she and her witnesses have applied the facts of that occupation to this case in an attempt to pull the proverbial wool over the court's eyes. To so find would however be to speculate on an irrelevant issue which this court will not do.

## Trespass

119. According to *Halsbury's Laws of England, Volume 97 (2015) paragraph 591*, in a claim for trespass, if the claimant proves the trespass he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the trespass has caused the claimant actual damage, he is entitled to receive such an amount as will compensate him for his loss. Where the defendant has made use of the claimant's land, the claimant is entitled to receive by way of damages such a sum as should reasonably be paid for that use.
120. In *Jacob & Polar v Samlal CV 2005-00454*, Pemberton J at paragraph 8 stated as follows;
121. *"In this jurisdiction, nominal damages have been awarded in various cases what is of relevance to me is the quantum of damages awarded by the Court under this head. The figures range from \$100.00 to \$2,500.00 and cover the same subject matter as the case at bar – trespass to land. The range therefore at present values stands at \$3,500.00 to \$10,500.00."*
122. Based on the foregoing, the claimant has proven that the defendants trespassed onto its land when they constructed their house on same. It has however not proven any specific loss in that regard. The court is of the view therefore that in the circumstances of this case, the claimant should be awarded the sum of \$6,000.00 as nominal damages for trespass to land.

## Disposition

123. The judgment of the court is therefore as follows;
- A. It is declared that the claimant is the owner and entitled to possession of All and Singular that piece or parcel of land situate at Cascade in the Ward of



St. Anns, in the Island of Trinidad comprising seven hundred and seventy four point six (774.6) square metres (being portion of a larger parcel of land described in the Schedule to Deed registered as No. DE200201489571D001) and bounded on the north by a Road Reserve, on the south by Lot 2, on the east by Lot 2 and on the west by partly Sunland Avenue and partly by lands of Deposit Insurance Corporation (D.I.C) which said piece of parcel of land is shown delineated and coloured pink as Lot No. 1 on the Plan annexed to Deed dated the 19<sup>th</sup> January, 2004 and registered as DE200400446080D001 and marked “A” together with the dwelling house and buildings thereon and the appurtenances thereto belonging (“the subject land”).

- B. The defendants are to deliver possession of the subject land to the claimant.
- C. The defendants, their servants and/or agents and/or workmen are restrained from building any structures or digging or carrying onto or storing any materials on the subject land.
- D. The defendants, their servants and/or agents are to remove all plant, machinery or anything else placed on the subject land.
- E. The defendants shall pay to the claimant nominal damages for trespass in the sum of \$6,000.00.
- F. The counterclaim is dismissed.
- G. The defendants shall pay to the claimant the prescribed costs of the claim in the sum of \$14,000.00.

H. The defendants shall pay to the claimant the prescribed costs of the counterclaim in the sum of \$14,000.00.

Dated the 5<sup>th</sup> February, 2018

Ricky Rahim

Judge