

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2016-02436

Between

**GENEVIEVE CHARLES, JULIA EDWARDS and VENETIA MARIA WALLACE
(as Administratrixes ad litem of the Estate of Joseph Lutchman and Carmen
Lutchman)**

First claimant

GENEVIEVE CHARLES

Second claimant

VENETIA MARIA WALLACE

Third claimant

JULIA EDWARDS

Fourth claimant

PASCALL LUTCHMAN

Fifth claimant

JOACHIM M. JONES

Sixth claimant

PHILIP LUTCHMAN

Seventh claimant

RUSSHEED M. SALIM

Eighth claimant

And

CARLOS BYNOE

First defendant

ROHAN MAHARAJ

(As Administrator Pendente Lite of the Estate of Janet Veronica Maharaj)

Second defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: November 11, 2019

Appearances:

Claimants: Mr. Y. Ahmed instructed by Ms. C. Le Gall

First defendant: Ms. R. Sookhai instructed by Ms. S. John

Second defendant: Mr. A. Hosein instructed by Ms. N. Persad

JUDGMENT

1. This claim is one for possession of a parcel of land comprising one acre (“the subject land”) being part of a larger parcel of land described in the Crown Grant in Volume 438 Folio 447 also described in the Certificate of Title in Volume 1566 Folio 133 and shown as Lot X1 in the general plan filed in Volume 3208 Folio 189 and bounded on the north by lands of Bertha Gransauil then of L. Shivaprasad and by a reserve 1.52 metres wide along the bank of Alcide River, on the south by lands reserved for a village and by the Toco Old Road, on the east by a reserve 1.52 metres wide along the bank of Alcide River, by the Toco Old Road and by lands reserved for a village and on the west by State land and by lands of D.K. Macgillivray and intersected by a road reserved 7.62 metres wide.

2. The claimants; Genevieve Charles (“Genevieve”), Venetia Maria Wallace (“Venetia”), Julia Edwards (“Julia”) and Pascall Lutchman (“Pascall”) are siblings and the children of Joseph Lutchman (“Joseph”) and Carmen Lutchman (“Carmen”). Carmen died on July 9, 1994 and Joseph died on September 29, 2004. The claimants; Joachim M. Jones (“Joachim”) and Philip Lutchman (“Philip”) are the brothers of Carmen and Russheed M. Salim (“Russheed”) is the brother-in-law of Carmen.

3. The first defendant, Carlos Bynoe (“Bynoe”) is the owner of two parcels of land with the first parcel of land comprising 7.4328 hectares (“the first parcel of land”) and the second parcel comprising 2.6228 hectares (“the second parcel of land”). Both parcels of land are located opposite L.P. No. 333 or 19 ³/₄ mile mark, Toco Main Road, Rampanalgas.

4. The second defendant, Rohan Maharaj (“Rohan”) represents the estate of his late mother, Janet Veronica Maharaj (“Janet”) as Administrator

Pendente Lite. His late mother's estate is the owner of a larger parcel of land measuring 9.6892 hectares less 7.4328 hectares which was sold to Abraham Dukehedin Lalla ("Lalla") and which is now one of the two parcels of land owned by Bynoe. The subject land is a portion of the larger parcel of land owned by the estate of Janet.

5. According to the claimants, on April 30, 1968 Joseph and Carmen entered into and executed an agreement for sale with Charles Manoram ("Manoram") for the purchase of a five acre parcel of land in Toco. The purchase price for the five acre parcel of land was \$2,500.00 and a down payment of \$1,250.00 was paid to Manoram by Joseph and Carmen. The balance of the purchase price was to be paid upon the completion of a survey of the five acre parcel of land. The claimants aver that once the agreement for sale had been executed, Joseph and Carmen were free to enter into possession of the five acre parcel of land.
6. Consequently, pursuant to the agreement for sale, Joseph and Carmen went into occupation and took possession of a certain parcel of land pointed out to them by Manoram which they assumed formed part of the five acre parcel of land. However, the parcel of land pointed out to them and of which they entered into possession was in fact located on the parcel of land now owned by Janet.
7. In or about June 1968, Joseph and Carmen began cleaning and clearing the parcel of land which at the time they took possession of was heavily forested. In or about 1969 or 1970, Joseph constructed a completely wooden structure measuring approximately 10 feet x 20 feet on the western side of the parcel of land as a vacation house without objection from Manoram or any other person.

8. Upon the completion of the construction of the vacation house in about 1970, Joseph and Carmen visited, used and occupied the vacation house and the parcel of land almost every weekend and for longer periods during long weekends, vacation periods and school and public holidays.
9. The claimants aver that from the early 1970s and continuing, gradual improvements were made to the vacation house by Joseph and Carmen and other family members depending on the availability of finances. Joseph and Carmen also planted various fruit trees and crops on the five acres. Further, they obtained a supply of water and electricity to the vacation house in the 1970s. They commenced paying land and building taxes for the lands since the 1970s and did so continuously.
10. According to the claimants, in an effort to complete the agreement for sale, Joseph published an advertisement in the Trinidad Guardian on March 23, 1995 seeking the whereabouts of Manoram, his servants and/or agents. This attempt was unsuccessful.
11. The claimants aver that subsequent to the death of Carmen in 1994, Joseph was emotionally affected and his interest in the parcel of land and the vacation house diminished substantially over the years. In or about 1996, Joseph ceded maintenance and management of the vacation house and a portion of land to Genevieve, Venetia, Julia, Pascall, Joachim, Philip and Russheed who fully commenced all acts related to the vacation house and surrounding lands.
12. Throughout the 1980s up to the year 2007, no person ever claimed ownership of the parcel of land or raised any objections to their use, occupation, title or possession of the parcel of land. However, over the

years, Genevieve, Venetia, Julia, Pascall, Joachim, Philip and Rusheed reduced their occupation and maintenance of the land to just approximately one acre (the subject land).

13. In or about 2007, the larger parcel of land (of which the subject land forms part) was surveyed by licensed land surveyor Charles Hamilton ("Hamilton") and a survey was produced ("the Hamilton plan"). The claimants aver that the Hamilton plan was done without notice being given to them. That the Hamilton plan sought to earmark a road reserve measuring 10.06 metres wide running in a westerly direction through a part of the larger parcel of land. The road reserve as depicted in the Hamilton plan overlaps onto a portion of the subject land, particularly over a portion of the vacation house.
14. The claimants claim that despite one telephone conversation between Janet and Pascall, they continued to exclusively and continuously occupy the subject land. In 2010 or 2011, Venetia was approached by Lalla who claimed to be the owner of the subject land. As Lalla was unable to produce any proof of title to the subject land, he was advised by Venetia to contact the claimants' attorneys which he never did. The claimants continued to enjoy and occupy continuous possession of the subject land.
15. In Easter, 2015 Joachim whilst at the subject land was approached by Bynoe who claimed to be the legal owner of the subject land. Bynoe met with the claimants in July, 2015 and September, 2015. At the meeting in September 2015, Bynoe offered to sell two lots of the land to the claimants but that offer was rejected.

16. The claimants aver that subsequent to his purchase of the first parcel of land, Bynoe through his servants and/or agents trespassed onto a portion of the subject land and demolished and/or bulldozed a portion of the subject land in an attempt to demarcate the road reserve in accordance with the Hamilton plan. It is the claim of the claimants that by reason of their continuous and exclusive use, occupation and possession of the subject land, the title of Janet and her predecessors in title to the vacation house and the subject land has been extinguished.

17. Consequently, the claimants claim the following relief;

- i. A declaration that the title and/or interest if any of the Estate of Janet and her predecessors in title to the subject land has been extinguished pursuant to the Real Property Limitation Act by virtue of the claimants' continuous and exclusive possession of same in excess of sixteen years;
- ii. A declaration that the title/interest of the defendants in the purported road reserve, 10.06 metres wide as set out in the Hamilton survey plan has been extinguished by virtue of the claimants continuous and exclusive possession of same in excess of sixteen years;
- iii. An Order for possession of the subject land to the claimants;
- iv. A declaration that the claimants have acquired possessory title to the subject land;
- v. Damages for trespass against Bynoe;
- vi. An injunction restraining Bynoe whether by himself, his servants and/or agents or otherwise howsoever from entering and/or remaining upon the subject land and/or from clearing, taking or in any other way committing acts of trespass on the subject land or

from removing therefrom or damaging any belongings, structures or other items on the subject land;

- vii. An injunction restraining Bynoe whether by himself, his servants and/or agents or otherwise howsoever from threatening, harassing, assaulting or in any way interfering with the claimants or any members of their family, their servants and/or agent use and occupation of the subject land; and
- viii. Costs.

THE DEFENCE AND COUNTERCLAIM OF THE FIRST DEFENDANT

18. By his Defence, Bynoe denies that the claimants are entitled to the ownership of the subject land. He claims that any right of possessory title by virtue of the alleged possession of the vacation house by Genevieve, Venetia, Julia, Pascall, Joachim, Philip and Russheed arose after the death of Joseph in or around 2004 which does not satisfy the period of sixteen years' exclusive occupation.

19. According to Bynoe, he purchased the two parcels of land from the Eastern Credit Union. After he purchased the lands, he commenced mapping the boundaries of same and discovered a partly wooden, partly concrete two-bedroom house on what he believed at the time to be his property. He finally made contact with a man named Danny and his daughter, Kimberly during the Easter weekend of 2015. He explained that he was now the owners of the lands and showed proof of his ownership to Danny. He then offered to sell to them the one lot upon which the house was located. Danny informed him that he would consult his relatives and then contact him.

20. Sometime thereafter, Bynoe was contacted by someone who informed him that he should speak to their attorney, Mr. Bhan Ramcoomarsingh ("Mr. Ramcoorarsingh") concerning the house. Bynoe contacted Mr. Ramcoomarsingh who advised him that he should attempt to resolve the issue by selling the owners of the house a piece of land.
21. According to Bynoe, at a meeting amongst himself, Danny and five of Danny's relatives in Malabar, Arima, he presented documents showing his proof of ownership. Despite Danny and his family claiming that they were the owners of the property, they were unable to prove same by way of documents. Bynoe advised that he was in the process of surveying the lands and developing same.
22. Subsequently, Bynoe surveyed the lands through Peter Goodridge ("Goodridge") of Land Development Consultants and Management Services Limited. Goodridge mapped out the boundaries in accordance with the Hamilton plan. Upon completion of the survey, Bynoe and his wife met with six persons at the house of the claimants. Bynoe identified his boundaries as set out in the Hamilton plan, showed them the location of the house on the Hamilton plan and indicated that the house was partially located on the road reserve that he has to use to access his lands. He further indicated that the normal standard for a dwelling house is fifteen to twenty-five set back from the road and that the house will have to be demolished. Bynoe denied a request by the persons to give them one acre of the lands, advised that he would be commencing development road works and identified the area in which development road works would have been started.

23. Bynoe avers that the claimants occupy approximately one lot of land not one acre of land. That towards the immediate back and west of the vacation house is heavily forested. He further avers that he is not the owner of the lands occupied by the claimant. According to Bynoe, he and the claimants discovered on April 11, 2017 that the parcels of land he owns was not in fact the same parcel of land the claimants are claiming to be in occupation of. That knowledge came from Arnold Ramon-Fortune ("Fortune") a land surveyor employed by the claimants.

24. According to Bynoe, the road reserve demarked by the Hamilton plan serves as an access to himself and three other owners of adjoining parcels of land and is the only access to the adjoining parcels of lands.

25. Bynoe avers that the subject land and/or the land allegedly occupied by the claimants only encroaches on approximately 6 feet of the road reserve which measures 10.06 metres wide running from the Toco Main Road in a westerly direction through a part of the larger parcel of land leading to his lands. He further avers that the aforementioned encroachment does not obstruct and/or prevent him from developing his lands. That he bulldozed a portion of the road reserve that was not occupied by the claimants and in no way damaged any portion of land occupied by them.

26. Consequently, by counterclaim Bynoe seeks the following relief;

- i. A declaration that the claimants' house stands on approximately 6 feet of the road reserve which is adjacent to the said property measuring 10.06 metres wide running from the Toco Main Road in a westerly direction through a part of the said larger parcel of land;

- ii. An injunction restraining the claimants whether by themselves and/or their servant and/or agents from obstructing the road reserve. Damages;
- iii. Costs;
- iv. Interest; and
- v. Such further and/or other relief as the court may deem fit.

THE DEFENCE OF THE SECOND DEFENDANT

27. By his Defence, Rohan avers that the claim by Genevieve, Venetia, Julia, Pascall, Joachim, Philip and Russheed for any possessory title of the vacation house cannot succeed as they have not satisfied the criteria of sixteen years exclusive occupation of the house, their predecessor, Joseph having been deceased only since 2004.

28. According to Rohan, the occupiers on the parcel of land owned by the Estate of Janet were/are only in occupation of approximately one lot of land. Rohan admitted that there is a structure on the land but that same is not on an entire acre of land. He avers that the lands owned by the Estate of Janet are heavily forested.

29. Rohan denies that the land and building taxes were paid by Joseph and Carmen. He avers that the land and building taxes were paid by his parents, Jit Maharaj (“Jit”) and Janet. That since the land was purchased by Jit in 1987, he and Janet were responsible for the maintenance of same and in fact Jit was the one who maintained it throughout the years until his death in 2004. Thereafter, Janet would sporadically maintain the lands but due to her illnesses in the few years prior to her death, the maintenance stopped.

30. According to Rohan, the claimants were always aware that Jit and Janet were the owners of the land. When the land was purchased by Jit in 1987, both he and Janet tried to communicate with the then occupiers of the one lot but the occupiers at that time were not receptive and refused to communicate with them. Thereafter, Jit and Janet tried on several occasions to communicate with the occupiers of the land about their unlawful occupation whenever they met them to no avail.

31. In or about December, 2006 Janet communicated through her then Attorney-at-law, Ms. Alana Jameson (“Ms. Jameson”) to the then Attorney-at-law for the heirs of the Lutchmans with respect to their alleged entitlement to the portions of lands that were occupied by them. By letter dated January 18, 2007 the then Attorney-at-law for the occupiers of the land responded to Ms. Jameson’s letter. By letter dated February 12, 2007 Janet’s then attorney wrote again to the then attorney for the occupiers in an attempt to resolve the issue relative to their unlawful occupation.

32. Rohan avers that the survey conducted by Hamilton was commissioned by Janet, that the Hamilton plan was approved by the Director of surveys and represents a true depiction of the lands owned by the Estate of Janet. That there was no obligation on the surveyor to notify the occupiers and/or the claimants of any survey as they are not the owners of the lands neither were they owners of any lands adjoining the parcel that was being surveyed.

33. According to Rohan, the road reserve depicted on the Hamilton plan is a necessary access for him, his servants and/or agents as well as any adjacent land owners. The vacation house overlaps on part of the road reserve.

REPLY TO THE DEFENCE OF THE SECOND DEFENDANT

34. The Claimants filed a Reply to Rohan's Defence averring inter alia the following;

- i. A clear offer/promise was made by Rohan to the claimants to transfer a one acre parcel of land to the claimants subject to the claimants paying the cost of a survey and transfer as outlined in a letter from Rohan's Attorney-at-Law dated October 23, 2017;
- ii. The claimants accepted that offer by letter dated November 1, 2017. The issue of road access did not form part of the agreement and that position was accepted by Rohan through letter dated December 4, 2017;
- iii. The claimants relied on the agreement and expended the sum of \$3,800.00 to retain the services of a licensed land surveyor Fortune to survey and prepare a sketch plan of the one acre parcel. Fortune prepared the sketch plan dated February 25, 2018 in accordance with the agreement which was forwarded to the Rohan's Attorney-at-Law by letter dated February 28, 2018. The sketch plan was accepted by Rohan by letter dated March 6, 2018;
- iv. At a hearing of this matter on April 10, 2018, a draft consent order was submitted to the court as between the claimants and Rohan to transfer the one acre parcel of land without any road reserve or road access in accordance with the concluded agreement between the claimants and Rohan. However, the agreement was subsequently withdrawn by the Rohan's Attorney-at-Law who for the first time, took issue with road access;
- v. There was a binding agreement between the claimants and Rohan as at October 23, 2017 which the claimants acted upon to their

detriment. Consequently, Rohan was estopped from denying the claimants' entitlement to the one acre parcel of land.

THE ISSUES

35. The issues to be determined by this court are as follows;

- i. Whether the issue of estoppel arises properly on the pleaded case and if it does whether Rohan should be or is estopped from denying the claimants' entitlement to the subject land as set out in the sketch plan of Fortune;
- ii. Whether the claimants are entitled to possession of the subject land based on the doctrine of adverse possession;
- iii. Whether the road reserve as identified in the Hamilton plan ever existed and if so is it a part of the land occupied by the claimants; and
- iv. Whether the claimants are entitled to damages for trespass.

THE CASE FOR THE CLAIMANTS

36. The claimants called four witnesses; Venetia, Norman Mitchel, Tara Lutchman and Arnold Fortune.

The evidence of Venetia

37. Venetia was born on November 21, 1952. As such, she is sixty-six years of age. Joseph and Carmen had five children; Genevieve, Venetia, Julia, Pascall and Alexander Lutchman (deceased). Since childhood, Venetia's family and she lived together at No. 9 Ross Lands, St. James. Joachim and Philip are Carmen's brothers who grew up with Venetia and her siblings from a very young age. They were always treated by Joseph and Carmen as children of the family. As such, Venetia considered them as her

brothers. Russheed is also very close to the family. He was married to Venetia's aunt, Theresa (now deceased).

38. Sometime in early 1968, Joseph was excited about buying some lands located in Balandra from Manoram. The lands were being sold at \$500.00 per acre. Joseph and Carmen confided and discussed matters of importance both personal and pertaining to business with Venetia (although a teenager) since she was usually more interested in family affairs than her siblings and she would ask questions and become actively involved.

39. Venetia was therefore privy to and knowledgeable about the sale transaction entered into by Joseph and Carmen with Manoram for the purchase of the parcel of land comprising five acres ("the five acres") which was a portion of the lands described in the Certificate of Title in Volume CDXXXVII Folio 265 situate in the Ward of Toco in the Island of Trinidad and bounded on the north by the Alcide River, on the south by an Estate Trace, on the east by Crown Lands and on the west by remaining portions of the larger parcel of land together with a right of way to and from the sea for all purposes connected with the said lands.¹

40. The purchase price for the five acres pursuant to the agreement for sale was \$2,500.00 and Joseph and Carmen were required to pay half of that sum of \$1,250.00 in advance. The balance of \$1,250.00 was to be paid when the five acres were surveyed and the plans and Memorandum of Transfer for the transaction were ready. The advance sum of \$1,250.00

¹ A copy of the Agreement for Sale executed by Joseph and Carmen on April 30, 1968 was annexed to Venetia's witness statement at "V.M.W.1".

was paid towards the purchase price by Joseph and Carmen on April 30, 1968.

41. On April 30, 1968 Joseph and Carmen took the original executed agreement home and showed it to their children which included Venetia. Venetia remembered reading it back then and the payment of the sum of \$1,250.00 was verified by a 5¢ stamp on the agreement for sale. Joseph and Carmen were responsible for the cost of preparation of the Memorandum of Transfer.
42. Joseph and Carmen took possession of the five acres upon execution of the agreement. At that time the claimants had no idea that they were entering the wrong parcel of land.
43. A week or so after the agreement for sale was executed, Joseph and Carmen took the entire family which included Genevieve, Venetia, Julia, Pascall, Joachim, Philip and Russheed up to Balandra to see the five acres. The general area was heavily forested. There was no road passing through the land. They all stood on the Toco Main Road and Joseph pointed out the lands showing them a large area behind a forested strip of State land which was adjacent to the Toco Main Road and which according to Joseph, Manoram himself had pointed out to him at an earlier visit. The five acres still needed to be surveyed.
44. Venetia was sixteen years old at that time. About two months or so after entering into the agreement for sale, Joseph, Carmen, Genevieve, Venetia, Julia, Pascall, Joachim, Philip and Russheed began cleaning and clearing the five acres of the heavy forestation. The entire family including Venetia went on all the occasions which was usually most weekends to assist in

clearing and cleaning of the five acres. They spent only one day there on the weekend for most weekends and would return home at night. They started by clearing an access way from the Toco Main Road through the State lands (now occupied by Bayne) to get to the five acres. They all assisted Joseph and Carmen in cutting branches, small trees and heaping up the branches to burn. They cleared an extensive area including on the hill top. The entire area was also burnt twice to completely clear it of forestation.

45. They started with the front lot bordering the Toco Main Road and continued to the back heading north and east up to the Alcide River. Throughout that time the family enjoyed exclusive use of the five acres. On their visits to the five acres, there were no signs of anybody trespassing on same.

46. Joseph and Carmen always discussed building a beach house on the five acres so that the entire family would have a place to go and relax away from the city on weekends and holidays.

47. The house spot was then cleared. The flat land cleared at the bottom of the hill was about one and a half acres. After that they focused on clearing and cleaning the small incline leading to the top of the hill on the north which was about one half acres of land and then they cleared the entire top of the hill which was about two acres. The top of the hill was relatively flat. Venetia is aware that one acre is eight lots.

48. The aforementioned continued for about one year due to their limited time of just one day per weekend on most weekends. At no time did anyone object or stop their works. They continued to maintain exclusive

use of the five acres during that time. At that time, Joseph worked as a mechanic with his own garage whilst Carmen was a housewife. Venetia had completed school by that time but was unemployed.

49. The trees that they cut were not valuable trees like teak and cedar but rather just wild trees in the forest. The majority of the trees cut down by them were about fifteen inches in diameter. Venetia estimated that they had cut and cleaned a few hundred trees of all different sizes the smallest being about five inches in diameter and the biggest being about fifteen inches.
50. Whilst cleaning and clearing the trees, they discovered a fresh water spring about one hundred feet west of the Alcide River and which formed part of the approximate four to five acre parcel of lands that they cleaned. The spring was converted by them to a pond where they collected water. The pond created was about three feet in depth and about four feet in diameter. They cleaned up the area where the spring water ran off as same was swampy and bushy.
51. They cleaned the lands all the way to the Alcide River on the east, to the Toco Main Road on the south, about ten feet past the spring/pond on the west and the entire top of the hill to the north.
52. The lands surrounding the five acres were also heavily forested. Their closest neighbour at the time was a man named Mitchell, who lived along the Toco Main Road about three hundred feet away.
53. Sometime in about 1969 or 1970, Joseph with assistance of the family including Venetia who would by then have been about 18 years if age,

constructed a completely wooden structure on the western side of the five acres. That wooden structure was approximately 10 feet x 20 feet and it took a few months to build. Joseph continued to take the entire family on most weekends to the five acres during the period of construction. They usually only stayed for the day. The house was built using lumber purchased by Joseph from the Sawmill in Valencia and other materials from the local hardware.

54. Joseph's friend, Papit (now deceased), had a truck and provided free transport of the materials up to the five acres. The structure was intended to be the vacation house. No one objected to the construction of the house ("the vacation house"). It consisted of just one large enclosed area with an outhouse to the back. They used lanterns and flambeaus back then since there was no electricity in the area. They got water from the nearby Alcide River for drinking and cooking and from their pond for cleaning and washing.

55. After the vacation house was completed in about the year 1970, Joseph, Carmen and the entire family which included Genevieve, Venetia, Julia, Pascall, Joachim, Philip and Russheed would visit the five acres and stay in the vacation house almost every weekend. If there were holidays or long vacations, they would stay in the vacation house on the five acres for longer periods. Joseph and Carmen always used to take Venetia and her siblings with them. Sometimes other family members, such as aunts and uncles were invited.

56. Every time they went up to the parcel of land, they needed to clean the house and land. Venetia and her siblings had the task of going to the pond to fill water in buckets and drums for use in cleaning and washing. Venetia

never saw anyone else using their pond water. She also never saw signs of anybody trespassing on the five acres.

57. Over the years since the early 1970's, they gradually improved the vacation house. They did so when extra monies were available. The wooden walls were removed and replaced entirely with concrete walls. Also four additional rooms were added to the vacation house, that being a garage, a bathroom, kitchen and living room. Only one wooden partition wall remained.

58. Those renovations and improvements were done by Joseph with assistance from Genevieve, Venetia, Julia, Pascall, Joachim and Philip. All the works were done by the family directly and not with the help of any contractor or labourer. Venetia along with her siblings and Joseph personally dug dirt, mixed cement and plastered walls.

59. Also since Joseph and Carmen cleaned the parcel of land, they planted various fruit trees and crops on the five acres. Those fruit trees and crops included mangoes, cashews, breadfruit, fig, pommerac, lemon, lime, pineapple, coconut, almond and cassava. They picked the fruits and reaped the crops for their own enjoyment and would share the excess with other family members. They continued to maintain exclusive use of the five acres during that time. At all times when they left the land and the house and returned, everything was usually the same.

60. In the latter part of the 1970's, Joseph was able to apply for and obtained both a water and electricity connection for the vacation house. Joseph had to erect an electricity pole in the front yard and then T&TEC connected

them. The lands to the north, south, east and west of the four to five acre parcel of land were still uninhabited at that time.

61. After they received a water connection from WASA, the family no longer needed to collect water from the pond but they still continued to maintain the pond and about ten feet of the five acres to the west of the pond. The spring was still running at that time. Also, even though they had gotten the water connection, the family still maintained regular presence along the river bank of the Alcide River. They would catch cray fish to cook on most weekends.

62. In relation to the five acres, on the top of the hill north of the vacation house, the family had planted mainly coconut trees on that area. Joseph got the young coconut plants from some friends. They took the coconut tress up to the lands over a couple of months and gradually planted same on the hill. Joseph used to get a villager named Mikey, a coconut vendor from the Rampanalgas Village to climb and pick the coconuts for him. They used to cut and drink the coconut water on the hill itself and carry coconuts back to the house to cut later. Also, the dry coconuts were sometimes collected and used for cooking and they gave away many to friends and family. Venetia attempted to locate Mikey to give evidence in this matter but was unsuccessful.

63. After the vacation house was completed and the improvements were done, Joseph and Carmen with all their children continued to visit almost every weekend and on holidays. On those visits they kept themselves occupied by cleaning and maintaining the five acres and the access road which they had cut and tending to their fruit trees and crops. The beach was about a mile away, so they spent a lot of time by the vacation house

instead. They used to take walks up the hill to the back of the vacation house to look at the ocean and to pick coconuts from their trees planted on the hill top. They would also take walks along the Alcide River itself which was shallow. The Alcide River was down a deep gorge and so they had created a foot track to hike down to the river to catch the cray fish.

64. Back in the 1970's up to about the early 1980's, there continued to be no other persons living in the general vicinity of the five acres except for Mitchell. There were no objections by any person to their occupation of the five acres and they continued to maintain exclusive use and occupation of same.

65. During that time they were accessing the five acres through another access created to the south of the same now owned by Graeme Dow ("Dow"). They have their own key to open the chain which runs across the access way of Dow's property.

66. Rusheed was very close to the family and since the onset, he was also invited regularly to the vacation house by Joseph and Carmen. He used to assist them in cleaning and maintaining the five acres and with the upkeep of the vacation house.

67. Joseph paid the land and building tax receipt for the year 1975 and onwards. Joseph used visited the Sangre Grande District Revenue Office to pay it but since the 1990's, Venetia visited on his behalf to do so. Venetia has fifty-four land and building tax receipts for the years 1975 to 2009 under assessment number B/77.²

² Copies of those receipts were annexed to Venetia's witness statement at "V.M.W.2".

68. Carmen died on July 9, 1994.³ After the death of Carmen, Venetia and her siblings were concerned about securing title to the five acres and to bring the sale to a close. Up to that time Venetia was not aware whether the five acres had been surveyed. They had no contact since the 1970s with Manoram. In an attempt to locate the whereabouts of Manoram or his servants and/or agents in order to complete the agreement for sale, Venetia had cause to have an advertisement published in the Trinidad Guardian. Venetia personally visited the Trinidad Publishing Co. on April 1, 1995 and paid \$393.30 for the advertisement on behalf of Joseph and was issued a receipt. The advertisement ran from April 3 to April 9, 1995.⁴ No one however came forward to deal with the agreement for sale.

69. At that time in the mid 1990's, they were no longer cleaning and maintaining the five acres and had reduced the area maintained. They started to clean less land. They also reduced the area of land cleaned on top of the hill by about half. They however continued to clean and maintain the incline of the hill and the entire area on the east up to the Alcide River.

70. Whilst the family still visited the vacation house almost every weekend and holidays it was difficult to continue maintaining the entire area after Carmen's death. Also Venetia's siblings and she preferred to relax on their visits and did not want the hassle of clearing such a large area of land. They were therefore comfortable to continue cleaning and maintaining the area around the vacation house and continuing to the back up to the top of the hill so they could access their trees. After the advertisement had been

³A copy of Carmen's Death Certificate was annexed to Venetia's witness statement at "V.M.W.3".

⁴ Copies of the receipt dated April 1, 1995 and one of the advertisements that was published were annexed to Venetia's witness statement at "V.M.W.4".

published, Venetia's husband and she on one of their visits to the vacation house pulled a measuring tape to get a rough idea of the area of land they were occupying, cleaning and maintaining.

71. Venetia was familiar back then with how much one lot of land was since their home at Ross Lands was on one lot of land. Also, she had observed in the village and with relatives' homes the general size of house spots and lots. She was therefore familiar to a fair extent with sizes of land.

72. From about 1996 and thereafter Joseph still visited the vacation house and the land continuously with Venetia and her other siblings. He however was no longer actively involved or participating in the management of the lands. Venetia was now fully responsible for paying the land and building taxes. Julia and Pascall took charge of the water and electricity bills. All of the siblings and Joachim, Phillip and Rusheed took care of the vacation house and the cleaning and maintenance of the land and the access road. They also continued to maintain the fruit trees and crops and reaped the produce for their benefit. They nonetheless enjoyed exclusive use of the land at that time and they kept trespassers out.

73. Joachim and Phillip were always involved in the five acres from the inception. Since the year 1996, the siblings and Joachim, Phillip and Rusheed took charge and responsibility over the vacation house and the land. From that time and onwards no one disturbed their use and possession of the land and occupation of the vacation house. Also, no one ever approached Joseph or any of the claimants up to the year 2007 claiming ownership of the land.

74. During that period from 1996 to 2000 they gradually stopped maintaining the lands on the top of the hill entirely. They focused only on approximately one acre of the land which included the area with the vacation house up to Bayne's land on the south, the lands to the east up to the Alcide River, about one lot on the west of the vacation house and up to the slope of the hill on the north ("the subject land").
75. During that time no one was using the pond and the hole filled up with dirt. The spring was however still running and they continued to clean around it.
76. In the year 2004 Joseph died.⁵ Between the years 2004 to 2007, no one came forward to dispute their occupation of the vacation house and upkeep and maintenance of the subject land. They also never saw signs of anybody trespassing on the subject land.
77. In 2005, a few months after Joseph's death, Pascall informed Venetia that he had received a telephone call at his garage from someone named Janet, who complained that they were occupying the wrong parcel of land. They ignored the information. Apart from that one telephone call, during their weekend visits to the land, they never met anyone who claimed ownership of same until about the year 2010 or 2011.
78. Venetia was not aware of the following letters;
- i. Letter dated December 19, 2006 from Ms. Jameson to Mr. Ramcoomarsingh. This letter stated that certain heirs of Lutchman

⁵ A copy of Josephs' death certificate was annexed to Venetia's witness statement at "V.M.W.5".

were in occupation of a portion of land owned by Janet Veronica Maharaj (the legal personal representative of Jit). That Janet was informed by the heirs that they were granted a document which permitted them to enter and occupy the portion of land and that they paid a certain sum of money but no formal document was ever executed or registered. As Janet was in negotiations to sell the lands, the receipt and any other documents which would have indicated a formal arrangement between Janet's predecessors and the Lutchman heirs were demanded.

- ii. Letter dated January 18, 2007 sent by Mr. Ramcoomarsingh to Ms. Jameson which stated that Joseph and Carman had been in actual, undisturbed occupation of the parcel of land since 1968 up to the time of their respective deaths and thereafter the other claimants have continued occupation thereof up to that time. Further, a copy of the agreement dated April 30, 1968 was provided.
- iii. Letter dated February 12, 2007 from Ms. Jameson to Mr. Ramcoomarsingh which stated that Janet was not aware that Manoram had any authority to sell the land in question and that there was no nexus between Manoram and the lawful owner of the land. That as Janet wishes to sell the land to a third party, she was prepared to offer the claimants one acre of the land free from all encumbrances.

79. Those letters were never brought to the claimants' attention by Mr. Ramcoomarsingh. Venetia testified that she has since read the contents of letter dated January 18, 2007 and that same did in fact convey an accurate position. That Joseph and Carmen had been in actual occupation of the parcel of land since 1968 up to their respective deaths and thereafter the other claimants had continued in occupation.

80. Venetia was not aware that their land was being surveyed in the year 2007 by Hamilton. She testified that her family maintained a continuous presence on the subject land and no notice of survey was ever given to them or posted on their property. That if she was aware of any survey, she would have certainly objected because of their occupation.
81. Venetia was at the vacation house sometime in 2010 or 2011 with her family. She remembered that a man walked up to the vacation house from the Toco Main Road. He met her at the door, introduced himself as Dukhedin Lalla ("Lalla) and claimed to be the lawful owner of the subject land. Venetia told Lalla that it was their property, that they had their papers and to contact their lawyers. Lalla left and Venetia never heard or saw him thereafter. Further, Mr. Ramcoomarsingh never brought any letter or correspondence from Lalla to Venetia's attention.
82. Venetia, her siblings and three uncles continued to use and occupy the subject land and enjoy the vacation house without any other interference. Over the years they had cause to cut down the chataigne, pommerac and pommcythere trees since they were drying and aged. They never replaced those trees but continued to reap fruits from the other trees like mango, breadfruit, lemon and coconuts.
83. In Easter of 2015 Joachim informed Venetia that Bynoe had approached him at the vacation house claiming ownership of the lands having purchased same from Lalla. After that they decided to have a family meeting at Venetia's house with Bynoe to discuss ownership of the subject land. That meeting took place on July 18, 2015. At the meeting, Bynoe showed them his documents from the Credit Union. Venetia informed him about their agreement for sale and occupation since the late 1960's. She

further informed him that he should speak to their then Attorney, Mr. Ramcoomarsingh and the meeting ended. Up to that point, Venetia was still of the view that the five acre parcel was that which had been the subject of the agreement for sale entered into by her parents.

84. Later in September, 2015 whilst Venetia along with a few of her siblings were at the vacation house, Bynoe visited them and they had another discussion. Bynoe informed them that part of the vacation house was on the roadway. They rejected the aforementioned since they had never seen any plans showing any such roadway nor was there any roadway in actual existence. Thereafter, Bynoe left. At that time, Venetia was still not aware of any survey having been done by Hamilton.

85. Venetia and the other claimants gave instructions to their Attorneys and a pre-action protocol letter dated January 22, 2016 was prepared and sent via registered post to Bynoe.⁶ This letter informed Bynoe of the agreement for sale, the claimants' acts of occupation and that the claimants were prepared to complete the agreement for sale.

86. In early 2016, Venetia and her family visited the vacation house and found that the subject land and other adjoining lands had been bulldozed. The lands bulldozed were extremely close to the vacation house and there appeared to be a road cut about ten feet from the vacation house from a westerly direction curving and heading north towards and up the hill. Their almond tree and a few cassava trees were pulled down and cleared in the process. On March 5, 2016 Venetia's sisters took six photos of the works done by Bynoe.⁷

⁶ A copy of the pre-action protocol letter was annexed to Venetia's witness statement at "V.M.W.6".

⁷ Copies of the photographs were annexed to Venetia's witness statement at "V.M.W.7".

87. These proceedings were subsequently commenced by the claimants against Bynoe. Bynoe has not gone unto the lands since then and all works done by him has been ceased.

88. At the time of the commencement of this claim and at present there is a lime tree, mango trees, eight pineapple plants, two fig trees, a breadfruit tree and a few cassava trees which are all located on subject occupied and maintained by the claimants. They agreed at the start of this case after discussions with their lawyers to claim for use and occupation of subject land which is approximately one acre of land.

89. In consultation with their surveyor Fortune, and from subsequent searches it was revealed that the estate of Janet was in fact the owner of a larger parcel of land (having acquired same from the estate of Jit deceased) which included the subject land. The larger parcel of land was described as comprising 9.6892 hectares be the same more or less delineated and coloured pink in the plan registered in Volume 3208 Folio 197 being portion of the lands described in the Crown Grant in Volume 438 Folio 447 also described in the Certificate of Title Volume 1566 Folio 133 and shown as Lot X1 in the General Plan filed in Volume 3208 Folio 189 and bounded on the north by lands of Bertha Gransauil then of L. Shivapreasad and by a reserve 1.52 metres wide along the bank of Alcide River, on the south by lands reserved for a village and by the Toco Old Road, on the east by a Reserve 1.52 metres wide along the bank of Alcide River by the Toco Old Road and by lands reserved for a village and on the west by State land and by lands of D.K. Macgillivray and intersected by a Road reserved 7.62 metres wide.⁸

⁸ A copy of the Certificate of title dated December 29, 1987 was annexed to Venetia's witness statement at "V.M.W.8".

90. When their case changed, instructions were given by Venetia and the other claimants to their Attorneys and a pre-action protocol letter dated April 19, 2017 was prepared and addressed to Janet.⁹ This letter cited the agreement for sale, the claimants' acts of occupation and possession of five acres initially and the reduction of their occupation to the subject land (one acre). The letter further informed Janet that her title to the vacation house and the subject land had been extinguished by virtue of the claimants' continuous and exclusive use, occupation and possession of same for a period in excess of sixteen years.

91. Janet was however deceased and so these proceedings were commenced against Rohan as the Administrator pendente lite of the estate of Janet.

92. Following service of this claim on Rohan and prior to a Defence being filed an offer was made by Rohan through his Attorney, Ms. Persad by letter dated October 23, 2017. The offer made was to transfer the subject land (the one acre parcel of land) being claimed by claimants subject to them doing a survey and paying the cost of the survey.¹⁰

93. Following discussions with their Instructing Attorney, the claimants agreed to accept the offer made by Rohan. By letter dated November 1, 2017 the claimants' acceptance to Rohan's offer was communicated to him.¹¹ This letter provided as follows;

"... the Claimants hereby accept your settlement proposal as contained in your letter of 23rd October 2017 in the following terms:

⁹ A copy of this pre-action protocol letter was annexed to Venetia's witness statement at "V.M.W.9".

¹⁰ A copy of this letter was annexed to Venetia's witness statement at "V.M.W.10".

¹¹ A copy of this letter was annexed to Venetia's witness statement at "V.M.W.11".

- I. *The Second Defendant do transfer to the Claimants the one acre parcel of land more fully described in the Re-Re-Amended Fixed Date Claim Form and Re-Amended Statement of Case filed on 29th September, 2017 and 12th July, 2017 respectively;*
- II. *The Claimants agree to solely bear all costs associated with the preparation of an approved survey plan with respect to the transfer (by the Second Defendant) of the one acre parcel of land to the Claimants and*
- III. *The Claimants and the Second Defendants as between them agree to bear their own costs in these proceedings.*

With respect to your letter of 30th October, 2017, we wish to respectfully state our position that due to our clients' acceptance of the offer to transfer the legal title to the said one acre parcel, there is no basis for your client to be present when the site visit takes place as the Second Defendants (now accepted) offer was not conditional upon his approval of the road access arrangements as between the Claimants and the First Defendant."

94. By letter dated December 4, 2017 Ms. Persad on behalf of Rohan indicated their agreement with the terms of settlement as contained in letter dated November 1, 2017.¹²

95. Venetia testified that from the above letters, she understood that there was now a promise and agreement by Rohan to transfer the subject land to the claimants.

96. Following receipt of letter dated December 4, 2017 and having regard to the above promise and agreement, Venetia retained the services of

¹² A copy of this letter was annexed to Venetia's witness statement at "V.M.W.12".

Fortune, shortly thereafter on behalf of the claimants to survey and prepare a sketch plan of the subject land. Fortune charged \$3,800.00 and Venetia paid the sum charged in two parts. A first payment of \$3,000.00 was made on January 18, 2018 and a second payment of \$800.00 was made on February 24, 2018. Receipts were issued by Fortune on both occasions.¹³ Venetia testified that she relied heavily on Rohan's promise to transfer the subject land to the claimants when she made those payments to Fortune.

97. Venetia attended a site visit with Fortune and his crew in mid-February, 2018 for the purpose of identifying the area of land occupied by the claimants so that Fortune could determine an area of one acre out of same. Venetia pointed out the southern boundary which was bounded by lands of Bynoe, on the east which is bounded by the Alcide River, on the west Venetia pointed out the area that they maintained and on the north, on the hill she pointed out up to where they maintained.

98. Following the above site visit, Venetia later received a sketch plan dated February 25, 2018 from Fortune which identified the subject land to be transferred in accordance with the representation and promise by Rohan.¹⁴

99. By letter dated February 28, 2018 the claimants' Attorneys sent a copy of the sketch plan to Ms. Persad for her review and approval.¹⁵ By letter dated March 6, 2018 from Ms. Persad, Rohan agreed to the transfer of the

¹³ Copies of the receipts were annexed to Venetia's witness statement at "V.M.W.13".

¹⁴ A copy of the sketch plan was annexed to Venetia's witness statement at "V.M.W.14".

¹⁵ A copy of this letter was annexed to Venetia's witness statement at "V.M.W.15".

one acre area identified in the sketch plan of Mr. Fortune.¹⁶ The claimants were fully prepared to carry out the agreement between the parties.

100. Venetia attended Court on April 10, 2018 when the matter came up for hearing. Prior to the hearing, Venetia was given a draft consent order between the claimants and Rohan to review and approve. Venetia had authorisation to act on behalf of the absent claimants and she found the draft to be satisfactory and informed her advocate attorney of such. Venetia testified that the consent order was to be entered with the Learned Judge but after an issue of the road reserve was raised by the Attorney for Bynoe the consent order was withdrawn by Ms. Persad.

101. Venetia testified that there was never any road reserve in existence when Joseph and Carmen entered into occupation of the five acres and that there is still none existing today. She further testified that if any road had to be built, it would have to be across the Alcide River where there has been and currently is a deep gorge with a width and depth of approximately 20 feet by 15 feet respectively.

102. Venetia took four photographs of the lands on May 19, 2018 with her Samsung camera phone showing the subject land.¹⁷

The cross-examination of Venetia

103. Joseph and Carmen died intestate. In the pleadings, Venetia failed to plead who are the beneficiaries of Joseph and Carmen's estate.

¹⁶ A copy of this letter was annexed to Venetia's witness statement "V.M.W.16".

¹⁷ Copies of those photographs were annexed to Venetia's witness statement at "V.M.W.17".

104. Venetia was referred to the sketch plan produced by Fortune. She agreed that according to the sketch plan Dow's land does not connect to the land the vacation house is located upon. As such, she agreed that in order for she and her family to access the vacation house, they pass through both Dow and Bayne's lands. Dow's driveway has a cable with a chain and padlock. Venetia and her family were provided with a key for that pad lock to utilize the driveway.

105. Venetia testified that if she and her family do not have access through Dow's lands, she does not know how they would get to their vacation house. She further testified that she thinks they would develop the road reserve identified in the Hamilton plan if they no longer had permission to access their house through Dow's lands. Venetia and her family do not have any fruit trees on the road reserve as identified on the Hamilton plan. The vacation house however occupies part of the road reserve.

106. According to Venetia, the Alcide River is about twenty feet wide. As such she testified that any access from the Toco Main Road if developed would have to pass through Bayne's land.

107. Venetia testified that there are about six mango trees, one breadfruit tree, one lime tree, one lemon tree about six cashew trees and about six pineapples trees on the subject lands. That those trees are close to the house.

The evidence of Norman Mitchell

108. Norman Mitchell ("Mitchell") was born in the year 1956 and by age sixteen years he was familiar with his parents' acquisition of lands from

the State located at Balandra being roughly one lot of land (“the lot”). By 1975, Mitchel and his family had a vacation house on the lot.

109. On many visits by Mitchell and his family to their lot in the early 1970’s, which was usually every weekend, Joseph and his family would also be seen visiting and doing works on their parcel of land (“the claimants’ lands”). The claimants initially cleaned their lands of the heavy forestation and were also building a vacation house.

110. The claimant’s lands were located approximately two lots away from Mitchell and his family’s lot in a northerly direction but it was not bounded by the Toco Main Road.

111. As a teenager, Mitchell recalls that the land occupied by Joseph and his family was extremely large and comprised of a few acres. Joseph and his family accessed their lands through a lot of land to the south which was bounding the Toco Main Road and which is now owned by Bayne. Mitchell testified that there was no road, road reserve or access way other than the aforementioned.

112. According to Mitchell, the claimants cleared the land on top of the hill and around the house all the way to the Alcide River to the east. The claimants also planted some trees like coconut, mango, lime, cashew, breadfruit and cassava on their lands. They shared those fruits with Mitchell’s family.

113. Genevieve, Venetia and Julia were roughly around Mitchell’s age and as teenagers they all spent time together on the weekend trips. They would walk the claimants’ lands, hiking up to the top of the hill to the back of the

claimants' house to collect dry coconuts and take in the view. They would also hike down a deep gorge using a foot path to get to the bottom of the Alcide River to bathe and catch cray fish.

114. They also took walks to the Rampanalgas Village accessing it through the Toco Main Road. From Mitchell's recollection and observation of the general Balandra area at that time, there was never any other or alternative access roadway to get to Rampanalgas Village physically on the ground other than the Toco Main Road.

115. Mitchell eventually migrated to Canada in about 1975 and returned in 1981. From 1981 and continuing up to the mid 1990's he would visit his family's vacation house roughly about once every two months with his family to spend the weekends. During those occasions, he would often visit the Joseph family and spend time with them.

116. From his observations when he returned in the 1980's, the claimants' vacation house had been renovated and extended. A fair area of land around the claimants' house and to the back was still cleaned and maintained. He recalled the claimants and his family had a new neighbour, Dow whose new house was to the right of Mitchell's father's property and to the south of the claimants' lands.

117. The claimants were now accessing their property through Dow's land. Mitchell testified that there were still no other access way to get to Rampanalgas Village.

118. After the mid 1990's, Mitchell stopped going up to Balandra as his father had fallen ill.

The cross-examination of Mitchell

119. Mitchell testified that he stopped going up to Balandra regularly after the mid 1990's but he did not stop going. He visits his family vacation home once every month or two months.

The evidence of Ms. Tara Lutchman

120. Ms. Lutchman is the Instructing Attorney-at-law of the Firm, Yaseen Ahmed and Associates, the attorneys-at-law on record for the claimants herein. She is responsible for conduct of the claimants' matter which includes the management and overseeing of the various activities required in their matter. She had full dominion and/or control over the claimants' file and records from the inception of this matter and she manages, supervises, oversees and/or give instructions and/or directions for all matters and things which are required to be done in these proceedings. Her evidence was corroborated in material particular by relevant parts of evidence given by Venetia and as such there is no need to repeat same.

The cross-examination of Ms. Lutchman

121. Ms. Lutchman was principally involved in the drafting of the claimants' pleadings. She therefore would have also been principally involved in the amending and re-amending of the pleadings. The pleadings were however, not amended to include an averment that there was an agreed position between the claimants and Rohan concerning the one acre parcel of land. Further, the beneficiaries of the estate of Joseph and Carmen were not mentioned in the claimants' pleadings. The claimants' pleadings also did not mention whether either Joseph or Carmen had a will. However, according to Ms. Lutchman there were no wills.

122. Ms. Lutchman agreed that the sketch plan produced by Fortune was not an approved survey plan in conformity with the discussions on settlement.

123. Ms. Lutchman did not instruct the claimants that part of the southern boundary of the lands owned by the estate of Janet is the Toco Old Road.

124. At the time of issuing the pre-action protocol letter dated April 19, 2017 Ms. Lutchman did not have sight of the correspondence between Ms. Jameson and Mr. Ramcoomarsingh.¹⁸ She only became aware of the correspondence after the filing of the defence by Rohan. The claimants informed Ms. Lutchman that they too had never seen the correspondence. As such, the claimants did not inform Ms. Lutchman that Janet had offered them one acre of the land in 2007.

125. Ms. Lutchman testified that upon receiving Rohan's defence and seeing the correspondence, there was no need to entertain same as the claimants were at that time already engaging in settlements talks with Rohan.

The evidence of Arnold Roman-Fortune

126. Arnold Roman-Fortune ("Fortune") is a Licensed Land Surveyor duly registered under the Land Surveyors Act Chapter 58:04. He has been a registered Land Surveyor in Trinidad and Tobago since in or around October, 1962.

127. He was employed at the Lands and Surveys Department of Trinidad and Tobago for approximately fourteen years and was a Director in the Company, Land Survey Consultants Limited for the past twenty-eight

¹⁸ Letters dated December 19, 2006, January 18, 2007 and February 12, 2007.

years. Since his registration and continuing to date, he estimated that he has conducted well over 10,000 surveys.

128. He has in excess of fifty years of experience in the field of land surveying and his areas of expertise cover cadastral subdivision and boundary surveys including the preparation of plans for registration and Town and Country purposes, redefinition and consolidation surveys, all aspects of engineering surveys as well as geodetic, hydrographic and photogrammetric surveys. He is therefore suitably qualified to render expert opinion.

129. In or about early January, 2018 Fortune was instructed by Genevieve, Venetia and Julia to conduct a survey and prepare a sketch plan in relation to a parcel of land comprising one acre representing a parcel occupied by them out of a larger parcel of land comprising 2.2564 hectares (“the larger parcel of land”) off the Toco Main Road, Rampanalgas.

130. Fortune agreed to carry out the survey for the sum of \$3,800.00 which was paid to him by the claimants in two parts. A first payment of \$3,000.00 was made on January 18, 2018 and a second payment of \$800.00 was made on February 24, 2018.

131. The one acre included the portion of the larger parcel of land upon which the claimants’ house is located. Fortune was also subsequently asked to determine the existence and history (if any) of an alleged road reserve 10.06 metres wide that was shown on a plan dated February 1, 2007. Fortune was shown a copy of the Certificate of Title in the name of Jit pursuant to Memorandum of Transfer No. 32 dated May 14, 1987.

132. There was no written note of instructions given for his tasks except for a letter dated October 1, 2018 from Ms. Lutchman.¹⁹

133. Fortune was also asked for his expert opinion in determining whether the alleged road reserve 10.06 metres wide at the bottom of the larger parcel of land exists.

134. In making his findings, Fortune referred to the Land Surveyors' Handbook published under the direction of J.W. MacGillivray 1935.

135. In order to understand the history of the land in question and the status/non-status of the road reserve, Fortune located and referred to all relevant surveys, plans and cadastral sheets from the Lands and Surveys Department, Directors of Survey Office at Frederick Street, Port of Spain. The documents which he referred to were as follows;

- i. A copy of a survey plan dated June 4, 1966 of land surveyor J. R. Jardine, Land and Surveys Book 999 Folio 166;
- ii. A copy of a survey plan dated October 28, 1983 of land surveyor J. R. Jardine, Lands and Surveys Book 1175 Folio 23;
- iii. A copy of lands and surveys order No. 36/1949, cadastral sheet C.14.B;
- iv. A copy of lands and surveys order no. 63/1969, cadastral sheet C.14.B-16.C;
- v. A cadastral sheet labelled Matura Forest Reserve Eastern Extension, ward sheet 16 C undated; and

¹⁹ A copy of the letter dated October 1, 2018 was annexed to Hamilton's expert report at "A.R.F.2".

vi. A survey plan dated February 1, 2007 of land surveyor Charles H. Second.²⁰

136. In the month of February, 2018 Fortune visited the larger parcel of land together with his crew of four surveyor assistants to carry out the survey of the one acre parcel of land. Present at the time and at the direction of Venetia, Fortune conducted his survey.

137. At the visit, Venetia pointed out to Fortune the southern boundary of the land which they were in occupation of. She also pointed out the eastern boundary of the one acre parcel which was bounded by the Alcide River as well as the northern boundary of the one acre parcel which is also bounded by the Alcide River. After Venetia identified those boundaries to Fortune, he proceeded with the assistance of his crew to take measurements of the parcel of land as identified to him.

138. After completing the site visit and with the measurements being taken, Fortune subsequently prepared a sketch plan of the one acre parcel dated February 25, 2018. The one acre parcel of land is marked on the sketch plan as 1A OR OP.²¹

139. With respect to the history and existence of the alleged road reserve 10.06 metres wide at the bottom (that is along the southern side) of the larger parcel comprising 2.2564 hectares, Fortune looked for physical evidence of the said road reserve as pointed out by land surveyor, Hamilton in the survey plan dated February, 2007 but found no such road

²⁰ Copies of the documents were annexed to Fortune's witness statement at "A.R.F.2". Further certified copies of survey plans dated June 4, 1966 of land surveyor J.R. Jardine, Land and Surveys Book 999 Folio 166 and October 28 1983 of land surveyor J.R. Jardine, Land and Surveys Book 1175 Folio 23 obtained on October 12 2018 were to Fortune's witness statement at "A.R.F.2a".

²¹ A copy of the sketch plan was annexed to Fortune's witness statement at "A.R.F.3".

reserve in actual existence. That particular area (as shown on the plan) intersects the claimants' house and is also covered with shrubbery and to the eastern side was a deep, impassable gorge.

140. Fortune also viewed the documents/ maps at the Lands and Surveys Division from the year 1949, particularly the copies of survey plan dated June 4, 1996 done by land surveyor J.R. Jardine ("Jardine") and the survey plan dated October 23, 1983 of land surveyor Jardine and determined that there was no road reserve drawn/demarcated on the larger parcel of land as shown in the Hamilton plan.

141. In looking at the survey plan prepared by Jardine dated October 28, 1983 and which shows the parcel of land measuring 9.6892 hectares bordering the Alcide River, Fortune observed a small section of the Old Toco Road lettered as R2, S2 and B2 indicating that that portion of the larger parcel of land had access to the Old Toco Road. However, Fortune's further research showed that the Old Toco Road had been absorbed into the lands depicted as the Rampanalgas village.

142. Further, Fortune's examination of Lands and Surveys Order No. 36/1949 showed that by 1949, the entire area of the Old Toco Road had been subsumed within lots 2B (to the northeast) to 8A (to the southwest). As such, Fortune concluded that the Old Toco Road was by 1949 no longer in existence and instead formed part of the privately owned lands. In particular, Lot 2B at O^A 2^R 06^P and the hook symbol showed definitively that the area originally marked as the Old Toco Road was now part of privately leased lands.

143. Additionally, in Fortune's examination of Lands and Surveys Order No. 63/1969 Cadastral sheet C14B-16C same further confirmed his findings that the Old Toco road no longer exists. The survey plan prepared by H. Sankar, licensed land surveyor showed no depiction whatsoever of the Old Toco Road to the south of the Alcide River. Instead, lots 2B through 4A are shown to be completely under private ownership with road access to the southeast.

144. According to Fortune, from studying the combined survey plans of Jardine together with Lands and Survey Order nos. 36/1949 and 63/1969, it is clear that the Old Toco Road ceased to exist from 1949 at the earliest. At such, it was the testimony of Fortune that the validity and legitimacy of the road reserve measuring 10.06 metres wide as depicted by the Hamilton plan is totally undermined as not only is it clear that the road reserve never existed prior to 2007 but also that it purports to connect to a roadway (the Old Toco road) which has not existed for at least the past sixty-eight years and which now forms part of privately leased land.

The cross-examination of Fortune

145. Fortune did not issue notices to the adjoining neighbours when he was conducting the survey of the one acre as he was preparing a sketch plan and not a cadastral. When Fortune visited the one acre, he did see fruit trees planted on same. About half of the one acre was occupied with fruit trees.

146. Fortune was referred to survey plan dated June 4, 1966 of land surveyor Jardine. Fortune agreed that on this plan the Toco old road is visible and that same runs along the southeast corner of the lands. Fortune was then referred to survey plan dated October 28, 1983 of land surveyor Jardine.

On this plan it was stated that the actual survey was done in 1974. There were two drawings on this plan because the lands were divided into two parcels. In first drawing, the Toco Old road was not depicted. However, in the second drawing the Toco Old road was depicted again along the southeast corner of the lands. Fortune agreed that this plan would have been reflective of what was on the ground in 1974.

147. As a consequence of his aforementioned evidence, it was put to Fortune that his evidence that by 1949, the Old Toco Road was no longer in existence was not true. In response, Fortune testified that what he meant by that statement was that the Old Toco Road was no longer used. That although the Old Toco road might have been shown on a plan did not mean it was used. He further testified that subsequent plans showed that the Toco Old Road had been absorbed into leases.

148. Fortune was then referred to a cadastral sheet 36/49. According to Fortune, this cadastral was given out in 1949. He agreed that on this cadastral the Toco main road was shown as "*Road 100 links wide*". That almost parallel to that there is a broken line depicted. The broken line was where the Toco old road was located.

149. Fortune was then referred to ward sheet 16 C which was undated. Fortune agreed that this ward sheet depicted the river, the Toco Main road and the Toco old road. He further agreed that this ward sheet showed the Toco old road spanning almost in its full length through all of the lots of land. According to Fortune, this ward sheet was probably dated 1940 or 1950.

150. Fortune was then referred to the Hamilton plan dated February 1, 2007.

Fortune agreed that on this plan the Toco main road is visible. He further agreed that a small section of the Toco old road is visible and that continuing from the old road, he saw a road reserve 10.06 metres wide. However, he testified that by Hamilton putting the road reserve on his plan, did not mean that same existed. Fortune disagreed that 10.06 metres (approximately 33 feet) is the standard width of a road reserve. He testified that road reserves vary in width.

151. Fortune agreed that when he is doing a survey for clients, they would show him their lands and he would take his bearings and markings and without actually having a road laid down, he could draw on a plan where he wants to put a road reserve. As such, he agreed that whilst a parcel of land may not have any road, but as regards to the drawing, there is a road, there would be a road or an area reserved for a road. Usually, a surveyor should get town and country planning approval to suggest where the access to the lands are.

152. Fortune was referred to his sketch plan. He testified that the main differences between a sketch plan and a cadastral is that a sketch plan does not have any vectors, bearings and distances. A sketch plan basically shows the relationship between the parcel of land the person is claiming and the neighbours.

153. Fortune accepted that to the back of the house, there is bush. He testified that the site upon which the house as well as the few fruit trees are located is no more than 10,000 square feet more or less. That 10,000 square feet is a far cry from an acre of land which is 45,360 square feet.

THE CASE FOR THE FIRST DEFENDANT

154. Bynoe gave evidence for himself. He is the current owner of a parcel of land situate off a road reserve, opposite L.P. No. 333 or 19 ¾ mile mark Toco Main Road Rampanalgas, that comprises of 2.6228 hectares (“the smaller portion of land”) and 7.4328 hectares (“the larger portion of land”).

155. Bynoe came upon an advertisement for the sale of the aforementioned parcels of land in the local newspapers in and around September, 2014 and attended a bid for same. He paid in full, the price of the bid to the Eastern Credit Union who, as he is aware, were the owners of parcels of land at that time. Thereafter, in and around April 15, 2015, he became the lawful owner of the above defined parcels of land.

156. The parcels of land were originally belonged to Jit, who later passed, and his property was thereafter handled by his legal personal representative, Janet who would have been the person to transfer the larger portion of the land to Lalla.

157. Upon the transfer, the successors of Jit, employed the services of Hamilton to mark out a road reserve (“the road reserve”), with the purpose of giving access to all adjoining parcels of land, including that of the larger parcel of land.²²

158. Upon Bynoe’s purchase, the agents of the Eastern Credit Union, handed to him, amongst other documents, one cadastral for the property to show the extent of the property he now owned. Bynoe utilised the cadastral as

²² A copy of the survey plan of Second was annexed to Bynoe’s witness statement at ‘C.B.1.’

a guide, having not been chauffeured to the land to be shown the exact location of said parcels which he just purchased. It was to his understanding that the total amount of land which he purchased, was split into two parcels, one amounting to approximately seven hectares of land and the other amounting to approximately two hectares.

159. The cadastral showed one parcel of land amounting to approximately seven hectares of land and another parcel of land, in close proximity, amounting approximately two hectares of land. Consequently, Bynoe assumed both parcels shown on the cadastral belonged to him.

160. After having purchased the lands and locating what portions he believed belonged to him as he had viewed from the cadastral given, Bynoe began mapping out the boundaries of the property as his intention upon purchase was to develop the lands.

161. On performing the act of mapping out the boundaries, Bynoe discovered a partly wooden, partly concrete two bedroom house (“the house”) located on the property, he believed at that time to be situated upon the parcel of land which he had just purchased.

162. Bynoe made all efforts to contact the owner of the house. In those efforts, he left a note on the door of the house, with his name and contact information, requesting that the owner contact him. When that did not prove successful, Bynoe recorded the number located on the Trinidad and Tobago Electrical Company meter from which he obtained a telephone number and address for the registered name on the connection. Upon receiving that information, Bynoe made several attempts to contact the

owners of the house but was unsuccessful for a period of approximately four months.

163. Bynoe then sought to inquire information about the owner of the house from surrounding neighbours. A neighbour then informed him that the owners would occupy the property on some weekends and/or some public holidays. With that new knowledge, Bynoe began waiting patiently for the day when the owners and he would be at the site at the same time.

164. Finally, in the year of 2015, in and around the season of Easter, whilst Bynoe was visiting the site, on which his parcel of land is located, he approached a man by the name of Danny (not party to this claim), whom he believe is a sibling of the claimants, and his daughter, Kimberly, outside the vicinity of the house.

165. In that face-to-face meeting, Bynoe introduced himself to the parties and with a physical presentation, by way of his documents of ownership, he disclosed to them that he was the owner of the parcel of land on which the house is situated upon. Danny indicated to Bynoe during the conversation that Bynoe's statement or claim could not have been factual as the land belonged to him (Danny) and his family. Bynoe expressed his confusion at that time, reiterating with his display of documentation that he was the rightful owner of the land.

166. Within the conversation, Bynoe expressed three options to Danny, of which Bynoe thought would best settle the matter and in efforts of evading any future issues for all parties involved. Bynoe informed Danny that based on his desire, firstly that he could purchase from him the portion of land, specifically a lot on which the house is situated upon. Secondly, that he can allow him (Bynoe) to purchase the house for a price

based on a valuation report, or lastly, that they can enter into a lease or rental agreement for the property.

167. Danny indicated that he needed to discuss Bynoe's proposals with his relatives, and further indicated that he would contact Bynoe at a later date to discuss further the contents of his offers. Bynoe conceded to Danny's request.

168. Sometime thereafter, Bynoe was contacted by an individual whom he did not know. It was relayed to him by the individual that he should speak to the Attorney of the claimants, Mr. Ramcoomarsingh. Bynoe later contacted Mr. Ramcoomarsingh and during the call a face-to-face meeting was set.

169. Bynoe met with Mr. Ramcoomarsingh within the same year as his purchase, that is 2015, and at the meeting Bynoe presented his documents of ownership to the parcels of land. Mr. Ramcoomarsingh made no contest with the documents to which Bynoe showed to him, nor to Bynoe's status as owner of the lands. Instead, Mr. Ramcoomarsingh offered Bynoe advice on the matter.

170. After the meeting, Bynoe contacted Danny and relayed to him what he had been advised to do by Mr. Ramcoomarsingh. Danny indicated that he and his relatives would meet with Bynoe at a home of one of the claimants located in Malabar, Arima to further discuss the advice given to Bynoe by Mr. Ramcoomarsingh.

171. Bynoe soon after met with the family and at the meeting, five relatives were present, including Danny. Four out of the five present being party to

this claim. Bynoe took the opportunity to show to the parties present, his proof of ownership of the parcels of land and further explained to them his position as it related to the land upon which the house is built, providing them with the options he had given to Danny on the prior occasion. Danny then asked Bynoe what he intended to do with the lands and Bynoe informed him that he was in the process of surveying same in an effort to develop it.

172. During the meeting, the members of the family proclaimed their ownership of the property. However, their claims were not supported by any documentation. At that time, as their proof, the claimants showed to Bynoe a piece of paper that they asserted was an agreement in which their predecessors had made with the owner of the lands, who was in the process of selling to them five acres of land of which they believed included the land on which said house is situated upon.

173. The agreement however, had never been completed as the piece of paper shown to Bynoe appeared to reflect only a down payment having been made. In addition, by their documentation, the lands had never been surveyed and therefore neither of the parties' present knew where the exact location of the five acres was.

174. Bynoe left the meeting neither having come to any agreement with the claimants, nor having obtained any clarification or proof that the land in which he had claimed to be his, belonged to them.

175. Thereafter, Bynoe proceeded to have the property surveyed. In doing so, he utilised the services of Peter Goodridge ("Goodridge") of Land Development Consultants and Managements Services Limited. Goodridge

mapped out the boundaries according to the survey plan of Hamilton, including the road reserve. Upon the completion of that survey, the claimants requested to meet with Bynoe once more. Bynoe fulfilled that request, and along with his wife, he met with six individuals inclusive again of Danny, at the house located on the property.

176. At that meeting, Bynoe identified to the persons the boundaries set out in the survey plans conducted by Hamilton and indicated to them that based on the plans, the house was located on what he (Bynoe) understood to be his property. Bynoe also indicated to them that part of the house was situated on the road reserve needed for him to access his property.

177. In addition to the above conversation, at that time, Bynoe took the opportunity to point out the standard measurements of a dwelling home by the guidelines of Town and Country Planning, which is fifteen to twenty-five set back from the road and as the house did not meet those dimensions, Bynoe informed the parties present that the home would have to be demolished.

178. Upon that information being told to them, they asked Bynoe not to demolish the house, but instead to give to them a total of one acre of the land, comprising the land upon which said house was situated. Bynoe however denied that request made by the parties present.

179. Having previously attempted negotiations and given to them options Bynoe found to be suitable and having toured the property upon which the house is located, Bynoe did not find a total of one acre to be necessary to sell to the respective claimants as the house occupied only one lot of land and nothing more. The lot of land was inclusive of the house and some

fruit trees, mainly five mango trees, one lemon tree, one breadfruit tree, three cashew trees, two coconut trees and one pommerac tree.

180. Bynoe testified that there was no evidence of maintenance of the surrounding area. That to the immediate back and west of the house was heavily forested.²³ As such, Bynoe offered to them two lots of land instead of the one acre that they had requested, and that offer was rejected.

181. After his offer had been rejected, Bynoe advised the parties present of the framework of what his plan entailed going forward. Bynoe indicated to them at that time, that as soon as the dry season commenced from the month of January or February, 2016, he would have been commencing development road works. Bynoe also indicated to the parties the area in which that development would be starting from.

182. After having left the meeting, at some point thereafter, based on the continuous claims made by the claimants as to their ownership of the parcel of land, Bynoe sought to employ the services of Camille Wilson ("Wilson"), a search clerk, to conduct a title search on his behalf of the property. Wilson conducted a comprehensive search which dated back to the year of 1921.²⁴

183. The claimants thereafter filed a claim against Bynoe on July 19, 2016 for an order for possession of the said land totalling five acres, with the understanding that Bynoe was the owner of the five acres. Subsequent to filing, at the first Case Management Conference ("CMC") for this matter,

²³ Copies of photographs taken were annexed to Bynoe's witness statement at 'C.B.2.'

²⁴ A copy of the search was annexed to Bynoe's witness statement at 'C.B.3.'

the Attorneys of the claimants expressed some uncertainty and confusion with reference to the title or ownership of the five acres.

184. The claimants' Attorney then voiced their desire to employ a licensed surveyor to survey the property in hopes of clarifying all uncertainties. The request was put forth in the presence of Bynoe's Attorney-at-Law who at that moment agreed to conducting a joint survey as well as, to be bound by the results of same. Further to that, through discussions held between the Attorneys for the claimants and Bynoe's Attorney, it was agreed that the services of Fortune would be utilised.

185. Thereafter, at the conclusion of the survey conducted by Fortune, the Attorneys of the claimants hosted an all parties meeting at their offices, Yaseen Ahmed & Associates, Attorneys-at-Law, on April 11, 2017 to discuss said results. It was at that meeting, the parties present were made aware that they each had a mistaken belief that Bynoe was the owner of the property upon which that house is situated.

186. In essence, the property upon the house was built is not the property which Bynoe bought and therefore it was found that Bynoe was not the legal owner of said parcel of land, but of another parcel located on the opposite side. It had been agreed at that time, that Janet was the true owner of the parcel of land which included the portion occupied by the claimants.

187. Having clarified that aspect of the matter and having now identified what portion of land Bynoe was the true owner of, Bynoe continued with his schedule of the development of the lands of which he had ownership.

188. In furthering his plans on the property, he has since bulldozed a portion of the road reserve as depicted in the survey plan done by Hamilton. During that act, it was within his knowledge that the measurements of the house in which the claimants occupy encroaches onto the road reserve by approximately six feet. Bynoe testified that the encroachment does not prevent nor obstruct the development of his lands.

189. Bynoe began bulldozing the surrounding lands in and around the year 2016, during the month of February. In his actions, he has cleared part of the road reserve towards the back of the property in which he owns, clearing bushes and shrubs, causing no damage to any property belonging to that of the claimants, nor the parcel of land upon which the house is located.

190. According to Bynoe, the claimants now contest the existence of road reserve as laid out within the survey plan conducted by Hamilton. They have since the time of the all parties meeting, put forth an amended and re-amended version of their original claim, citing now trespass on Bynoe's part and asking for an order to be made by the court for an injunction to restrain Bynoe from further developing a much needed road reserve.

191. Bynoe testified that he is inclined to mention his scepticism that the claimants in their capacity can bring forth such a claim as he has indicated above, the predecessors of the claimants have never completed the agreements for sale of the five acres and therefore the claimants are not the legal owners of same.

192. Dow informed Bynoe that passage is granted to the claimants through property owned by his (Dow's) family, so that the claimants can access

their house. Dow's property is located at Lot No. 2A Rampanalgas Village, Matura, and can be seen on said survey plan of Hamilton marked with the writing '*Rosemarie E.D. Dow*'.

193. Bynoe has since charted the lands which he owns and found that there exists only one additional access point which comprises of a mere walking trail located to the west of the land, not large enough to be considered suitable for access. To utilise the walking trail, Bynoe is required to drive a distance and park his vehicle on the outskirts of state land and utilize the trail, walking approximately two hundred feet to get to his property. Bynoe testified that the aforementioned creates an unnecessary hindrance along with making things vastly difficult in his efforts of continuing development. Such a hindrance will also affect other owners of lands within the area, inclusive of the claimants if they are not allowed to utilise the property previously owned by the Dows.

194. Bynoe testified that as a land owner and a purchaser of land, property within the area would in his opinion, diminish in value, if purchasers are unable to access their land entirely (causing the land to become landlocked), or in a more suitable and practical way. As such, Bynoe argued that the road reserve is necessary for him to access the larger and smaller portion of his lands and for other neighbouring properties including the claimants'.

The cross-examination of Bynoe

195. Prior to bidding for the lands in September, 2014 Bynoe did go to see the lands. At that time, he did not have or know the dimensions of the lands. Upon his purchase of the lands, he was given the survey plan of Hamilton.

At that time, he did not know that the two hectares shown on the Hamilton plan did not belong to him.

196. During the first meeting Bynoe had with Danny, there was no discussion about a road reserve and the house being on the road reserve.

197. There is no bridge in existence to cross the Alcide River. According to Bynoe, if one is facing north, the lands to the right of the Alcide River belong to the Gopauls.

THE CASE FOR THE SECOND DEFENDANT

198. Rohan gave evidence for himself. He is a doctor and the executor of the estate of Janet. He is the son of Janet and Jit. A grant of probate for the estate of Janet was issued in Rohan's name on March 2, 2018.²⁵

199. Rohan testified that it is undisputed that Jit purchased the larger parcel of land ("the lands") of which the lands forming the subject matter of these proceedings ("the occupied lot") is a portion, some time in 1987. The lands are now vested in the estate of Janet. Rohan was aware of the purchase of the lands as he was already an adult at that time and Jit had mentioned the purchase to Rohan and his siblings. Since the time of the purchase of the lands, Jit and Janet were responsible for the maintenance of same.

200. Rohan, his siblings and their respective families would go visit lands. Sometimes they would all go together or sometimes it would just be one of them with their parents or with their families. Throughout the years 1987 to 2004, the lands were maintained by Jit. However, after the death

²⁵ A copy of the grant was annexed to Rohan's witness statement at "R.M.1"

of Jit in late 2004, Janet took over the maintenance of the lands. Janet become ill on or about 2013 or 2014 and thereafter until her death October, 2015 there was little or no maintenance done on the lands. Rohan and his siblings visited the lands sporadically after Janet became ill.

201. When Jit purchased the lands, he told Rohan that he became aware on one of his visits there that approximately one lot of the land was being occupied by persons unknown at the time as there was a wooden structure on the one lot (the occupied lot). The entire parcel of land however is heavily forested. Jit further informed Rohan that he later was made aware of the occupiers of the occupied portion were Joseph and Carmen. Rohan was not aware of any other persons occupying the structure on the occupied lot.

202. Throughout the years and in particular from 1989 to 2006, the land and building taxes for the lands, including the occupied lot were paid by Jit and after his death, Janet paid same.²⁶

203. Jit told Rohan that when he purchased the lands in 1987, he and Janet visited Joseph and Carmen to try to speak with them about their unlawful occupation but they were unwilling to speak about it. From discussions with Jit and Janet, Rohan was aware that they tried on several occasions to communicate with Joseph and Carmen about their unlawful occupation whenever they met them there to no avail. When Jit purchased the lands in 1987, Rohan was told by him that he had informed Joseph and Carmen that he was the new owner of the lands.

²⁶ Copies of the land and building taxes receipts for the period of 1989 to 2006 were annexed to Rohan's witness statement at "R.M.2".

204. Further, in or about December, 2006 Janet by letter dated December 19, 2006 had communicate through her then attorney, Ms. Jameson to the then attorney for the heirs of the Lutchmans with respect to their alleged entitlement to the occupied lot.²⁷ By letter dated January, 2007 the then attorneys for the occupiers of the lot responded to Ms. Jameson's letter.²⁸

205. By letter dated February 12, 2007 Janet's attorney wrote again to the then attorney for the occupiers in an attempt to amicably resolve the issue relative to their unlawful occupation.²⁹ There was no response to this letter.

206. In 209, Ms. Jameson sent a letter to Lalla on behalf of Janet outlining the history of the lands.³⁰ Lalla was at that time a proposed purchaser of the lands including the lands allegedly occupied by the claimants.

207. Rohan testified that it is unclear how the claimants are now alleging that an entire one acre parcel of land is occupied by them. That he visited the lands for many years (although after the death of Janet, he visited sporadically) and was well aware of the initial partial wooden and partial concrete structure that had been on the occupied lot. He further testified that he is unaware of any exclusive occupation by the claimants or their predecessors in title of a one acre parcel of the lands.

208. After the death of Jit in 2004, Janet decided that it would be best to sell the lands. In that regard, Rohan was informed by Janet that Hamilton was

²⁷ A copy of letter dated December 19, 2006 was annexed to Rohan's witness statement at "R.M.3".

²⁸ A copy of letter dated January 17, 2007 was annexed to Rohan's witness statement at "R.M.4".

²⁹ A copy of letter dated February 12, 2007 was annexed to Rohan's witness statement at "R.M.5".

³⁰ A copy of this letter was annexed to Rohan's witness statement at "R.M.6".

commissioned to carry out a survey of the lands to demarcate the road reserve and to get the necessary approvals from the Director of Surveys. Janet further informed Rohan that her intention was to sub-divide the lands and sell the parcels to land developers. The survey was eventually done and the survey plan is dated February 1, 2007 was approved by the Director of Surveys on May 28, 2007.³¹ According to Rohan, this plan represents the true depiction of the lands previously owned by Jit and now owned by the estate of Janet.

209. Rohan testified that the road reserve depicted on the approved survey plan is necessary for him, his servants and/or agents as well as any adjacent land-owners. That was always the road that had been used to access the land and as far as Rohan is aware, there is no other access available to the lands including the occupied lot.

210. In or about March, 2012 Janet told Rohan that Hamilton was again commissioned to prepare a survey plan for her as she wanted to identify the occupied lot as it was her intention to sell the remaining portions of the lands having previously sold a portion to Lalla. Janet further told Rohan that she wanted to give the occupiers the occupied lot as she wanted to move forward with selling the lands without any hassle. Hamilton prepared the survey plan dated March 15, 201 which depicts the structure on the occupied lot.³²

211. With respect to the survey that was carried out in 2007, Rohan could not say whether Hamilton gave notice to the occupiers of the one lot prior to the survey being carried out as that information was not within his

³¹ A copy of the approved plan was annexed to Rohan's witness statement at "R.M.7".

³² A copy of this survey plan was annexed to Rohan's witness statement at "R.M.8".

purview. However, as far as he is aware, there was no obligation on Hamilton to notify the occupiers and/or the claimants of any survey as they are not the owners of the lot neither were they owners of any lands adjoining the parcel that was being surveyed. It was only after Rohan was served with these proceedings that he became aware of all of these persons who are claiming to have been in occupation of a one acre parcel of the lands. Rohan does not know any of the claimants.

212. According to Rohan, the claimants are contending that they have a possessory right to the occupied lot having been in possession of same for more than sixteen years. However, as far as he is concerned, any right that the claimants may have, if at all, would have only arisen after the death of the surviving original occupier, Joseph who died sometime in 2004. As such, it was Rohan's testimony that it is unlikely that the claimants can prove their alleged possessory title.

213. Prior to the survey being carried out in 2007, Janet informed Rohan that she had tried on several occasions to contact the occupiers of the occupied lot but she had not been successful.

214. The structure on the occupied lot overlaps on a part of the road reserve. Rohan has no difficulty with the occupiers continuing to occupy the small portion of the road reserve. However, the entire road reserve cannot be transferred to the claimants since if that is done, it would prevent Rohan, his servants and/or agents and even the adjacent owners or occupiers from accessing the lands.

215. Rohan is prepared in an attempt to amicably resolve the proceedings herein to transfer a one acre parcel of land to the claimants in the spirit of

good faith and compromise with there being no admission that the claimants are in fact entitled to such one acre portion. The only issue is with respect to the road reserve as Rohan cannot agree to transferring same as to do so would mean that he would have no access to the lands and neither would Bynoe nor the adjoining landowners. Rohan's intention is to eventually sell the remaining portion of the lands and he cannot do so without there being an available access to the lands.

The cross-examination of Rohan

216. In 1987, Jit purchased approximately twenty- eight acres of land. Rohan first visited the lands in either 1987 or 1988 when Jit took him to see same. At that time, he was in his late 20's or early 30's. They walked where the river started and climbed the hill. Rohan could not say where the boundaries of the lands were located. At that time, they accessed the lands directly from the Toco Main Road through some lands located to the front of the Toco Main road. They parked on the main road. At that point, they were facing the claimant's house and the Alcide River was to the right.

217. Rohan admitted that he has no idea whatsoever about the lands prior to 1987/1988. He further admitted that he did not give any description as to how the lands were maintained between the years 1987 to 2004 and that he has not brought any evidence to contradict the occupation of the lands for all those years. He testified that what he meant by Jit maintaining the lands was that Jit paid the land and building taxes for same. Rohan could not say what else Rohan did in relation to the lands.

218. Janet's maintenance of the lands was also primarily making sure the land and building taxes were paid. As Janet did not have any money, she did not

develop or cut any roads on the lands. Janet took no steps post the letter dated January 18, 2007 to remove the occupants of the house.

219. There is no bridge connecting the lands from the right of the Alcide River to the road reserve. Since 2007, no member of the Maharaj family has begun any construction to connect the old Toco road to the road reserve.

220. Rohan testified that he could not state that if a road reserve is to be developed, the road reserve will have to pass over the lands of Bayne. When it was put to him that the road reserve did not exist, he stated that it was his understanding that the purpose of the road reserve was to set aside the land for a road when same becomes necessary.

221. Rohan was referred to letters dated October 23, 2017; November 1, 2017 and December 4, 2017. He agreed that in the correspondence there was a clear agreement.

ISSUE 1 – *whether the issue of estoppel arises properly on the pleadings and if so whether Rohan should be or is estopped from denying the claimants' entitlement to the subject land as set out in the sketch plan of Fortune*

222. The claimants in their reply to Rohan's defence pleaded that by virtue of the representations made by Rohan as contained in letter dated October 23, 2017 which was relied and acted upon by the claimants to their detriment in the commissioning of the sketch plan dated February 25, 2018 and preparation of the draft consent order between the claimants and Rohan, Rohan is estopped from denying their entitlement to the one acre of land as identified in the sketch plan.

223. According to *Blackstone's Civil Practice 2017*,³³ the contents of a reply are as follows;

“Conventionally, a reply may respond to any matters raised in the defence which were not and which should not have been, dealt with in the particulars of claim, and exists solely for the purpose of dealing disjunctively with matters which could not properly have been dealt with in the particulars of claim, but which require a response once they have been raised in the defence...The reply is, however, neither an opportunity to restate the claim, nor is it, nor should it be drafted as a ‘defence to the defence’.

When the defence takes issue with a fact set out in the particulars of claim, and the claimant accepts that the fact is incorrect the proper course should be for the claimant to seek to amend his statement of case accordingly... and not to deal with the matter in a reply...”

224. There was no mention of any agreement made between the claimants and Rohan in his Defence. Guided by the aforementioned statement in Blackstone, the court finds that the introduction of the claim for estoppel through the reply should not be allowed as the court in essence would be allowing the claimants to expand their claim. As such, the issue of estoppel is not an issue to be determined in this claim.

ISSUE 2 - *Whether the claimants are entitled to possession of the subject land based on the doctrine of adverse possession*

³³ Chapter 27, page 494, para 27.2

LAW

225. 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.”

226. 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.”

227. In the case of **Grace Latmore Smith v David Benjamin**³⁴ 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

³⁴ Civ. App 67 and 68 of 2007

accepted that the principles set out in the authority of *JA Pye (Oxford) Ltd v Graham*³⁵ 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 titleso far as is reasonably practicable and so far as the processes of the law will allow.*”³⁶

Findings

228. There is no doubt in the court’s mind due to the presence of the vacation home on the lands that the claimants’ (initially Joseph and Carmen) occupied a portion of the lands belonging to the estate of Janet. Further, the court finds that due to the sale agreement dated April 30, 1968, the claimants’ evidence that they had entered upon the wrong parcel of land since the late 1960’s and the first defendant’s admission that his father, Jit was aware when he purchased the lands in 1987 that approximately one lot of the land was being occupied by persons unknown at the time as there was a wooden structure on same, it is more probable than not that the claimants’ parents were in occupation of a portion of the lands since 1968. The evidence in that regard is abundant and clear.

229. The consequence of the claimants having occupied what was essentially the wrong parcel of land is that they would have felt secure in their possession of the land and would have occupied to the exclusion of all others including the real owner by extension.

³⁵ [2002] UKHL 30

³⁶ See *JA Pye supra*, Lord Browne-Wilkinson, paragraph 43

230. Further, the acts of Janet and her heirs, of writing to the claimants clearly informed them that they were occupying without permissions but the claimants maintained their occupation nonetheless. The court therefore finds that the claimants did in fact possess the land without the consent of the Janet or her estate and that such possession was adverse to the title and rights of Janet and her estate in law.

231. In addition to the evidence of Venetia, the evidence of Mitchell supported the evidence of the claimants that they were in occupation of a portion of lands from at least the early 1970's. Bynoe did not mount any serious evidential challenge the claimants' evidence of occupation of the lands prior to September, 2014 and the court therefore found their evidence to be the most reliable on this issue.

232. The extent of land occupied by the claimants is however in issue. According to Venetia, about two months after the sale agreement was executed, the claimants began cleaning and clearing the five acres of land. The five acres at that time was heavily forested. She testified that her family went to the five acres for one day on most weekends to assist in the clearing and cleaning of it. They started by clearing an access way from the Toco Main Road through the State lands (now occupied by Bayne) to get to the five acres. They all assisted Joseph and Carmen in cutting branches, small trees and heaping up the branches to burn. They cleared an extensive area including on the hill top. The entire area was also burnt twice to completely clear it of forestation. At this time no survey of the land was conducted. During cross-examination, Venetia testified that all of the clearing works were done with cutlasses and an axe for the bigger trees.

233. The court finds that it is extremely difficult to accept that the claimants by themselves without the use of any heavy duty machinery could have cleared five acres of heavily forested lands so that the evidence that they cleared and occupied five acres is highly unreliable and the court does not accept it as being accurate. Further, the claimants apparently had no clue as to how much land they occupied at the time. In fact they were unaware that they had been entering upon the wrong lands and had never obtained a proper measurement of the lands they cleared. The evidence if Venetia of “pulling a tape” is also highly unreliable for obvious reasons. Their evidence in that regard is therefore mere speculation and the court so finds.

234. As Joseph and Carmen were desirous of building a vacation house, a house spot was then cleared. Venetia testified that she is aware that one acre is eight lots. As such, it was her testimony that the flat land cleared at the bottom of the hill was about one and a half acres, the small incline leading to the top of the hill on the north which cleared was about one half acres of land and then the entire top of the hill which was cleared was about two acres. The court must ask itself whether it is reasonable to believe that Venetia who was sixteen years old in 1968 would have been able to estimate the amount of lands that were being cleared. Or is it that she wants the court to believe that their occupation was actually more than it factually was in an effort to bolster her claim for the one acre parcel. The court is of the view that the latter is in fact the case because of the inherent implausibility of the evidence.

235. In or about 1969 or 1970, Joseph with assistance of the family constructed a completely wooden structure on the western side of the five acres. The structure was approximately 10 feet x 20 feet and consisted of

just one large enclosed area with an outhouse to the back. Over the years, the vacation home was improved. The wooden walls were removed and replaced entirely with concrete walls. Also four additional rooms were added to the vacation house, that being a garage, a bathroom, kitchen and living room. Only one wooden partition wall remained.

236. Venetia testified that as Joseph and Carmen cleaned the five acres, they planted various fruit trees and crops on same. Those fruit trees and crops included mangoes, cashews, breadfruit, fig, pommerac, lemon, lime, pineapple, coconut, almond and cassava. The court finds that the evidence provided on the cultivation of the land was unspecific and insufficient to demonstrate physical and exclusive control of five acres of land. The claimants failed to indicate the time when the land was cultivated with the various crops and the dimensions of the areas cultivate. In relation to the coconut trees, Venetia did testify that those trees were planted on the top of the hill north of the vacation house. However, she failed to mention the dimension of the area in which those trees were planted and the amount of trees that were planted.

237. According to the evidence of Venetia, in the 1990's they started to clean less of the lands and from 1996 to 2000, they began focusing on approximately one acre of land. The evidence from the claimants as to their physical, exclusive control of that one acre parcel of land was sparse to say the least. It was the testimony of Venetia that one acre of the land included the area with the vacation house up to Bayne's land on the south, the lands to the east up to the Alcide River, about one lot on the west of the vacation house and up to the slope of the hill on the north.

238. She testified that over the years they had cause to cut down the chataigne, pommerac and pommcythere trees since they were drying and aged. That they never replaced those trees but continued to reap fruits from the other trees like mango, breadfruit, lemon and coconuts. At the time of the commencement of this action and at present there exists thereon a lime tree, mango trees, eight pineapple plants, two fig trees, a breadfruit tree and a few cassava trees. Again, there was no evidence as to dimensions of the areas cultivated. Further, during cross-examination Venetia testified that the existing trees are close to the house. As such, the court finds that upon an evaluation of the evidence, it is more plausible that the claimants were in occupation of less than an acre of land.

239. Assistance on this issue could be found within the evidence of Fortune upon cross examination who was retained by the claimants to prepare a sketch plan of the one acre land they occupied. Firstly however, the court finds that this sketch plan ought to be given limited weight as it is pellucid on the evidence that same was produced based on what Venetia pointed out to be the boundaries of the land they were occupying and it is not as precise as a survey plan. What is telling is that, during cross-examination Fortune accepted that to the back of the vacation house, there is dense bush.

240. Fortune also testified upon cross examination that the site upon which the vacation house stood inclusive of the area with the few fruit trees amounts to no more than 10,000 square feet. That 10,000 square feet is two lots more or less which is certainly six lots less than an acre. In that regard the court notes that should the amount of occupation had been closer to one lot, Fortune would have said so. His evidence in that regard was very helpful in defining the area actually occupied. The court accepts

his evidence that the land occupied was around 10,000 square feet and does not accept that it was one acre.

241. Additionally, there was no evidence from the claimants to suggest that they intended to exercise a degree of control over one acre of land. It is clear on the evidence however that the claimants did intend to possess a portion of the lands but that intention to possess was limited to the spot upon which the vacation house is built and the area with the trees close to the house.

242. It is also to be noted that no assistance as to the dimensions of the vacation house was provided. The Hamilton Survey dated February 1, 2007 appeared to show the house however as measuring “32” and “42.49”. The court therefore inferred that those measurements were the dimensions of the house and the survey plan specifically stated distance in metres.

243. The court therefore multiplied 32 by the 42.29 to get the area of the house which amounted to 1,359.68 metres. When converted to square feet that figure amounts to some 14,638.92 square feet. As such, on the evidence it appears to the court and it finds that the claimants were in occupation of approximately three lots of land on the basis that traditionally one lot measures 5,000 square feet more or less.

ISSUE 3 - *whether the road reserve as identified in the Hamilton plan ever existed and if so is it a part of the land occupied by the claimants*

244. The court finds that the combined effect of the evidence given by Fortune and Venetia and the courts perusal of the various cadastral, ward sheets and surveys is that the road reserve as identified by the Hamilton survey

never existed physically on the ground. That same was simply demarcated in the survey plan by Hamilton.

245. According to the evidence of Fortune, he looked for physical evidence of a road reserve as pointed out by land surveyor, Hamilton in the survey plan dated February, 2007 but found no such road reserve in actual existence. Fortune testified that that particular area (as shown on the plan) intersects the claimants' house and is also covered with shrubbery and to the eastern side was a deep, impassable gorge.

246. Fortune further testified that the Old Toco Road ceased to exist from 1949 at the earliest. As such, it was the testimony of Fortune that the validity and legitimacy of the road reserve measuring 10.06 metres wide as depicted by the Hamilton plan was totally undermined as not only was it clear that the road reserve never existed prior to 2007 but also that it purports to connect to a roadway (the Old Toco road) which has not existed for at least the past sixty-eight years and which now forms part of privately leased land.

247. Venetia testified that there was never any road reserve in existence when Joseph and Carmen entered into occupation of the five acres and that there is still none in existence. She further testified that if any road had to be built, it would have to be across the Alcide River where there has been and currently is a deep gorge with a width and depth of approximately 20 feet by 15 feet respectively.

248. Upon the courts perusal of the Hamilton plan, it is clear that to gain access from the Toco Main Road to the road reserve, one would have to utilize the Toco Old Road which according to Fortune no longer exists and

then cross over the Alcide River. On the evidence it is clear that there is no bridge over the Alcide River. The only other option as per the plan to gain access to the road reserve is across the lands of Bayne. As such, the court agrees with the submission of the claimants that the road reserve cannot be recognised and/or sanctioned by the court if its use would affect the rights of persons not party to these proceedings.

249. Further, during cross-examination when it was put to Rohan that the road reserve did not exist, his response was that his understanding was that the land was put aside to be used when a road becomes necessary. This evidence clearly demonstrated to the court that the road reserve was not in actual existence but was merely demarcated in the Hamilton plan.

250. It is undisputed that part of the claimants' vacation house lies on the demarcated road reserve. The court having found that the claimants are entitled to three lots of land, the court finds that it is more probable than not that due to the proximity of the alleged road reserve to the vacation house, same forms part of the three lots of lands occupied by the claimants.

251. The first defendant submitted that the road reserve as identified by the survey plan of Hamilton is necessary for the access to their respective lands as there exist no other feasible means of accessing the lands.

252. At paragraph 956 of the ***Halsbury's Laws of England, Volume 87 (2012), 5th Edition***, a right of way of necessity is defined as follows;

"A way of necessity is a right of way which the law implies in favour of a grantee of land over the land of the grantor, where there is no other way

by which the grantee can get to the land so granted to him, or over the land of the grantee where the land retained by the grantor is land-locked...The doctrine is not founded on public policy but on the implication into the document granting the land that the grant of some way was intended because otherwise the land would be inaccessible. A way of necessity can only exist where the implied grantee of the easement has no other means of reaching his land. If there is any other means of access to the land so granted, no matter how inconvenient, no way of necessity can arise, for the mere inconvenience of an alternative way will not of itself give rise to a way of necessity. Accordingly a way of necessity will not be implied where access can be obtained on foot, though not by car, or by water. It is not necessary in order that a way of necessity may arise that the land granted should be completely surrounded by land of the grantor if the land is partly surrounded by land of strangers and abuts upon land of the grantor. In those circumstances the implication is not rebutted by the fact that at the date of the grant of the land there existed a permissive or precarious approach to it over land of a stranger. A way of necessity may arise upon a grant of a lease as well as upon a grant in fee, and also upon the disposition of the property by will. A way of necessity can arise in favour either of the grantee on a disposition of the dominant tenement or of the grantor on a disposition of the servient tenement."

253. The evidence of the first defendant demonstrated that there exists an additional access point which comprises of a mere walking trail located to the west of the land. Bynoe testified that the walking trail is not large enough to be considered suitable for access. That to utilise the walking trail, he is required to drive a distance and park his vehicle on the outskirts of state land and utilize the trail, walking approximately two hundred feet to get to his property. According to Bynoe, the aforementioned creates an

unnecessary hindrance along with making things vastly difficult in his efforts of continuing development. During cross-examination, Bynoe testified that he has not explored the possibility of using the walking trail to access his lands from the Toco Main Road.

254. Based on the evidence of Bynoe it is clear to the court that there exists another route for him to access his lands, although it may be inconvenient. In those circumstances, Bynoe cannot succeed on the issue of a right of way by necessity.

ISSUE 4 - Trespass

255. 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.

256. In ***Jacob & Polar v Samlal***,³⁷ Pemberton J stated as follows at paragraph 8;

"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

³⁷ CV 2005-00454

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.”

257. According to Venetia, in early 2016, she and her family visited the vacation house and found that the subject land and other adjoining lands had been bulldozed. The lands bulldozed were extremely close to the vacation house and there appeared to be a road cut about ten feet from the vacation house from a westerly direction curving and heading north towards and up the hill. Their almond tree and a few cassava trees were pulled down and cleared in the process.

258. Bynoe admitted in his testimony that in furthering his plans on the property, he bulldozed a portion of the road reserve as depicted in the survey plan done by Hamilton. During that act, it was within his knowledge that the measurements of the house in which the claimants occupy encroaches onto the road reserve by approximately six feet. According to him, that the encroachment does not prevent nor obstruct the development of his lands.

259. He further testified that he began bulldozing the surrounding lands in and around the year 2016, during the month of February. That he has cleared part of the road reserve towards the back of the property in which he owns, clearing bushes and shrubs, causing no damage to any property belonging to that of the claimants, nor the parcel of land upon which the house is located. During cross-examination, Bynoe denied that he destroyed cassava plants but admitted that he destroyed one almond tree.

260. The court having found the claimants to be in possession of three lots of land and that the road reserve forms part of the lands occupied by the

claimants, they have proven that Bynoe trespassed onto their lands. The claimants however have not proven any specific loss in that regard. The court is of the view therefore that in the circumstances of this case, the claimants should be awarded the sum of \$5,000.00 as nominal damages for trespass to land.

Locus/capacity of the claimants

The submissions of the second defendant

261. The second defendant submitted that having regard to the opening statement of the claimants' Attorney in this case, he sets out that there is the estate claim from 1968 to 1996 then the personal claim from 1996 of Venetia, Genevevie, Julia, Pascall, Joachim, Philip and Russheed. According to the second defendant, the aforementioned position clearly highlights the claimants' limited understanding in how to bring a claim for adverse possession. That if it is that Venetia, Genevevie, Julia, Pascall, Joachim, Philip and Russheed were saying that their occupation was a continuance of the occupation of Joseph and Carmen then there was no need for the estate claim per se as the present occupiers would be entitled to say that they and their predecessors in title were in possession.

262. The second defendant submitted that what places them in a quagmire is the fact that their Counsel has confirmed that their own claim starts to run from 1996 so if there was any adverse possession by the parents prior then they cannot get any declaration against the defendants as they would be dispossessing the prior persons in occupation, their own parents, not the defendants and as such their claim in their own capacity must fail. As such, the second defendant submitted that the claimants cannot get any

declaratory relief as against the defendants or at all, their claim properly would be against their parents' estate.

263. The second defendant submitted that if it is the other way around, then the clear inference to be drawn is that the parents did not dispossess him of the land and Venetia, Genevevie, Julia, Pascall, Joachim, Philip and Russheed are now mounting their own claim and not any claim through their parents.

264. Furthermore, and/or in the alternative, the second defendant submitted that as Joachim, Philip and Russheed were merely "invited" by Carmen and Joseph to visit the lands from time to time. When they visited, it seems that they may have helped in the care and upkeep of the land but that was certainly insufficient to amount to exclusive possession or adverse possession and as such their claims should fail in its entirety. According to the second defendant, the court must draw the adverse inference in those claimants failing to give any evidence to support their claim and the lack of any explanation for that failure.

The submissions of the claimants

265. The claimants submitted that contrary to the submissions of the second defendant, the Estates of the deceased Joseph and Carmen have established the claim to adverse possession in accordance with section 3 and section 22 of the Real Property Limitation Act. That in the event that the court finds that that has not been proven then Venetia, Genevieve, Julia, Pascall, Joachim, Philip and Russheed have proved same from 1996 onwards for a continuous period of sixteen years.

266. The claimants submitted that in the alternative, if the Estates have not met the sixteen-year requirement, then their years can be tacked onto the adverse possession from 1996 onwards for the claims of Venetia, Genevieve, Julia, Pascall, Joachim, Philip and Russheed

Finding

267. In the court's view, this issue is a non starter. It is clear that the parents would have been in adverse possession therefore their estate would have taken the benefit and by extension those entitled to benefit from the estate. It is equally clear in any event that on their own even if the estate claim had failed that the claimants would have continued the adverse possession and have had the adverse possession of the estate tacked on to theirs. The claimants and their parents would have been in adverse possession of the land for over 40 years combined. The submission of the second defendant in this regard must therefore be dismissed.

DISPOSITION

268. The order of the court is as follows;

- i. It is declared that the title and/or interest of the Estate of Janet Veronica Maharaj and her predecessors in title to the three lots of land upon which the vacation home is located ("the subject land") being a portion of a larger parcel of land described in the Crown Grant in Volume 438 Folio 447 also described in the Certificate of Title in Volume 1566 Folio 133 and shown as Lot X1 in the general plan filed in Volume 3208 Folio 189 and bounded on the north by

lands of Bertha Gransaul then of L. Shivaprasad and by a reserve 1.52 metres wide along the bank of Alcide River, on the south by lands reserved for a village and by the Toco Old Road, on the east by a reserve 1.52 metres wide along the bank of Alcide River, by the Toco Old Road and by lands reserved for a village and on the west by State land and by lands of D.K. Macgillivray and intersected by a road reserved 7.62 metres wide has been extinguished pursuant to the Real Property Limitation Act by virtue of the claimants' continuous and exclusive possession of same in excess of sixteen years.

- ii. It is declared that the title/interest of the defendants in the purported road reserve, 10.06 metres wide as set out in the Hamilton survey plan to the extent that it has been occupied by the claimants has been extinguished by virtue of the claimants' continuous and exclusive possession of same in excess of sixteen years.
- iii. The second defendant is to surrender and deliver possession of the subject land to the claimant.
- iv. It is declared that the claimants have acquired possessory title to the subject land;
- v. The first defendant shall pay to the claimants nominal damages for trespass in the sum of \$5,000.00.
- vi. The first defendant is restrained whether by himself, his servants and/or agents or otherwise howsoever from entering and/or remaining upon the subject land and/or from clearing, taking or in

any other way committing acts of trespass on the subject land or from removing therefrom or damaging any belongings, structures or other items on the subject land.

- vii. The first defendant is restrained whether by himself, his servants and/or agents or otherwise howsoever from threatening, harassing, assaulting or in any way interfering with the use and occupation of the subject land by the claimants, their invitees, servants and/or agents.
- viii. The counterclaim is dismissed.
- ix. The defendants shall pay to the claimants the costs of the claim to be assessed in default of agreement.
- x. The first defendant shall pay to the claimants the costs of the counterclaim to be assessed in default of agreement.

Ricky Rahim
Judge