

**IN THE HIGH COURT OF JUSTICE**

Claim No. CV 2019- 04265

BETWEEN

**EDWARD JOHN**

Claimant

AND

**IAN TRUMPET**

Defendant

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

Date of Delivery: March 15, 2022.

Appearances:

Claimant: Mr. C. Sieuchand instructed by Ms. S. David-Longe assisted by Ms. L. Theodore.

Defendant: Mr. S. Mawer instructed by Ms. C. Mc Dowall.

## JUDGMENT

### **Introduction**

1. This case involves a claim for possessory title of one parcel of land. The Claimant claims that he has been in occupation from 1985 to 2005 until dispossessed by the Defendant who has been in unlawful possession since then. In response, the Defendant alleges that he has been in adverse possession since 1995. The Defendant has, however, not counterclaimed for an order in that regard.

### **The Claim**

2. According to the Claimant, from 1985 to 2005, he has been in possession of a parcel of land measuring one hundred feet by fifty feet (100ft. x 50ft.), (five thousand square feet (5000ft.<sup>2</sup>)) situated at Second Trace, Calabash Alley, Bagatelle ("the disputed land") which he fenced, planted fruit trees upon and constructed a wooden structure. On February 6, 2000, he applied to the Land Settlement Agency ("LSA") for a Certificate of Comfort. The address provided in the application for a Certificate of Comfort appeared to be different to the address of disputed land.
3. Prior to July 2005, the Claimant obtained work and relocated to Barbados. As a result, he asked his friend, the Defendant, to act as a caretaker for the disputed land. The Defendant has never left.
4. The Claimant, therefore, claims an order that the Defendant deliver up possession of the disputed land together with the building thereon at 2nd Trace, Calabash Alley, Bagatelle, in the Ward of Diego Martin, in the Island of Trinidad and an order that the Defendant deliver up to the Claimant, possession of his personal belongings situate at the premises.

### **The Defence**

5. The Defendant pleads that the Claimant's claim relates to an entirely separate parcel of land and that he, the Defendant, was granted permission to occupy the disputed parcel in 1995 by a Mr. Cardinal Connell.
6. In response to the Claimant's relief for detinue and/or conversion, the Defendant says that the claim is statute-barred and amounts to an abuse of process.

## The Reply

7. In response to the statement that the relief for detinue and/or conversion is statute-barred, the Claimant asserts that the offence is a continuing action which accrued at the date of the wrongful refusal to deliver up the goods and/or property of the Claimant, that is, July 1, 2019, by the Notice to Quit dated May 24, 2019.

## Issues to be determined

8. The principal issue on possession is, that of, which party holds the better right to possession. The other issue is, that of, whether the Defendant has unlawfully detained or converted the personal items of the Claimant.

## Case for the Claimant

### Edward John (the Claimant)

9. The Claimant, age sixty-four (64), was born in St. Vincent and the Grenadines and is self-employed as a mason. In or around 1982, the year that his son Narvil was born, he began occupying the disputed land, which measures approximately one hundred feet by seventy-five feet (100ft. x 75ft.), (seven thousand, five hundred square feet (7500ft.<sup>2</sup>)). The land was at the time vacant and overgrown with bush. It is accessible by entering Bagatelle Road and then entering the third street on the right. As one approaches the road known as Second Trace, there were Mahogany trees. After passing a bridge, one turns right and the third lot of land is his. The fourth lot was occupied by one Mr Jackson.<sup>1</sup>
10. The Claimant described the circumstances under which he came to possess the disputed land. In the 1980s, he assisted Cardinal Connell (also known as 'Brudzie' or 'John') in rearing pigs for Lloyd Salandy. Salandy then pointed out a portion of squatting land (the disputed land) and told the Claimant that he and Connell should occupy it.
11. With the assistance of Connell and his brother, Desbourne, the Claimant constructed a wooden house on the disputed land and planted crops such as corn, cassava, peas, chataigne, and coconut. He also fenced the property with galvanise. In or around 1983, Connell began to visit the adjacent land that housed a pig pen built by Salandy. Connell also planted crops including, dasheen, and only constructed a structure approximately ten (10) years ago.

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<sup>1</sup> See TB PDF 253, namely, a copy of a Google Map location that purports to set out the location of the disputed land.

12. Between 1997 and 1998, the Claimant met a man named Mr. Sam who was employed with the National Housing Authority (NHA). Mr. Sam explained to the Claimant that his job was to ensure that each neighbourhood resident occupied only one parcel of land. The Claimant then visited the NHA and submitted a written request to be regularised as the owner of the subject parcel.<sup>2</sup>
13. The Claimant's wooden house was destroyed by fire in May 1999. He produced a letter dated May 24, 1999, from the West End Police Station that indicates that he filed a police report regarding the fire that completely destroyed the house<sup>3</sup>. The Claimant subsequently purchased materials for the reconstruction of his wooden house and his friends Robert Patterson, one Augustus (also called 'Gussy', deceased) and the Defendant assisted with the rebuilding.
14. On February 6, 2000, the Claimant and his son, Narvil John, submitted an application to the Land Settlement Agency (LSA) for a Certificate of Comfort for the disputed land. At that time, Narvil, resided at Factory Road, Diego Martin. Also, at that time, he was informed by LSA that the street on which the disputed land was located was re-named Second Trace and that his file would be amended accordingly.<sup>4</sup> When the Claimant applied for a Certificate of Comfort, Robert Patterson and Henry Benn (deceased) swore supporting declarations establishing that the Claimant had occupied the disputed land since the 1980s. The Claimant says that Patterson and Benn visited him numerous times at the disputed land between the 1980s and 2000.
15. The Claimant began travelling to Barbados for work in 2000. In 2005 it became necessary for him to reside in Barbados for work purposes. Fearful of leaving his house unattended, the Claimant gave the Defendant the keys to his wooden house for him to attend to it in his absence. At the time it contained a bed, stove, clothing, three chairs, pots, buckets, cookware and cleaning supplies. It was agreed that the Defendant would stay in the said house for a few days each week and look after the disputed land and that the Claimant would return to stay at the disputed land during his visits to Trinidad.

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<sup>2</sup> See PDF 381 of the TB, namely, a letter dated March 29, 1999 from NHA addressed to the Claimant acknowledging receipt of an undated letter requesting that the Claimant to be regularised on the parcel of land he occupies.

<sup>3</sup> See TB, PDF 379.

<sup>4</sup> See TB, PDF 232, namely, an application for Certificate of Comfort with the address as Third Trace, Bagatelle, Diego Martin and a sketch of the location of the disputed land labelled Third Street.

16. From 2005 to 2016, the Claimant returned to Trinidad approximately every five to six (5-6) months and stayed for approximately three (3) weeks at a time and stayed at the house on the disputed land throughout.<sup>5</sup>
17. The Claimant began construction of a concrete structure sometime in 2008 to the left of the wooden house. He hired Robert Patterson, Augustus (also called 'Gussy'), and the Defendant to dig the foundation. The Claimant asserts that he sent money via Western Union to Robert in Trinidad. He did not, however, retain the receipts. He subsequently contracted Esworth John to construct the columns at a cost of twenty-six thousand and sixty dollars (\$26,060.00). When the Claimant returned to Trinidad, he obtained an estimate and receipt for the works performed by Esworth.<sup>6</sup> Esworth's whereabouts are now unknown.
18. The government of Trinidad and Tobago subsequently carried out infrastructural improvements in the Bagatelle area, including replacing of the Claimant's galvanised fencing with a wire fence.
19. Sometime after September 2015, the Claimant's son informed him that the wooden house on the disputed land had been wired for electricity without the Claimant's permission. This was apparently done by the Defendant's daughter, Naomi Brown, who was able to obtain an electricity connection in her name. Problems then arose between the Defendant and the Claimant in relation to the failure of the Defendant to construct a cesspit for the concrete house as agreed and for which money had been remitted to the Defendant by the Claimant.
20. Upon his return to Trinidad a few weeks later, the Claimant, his son and his girlfriend visited the disputed land. The Claimant addressed the Defendant who threatened him with violence. He was, therefore, forced to leave and he made a police report at the West End Police Station. He was unable to receive a copy of the police report because he could not recall the precise date of the incident.
21. It was his testimony that he makes regular enquiries from the LSA as to the status of his application for a Certificate of Comfort. Throughout 2016 and 2017, he sought advice from

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<sup>5</sup> See PDF 391-401 of the TB, namely, the entrance dates into Trinidad and Tobago as set out in the Claimant's passport.

<sup>6</sup> See PDF 235 of the TB, namely, a receipt dated April 26, 2008 from Esworth Johnson for material and labour for work done at Second Trace, Bagatelle and a PDF 251, namely, an undated note written by Esworth Johnson that the Claimant sent monies to buy material, a breakdown of the cost.

different Attorneys and wrote letters to the Defendant demanding that he vacate the house on the disputed land.<sup>7</sup> Further, the Claimant made a Freedom of Information request and obtained the notes of the LSA of the investigations done while processing his application. An entry of September 12, 2016 shows that at a site visit made by the investigator of the LSA on September 9, 2016, the Defendant told the investigator that the wooden house was a gift from the Claimant, Edward John<sup>8</sup>. The note states in part that the processing officer Fitzgerald N ('FN') conducted a site visit. The Defendant indicated that "the applicant, Edward John, gave him his structure as a gift.....Mr. Trumpet further informed me that this was done verbal approximately 19 years ago."

22. The Claimant explained that his son Narvil is fearful for his life and hence he refused to testify in this matter.

23. Finally, it was the Claimant's evidence that when he left the Defendant in possession of the house he left his personal items including a bed, stove, clothing, three chairs, pots, buckets, cookware and cleaning material which have never been returned to him.

#### Cross-examination by the Defendant

24. The Claimant accepted that his son was a minor, despite being named a co-applicant for the Certificate of Comfort but testified that he included his son's name in the event he, the Claimant, passed away. Although Narvil occasionally stayed with him, he lived with his mother at Factory Road, while the Claimant lived on the disputed land.

25. The Claimant denied that he lived at Factory Road and practically visited his son daily at his mother's residence. As his status had not been regularised, he collected his mail at TTPOST, Covigne Road. He maintained that he occupied the parcel of land from 1982 to 1999 when his wooden house was destroyed by fire. Thereafter, he slept in a shed where Salandy and Connell cooked and limered before reconstructing his wooden house.

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<sup>7</sup> See PDF 243 and 245, namely, letters dated June 20, 2017 and May 24, 2019 addressed to the Defendant requesting that he vacate the disputed land.

<sup>8</sup> See PDF 341 of the TB, namely, a note dated April 12, 2016. The note states in part that the processing officer Fitzgerald N ('FN') conducted a site visit. The Defendant indicated that "the applicant Edward John give him his structure as a gift. However, a GPS coordinates was taken for the structure. Mr Trumpet further informed me that this was done verbal approximately 19 years ago."

26. He testified that he was employed at Cumana when he received the call that his house was on fire. Due to transport difficulties, he was only able to return to the house two (2) days later, and did so in the company of the police. The Claimant accepted that there was no fire report by the fire services, but testified that Mr. Sam notified LSA of the incident. He also vehemently denied that Connell owned the wooden house destroyed by the fire.
27. He explained that the majority of his documents, including receipts were stored in his wooden house, currently occupied by the Defendant therefore, he has no access to them. Therefore, he requested a letter from Saran Sampath Ltd, the Hardware from which he purchased material to rebuild the wooden house, for submission to the LSA in support of his application for the Certificate of Comfort. That letter set out the address of the Claimant to be 2<sup>nd</sup> Trace Bagatelle, Diego Martin. When questioned in relation to the address as stated in the letter, he testified that after submitting his application to LSA and learning the proper street name, he advised Saran Sampath to change the address to the correct address.<sup>9</sup>
28. The Claimant was then referred to his Certificate of Comfort application. He explained that the address on the form was incorrect, but the sketch he drew clarified the location of the disputed land. He further explained that his property is located on the third street, called Second Trace. He was always under the impression that where he lived was called Third Trace and was also unaware of the name of the street being Calabash Alley.
29. Before 2005, he worked in Barbados in 2000 for brief periods due to his lack of a work permit. He also testified that he was unaware of how often the Defendant slept at the disputed land. He said that he did not have a cellular phone and did not photograph the disputed property. Additionally, the Claimant never returned to the disputed land after he was allegedly threatened by the Defendant.

#### Robert Patterson

30. Patterson, an acquaintance of the Claimant, met the Claimant in the 1980s when they both lived at Diego Martin. They were both masons and he knew the Claimant as 'Finey'. Additionally, they were friends with Cardinal Connell (also called 'John'). The Claimant and John would from time to time, visit a man named Salandy who reared pigs at Cemetery Street, Diego Martin.

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<sup>9</sup> See PDF 353 of the TB, namely, a letter dated November 25, 2002, from the General Manager of Saran Sampath Ltd, Errol Nagee, claiming that materials were supplied to the Claimant between 1988 and 1989.

31. Patterson visited the Claimant at the disputed land numerous times and even worked on the said land. He set out that to access the Claimant's land, one would enter Second Trace, Bagatelle, proceed until a bridge, cross the bridge and turn right and the disputed land would then be the third parcel on the right. He was also familiar with a larger parcel of land adjacent to that of the Claimant that was occupied by Connell. The Claimant and Connell fell out in the late 1980s or early 1990s and were no longer friends.
32. It is his testimony that overtime he encountered a man named Mr. Sam, who worked at National Housing Authority through visits that Sam made to the area from time to time to ensure that the squatters (as he put it) in the area were limited to one lot of land.
33. Patterson, Augustus and the Defendant constructed a new wooden house for the Claimant on the same parcel of land a few months after the Claimant's original house was destroyed by fire. The house was completed in one (1) year and the Claimant lived alone in it.
34. Patterson signed a declaration supporting the Claimant's application for a Certificate of Comfort. Henry Benn, who lived in the same apartment building as Patterson, also signed a declaration in support, but passed away. On February 6, 2000, they visited a Justice of the Peace with the Claimant and his son.<sup>10</sup>
35. When the Claimant relocated to Barbados, he informed Patterson that the Defendant would be the caretaker of the disputed land. While working in Barbados, the Claimant wired money through Western Union to Patterson to pay himself and the others for the works done. A few years later, in 2008, the Claimant rehired Patterson, Augustus and the Defendant to begin work on a concrete house on the disputed land.
36. Patterson recalled that Esworth Johnson and George Roberts added the columns to the concrete house. During the construction phase, the Claimant remained in the wooden house.
37. During the 2015/2016 period, the Claimant informed Patterson that the Defendant had denied him access to his home on the disputed land and had allegedly threatened him.

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<sup>10</sup> See PDF 355 of the TB, namely, a declaration in support of the Claimant's application.



### Cross-examination by the Defendant

38. Patterson testified that he knew the Claimant because they both lived on Dillon Road (off Factory Road), Diego Martin where the Claimant resided with his common-law wife and son in the earlier years. Between 1990 to 1998, Patterson paid periodic visits to the Claimant and assisted him in cutting the grass and cleaning the area around the disputed land which the Claimant also occupied at the time. Whenever the Claimant returned to Trinidad, he would hang out with Patterson at Dillon Street.
39. Patterson testified that he is not a friend of the Defendant but is acquainted with Connell (also known as 'John'), but he is not his friend. Connell was a friend of the Claimant and worked as a mason alongside him.
40. During re-examination, Patterson clarified that the Claimant did not reside at Bagatelle Road all the time but sometimes at Dillon Road. Patterson also clarified that whenever the Claimant returned to Trinidad, they would hang out not only on Dillon Street.

### George Roberts

41. Roberts met the Claimant in 1979 and since then, he and the Claimant have become close friends. The Claimant is also known by the name 'Preacher' according to him. He first visited the Claimant's parcel of land in the early 2000s when there was a board house situated thereon. He returned eight (8) years later to assist his friend Esworth Johnson with the installation of columns for the Claimant's concrete house. He could not recall the precise directions to the disputed land, but testified that from Bagatelle Road, one would turn into a street on the right passing a Baptist Church and a bridge and that the Claimant's property is situated just after the bridge.
42. When the Claimant left for Barbados, he informed Roberts that the Defendant would act as caretaker for his property. The Claimant also returned to Trinidad twice a year and always called Roberts to hang out (lime). Before the concrete house was built according to Roberts there existed a board house on the Claimant's property and the foundation for the concrete house. While working on the columns, Roberts did not observe anyone living on the disputed land during the day.

43. Roberts referred the Claimant to an Attorney at Law who drafted a letter addressed to the Defendant as the Claimant had complained to him about threats made by the Defendant when the Claimant visited one day.

#### Cross-examination by the Defendant

44. Roberts maintained that the Claimant showed him the disputed land. Additionally, despite his inability to recall the precise directions to the disputed land or the name of the street, he was adamant that he is aware of its location.

45. Roberts similarly testified that the Claimant and his common-law wife had continuously resided at Dillon Street (off Factory Road), Diego Martin. Therefore, whenever the Claimant returned from Barbados to Trinidad, he stayed at Dillon Street.

46. He explained that Esworth employed him to build columns for the Claimant's concrete structure, and he was paid by Esworth, who received monies from the Claimant. Furthermore, there were no others persons on the disputed parcel of land during these works.

#### **Case for the Defendant**

##### Ian Trumpet

47. The Defendant, also originally from St. Vincent, is a mason sixty (60) years of age and known as 'Rass' or 'Fari'. He met Connell in or around 1985, while both were residents of Factory Road and shared an interest in planting. Connell planted crops at Calabash Alley and eventually relocated from Factory Road to Second Trace. The Defendant would pass through Second Trace as a shortcut to go fishing during his younger years so he knew the place since then.

48. During a 1995 conversation with Connell, the Defendant learned that the land at Calabash Alley belonged to the state and showed the Defendant a spot to build a house for himself and his family. The said parcel of land is low-lying and bordered by a river. The Defendant asserted that before the construction of the bridge that is used to get to the disputed land, he and Connell traversed the river and a dirt track to reach Second Trace. That same year, the Defendant constructed a shack and planted crops, including pumpkin and sweet peppers and has been in uninterrupted occupation since. There was no electrical connection and the Defendant received electricity via an extension cord from his neighbour, Ms. Nella. However, in 2014, the Defendant's daughter,

Naomi Brown, obtained electricity in her name. Over the years, Ms. Nella brought her son Stephen Whittier, then six (6) or seven (7) years old over to play from time to time.

49. Sometime in 1999, the Defendant demolished his shack and built another wooden structure to the western side of the disputed parcel of land.<sup>11</sup> That same year, he and one Kenneth Betancourt dug a trench and tied steel in preparation for a concrete foundation. The Defendant, friends, neighbours, Owen Alexander and Cardinal Connell also assisted with the works. In or around 2012, the Defendant worked on the concrete foundation and back-filled the disputed land.<sup>12</sup> According to the Defendant, in 2019, with the financial assistance of his daughter, he continued construction work on the foundation. The Defendant also hired Mark Irish, Antonio Connell, Michael O'Garro, Stephan Whittier, Roy Moses and Leroy De Leon to assist with construction.<sup>13</sup>

50. According to the Defendant, due to the regular flooding, he lost personal items, including receipts for works performed on the disputed land in the 1990s. He, his daughter and grandson currently reside on the disputed land.

#### Cross-examination by the Claimant

51. The Defendant says he has been visiting Second Trace, Bagatelle, since a young age. As an adult, the Defendant continued to pass through the area and observed Connell and his wife rearing pigs and ducks. There was no electricity in the area at that time and the area was only accessible via the dirt track. Connell and others constructed the bridge in the 1970s. Additionally, the Defendant asserted that he was constantly looking for a parcel of land in Second Trace. He then met Connell in 1985. He testified that Connell built his own house at Second Trace approximately ten (10) years after planting.

52. He explained that because he is originally from St. Vincent, an electrical connection had to be established in his daughter's name. The Defendant accepted, however, that he did not exhibit any T&TEC bill. This is not in issue, however, as the Claimant accepted that the connection was

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<sup>11</sup> See PDF 307 of the TB, namely, an undated photograph of the wooden flat structure PDF.

<sup>12</sup> See PDF 265, namely, receipts and invoices dated 2006, 2011, 2016, 2018 & 2019 from the following places: Northern Hardware & Building Supplies Ltd; Radica Trading; Payless Hardware & Electric Store; Doc's Hardware; Jai Ramdeen Hardware & Construction Ltd; and Saleem Ramdeen Construction & Hardware with an approximate total of thirteen thousand, eight hundred dollars (\$13,800.00).

<sup>13</sup> See PDF 309-317 of the TB, namely, undated photographs of a concrete foundation with columns as well as bags of cement.

obtained by Naomi. Additionally, Naomi obtained a loan to assist the Defendant in casting the foundation.

53. Before, he moved from Factory Road, the Defendant lived with his wife and children in a house he constructed in his mother's backyard. The Defendant accepted that although his daughter starting visiting the disputed land in her early teens and presently lives with him, she was not called as a witness in this matter. He has given no reason for the failure to call her as a witness.

54. According to the Defendant, around 1985, he was a labourer living on Factory Road and planted on the hill. He is not acquainted with Robert Patterson. Connell lived on Dillon Street, which street converges with Factory Road. Connell informed the Defendant that he occupied four lots of land in Second Trace and Connell invited him to plant on the land and pointed out the parcel measuring approximately one and a half (1½) lots to him. When he began planting in 1985, there was a small shack, owned by Connell, on the disputed land. The Defendant had to wait until Connell's crops were harvested to occupy. As a result, one month later, the Defendant relocated to the disputed land. The Defendant asserts that he cleaned the area and repaired the shack. At that time, Connell continued to rear pigs and ducks. The land was prone to flooding in those days and his crops were flooded out approximated four (4) times.

55. The Defendant also sought to describe the location of the disputed land. According to him, one would turn right onto Savannah Road from the Diego Martin Main Road. The Savannah Road will lead to Savannah #1, 2, 3 and 4. From there one will reach the corner of Bagatelle Road, pass Merry Tones on the right where there is First Trace and then Second Trace. Sea Trace is the street that follows Second Trace. In the court's view the descriptions of the route given by both parties although of some variation due to changes made in the street name remained essentially the same. So that there is no dispute as to the description of the land and no dispute as to the fact that both parties are claiming the same parcel of land.

56. The Defendant testified that he has been peacefully occupying the disputed land since 1995. According to his version of events, in 2015, the Claimant (also known as 'Finey') came onto the disputed land and informed the Defendant that the said land was his and that he owned a house destroyed by fire. The Defendant informed Connell, who told the Defendant that the Claimant did not own the disputed land. According to the Defendant, the Claimant returned to the disputed land with police officers and eventually sent a letter from an Attorney subsequently. The

Defendant confirmed that he received the letters that demanded he vacate the disputed land and admitted that he had been offered ten thousand dollars (\$10,000.00). He denied that he threatened the Claimant saying that the Claimant always visited the disputed land with police officers. He also accepted that he did not say so in his witness statement.

57. The Defendant knew the Claimant by living at Factory Road. In the 1990s, Mr. Sam visited Second Trace but he spoke with Connell. Following the Claimant's assertions that the disputed land was his, the Defendant visited the LSA and a field investigator visited the said land. LSA informed him that the disputed land was State Lands and that he should refrain from moving. He also accepted that this information was not in his witness statement. He was also referred to the minute sheet from the LSA file set out above and the entry of his alleged admission to the interviewing officer that he admitted that the house was given to him as a gift by the Claimant and accepted that he answered some questions when the LSA visited.<sup>14</sup>

58. He was cross-examined as to why no receipts or invoices for 1995 to 2005 were exhibited and he testified that during that period he was planting and did not initiate any construction work. The Defendant later testified during cross-examination and in response to the Attorney's question about the date of his occupation that he occupied the disputed land in 2005.

59. The Defendant was referred to the receipts and invoices exhibited in his list of documents. He accepted that the receipts for decorative ply, curtains, PVC elbows and male-adapter, construction ply did not reflect materials used to cast foundation.<sup>15</sup> Additionally, he stated that the receipt for decorative hardboard was for use while constructing the small shed.<sup>16</sup> The receipt for a pick axe was for use in digging the trench.<sup>17</sup> He could not explain why two receipts were in the name of his neighbour, Roy Moses.<sup>18</sup>

60. During re-examination, in an attempt to salvage an otherwise unsalvageable bit of evidence, Attorney for the Defendant referred him to the investigator's note with a view to eliciting

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<sup>14</sup> See PDF 341 of the TB, namely, a note by 'FN' dated September 12, 2016.

<sup>15</sup> See PDF 265, 267, 277 of the TB, namely, receipts from Northern Hardware & Building; Radica Trading; Doc's Hardware.

<sup>16</sup> See PDF 269 of the TB, namely, a receipt from Payless Hardware & Electric Store.

<sup>17</sup> See PDF 289 of the TB.

<sup>18</sup> See PDF 281, 283 of the TB.

testimony that Connell is also known as 'John'. This is of course unhelpful as the note specified that the Defendant said "Edward John" and not "John".

### Stephen Whittier

61. Whittier, twenty-four (24) years of age, resides at No. 51 Second Trace Bagatelle, Calabash Alley, Diego Martin. He says he has resided at this address his entire life. The Defendant (also called 'Rass') is his neighbour. He first met the Defendant for the first time when he was six (6) years and was playing with ornaments from the Defendant's home. Whittier recalled that the Defendant living in a small wooden house that was later demolished and replaced with a new wooden house. Whittier learned to plant from the Defendant and has fruit trees such as breadfruit, coconut, plantain, sugar cane, cherry and avocado on his property.

62. Whittier claims that he observed construction works on the disputed land as he grew older. Connell and his son, Antonio Connell, aided the Defendant with these works. Sometime in 2019, Whittier assisted with these works and the Defendant's friend, Leroy De Leon (also known as 'Sunny'), Mark Irish, Michael O'Garro, Roy Moses and Antonio Connell.

63. In the court's view, the evidence of this witness is of no probative value and does not, therefore, assist in the resolution of the issue.

### Cross-examination by the Claimant

64. Whittier testified that he does not know the Claimant. He observed construction works being done by the Defendant in 2008. He confirmed that the Defendant and his daughter were the only occupants of the disputed land. Additionally, he asserted that the Defendant occasionally stayed at Factory Road.

### Leroy De Leon

65. De Leon, known as 'Sunny' is forty-five (45) years old and has known the Defendant (who he also called 'Jamoo') for over forty (40) years. They once lived as neighbours at Factory Road sometime in 1979 and remain close friends. The Defendant told De Leon that in 1995, Connell permitted him to construct a wooden shack and plant crops on the disputed land.

66. De Leon visited the Defendant at the disputed parcel of land to lime, play cards, and help with construction works. In 2012, De Leon and Michael O'Garro, Mark Irish, Stephan Whittier, Roy

Moses and Antonio Connell assisted the Defendant in digging a trench, constructing a foundation and back-filling the disputed land due to its low-lying nature.

#### Cross-examination by the Claimant

67. De Leon admitted that he is unfamiliar with several of the Defendant's friends and is only familiar with the Defendant. Approximately fifteen (15) or sixteen (16) years ago, De Leon began visiting the Defendant at the disputed land. The visits would occur infrequently, every two to three (2-3) months, and the Defendant lived alone at that time. He would ask De Leon to assist him in completing ongoing works on the disputed land. He could not confirm the date on which the Defendant occupied the disputed land. De Leon confirmed that in 2019, he aided the Defendant in completing the foundation.

68. According to De Leon, a river and a concrete foundation exist to the back of the disputed land.

#### Michael O'Garro

69. O'Garro (also known as 'Junior' or 'J') is thirty-eight (38) years old. He has spent his entire life at 36B Bagatelle Road, Diego Martin. As a teenager, O'Garro rode his bicycle around the neighbourhood. He was familiar with the Defendant and would see him coming and going from his house on the disputed land. O'Garro also knew Connell and worked with him as a labourer.

70. In 2009/2010 O'Garro met the Defendant's daughter, Naomi and they became friends. A few years later, in 2019, the Defendant hired O'Garro to finish the concrete foundation. He cast the foundation, tied steel and back-filled the disputed land. Additionally, Leroy De Leon, Martin Irish, Roy Moses, Antonio Connell and Stephan Whittier assisted with these works.

#### Cross-examination by the Claimant

71. O'Garro claims to be acquainted with the majority of the residents of Second Trace, Bagatelle. He does not, however, know the Claimant. In 2005, O'Garro first observed the Defendant entering and exiting Second Trace. Although, the Defendant resided in the wooden house, O'Garro was unaware of the Defendant's acquisition of the disputed land. Work on the foundation began in 2008 and he assisted the Defendant in completing it in 2019.

## Cardinal Connell

72. Connell says he is also known as 'Mr. John' or 'Papa'. He is seventy (70) years old. He began occupying approximately four (4) lots in the 1970s at Second Trace, Calabash Alley, Bagatelle Extension, Diego Martin. He explained that this larger parcel of land was on the right when one enters Second Trace, Calabash Alley. At that time, he reared pigs and planted crops at a time.
73. Connell knew the Defendant from Factory Road, where they met in 1985. Several years later in 1995, Connell showed him a parcel of State-owned land that he could occupy. That land is the disputed parcel of land. He also told his daughters that they should build their homes on the remaining land.
74. As a result, in 1995 the Defendant constructed a wooden house and planted crops. He was supplied with electricity by a neighbour. Connell says that he has assisted the Defendant with work on the disputed land over the years. Connell also assisted in digging a trench, and in 2019, his son assisted with back-filling and completing the concrete foundation.
75. Connell asserts that he does not know anyone named 'Edward John' and has always known the Defendant to occupy the disputed land.

## Cross-examination by the Claimant

76. Connell obtained a Deed of Comfort for his property at Second Trace, Bagatelle. He confirmed that Merry Tones Panyard has always been in the area. He testified that he and Salandy were the first residents of Second Trace. At the end of the street, there was a Mr. Andy. He recalled that during the 1990s, Mr. Sam conducted inspections in the area but spoke with him.
77. Connell began rearing pigs in the 1980s before he built his house. During that time he lived at Factory Road where he met the Defendant. They both had an interest in planting crops. So they built a wooden shack measuring approximately ten feet by twelve feet (10ft. x 12ft.) in size on the land.
78. Connell is acquainted with Whittier, but none of the other individuals mentioned by the Defendant who allegedly worked on the disputed land. According to Connell, Factory Road was densely packed with masons and tradesmen. He knows Patterson and the Claimant's son but are not friends with them. He did not assist the Defendant with the 2008 foundation work. However,



in 2015, the construction works continued. Connell confirmed that his son aided the Defendant in 2019 with the foundation work.

79. He denied that he, Salandy and the Claimant collectively reared pigs. He also denied assisting the Claimant with the construction of a wooden house. Furthermore, the Claimant and Connell were never friends.

### **Submissions of the Defendant**

80. The Defendant's primary arguments centred on the law of adverse possession. In that regard, the court is of the view that the argument is misconceived as an adverse possession claim can only lie against the title owner of the premises, in this case the State. The attempt, therefore, to raise the principle of adverse possession as against the Claimant is one that cannot stand in law as the Claimant equally had no title to the disputed land. The issue, therefore, remains, that of, which party possesses the better entitlement to possession simpliciter.

81. Regarding the LSA's officer's notes from the site visit, the Defendant submitted that calculating the date the Defendant was "gifted" the disputed land, confirms his occupation began in 1995. Thus, the LSA officer referred to the wrong 'John'. The court does not accept this, as set out earlier on.

### **Submissions of the Claimant**

82. It was submitted on behalf of the Claimant that he enjoys a superior right to possession of the subject property as against the trespassing Defendant. The Claimant made the point that he approached the court as a squatter seeking to enforce his better title as against the Defendant, a trespasser.

83. The Claimant referred to the words of Cockburn, C.J in **Asher v Whitlock**<sup>19</sup>:

*But I take it as clearly established, that possession is good against all the world except the person who can shew a good title; and it would be mischievous to change this established doctrine. In Doe v Dyeball (1) one year's possession by the plaintiff was held good against a person who came and turned him out; and there are other authorities to the same effect.*

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<sup>19</sup> (1865) L.R. 1 Q.B. 1, at p. 5.

84. The Claimant argued that minor inconsistencies between his pleadings and witness statement are immaterial. The court ought to consider whether any inconsistent statements reveal an honest mistake or whether they expose a sinister reason on the part of the witness. In addition, the witnesses in the instant matter are elderly.

85. The Claimant further submitted that an adverse inference should be drawn against the Defendant for failing to call Naomi Brown, Ms. Nella and Roy Moses as witnesses.

### **The Court's Approach**

86. In *Horace Reid v Dowling Charles and Percival Bain*<sup>20</sup>, Lord Ackner delivering the judgment of the Board stated that where there is an acute conflict of evidence, the trial judge must check the impression that the evidence of the witnesses makes upon him against:

- i. Contemporaneous documents;
- ii. The pleaded case; and
- iii. The inherent probability or improbability of the rival contentions.

### **Discussion and Findings**

87. This case is burdened by a paucity of supporting evidence on both sides of the proverbial fence. However, the truth is a species that survives, by way of small and at first blush, insignificant events. But come to light, it eventually does. In that regard, the evidence on each case is diametrically opposed to the other. There are, however, some features that speak to the truth.

88. Before moving on, the court finds that both the Claimant and the Defendant are referring to the very same parcel of land and house thereon. The court does not accept the evidence of the Defendant that the Claimant is claiming another parcel of land. The evidence shows clearly that the address and description of the streets changed overtime and that is what, therefore, would have accounted for the apparent discrepancy.

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<sup>20</sup> Privy Council Appeal No. 36 of 1897 at page 6.

89. To resolve which party is telling the truth, the court must in these circumstances decide whether the Claimant is the one who left the Defendant in occupation of the house in or around 2005 or whether, Connel is the one who pointed out the land to the Defendant in 1995 and the Defendant took possession at that time. If it is the case that the Claimant is the one who left the Defendant to look after the house, it would mean as a matter of logic that the Defendant occupied the house with the permission of the Claimant and held no right to possession on his own. It would also mean that he is not telling the truth when he says that he entered into possession of the land in 1995. If, on the other hand, the Defendant did in fact assume possession in 1995 then the Claimant is telling untruths.

90. In resolving that issue, there is evidence which tilts the balance in favour of the Claimant. It is this. It is the case for the Claimant that upon leaving the wooden house (the one he rebuilt) around 2005, he left therein his personal items including a bed, stove, clothing, three chairs, pots, buckets, cookware and cleaning material which have never been returned to him. The court notes that there is no answer whatsoever to refute this save and except for the fact that the Defendant says that he does not know a man named 'Edward John'. The Defendant has denied all knowledge of the Claimant. This, of course, is highly unlikely as the Claimant's house burnt down in 1999, a fact which the court accepts as true in light of the supporting evidence of the report made to the police at that time as certified by them.

91. It must of course mean that the Claimant did in fact live at the premises that were burnt in 1999. It is highly unlikely that a house in the area would catch fire and be completely destroyed in 1999 and a neighbour would not know of it. It must be the case, therefore, that the Defendant was not in fact a neighbour at the time and/or was not living in the said house at the time. It is the Defendant's case that he moved onto the property in 1995. If he was there in 1995 he must have known of the fire and he must have known the Claimant. The court, therefore, finds that the Defendant is not telling the truth when he said that he did not know the Claimant. It also follows by logic and reasoning that the Defendant was not in occupation of the house on that property in 1995 as he and his witness Connell stated.

92. In relation to Connell, it is telling that he also denies any knowledge whatsoever of the existence of the Claimant. He denied knowing him but eventually admitted knowing him when confronted. It was also clear that Connell set out to disavow all knowledge of the Claimant in a concerted and almost nefarious attempt to change the true narrative of the events that led to the Claimant being

dispossessed. It was abundantly clear to the court not only as a matter of plausibility of the evidence but also the manner in which Connell gave his evidence that his intention was to alienate himself completely from the Claimant and align himself with the Defendant.

93. But Connell obviously had a part to play in the facts. The story of the Defendant is that Connell is the one who showed him the land and told him to occupy in 1995. But it is passing strange that the case for the Claimant is that the very same Connell was present when Salandy almost the exact fashion took him and pointed out the land to him. This was the case set out in the Statement of Case and in the evidence of the Claimant. It is unlikely that the Claimant would have made up a similar set of facts out of the blue if he was not privy to the Defendant's story that Connell pointed out the land to the Defendant. This is so because it is the evidence not only of Connell that he did not know the Claimant but the Defendant also said at paragraph 22 of his witness statement "At no point of time a man name Edward John lived in my piece of land nor do I know a man by the name of Edward John or had any interaction with a man by the name of Edward John".

94. So both men on their evidence did not know the Claimant and had never met him before but somehow the Claimant narrates a story of how he came to possess the land that is in large measure the same as the story as to how the Defendant came to possess the land. The difference is that the Claimant's story takes place some ten (10) years before the Defendant's version and Connell would have been present on the occasion that the land was pointed out to the Claimant and so is poised to give that information to the Defendant for whom he gave evidence.

95. It must, therefore, mean that Connell is not telling the truth when he said he did not know the Claimant and that he was never present when the land was pointed out to him (by inference). It is equally clear to the court that Connell appeared to be an individual with sway in the community as to who could occupy State Lands. He appeared to the court to be what we call in local terms "the big man" of the area so that he appeared to be essentially distributing State Lands for occupation unlawfully. This is so on the evidence of both the Claimant and the Defendant. Connell, therefore, had an interest to serve in these proceedings and his word could not be trusted by the court.

96. The court's assessment of the evidence is supported by other evidence as follows:

- a. The note of the interview conducted by LSA clearly sets out a previous inconsistent statement allegedly made by the Defendant that he was gifted the house by the Claimant. The hollow attempt to once again change the narrative of the entry is coated with implausibility. In this regard, it is not the case that the court accepts the entry as being the truth. But the entry is evidence on a previous inconsistent statement made by the Defendant on a material issue, therefore, the court is entitled to consider the inconsistency and determine whether it affects its view of the credibility of the Defendant. The court finds that it does indeed affect the credibility of the Defendant on the issue of possession.
- b. The application for the Certificate of Comfort by the Claimant was made in 2000, before the Claimant migrated to Barbados on a more permanent basis. This supports his claim that he was in possession of the house at the time of his application.
- c. The Claimant's evidence is also supported by the receipt from his builder and the receipt for material, although the address of the Claimant is that of his other address which he states he subsequently corrected.
- d. The evidence of the Claimant is that he left all of his receipts in the house so that he did not have access to them for the purpose of the case. The court accepts this evidence as being plausible and truthful.
- e. The Defendant's witnesses, save and except Connell, are of no probative value to his case as they are unable to give credible independent evidence as to when the Defendant entered into possession and under what circumstances. However, there is one bit of evidence that is telling. The witnesses say that there is a concrete foundation behind the house of the Defendant. This accords with the version given by the Claimant that in 2008, he began construction of a concrete structure next to the wooden house that he had rebuilt after the fire. That wooden house according to the Claimant is the one occupied by Naomi and is supplied with electricity. The admission of the witnesses for the Defendant, the house occupied by the Defendant lies next to the concrete structure; tells the court that the house occupied by Naomi is the Claimant's wooden house and the court so finds.
- f. Further, the Defendant has failed to call Naomi who would have been poised to provide probative evidence of her occupation and to provide the details of the electricity connection

but he has failed to do so without any reason being given to the court. The Court, therefore, agrees with the submission of the Claimant and draws an adverse inference against the Defendant on the issue of the ownership of the house he occupies.

97. The court finds that the case for the Defendant is highly suspect and is craftily set out by the Defendant and his witnesses in such a manner that the Defendant has usurped some of the facts relied on by the Claimant and made it part of his story. For example, it is the evidence of the Claimant that he started construction of the concrete structure next to the wooden house in 2008. The Defendant used this evidence by substituting himself in the place of the Claimant and testified in his witness statement that he is the one who built a foundation next to the wooden house. Of course, the benefit to this is that his witnesses who worked on the foundation would not have been in a position to say who was the owner of the foundation but they could testify (as they did) that the Defendant is the one who hired them and he is the one who was on the compound at the time. This is not inconsistent with the evidence of the Claimant who testified that he would have been in Barbados at that time and would have been sending money to the Defendant to build the concrete structure. When the evidence is distilled and the similarity considered, it is clear that the Defendant was occupying the wooden house with the permission of the Claimant who financed the concrete structure but the Defendant would have attempted to persuade the court that he was the one who built the structure.

98. Sometime in 1999, the Defendant demolished his shack and built another wooden structure to the western side of the disputed parcel of land. That same year, he and one Kenneth Betancourt dug a trench and tied steel in preparation for a concrete foundation. The Defendant, friends, neighbours, Owen Alexander and Cardinal Connell also assisted with the works. Firstly, it is passing strange or of extreme coincidence that the Defendant demolished his shack in 1999 and built a wooden house. 1999 was of course the year that the Claimant's house burnt down. This is in the court's view not coincidence but is reflective of the fact that the Defendant knew that the Claimant's house burnt down in 1999 (as supported by the fire report) so he had to justify the removal of the old house and the construction of the new one but not in the manner as set out by the Claimant.

99. Further, the evidence of De Leon is that in 2012, De Leon and Michael O'Garro, Mark Irish, Stephan Whittier, Roy Moses and Antonio Connell assisted the Defendant in digging a trench, constructing a foundation and back-filling the disputed land due to its low-lying nature. On the

whole of the evidence, there was only one trench dug for the one foundation. But the witness for the Defendant, De Leon, says that trench was dug in 2012. This is entirely inconsistent with the evidence set out in the paragraph above which is that in 1999, that same year, the Defendant dug the trench and tied steel in preparation for the concrete. This inconsistency is material in the court's view as De Leon who has no direct interest to serve has shown that the Defendant could not have been telling the truth on that issue.

100. Additionally, the Defendant has failed to call Owen Alexander to support his alleged digging of the trench for the concrete in 1999. Even Connell does not support the evidence of the Defendant, in this regard, as Connell says, the trench was dug in 2019.

101. When all of the evidence is weighed, therefore, it is clear to the court that it is more likely than not that the Claimant was the one who occupied the wooden house in 1985, it burned to the ground in 1999, he rebuilt a wooden house thereafter and when required to leave for Barbados, he gave permission to the Defendant to stay in his home to look after same. The Defendant would have been there solely as a result of the permission given by the Claimant. The court accepts as credible the evidence of the Claimant that he would return from time to time between 2005 to 2016 for three (3) weeks at a time and would stay at the very house. The court also accepts the evidence of the Claimant that the Defendant sought to exclude him upon re-entry in 2016. Over the years it may well be the case that the Defendant became very comfortable and may have made friends with Connell who has now taken his side with a craftily made up version of events which the court sees through like a thin veil and does not believe.

102. It follows that the Claimant has a better right to possession as against the Defendant and the court so finds. In relation to the claim for detinue and conversion, the law is that time begins to run from the date of the demand first made. In this case, it is the evidence of the Claimant that his attorney, Mr. Alfred Pierre, first wrote to the Defendant demanding that he vacate the premises by letter of June 20, 2017. He was given until July 31 to vacate. The context of the case is that the items were left with the house because the Defendant was placed in the house as caretaker. In such circumstances, the demand for the return of the house is also a demand for the return of the items as a matter of logic and law. It follows that at the date of filing the claim in October 2019, the claim for detinue or conversion had not yet become statute-barred. The claim for that relief must follow the claim for possession in favour of the Claimant.

**Disposition**

103. The court makes the following order:
- a. The Defendant, shall surrender and deliver up possession of all and singular that parcel of land together with the buildings thereon situate at and known and assessed as Second Trace, Calabash Alley, Bagatelle, in the Ward of Diego Martin measuring one hundred feet by fifty feet (100ft. x 50ft.) to the Claimant.
  - b. The Defendant shall pay to the Claimant nominal damages for detinue and conversion in the sum of five thousand dollars (\$5,000.00).

Ricky N. Rahim

Judge