

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. **CV2010 –01083**

Between

**DINDIAL'S HARDWARE LIMITED**

Claimant

And

**SUPER INDUSTRIAL SERVICES LIMITED**

Defendant

**Appearances:**

- Bissoondath Ramlogan S.C. instructed by Rekha Ramjit for the Claimant
- Ramesh Lawrence Maharaj S.C. leading Kingsley Whalesby and instructed by Vijaya Maharaj for the Defendant

**Before The Honorable Mr. Justice Devindra Rampersad**

Dated the 4th of May 2012

**JUDGMENT**

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## **Introduction**

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1. The claimant brought this action for trespass to a portion of a parcel of land known as Cottage 24 Rivulet Road, Brechin Castle Esperanza Section, Brechin Castle Area of Caroni (1975) Limited in the occupation by the defendant to which the defendant has countered by claiming for orders that it is entitled to the portion of land for the reasons set out below.
2. On the 4<sup>th</sup> of May 2012, this court, in an oral judgment, dismissed the claim and made the following order:
  - 2.1. The claimant to pay the defendant's prescribed costs assessed in the sum of fourteen thousand dollars (\$14,000.00);
  - 2.2. There will be judgment on the counterclaim for the defendant against the claimant as follows:
    - 2.2.1. It is declared that the defendant has an equitable interest coupled with and/or an irrevocable licence to occupy the said portion of land;
    - 2.2.2. It is declared that the defendant is the owner and entitled to exclusive possession of the said portion land; and
    - 2.2.3. The claimant is directed to execute a Deed of Conveyance conveying the said portion of land to the defendant and in default of same the Registrar of the Supreme Court be empowered to do so.
  - 2.3. The claimant to pay the defendant's prescribed costs on the counterclaim assessed in the sum of fourteen thousand dollars (\$14,000.00).
3. Consequent upon an appeal being lodged, the court's detailed reasons are now set out.

## **The Statement of Case**

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4. In the statement of case filed on the 22nd March 2010, the claimant pleaded that:
  - 4.1. By Deed number 19269 of 1979 the Claimant's predecessor in title purchased ALL AND SINGULAR that certain piece or parcel of land together with the building standing thereon and the appurtenances

thereto belonging situate in the Ward of Couva, in the island of Trinidad comprising TWENTY FOUR THOUSAND ONE HUNDRED AND EIGHTY SQUARE FEET known as Cottage 24 Rivulet Road, Brechin Castle Esperanza Section, Brechin Castle Area of Caroni (1975) Limited delineated and coloured pink on the Plan attached and marked "A" to the Deed registered as No: 19269 of 1979 and bounded on the North by Couva River on the South by Rivulet Road on the East by Lot 23 and on the West by Lot 25 (hereinafter referred to as "the claimant's land") from Caroni 1975 Limited.

- 4.2. By Deed of Assent dated 2nd April 2003 and registered as DE200301719588 the Claimant's land was assented to the claimant's immediate predecessor in title. The claimant maintained that prior to 1999, its predecessors in title were in exclusive possession of the claimant's land.
- 4.3. By Deed of Conveyance dated the 14th August 2009 and registered as Deed number DE20090203327, the claimant became the owner entitled to possession of the disputed lands.
5. The claimant said in its statement of case that in the year 1999, i.e. approximately 10 years prior to purchase, the defendant trespassed and/or wrongfully entered unto a portion of the Claimant's land comprising Three Hundred and Forty-Six Point Nine Square Meters (346.9 m<sup>2</sup>)<sup>1</sup> be the same more or less and bounded on the North by the Couva River on the South by lands of the claimant on the East by Lot 23 and on the West by Lot 25 which said piece or parcel of land is shown colored green in the photocopy of the survey plan of Mr. Curtis Gokool dated 10 September 2003 (hereinafter referred to as "the disputed lands") and constructed a shed and a galvanize fence depriving the claimant of the use and enjoyment of a portion of the disputed lands.

#### Comment

- 5.1. Of course, the claimant was not in possession of the claimant's lands at the time to be so deprived since it only purchased in 2009 and there is no plea or evidence of any complaint of the claimant's predecessor in title being so deprived.
6. The claimant claimed that by pre-action protocol letter dated 21<sup>st</sup> October 2009, the claimant's attorney wrote to the defendant, outlined the claimant's case and called upon the defendant to break and remove the portion of its shed constructed on the disputed lands and deliver vacant

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<sup>1</sup> This converts to approximately 3,734 square feet

possession. The claimant further said that by letter dated 23<sup>rd</sup> December 2009 the defendant responded to the claimant's pre-action letter.

7. It is the claimant's case that it made repeated requests for the defendant to vacate the disputed land and by reason of the defendant's continued trespass, the claimant suffered loss and damage. The claimant pleaded, as particulars of this loss and damage, the loss of rental value and/or mesne profits from the date of purchase to the date of filing at the monthly rate of \$5,000.00 per month.
8. The claimant claimed that the defendant threatened and intended to carry on and repeat the acts complained of unless restrained by the court and went to seek reliefs for an injunction restraining the defendant from entering or remaining on the disputed lands, damages for trespass, mesne profits, interest and costs.

## **The Defence and Counterclaim**

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### **The Defence**

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9. The defence was filed on 24<sup>th</sup> June 2010 by the defendant company. While the defendant admitted that the land described in the claimants pleadings registered as Deed number DE200902033271D001 was indeed transferred to the claimant, the defendant maintained that the transfer was subject to the defendant's interest and/or occupation of a portion of the disputed lands and that at all times the claimant had constructive notice of the same, both prior and subsequent to the acquisition of the Claimant's lands.
10. The defendant further pleaded that the said parcel was conveyed to the claimant notwithstanding that the claimant's legal title and interest had been extinguished as a result of the continuous, open, undisturbed and exclusive occupation of the defendant since the year 1991. The defendant said that the disputed land was assented to by the claimant's immediate predecessor in title subject to the defendant's pre-existing interest and/or right to own and/or occupy the said portion of land.
11. The defendant company occupies Lots 22 and 23 which are located to the east of the disputed land. The defendant said that by virtue of Deed No 22006 of 1984, Mr. Krishna Lalla, the Managing Director of the defendant company became the registered owner of Lot No. 22 and by Deed no. 4193 of 1991, Mr. Krishna Lalla became the registered owner of Lot No 23. The defendant further claimed that Mr. Oliver Yallery and Mr. Lalla,

who shared a close relationship, verbally agreed that the defendant would bear the costs of providing the labour and materials to reclaim a total of 8,732 square feet of the said parcel of land and in return Mr. Oliver Yallery would be entitled to the exclusive use and benefit of the 5,000 square feet of the reclaimed land and the defendant would be entitled to the exclusive use and benefit of the remaining portion, which is the disputed lands, comprising approximately 3,732 square feet thereafter.

12. The defendant claimed that pursuant to that agreement they expended over \$400,000.00 to reclaim the said portion of land. The defendant says that after reclaiming the said portion of land, and relying upon the assurance that they were entitled to exclusive possession, the defendant invested additional time, labour and expense in constructing a sizeable warehouse and fence upon the said portion of land. The defendant claims that the claimant and its predecessors in title acquiesced to the continued occupation and possession by the defendant of the said portion of land. Furthermore the defendant claims that since 1991 they have been in continuous exclusive and undisturbed possession of the said portion of land with the intention to possess the same.
13. The defendant stated that after Mr. Oliver Yallery died in the year 2000, Mr. Einool Hosein, the defendant's manager, met with Mr. Glen Yallery in 2004 to discuss the defendant's occupation of the said portion of land. The defendant alleges that Glen Yallery requested compensation in the sum of \$250,000. The defendant said that Mr. Hosein indicated at that time that the defendant was entitled to own and occupy the said portion of land pursuant to the agreement between Mr. Oliver Yallery and the defendant and the defendant's performance of its obligations.
14. The defendant said that there were several attempts to resolve the matter amicably to no avail and that on 24th July 2006, the attorneys for Mr. Ian Yallery wrote to the defendant alleging that the defendant was unlawfully occupying a portion of the land since 1999 and requesting the sum of \$500,000 for the said portion of land. The defendant said that on 13th November 2006 the Yallerys renewed the offer to sell the portion of land to the defendant for \$300,000.00. The defendant claims that they replied on the 21st November 2006 making an offer of \$200,000.00 to the Yallerys to purchase the said portion of lands. On the 4th December 2006 the defendants replied to the claimant's letter of 24th July 2006 asserting that the defendant had been occupying the land since February 1991 pursuant to an agreement for the defendant to reclaim lands for Mr. Oliver Yallery. Mr. Lalla further stated in that letter that more than \$400,000.00 had been expended in the reclamation of the disputed lands

and that at that time the defendant was prepared to accept the sum of \$400,000 as compensation for monies expended in reclaiming the said portion of land.

15. The defendant said that on 11th January 2007 the claimant responded to the defendant and indicated that they denied that Mr. Oliver Yallery authorized the defendant's occupation of the said portion of land and that they intended to sell the said portion of land to a third party in the event that the defendant failed to pay the sum of \$300,000.00 offered in the letter of 13th November 2006. The defendant, on 27th February 2008, replied indicating that if they sold the disputed lands to a third party without compensating the defendant for the work undertaken in reclaiming the land, the defendant intended to institute High Court proceedings. The defendant noted that on the 14th August 2009 the claimant purchased the said parcel of land with notice of the defendant's possession interest and right to own and/or occupy the disputed lands.
16. The defendant pleaded therefore that they had acquired an equitable interest coupled with an irrevocable license to occupy the disputed lands. Further the interest of the claimant and its predecessors in title to the disputed lands have been extinguished due to the effluxion of time and furthermore the defendant has acquired a possessory title to the same based upon its continuous open, undisturbed and exclusive possession since 1991.
17. The defendant denied that it was in wrongful possession of the disputed lands and/or that the claimant had sustained loss and damage.

#### The Counterclaim

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18. The defendant then proceeded to counterclaim for:
    - 18.1. A declaration that the rights and interests of the claimant in the disputed lands have been extinguished due to the effluxion of time since the defendant has had exclusive, continuous and undisturbed occupation of it since about the year 1991.
    - 18.2. Further and alternatively a declaration that the defendant has an equitable interest coupled with and an irrevocable licence to occupy the disputed lands.
    - 18.3. A declaration that the defendant is the owner and entitled to exclusive possession of the disputed lands.
    - 18.4. An order directing the claimant to execute a Deed of conveyance conveying the disputed lands to the defendant and that in default
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of same that the Registrar of the Supreme Court be empowered to do so.

18.5. Costs.

## **Defence to Counterclaim**

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19. The claimant filed a defence to the counterclaim of the defendant on the 21st July 2010. The claimant contended that they were bona fide purchasers for value without notice and had no notice of any agreement of the defendant with anyone or any other interest he may have had.
20. The claimant stated that the first time the claimant's attention was drawn to any interest of the defendant was after the letter dated 23rd December 2009 in reply to the claimant's pre-action protocol letter threatening legal action.
21. The claimant also denied that the defendant entered the disputed lands in 1991 and instead stated that the defendant did not enter it until 1999.
22. The claimant contended that the defendant's counterclaim was not maintainable in law because:
  - 22.1. The defendant alleged it went into possession with the permission of the claimant and pursuant to a licence agreement. In these circumstances, the defence of adverse possession cannot be maintained.
  - 22.2. Further the defendant entered into negotiations with the claimants predecessors in title to purchase the disputed lands and therefore is estopped from denying the claimant's title.
  - 22.3. The claimant contends that even if the defendant did acquire an irrevocable licence, a licence is not regarded as an interest in land and is not proprietary in nature. Further a licence dies with the demise of the grantor and cannot bind third parties.

## **Issues**

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23. On the 24th January 2011 the parties filed a joint list of agreed issues and listed the following issues to be determined:
  - 23.1. Whether the defendant has an equitable interest coupled with and/or an irrevocable licence to occupy the disputed lands.



- 23.2. Further and alternatively whether the claimant is entitled to the loss of rental value and/or mesne profits from the date of purchase of the disputed lands either at the monthly rate of \$5,000.00 as alleged by the Claimant or at all.
24. At the beginning of the trial the parties noted that there were now four agreed issues which were identified as follows:
- 24.1. Whether there was an agreement made in the year 1990 as alleged in the defence with respect to the disputed lands coloured green shown on the plan of Gokool and marked D in the statement of case.
- 24.2. Whether the agreement was enforceable and binding on the claimant.
- 24.3. Whether D entered on the land in or around 1999 or in or around 1990.
- 24.4. Whether D has been in adverse possession of the disputed lands and whether the interest of the claimant was extinguished.
25. The court mentioned concern about a fifth issue namely whether the defendant had proven the alleged expenditure \$400,000.00 on the land but, upon reflection, it is clear that this was not in issue between the parties in light of the agreed issues referred to in the preceding paragraph so that the court did not pursue this concern.
26. The court also noted that there has been no documentary evidence of any agreement and that there was no evidence of Mr. Lalla's role in the company at that time and there was no proof that he had the capacity to commit the company to certain things.

## **The Claimant's evidence**

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### **Dianand Dindial**

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27. Dianand Dindial filed his witness statement on the 29th July 2011. The witness is the Managing Director of the claimant company. He stated that on the 14th August 2009 the claimant company purchased the subject property located along the Rivulet Road Couva comprising land and "a house standing on the land" from Ian Kenneth Yallery, Bridget Carol Yallery and Gillian Edwards for the sum of Two Million Five Hundred and Fifty Thousand Dollars (\$2,550,000.00).

28. He said that prior to the purchase of the property he was not aware of any agreement with anyone with regard to the land and he had no notice of any claim by anyone, nor did the claimant have any such notice. He said that prior to the defendant's purchase he went on the land with Mr. Glenn Yallery who conducted all negotiations for the vendors. He says that the four boundaries were pointed out to him. He admitted that he did see an area of land between the galvanize fence and the Couva river and that part of a shed stood upon that enclosed area.
29. After speaking to Mr. Glen Yallery about the shed and its construction the claimant said that he caused his attorneys to write a letter to the defendant regarding the shed occupation. That letter was dated 21st October 2009. The defendant responded to the claimant's letter on 23rd December 2009 and the witness said it was the first time that he had heard that the defendant was claiming that it had permission to put up the shed.
30. The witness said that the claimant company was in the course of erecting a building measuring 160 feet by 60 feet and was about 95% complete. The defendant's shed at the back, however, was an obstruction to this process.

#### The cross examination of Dianand Dindial

31. Mr. Dindial, in cross examination, said that he knew in 2009 that he was purchasing land with a house upon it. The defendant's attorney noted that the Deed referred to lands with "buildings thereon" and the witness admitted that he knew there was another building, in particular a shed on the land. Mr. Dindial said that he had seen the shed from Mr. Yallery's van and from inside the "old building". The witness admitted that he knew that the defendant had built the shed and that the shed was used by the defendant company.
32. He also admitted that he made enquiries about the shed and the building existing on the land. He admitted that he knew Mr. Krishna Lalla for "twenty something" years. He said that he went to Mr. Lalla's place first and met a guard who said he would convey the message. It was his testimony, however, that this particular visit occurred after he had already purchased the property. When prompted by the defendant's attorney as to whether he talked to Mr. Lalla before he bought the land, he said that he went to his home three months before he bought the land to speak to Mr. Lalla but was unable to talk to him. Despite not having met him, he went ahead and purchased the land.

33. He said that the shed is a big shed - 60 feet by 120 feet long - and that it was made out of galvanize and steel. He said however that he did not think that the shed had any foundation but was just a shed. He admitted that the shed was on an enclosed portion of the land, enclosed by a fence. He agreed that the portion of land he was interested in buying had a galvanize fence and he agreed that he bought Mr. Lalla's building without talking to him.
34. He said that he went onto the land in 2009 and admitted that in 2009 the northern boundary was not the Couva river but instead the Couva river bank. He said before the purchase he was shown the northern boundary of the land beyond the shed in order to average as they knew the river "was around there". He accepted that this was no longer the river bank and he stated that he grew up in the area so he knew the area well. He also stated that he accepted the surveyor's plan. Mr. Dindial, under cross examination, insisted that he did not know that Mr. Lalla had permission from Mr. Yallery to build the shed.
35. The claimant reiterated his statement that he was putting up a building that was 95% complete and that the defendant's shed was an obstruction. He admitted that the business from the building was from Rivulet Road and that the entrance of his building was not obstructed but he claimed that he needed that portion of land for parking purposes. He said he bought the land hoping to resolve the matter.

#### Glenn Yallery

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36. Glenn Yallery is the son of Oliver Yallery who died on 1st September 2000. He stated that from as far back as he could remember, the first place he remembered living was at No 24 Rivulet Road Couva in their family home. He stated that the family moved into another residence at Woodford Lodge in Chaguanas in the year 1978. As a result of living at that property for many years the witness said that he became very familiar with the boundaries of the land. He said that in the years that he lived at the house it was never fenced on any side and there was never anything separating the house from the Couva River along the Northern boundary. The witness says he was about 9 years old when Caroni 1975 Limited conducted a survey of the land on which the house stood when his father was purchasing it. He said that prior to his father's death he was told that the house and land was purchased from Caroni 1975 Limited for the sum of Fourteen Thousand Six Hundred and Seventy Two Dollars (14,672.00). The witness says that the Deed for the disputed

lands shows his father's name as the purchaser of the lands described in Deed number 19269 of 1979.

37. The witness recalled that when his family was in the process of moving out of the house, a tenant named Mr. Mitchell came to view the house. He said the Mitchell family began their tenancy in that same year and that at the time that the Mitchell's moved into the house there was no fence existing along the four boundaries of the land. He said he and his siblings would accompany his father to collect rent on a monthly basis. He said that at no point during his many visits did he notice any fence along any of the four boundaries of the land until 1999. He said that after the tenant died his daughter continued to rent until the year 2009 when the house and land was sold to the claimant.
38. Mr. Yallery said he became more involved in assisting and managing the house when his father was diagnosed with prostate cancer and underwent surgery in 1997. He said thereafter he would visit the house more frequently for the purpose of collecting rent and tending to the concerns of the tenant. He said that at that time a portion of the northern boundary line had eroded into the Couva River and it was affecting the integrity of the northern boundary of the land and the properties.
39. In the year 1998 after his father was already diagnosed with his illness, Mr. Yallery noticed that the defendant began construction of a warehouse close to the northern boundary of the land it occupied and he also noticed the defendant's workers using a backhoe to backfill its northern boundary line and divert the existing watercourse north of its location. He said this caused further erosion of his father's land which damaged his father's land.
40. Mr. Yallery says he was told by his father that he was approached by Mr. Lalla of the defendant company who informed him of the instability of the northern boundary of his land which was causing damage to the defendant property and said that he could backfill the back of the land to the same extent that he had backfilled the back of the property he occupied. The witness did notice backfilling works being done to the northern boundary of his father's land in 1998 but maintained that up to that time there was no galvanize fence. His father informed him of the construction of the galvanize fence in 1999. The witness deposed that his father was very upset and told him that he never gave permission to the defendant to fence off a portion of his land and his father immediately brought this to the attention of Mr. Lalla of the defendant Company.

41. The witness said that in 1999 his father's health deteriorated and he was unable to visit the house regularly but on the rare occasions that he did visit he noticed that the galvanize fence had not been removed.
42. He said that his father willed the house and land to his siblings and he was appointed the executor of his father's will. He subsequently applied for and obtained probate of the will and, by a Deed of Assent dated the 2nd April 2002 and registered as DE200301719588, he assented and conveyed the house to his siblings. He said that subsequent to his father's death, he approached the defendant, in particular one Mr. Hosein, and had a meeting regarding the purchase of the disputed portion of land. He said at a meeting he told the defendant he would accept \$250,000.00 for the sale of the disputed portion of land to the defendant. He agreed to have a valuation done because the defendant found the price to be high.
43. He said that he did not commence any litigation against the defendants because he was confident that negotiations would be fruitful and that it was only a matter of agreeing on a purchase price. He said by letter dated the 24th July 2006 his attorneys, on the instructions of his siblings, wrote to the defendant offering to sell the disputed land for the sum of \$500,000.00. By letter dated the 21st November 2006 Mr. Krishna Lalla indicated that he was interested in purchasing the disputed portion of land for \$200,000.00. However by another letter dated the 4th December 2006 the defendant wrote that they had been occupying the disputed portion of land since February 1991 pursuant to the permission of his deceased father and that the defendant wished to be paid \$400,000.00 to relinquish possession. In response the witness says his siblings wrote a letter disputing the allegation that their father authorized possession and the defendants were informed that they wished to sell the property to a third party in the event that they did not pay \$300,000.00.
44. The witness maintained throughout his statement that the defendant entered into possession of the disputed portion of land in the year 1999.

#### [The cross examination of Glen Yallery](#)

45. At the beginning of the cross examination the witness was questioned about what he was doing in 1978 at the age of 16. He said that he was in school at the time and that he finished school in 1979. He then worked at St. Mary's College ("CIC") in the laboratory, then the Bank of Commerce, and he then entered PCS Nitrogen about 30 years ago where he has remained.

46. He reiterated what he said in his witness statement that his father was diagnosed with his illness in 1998 and he noticed that the defendant constructed a warehouse. When asked, he acknowledged that when he saw the building being constructed he thought it was a wrong thing and that he spoke to his father about it. He admitted however that they did not write the defendant any letter of protest.
47. He said that in 1998 he also saw backfilling of land going on and in 1999 he also saw a galvanized fence being constructed parallel to the northern boundary of the land. He admitted once again that no letter of protest was written in relation to the construction of the fence.
48. He said that after his father's death he approached the defendant regarding the purchase of the parcel of land. The defendant's attorney noted that the witness claimed that the defendant was trespassing yet he went to ask the defendant to purchase the land. The witness seemed to have no problem admitting that this was the case. He maintained that he knew that his father was greatly upset by the fact that the land was being occupied by Mr. Lalla and that they "considered it an injustice". He said he remembered having a discussion with Mr. Hosein regarding the illegal occupation and he remembered making an offer which Mr. Hosein thought was too high. He noted that they determined that they would get a valuator. He said he never accepted the defendant's position that they owned the piece of land.
49. He said that the discussions they were having were to avoid court and to attempt to resolve the matter. He accepted that under the discussions they were having the defendants were not giving up their rights. He said there was a gap from 2003 to 2006. He said right up to when his siblings decided to sell the land, they reached a point where they had accepted that the defendant would not come around to accept an offer in respect of the price. He said that he and his family continuously attempted to resolve the matter but both sides were adamant not to give up their rights.
50. When questioned, he admitted that in 1990 and 1991 he was not in charge of the lands but his father had full authority for dealing with this land. It was put to him that the works that were done on the land were done in the 1990's. He maintained that the work was done much later. He was quite certain that it was constructed much later than 1991. He said that although he did not see it being constructed he was told by his father that the fence was constructed around 1998 or 1999. He said that he was not living on the property at that time but that he visited "occasionally" when he went to see his father. He said that although the

shed was a big shed it was not immediately visible from the roadway because it was located at a depressed area of the land. He said the shed was visible from the back of the land. He once again rejected that the fence was constructed in 1991.

51. When asked why in 1998 he saw trespass on the land but did nothing, he said that in 1998 his father was diagnosed with prostate cancer and his father had told him that the defendant had offered to help backfill the land to prevent the erosion that he had caused when he was clearing his land. He maintained that his father never gave permission for the defendant to construct the structure. It was suggested to him that that agreement took place in 1990. He rejected that. He said that when his father was ill and saw the wall constructed he lost his will to fight.
52. The defendant's attorney put to him that from 2000-2004 no action was taken and no letters were written. He admitted that this was so. He said that his siblings were the owners of the land and they were the ones who negotiated. He said that he gave a witness statement in the matter because Mr. Dindial told him he was litigating against Mr. Lalla for ownership.
53. In re-examination he was asked about the erosion of the land that he said was caused by the defendant and he said it was caused because the defendant moved about 4 or 5 big trees that were there since his childhood.
54. He was also asked in reexamination to clarify whether Mr. Lalla ever told him about his rights to which he responded that he never spoke to Mr. Lalla. When asked if Mr. Hosein ever spoke about his rights, he said that Mr. Hosein never spoke to him about his rights.

## **The Defendant's evidence**

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### Krishna Lalla

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55. Krishna Lalla is the General Manager of the defendant company. He stated that he was the registered owner of Lots 22 and 23 registered as Deed No. 22996 of 1984 and Deed No. 4193 of 1991 respectively. He said that in or about 1990 he was approached by Mr. Yallery for assistance in reclaiming approximately 5000 square feet of Lot no 24 which had eroded into the Couva River. He was shown a cadastral sheet for the parcel of land by Mr. Yallery and was informed that the boundary of Mr. Yallery's property boundary stopped at the iron put shown on the said cadastral
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sheet. According to him, Mr. Yallery told him that the Defendant could occupy 3,732 square feet of land which was eroding rapidly into the river and that he also wanted the defendant to re-route the Couva River in order to prevent any further erosion.

56. The witness said that it was agreed between Mr. Yallery and him that the defendant would bear the cost of providing the labour and materials to reclaim a total of 8,732 square feet of the said parcel and that the defendant would be entitled to 3,732 square feet of land. The witness said that subsequent to that the defendant company proceeded to carry out the necessary works to reclaim the land and further constructed a fence and a shed in 1991. At no point during construction did Mr. Yallery ever take any steps to object to the said construction and since that time the witness claimed that the defendant has been in continuous and exclusive occupation and possession of the said 3,732 square feet of land. He said that it was only after the death of Mr. Yallery in the year 2000 that his children made any objection to the defendant's occupation of the land.
57. The witness was aware that by Deed of Assent dated 2nd April 2003 that the parcel of land owned by Mr. Oliver Yallery was assented to his children but he says that was subject to the pre-existing occupation and interest of the defendant in the said portion of land. He noted that through a series of correspondence between the defendant and Mr. Yallery's children they attempted to negotiate an amicable settlement but were all unsuccessful.
58. He also noted that he knew when the claimant purchased the said parcel of land it did so subject to and with express notice of the continuing possession, interest and right of the defendant to occupy and own the portion of land comprising 3,732 square feet. The witness stated that the claimant's interest in the said portion of land has been extinguished due to the continued possession and occupation by the defendant.

#### The supplemental witness statement of Krishna Lalla

59. Krishna Lalla filed a supplemental witness statement on November 11th 2011. In it he stated that on the 31st October 2011 his attorneys wrote to the claimants attorneys disclosing new documents and seeking their agreement to file additional documents as an agreed bundle of documents and also agreeing to the admission of the aerial photograph included in the claimant's supplemental list of documents. The claimants replied on the 4th November 2011 indicating that they were unwilling to



agree to any of the documents provided by the defendants or to agree to the admission of the aerial photograph.

60. Mr. Lalla further stated that on the 9th November 2011 his attorneys confirmed that the aerial photograph included in their supplemental list of documents was now an agreed document. It was further pointed out that the aerial photographs in CD were applied for at the request of the Court at the Case Management Conference and had only been recently obtained. Further the photographs were certified by the Director of Land and Surveys and therefore were admissible under section 22 of the Evidence Act. The letter also noted that a witness summons was issued to the Director of Land and Surveys to give evidence at trial.
61. Mr. Lalla went on to state that he saw the photographs of the shed included in the Supplemental List of Documents and confirmed that the photographs show the existing shed and fence that the defendant erected in the year 1991 and accurately depicts the structure.
62. Mr. Lalla also said that he saw the certified copy of the 1994 aerial photograph identified as L&S/T&T 06-142 dated 22nd March 1994 and confirmed that the largest building shown in the circle and highlighted in blue is the shed that was built by the defendant in 1991. Mr. Lalla also confirmed the same building in the magnified copy and in the CD format of the same aerial photograph.
63. He further stated that he looked at the certified copy of the 1998 aerial photograph identified as T&T 98006-54 from the Archives of the Land and Surveys Division. The witness also confirmed that the building shown in the said paragraph and highlighted in blue was built by the defendant in 1991. He noted the same in the magnified certified copy and in the CD format of the same photos.

#### [The cross examination of Krishna Lalla](#)

64. In examination in chief Mr. Lalla pointed out that in paragraph 13 of his witness statement 2006-2008 should really be 2003-2008.
65. Under cross examination the witness accepted that by letter dated 21st November 2006 he indicated that he was interested in buying the disputed property for \$200,000. He also admitted that there was no mention of any compensation in the letters. He agreed that Mr. Hosein on his behalf entered into negotiation for the purchase of the land. He said that Mr. Hosein was supposed to get a valuator and that he guessed that was not done. He said that he was not prepared to pay the sum of \$500,000.00 that the claimants were requesting. The claimant's attorney pointed out the various letters of negotiation between the parties

indicating that the defendant was willing to purchase the property for a certain price. The witness said that he offered the price of \$200,000.00 because he is a businessman.

66. It was brought to his attention by the claimant's attorney that on the 4th December he suddenly decided to claim he owned the land since 1991. He said "yes" to this. The claimant's attorney noted that in one of the letters he said "*I advise that I have been occupying the lands*". He admitted that he did say that he was occupying the land but he stated that he was given permission to do so. He admitted that he never transferred the land to his company's name.
67. The claimant when cross examined admitted that he interfered with the Couva River. He said that he improved the watercourse. He said that he was an engineer but did not go to university to become one. As he put it: "*I don't need to go to any university to be an engineer.*" He said that he filled up the old river because it was ruining his property and in realigning the river he moved it further north by about 100 yards. He said he built a car park on the land he filled up.
68. He said that he also reclaimed the land for Mr. Yallery. He was examined on the amount of land that was reclaimed. It was put to him that it was untrue that 8,732 square feet of Mr. Yallery's land went down in the river and he denied that. He said that he reclaimed the land and kept the 3,000 square feet for himself. He admitted that he reclaimed more land north of his property for himself in the process. He said the entire process cost him about 3 million dollars.
69. He looked at the cadastral sheet and stated that the shed was located on the portion on the plan that was shaded with lines. He maintained that he made an offer to buy the land and that Mr. Dindial had no access to that portion because there was a fence there.
70. The claimant's attorney pointed out that according to the plans the 8,732 square feet of land was reserve land. He admitted this but said that there was a mistake. He said "the mistake here is 3,732". He said that according to what was discussed with Mr. Yallery, it was his equipment and labour that was to be used and Mr. Yallery agreed that at no cost to him he would get back his 5000 square feet of land. He said that at that time the land would have been worth about \$60 or \$70 per square foot.
71. He said that the claimant purchased the parcel of land with express notice because his attorneys "*contacted the guys who sold his land and notified them of his position*". He admitted that he started the works from behind his property. He said that there was only bamboo there and he

cut the bamboo down. When the claimants attorney told him that bamboo was one of the best plants to protect erosion he admitted it was.

72. The court noted that there was some question as to whether certain aerial photographs show the existence of a shed in 1991. The witness said that he used landmarks to identify what is on the photos because: *"You cannot see it clearly"*.
73. In re-examination the witness was asked to clarify why he was negotiating to purchase the land and he said that the reason he made the offer was because he was a businessman and to avoid litigation he made an offer. In his words it made no economic sense to break down a building. He was also re-examined as to the reason he cut down the bamboo. He said that he had to remove the bamboo in order to reclaim the land as over the years the river came into his land.
74. The court asked the witness about the photographs and how he knew that it was his shed in the picture and he replied that his building was the 3rd building along Rivulet Road and so the photos would show that.

#### Mulchan Lewis

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75. Mr. Mulchan Lewis became the alderman of the Council of the Couva/Tabaquite/Talparo Regional Corporation in 1993. He said it was brought to his attention that some flooding had been taking place in the vicinity of Rivulet Road, Couva and he knew that several owners started to backfill portions of their properties including the defendant.
76. He said that, at that time, the council was requested to make a site visit to the property of the defendant as a complaint was made about the defendant's realignment of the river. He deposed that he visited the property along with some technical officers from the Ministry of Works. He said he remembered parking at the front of the property and walking to the back of the defendant's property. He said that they stayed for 30 minutes where he noticed that the defendant's backfilling was successfully preventing erosion of the properties.
77. He deposed that at the time of the visit the reclamation works had already been completed and a wall/embankment was in the process of being constructed. The witness said that he recalled observing a shed located at the rear of the property approximately 60 feet by 100 feet and he also recalled seeing a wall between the defendant's property and the property immediately adjacent to it.

78. He said that based on the observations of the council they found that there was no justification for the original complaint and they did not proceed any further.
79. The witness further stated that because of his duties in the positions that he held as a member of council in 1996 and as a councilor in 1999-2002, he had cause to frequently visit the area. He said that the shed on the property is the same kind of structure now as when he first saw it in 1993 and that he had seen that shed approximately 10 times since 1993.

#### Cross examination of Mulchan Lewis

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80. Mr. Lewis maintained much of what he said in his witness statement under cross examination. He stated that several owners of property in the area started to backfill their land. He said that he got a complaint about interference at the Regional Corporation around 1993 and he went to investigate. He said that the defendant's property was backfilled. He admitted that he didn't take notes during his visit but said the technical officers did.
81. He said that he had not been to the defendant's property since 2010. He said that there was less parking in 1993 than there was in December 2010 when he last saw the property.
82. He said when he went to the defendant's building in 1993 the river was already moved however he was not sure if the defendant changed the course of the river.

#### Sylvester Pino

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83. This witness was a member of the Council of the Couva/Tabaquite/Talparo Regional Corporation in 1996 and was also a Chairman of a Committee. The witness said that he remembered attending the defendant's property at Rivulet Road at the end of 1996 when he visited the premises to go to the auditorium located on the property.
84. He said that during that visit he remembered observing at the rear of the property a large shed and a fence in close proximity to the said auditorium. He said that he remembered the shed because the size of the shed astounded him as it measured approximately 60 feet by 100 feet. He admitted in his witness statement however that it was the only time that he had ever saw the shed as he had no reason to return to the property.

## Was there an agreement in the year 1990?

85. It is necessary for the court to determine whether there was an agreement made which caused the defendant to enter the lands in 1990 or 1999. To my mind, there is no doubt that there was some sort of agreement between Mr. Lalla and Mr. Oliver Yallery (deceased). The issue seems to be when this agreement occurred and the terms of the said agreement.

86. At paragraph 13 of his witness statement Glenn Yallery said that in the year 1998 his father told him that that he had been approached by Mr. Lalla of the defendant company who stated that:

*“.... instability of the Northern boundary of the land was threatening to cause damage to the defendant’s property and that in an effort to protect the integrity of the defendant’s building he could backfill the back of the land to the same extent that he had backfilled the back of the property he occupied along the northern boundary of both the northern boundaries of his property as well as the Williams’ property.”*

He further stated at paragraph 15:

*“Sometime around the year 1999, I was told by my father after a visit by him to the house that the defendant had constructed a galvanize fence parallel to the northern boundary of his land and had constructed a portion of its warehouse on the portion of his land north of the galvanize fence. My father was very upset and told me that he never gave permission to the defendant to fence off a portion of his land or to construct a portion of its building on any portion of his land.”*

87. Mr. Glenn Yallery said in cross examination that:

*“....the defendant had attempted to clear the back of his land and it hastened the erosion of our land so the defendant offered to help backfill our land to prevent the erosion. My father never agreed and never gave permission for him to construct a structure.”*

88. Mr. Glen Yallery therefore acknowledged that there was an agreement for the defendant to backfill the land but according to his witness statement and his testimony in cross examination the defendant agreed to backfill the land because he caused the deceased’s land to be eroded by works the defendant had done on their adjoining lots.

89. On the other hand Mr. Krishna Lalla, in his witness statement at paragraph 6, said that Mr. Yallery informed him that:

*“... he wanted the defendant to re-route the Couva river in order to prevent any further erosion....”*

of his land and at paragraph 7 he set out the terms of the agreement:

*“...it was agreed between Mr. Yallery and I on behalf of the defendant that the defendant would bear the cost of providing the labour and materials to reclaim a total of 8,732 square feet of the said parcel, that Mr. Yallery would be entitled to the exclusive use and benefit of 5,000 square feet of the reclaimed land and that the defendant would be entitled to the remaining 3,732 square feet of land.”*

90. This witness reiterated these terms in his cross examination.
91. The court prefers the evidence of Mr. Krishna Lalla to that of Mr. Glen Yallery in relation to this issue about the agreement as it seems the more plausible in the circumstances. It is quite evident that Mr. Yallery’s evidence in relation to this issue came from his father rather than from his own personal knowledge and that carries with it the difficulties inherent in instances such as this when a third party is faced with the *viva voce* evidence of a party to the agreement. As referred to above, there was obviously some sort of agreement between Mr. Lalla and Oliver Yallery. That is implicit in the fact that Mr. Glen Yallery’s evidence revealed no objection to the reclamation work done by Mr. Lalla – only, according to him, to the fact of the erection of the fence and the structure. It was quite obviously an oral agreement between neighbours. It seems more probable than not that the act of reclamation was an act which was of mutual benefit to both parties at the time and the court believes Mr. Lalla’s evidence that, in consideration of Mr. Lalla reclaiming the 8,732 square feet of land, Mr. Oliver Yallery promised to give him the 3,732 square feet of land bounding the river thereby giving Mr. Yallery access to a further 5,000 square feet of land which was previously being eroded. Why else would someone who was allegedly upset about the fact that a fence and structure was built by Mr. Lalla take absolutely no step to cause those things to be moved immediately or to even complain about it in writing?
92. It is passing strange that a person would see another allegedly trespass onto his land or breach an arrangement or understanding and take no step to address it.
93. Further, Mr. Lewis, who was an alderman in the Regional Corporation in 1993 and who visited the land, spoke of several complaints in the area with respect to persons backfilling land as a result, inferentially, of flooding in the area. This seems consistent with the evidence given by Mr. Lalla and it seems reasonable to accept that Mr. Yallery’s land may also have been under threat of erosion by the river.
94. The court accepts that the reason for that was that there was an arrangement between the parties as alleged by Mr. Lalla who was better

placed than Glen Yallery to speak of the terms thereof. Consequently, the court holds that there was an agreement as alleged by Mr. Lalla.

### **Did the Defendant enter upon the lands in 1990 or 1999?**

95. Even if there was no agreement in 1990 the court still has to determine whether the defendant company did indeed enter the land of the deceased Mr. Yallery in that said year.
96. Mr. Glen Yallery on behalf of the claimants claimed that the shed and galvanize fence were erected between 1998 and 1999. However under cross examination he admitted that he rarely visited the property in the early 1990's and that he was not in charge of the property at that time. Mr. Yallery then based his notion of when the defendant entered the land wholly on the word of his father.
97. The defendant on the other hand submitted into evidence aerial photographs purporting to show the existence of his shed in the early 1990's. This is the main evidence in support of the defendant's proposition that occupation of the property began in 1990. Mr. Lalla however did not attempt to summon any expert to analyze these said photographs and the court was left to analyze these photographs based on the testimony of the witness. Having viewed the area shown, the court accepts that the area as shown represents the area in question and notes that the 1994 photograph shows that by that time, the river had been diverted and there is a substantial structure on the southern bank in the vicinity of the disputed lands. When considered in tandem with the evidence of Mulchan Lewis and Sylvester Pino, who both confirmed the existence of the shed since at least 1993, when Mr. Lewis visited the lands, and definitely by 1996, when Mr. Pino visited the lands, and whose evidence was not shaken in cross examination, the balance of probabilities supports the defendant's contention that the occupation began since 1991 as alleged by Mr. Lalla. He was definitely in a better position to give the evidence in relation to this issue than Mr. Yallery whose evidence in this regard cannot be regarded as reliable having based his evidence on information from his father and his infrequent visits. He admitted, as well, in cross examination that it is not possible to see the land at the back from the front of the property and therefore this puts into question whether he was able to see what was happening at the back of the property at all.

## Equitable License to Occupy

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98. The defendants have pleaded that they entered the land under an equitable license. The defendant claims that he expended \$400,000.00 because of an agreement between the defendant company and Mr. Yallery thereby creating a certain equitable interest in the lands.
99. For the court to find that there was an estoppel in this case the defendant must have relied on the assurance of Mr. Yallery. Under the principle in ***Greasly v Cooke*** [1980] 3 All ER 70, the court must be sure that clear assurances were made and that a detriment was suffered. The only other party to the agreement that the defendant speaks of is the deceased.
100. This court considered the law on proprietary estoppel, which is the principle raised by the defendant, in the case of ***Tarah Ramlakhan & or v Anand Persad & or*** HCA No. CV2007-3577 at paragraphs 27 to 31. That exposition of the law is applicable in this case and the court accepts that the defendant expended \$400,000.00 in reliance upon the assurance given by Oliver Yallery – the owner at that point in time. Having relied upon that assurance, it seems unconscionable for the claimant to now seek to resile from that position even though he was not party to the assurance. To my mind, the assurance led to a position of irrevocability as Oliver Yallery, and now the claimant, have benefited from reclamation works which have shored up the lands and provided 5,000 square feet of land to the claimant which was previously subject to erosion according to Mr. Lalla. This court accepts that position.
101. As a result, this court holds that the defendant is entitled to an interest in the 3,732 square feet of land currently under its occupation pursuant to the agreement between Mr. Lalla and Oliver Yallery and of which this court holds that the claimant must have had constructive notice.
102. The claimant's claim that they purchased the property without being aware of the defendant's interest in the property. Mr. Dindial however under cross examination admitted that he saw the fence and the shed and he knew that they belonged to the defendant so much so that he unsuccessfully attempted to contact Mr. Lalla, whom he knew for 20 years prior to purchase, to find out whether he had an interest in the land. Mr. Dindial maintained that he acted in good faith and on the representation of the vendor that the entire parcel of land was being conveyed.
103. The Privy Council, in ***Ramlal v Chaitlal*** [2004] 1 P & CR 1 confirmed that if a person has actual notice of another's occupation of lands, he is



fixed with constructive notice of his rights over it<sup>2</sup>. In this case, the obvious actual occupation of the subject lands by the defendant ought to have put the claimant upon notice of the defendant's interest or, at the very least, upon inquiry. Having failed to investigate the defendant's claim prior to purchase, the claimant must be estopped now from disavowing itself from the existence of the defendant's equity in the lands. Caveat emptor must apply in the circumstances.

### Was the Defendant in Adverse Possession?

104. Having found that the equity exists, the court is of the view that adverse possession may not apply as the defendant's interest is sufficiently grounded upon the assurance and reliance thereon as alleged by the defendant and upon which this court has found favour above.
105. In any event, the court has already accepted that the defendants were in possession of the property since 1991. The defendant has said that it erected a fence to demarcate where its ownership began. In ***George Wimpey and Co. Ltd v Sohn*** [1966] 1 All ER 232, it was accepted that a fence is sufficient evidence of factual possession by the adverse possessor. Not only did the defendant erect a fence but they also erected a large building some 60 ft wide by 120 ft long. There is no doubt that since this structure had existed the defendant had exclusive possession to the exclusion of Oliver Yallery, the previous owner, and now the claimant, so that even if there was no finding in equity, the defendant would have been entitled to possession as the necessary animus possendi has been established consonant with the law established in ***JA Pye (Oxford) Ltd v Graham*** (2002) WL 1310842 and confirmed in our jurisdiction in our Court of Appeal in ***Smith vs. Benjamin; Smith vs. Benjamin & Baptiste*** Civ App No. 67 of 2007 / 68 of 2007 per Mendonca JA where he said at paragraph 47, page 14 that:

*"There is no cogent reason why the principles in Pye should not apply to this jurisdiction."*

106. The case of ***Pye*** also declared that it was immaterial that the "squatter" would have been willing to pay to occupy the land if requested to do so. Therefore this contention by the claimant must fail.

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<sup>2</sup> See the judgment of Sir Martin Nourse at paragraph 30.

### The defendant's offers to buy

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107. The court does not view the offers to buy referred to in the correspondence tendered into evidence as inconsistent with the equity in the defendant's favour or the claim in adverse possession. The court accepts the explanation given by Mr. Lalla that he is a businessman and that the offer was an economic decision to avoid litigation rather than a surrender of his rights.
108. The costs and uncertainty of litigation is always a relevant factor to be taken to account and the court does not find it unreasonable for the defendant to try to buy its way out of a conflict to avoid those vicissitudes.

### Illegality

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109. This was raised by the claimant's attorney in submissions as an issue for determination. Essentially, this submission is that the alleged agreement in 1990 could not have been a legal one since the parties could not have lawfully reached an agreement in relation to a course of action which included the diversion of the course of the river. This, however, was not at all pleaded nor was the alleged illegality identified or substantiated by reference to any statutory or regulatory requirement.
110. The point was not argued by the parties nor was the allegation of illegality put to the witnesses who gave evidence.
111. In any event, the unchallenged evidence was that the Regional Corporation investigated claims of backfilling of the river by the defendant and formed a decision that there was no action that had to be taken against the defendant. In those circumstances, there is absolutely no evidence of any illegality.
112. Consequently, and based on the state of the pleadings before this court, the court is of the view that the issue of illegality was not sufficiently raised to warrant it being considered as part of the issues for determination by this court, especially since the parties identified the agreed issues at the start of the trial without including this as an issue for determination by this court.

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## The Order

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113. As a result, the court's order is as follows:
- 113.1. The claim is dismissed;
  - 113.2. The claimant to pay the defendant's prescribed costs assessed in the sum of fourteen thousand dollars (\$14,000.00);
  - 113.3. There will be judgment on the counterclaim for the defendant against the claimant as follows:
    - 113.3.1. It is declared that the defendant has an equitable interest coupled with and/or an irrevocable licence to occupy the said portion of land;
    - 113.3.2. It is declared that the defendant is the owner and entitled to exclusive possession of the said portion land; and
    - 113.3.3. The claimant is directed to execute a Deed of Conveyance conveying the said portion of land to the defendant and in default of same the Registrar of the Supreme Court be empowered to do so.
  - 113.4. The claimant to pay the defendant's prescribed costs on the counterclaim assessed in the sum of fourteen thousand dollars (\$14,000.00).

*/s/ Devindra Rampersad*  
Devindra Rampersad  
Judge