THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2011-02771

BETWEEN

SONNY G. MAHARAJ

Claimant

AND

DARWIN ALMORALES also called GAVIN ALMORALES
Also called GARVIN ALMARALES

Defendant

Before the Honourable Justice Frank Seepersad

Appearances:

1. Mr. Seenath Jairam S.C. and Mr. Ian Benjamin for the Claimant
2. Ms. Shastri Roberts and Ms. Carla Scipio for the Defendant.

Date of judgment: 29th July, 2013.

DECISION

(1) This is a claim in which the Claimant seeks an order mandating the Defendant Darwin Almorales a/c Garvin Almarales to demolish and remove from his land all structures and items place by the Defendant thereon, as well as damages for trespass and an injunction restraining the said Defendant, his servant and/or agents from entering upon or remaining or carrying on any work on the said land.

(2) The Defendant denied that any structure erected by him stands on lands belonging to the Claimant and he contends that he went into possession of the portion of land claimed by the Claimant since 1984 and that he has remained in undisturbed possession of the said portion of land for over 16 years and further contends that he constructed a chattel house thereon in November 1998.

(3) The Defendant therefore denied that he committed any act of trespass or that the Claimant is entitled to any of the reliefs sought.

The Evidence in the matter

The Claimant's Evidence

(4) The trial of this action took place on the 13th, 14th and 16th May 2013 and the evidence concluded on 13th June 2013, with a *locus in quo* visit by the Court.

(5) The Claimant testified, inter alia, that:

a. He was one of two fee simple joint owners, of the land including, a parcel known as 1C, which is undeveloped, by virtue of a deed dated 7th December, 1990 registered as No. DE199100753005;

b. By deed dated 4th December 1991 registered No DE199120219054 he and his cousin (Jit Maharaj) conveyed to him (i.e. the Claimant) the said parcel of land known as 1C thereby making him the sole owner of parcel IC;

c. Parcel 1 C includes a strip of land that enables access to and egress from the Mausica Road (the roadway) a portion of which roadway together with the road reserve was shown on the plan adduced into evidence and marked Court Exhibit "A";

d. He had the land re-surveyed in June, 2001 by one of his two surveying witnesses Bhagirathi Maharaj;

e. The said 2001 survey does not show any structure on the north western strip of land of Parcel 1C (i.e. the area that the Defendant is currently in occupation of);

f. He inspected the land between 2007 and 2008 for the purpose of showing prospective purchasers; these included, Mr. Sirjoo a real estate agent and Ms. Gibson and he said that structures now on the land were not there at that time;

g. On the 9th and 17th September, 2010 and 8th January, 2011 he again inspected the land;

h. From the time the larger parcel was partitioned in 1991 until recently there were no structures on the disputed land and no cultivation;

i. He first noticed the chattel house and other structures on the disputed land in September 2010 and they appeared new; and

j. He spoke to the Defendant and informed him in November 2010 that the chattel house he observed was on his land and the Defendant responded that he had applied for the land a long time ago.

(6) The Claimant's cross-examination was uneventful and by virtue of his responses he reinforced the evidence contained in his witness statement.

(7) The Claimant also adduced into evidence documents from T&TEC and WASA and called two witnesses from the said utilities.

(8) Mr. Rodney Lutchman of T&TEC, testified as to the procedure for obtaining an electricity supply and produced documents which were exhibited to his witness statement as - "**RL 1**". The documents contained inter alia:

a. a signed copy of the Defendant's application dated 16 March 2011 together with the electricity supply agreement dated 16 March.

b. declaration sworn by the Defendant dated 15 March 2011 to the effect that he had been on the land for 20 years and that there was no dispute in respect of the land.

(9) Theresa Bailey of WASA also testified and spoke of the procedure for obtaining a water supply from WASA and produced documents which were attached to her witness statement and were exhibited as "**TB 1**"

(10) Among the documents produced were:

a. a signed copy of a job card that showed that the Defendant's father applied for a new connection on 4 November 2010;

b. the Defendant's written application for a yard tap on 4th November, 2010 which was signed by both his parents granting him permission to get water supply at LP 78 Mausica Road dated 4th November, 2010.

(11) The Claimant also called as witnesses, two licensed land surveyors. The first surveyor called was Mr. Bhagirathi Maharaj. The gist of his evidence is as follows:

a. On the Claimant's instructions (through his son) he surveyed the 1C parcel in 2001 and prepared a plan which was put into evidence as Agreed document #16 attached to Trial Bundle;

b. This witness also testified, that the plan prepared by him reflects what he saw on the land when it was surveyed and that what he saw was the remains of a burnt-out shed on the boundary line. He said there were no structures such as an outhouse and latrine on the roadway and said that there was no evidence of farming nor did he see any water tanks. He said further that if he had seen water tanks he would have outlined them on the sketch he had prepared; and

c. The witness testified that the structures now standing on the roadway, and shown on the survey plan marked court exhibit "**A**" prepared by Mr. Asim Ali, did not exist when he surveyed the land in 2001.

(12) The second surveyor, Mr. Asim Ali, testified, inter alia, that:

a. He surveyed the 1C parcel in June 2011 and prepared a survey plan. The plan which was marked "**A**" shows the chattel house, the outhouse, water tanks etc. on the roadway; and

b. He said he never visited the land prior to 2011 and during his 2011 visit he said he spoke to the defendant and observed that the shed on the roadway was incomplete. He was of the view that the chattel house that stood thereon appeared to be of recent construction and he stated that subsequent to his visit to survey the land in 2011 the said incomplete shed was completed.

The Defendant's Evidence

(13) The Defendant testified and he called his father, Frankie Almarales, Marcel Martin and Sheldon Pascal as his witnesses.

Evidence of Darwin Almorales/Gavin Almorales/a/c Garvin Almarales

(14) The Defendant testified that since he was a boy his family moved unto a portion of land at Mausica and that the portion of land in dispute in this matter was always under his family's possession and control since they moved to Mausica. He said that during the 1980's there was a shed on the area where his chattel house now stands and he would spend time there and tools were stored in same.

(15) He also said that around the late 1990's the shed was converted into a chattel house and he moved into same and continues to date to reside there. He testified that his parents got a lease from the State for a large portion of the land that they had occupied and they eventually assigned (sold) the lease to Kallco Ltd. (this company was initially a party to this action and on the 17th July, 2012 a judgment was granted in favour of the Claimant, thereafter the action continued against the instant Defendant only).

(16) The Defendant further said that he was of the view that the land upon which his chattel house now stands belongs to the State and said that he never knew the Claimant to be the owner of the said piece of land. The Defendant also testified that he initially got a supply of electricity to his house which he called 'juice' from his parents house and that he subsequently got his own supply of electricity. The Defendant further testified that since the 1980's there was an outhouse on the disputed land and that water tanks were also placed by his family on same.

(17) The Defendant testified that a bridge was built over a section of the disputed area of land since 1992 and pictures of the said bridge were adduced into evidence.

(18) The cross-examination of this witness was eventful and several of his responses were inconsistent with and contradicted his evidence in chief. Detailed reference would be made to the inconsistencies and contradictions later on in this judgment.

The evidence of Frankie Almarales

(19) This witness, who is the Defendant's father, testified that his family moved onto the lands at Mausica when the Defendant was a little boy. He said the family planted the lands and occupied a large piece of land which includes the lands in dispute. He said he built a tool shed on the disputed land and that the Defendant first stayed in a shack on the disputed portion of land and then built the current dwelling house thereon.

(20) He testified that around 1992 with the assistance of a self help grant, he and his family constructed a bridge across a drain to the north of the property he occupied and the said bridge leads unto the disputed portion of land. This witness said that he began planting the lands at Mausica around 1982 and at the time the lands were overgrown and he had to clear same and he built a small dwelling house in the middle of the land. He said over the years he planted more of the land and he eventually got a lease for a substantial portion of the land he occupied and planted and thereafter he sold/assigned the leased land to Kall Co. Ltd.

(21) He testified that there was a tool shed/shack on the area of the land in dispute and that the Defendant used to stay there at times and eventually with his permission he built a dwelling house in the area where the tool shed stood. The cross-examination of this witness was also eventful and detailed reference would be made to his cross-examination later on in this judgment.

The evidence of Marcel Martin and Sheldon Pascal

(22) These witnesses spoke of their knowledge of the bridge constructed around 1992 and the fact that the Almarales family planted the lands in the area. The Court did not find the

evidence of these two witnesses to be very helpful. There were inconsistencies in their evidence and they provided very little assistance to the Court.

(23) Apart from the evidence contained in the Defendant's witness statement, a response to a request for further information was filed on behalf of the Defendant on the 20th July, 2012 and reference would be made to the correlation between the said responses, the Defendants evidence in chief as contained in his witness statement and his responses in cross-examination later on in this judgment.

The Issues

(24) Each party filed their own statement of issues. The Court considered the issues outlined by the parties and formulated the view that the fundamental issues to be determined in this matter are as follows:

1. Whether the Claimant adequately pleaded his title to the lands in dispute so as to enable and justify his claim for possession of the disputed land and whether the Claimant is entitled to the relief sought;
2. Whether the Defendant and his family have been in continuous and undisturbed occupation and possession of the disputed land for a period of over 16 years; and
3. Whether the nature and extent of the Defendant's occupation and possession of the said disputed land is such that the legal title of the owner of the disputed land is extinguished and whether the Defendant is therefore entitled to remain in possession of the said disputed portion of land.

The Law

The issue of title and the requirement to strictly prove same

(25) In *Ocean Estates Ltd v. Pinder (1968) 2 AC 19* at 25A-B, Lord Diplock said:

" Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants… It follows that as against a defendant whose entry upon the land was made as a trespasser a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land unless debarred under the Real Property Limitation Act by effluxion of the 20-year period of continuous and exclusive possession by the trespasser".

(26) In the *Ocean Estates* case Lord Diplock went on to say at page 25 G- H:

"*Put at its highest against the plaintiffs it is clear law that the slightest acts by the person having title to the land or by his predecessors in title, indicating his intention to take possession, are sufficient to enable him to bring an action for trespass against a defendant entering upon the land without any title unless there can be shown a subsequent intention on the part of the person having the title to abandon the constructive possession so acquired: see Bristow v. Cormican (1878) 3 App.Cas. 641, Lord Hatherley at p. 657, and Wuta-Ofei v. Danquah [1961] 1 W.L.R. 1238, PC."*

(27) In *Buckinghamshire County Council -v-. Moran [1990] Ch. 623*, at 644 Slade LJ said –

"Adopting the distinction between dispossession and discontinuance which was suggested by Fry J. in Rains v. Buxton, 14 Ch.D. 537, 539, I take the first case to be one where the squatter comes in and drives out the true owner from possession and the second to be one where the true owner goes out of possession and is followed in by the squatter. In the light of that distinction, a very fine one, it is sometimes said that the intention of the true owner may be material in this way. If he intends to use the land for a particular purpose at some future date, a discontinuance of possession can be prevented by the slightest acts of ownership on his part, even by none at all."

(28) In the case of *Olga Charles v Harrichand Singh and Lewis Harrichand Singh* CA No. *50 of 1960*, the Respondents claimed possession of a lot of land on the ground that same was purchased by a deed dated 20th January 1960. Wooding CJ cited an extract from Bullen & Leake's Precedents of Pleading 11th Edition at pg. 45 as follows:

> *"If the Defendant asserts that he is in possession of the land by the permission of the Plaintiff, he thereby admits that the Plaintiff had the right so to place him in possession. In other words, he admits the Plaintiff's title at that date, though he may contend that it has since been determined, as, for instance, if the lessor himself had only a leasehold interest. Where, however, there is no suggestion that the Defendant received possession from the Plaintiff, or has paid him rent the onus lies on the Plaintiff to strictly prove his title, and he must state his title in full detail in his pleading, deducing it step by step through the various mesne assignments. On the other hand, the Defendant is allowed to state merely that he is in possession and thus to conceal all defects in his title, unless he is in possession by virtue of a lease or tenancy granted by the Plaintiff or his predecessor in title, or unless he relies on some equitable defence, in which case he must plead it specially."*

(29) The Court felt that it was imperative in actions for the recovery of land that the Claimant's pleaded case clearly and with full detail set out his title to the land claimed.

Law as it relates to Discontinued Possession and Adverse Possession

(30) In *Powell v McFarlane [1977] 38 P & CR 452* Slade J traced his way successfully through a number of Court of Appeal judgments which were binding on him in an attempt to restore a degree of order to the subject and to state clearly the relevant principles. Slade's J classic judgment has been highly considered in all the leading cases in this area of the law and as Lord Browne-Wilkinson in JA Pye (Oxford) Ltd. v. Graham [2002] 3 All ER 865, HL at 873 b-c said it cannot be improved upon. The basic principles relating to the concept of possession under English law as summarized by Slade J in Powell at pages 471-472 is as follows:

"(1)In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.

(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").

(3) Factual possession signifies an appropriate degree of physical control. It must be single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. "What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants": West Bank Estates Ltd. v. Arthur [1967] AC 665, 678, 679; [1966] 3 WLR 750, PC, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession….

Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.

(4) *The animus possidendi, which is also necessary to constitute possession, was defined by Lindley MR, in Littledale v. Liverpool College [1900] 1 Ch 19, as "the intention of excluding the owner as well as other people." This concept is to some extent an artificial one because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.*

The question of animus possidendi is, in my judgment, one of crucial importance in the present case. An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess, unless the contrary is clearly proved. This, in my judgment, is why the slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance of possession. The position, however, is quite different from a case where the question is whether a trespasser has acquired possession. In such a situation the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite

intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the owner requisite animus possidendi and consequently as not having dispossessed the owner."

(31) Slade J continued to state at pages 476-477:

"In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner. The status of possession, after all, confers on the possessor valuable privileges vis-à-vis not only the world at large, but also the owner of the land concerned. It entitles him to maintain an action in trespass against anyone who enters the land without his consent, save only against a person having a better title to possession than himself. Furthermore it gives him one valuable element of protection even against the owner himself. Until the possession of land has actually passed to the trespasser, the owner may exercise the remedy of self-help against him. Once possession has passed to the trespasser, this remedy is not available to the owner, so that the intruder's position becomes that much more secure; if he will not then leave voluntarily, the owner will find himself obliged to bring proceedings for possession and for this purpose to prove his title.

Against this background, it is not in the least surprising that over many years in cases as Leigh v. Jack [1879] 5 Ex D 264., the Williams case [1958] 1 QB 159] and Tecbild Ltd. v. Chamberlain [1969] 20 P & CR 633 the courts have been reluctant to infer the necessary animus possidendi on the part of a squatter, even where the acts relied on could have sufficed to constitute factual possession.

I would add one further observation in relation to animus possidendi. Though past or present declarations as to his intentions, made by a person claiming that he had possession of land on a particular date, may provide compelling evidence that he did not have the requisite animus possidendi, in my judgment statements made by such a person, on giving oral evidence in court, to the effect that at a particular time he intended to take exclusive possession of the land, are of very little evidential value, because they are obviously easily capable of being merely self-serving, while at the same time they may be very difficult for the paper owner positively to refute. For the same reasons, even contemporary declarations made by a person to the effect that he was intending to assert a claim to the land are of little evidential value for the purpose of supporting a claim that he had possession of the land at the relevant date unless they were specifically brought to the attention of the true owner. As Sachs LJ said in Tecbild Ltd. v. Chamberlain [Ibid. at p. 643.] "In general, intent has to be inferred from the acts themselves."

(32) Slade J at page 478 adopted the approach followed in *Convey v. Regan [1952] IR 56* an Irish decision in which Black J said:

"The basis of the principle seems to be that when a trespasser seeks to oust the true owner by proving acts of unauthorised and long continued user of the owner's land, he must show that those acts were done with animus possidendi, and must show this unequivocally. It is not, in my view, enough that the acts may have been done with the intention of asserting a claim to the soil, if they may equally have been done merely in the assertion of a right to an easement or to a profit à prendre. When the acts are equivocal - when they may have been done equally with either intention - who should get the benefit of the doubt, the rightful owner or the trespasser? I think it should be given to the rightful owner."

(33) At page 480 Slade J further stated in *Powell v. McFarlane*:

"in view of drastic results of a change of possession, however, a person seeking to dispossess an owner must, in my judgment, at least make his intentions

sufficiently clear so that the owner, if present at the land, would clearly appreciate that the claimant is not merely a persistent trespasser, but is actually seeking to dispossess him."

(34) In *Wallis's Cayton Bay Holiday Camp Ltd. v. Shell-Mex and B.P. Ltd. [1975] QB 94* at 103 Lord Denning MR held that the plaintiffs had not acquired a possessory title to a strip of vacant land, which had been left unoccupied by its owners, for the purposes of eventual use in connection with a proposed road. The ratio of Lord Denning MR's decision appears from the following passage at pg. 103:

"…Possession by itself is not enough to give a title. It must be adverse possession. The true owner must have discontinued possession or have been dispossessed and another must have taken it adversely to him. There must be something in the nature of an ouster of the true owner by the wrongful possessor. That is shown by a series of cases in this court which, on their very facts, show this proposition to be true.

When the true owner of land intends to use it for a particular purpose in the future, but meanwhile has no immediate use for it, and so leaves it unoccupied, he does not lose his title to it simply because some other person enters on it and uses it for some temporary purpose, like stacking materials; or for some seasonal purpose, like growing vegetables. Not even if this temporary or seasonal purpose continues year after year for 12 years, or more: see Leigh v Jack [1879] 5 Ex D 204; Williams Brothers Direct Supply Ltd. v . Raftery [1958] 1 QB 159 and Tecbild Ltd. v. Chamberlain [1969] 20 P & CR 633. The reason is not because the user does not amount to actual possession. The line between acts of user and acts of possession is too fine for words. The reason behind the decisions is because it does not lie in that other person's mouth to assert that he used the land of his own wrong as a trespasser. Rather his user is to be ascribed to the licence or permission of the true owner. By using the land, knowing that it does not belong to him, he

impliedly assumes that the owner will permit it; and the owner, by not turning him off, impliedly gives permission. And it has been held many times in this court that acts done under licence or permitted by the owner do not give a licensee a title under the Limitation Act 1939. They do not amount to adverse possession ..."

(35) At p. 469 Slade J opined that:

"Neither the word "possession" nor the word "dispossession" is defined in the 1939 Act. Possession of land, however, is a concept which has long been familiar and of importance to English lawyers, because (inter alia) it entitles the person in possession, whether rightfully or wrongfully, to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession. In the absence of authority, therefore, I would for my own part have regarded the word "possession" in the 1939 Act as bearing the traditional sense of that degree of occupation or physical control, coupled with the requisite intention commonly referred to a animus possidendi, that would entitle a person to maintain an action of trespass in relation to the relevant land; likewise I would have regarded the word "dispossession" in the Act as denoting simply the taking of possession in such sense from another without the other's licence or consent; likewise I would have regarded a person who has "dispossessed" another in the sense just stated as being in "adverse possession" for the purpose of the Act."

(36) In *Victor v. West Bank Estates Ltd. [1961] 3 WIR 208*, FSC Marnan J who delivered the main judgment said at p. 215 B-C:

"No doubt it is good law that a mere trespasser who occupies de facto one part of a defined area, does not thereby establish possession of the whole area. He may enter upon land and fence himself in, but, whatever he may covet, his possession is limited to what he can grasp. Unlike William Cowper's marooned islander, he is not monarch of all he surveys. His

animus possidendi may be limited only by his ambition, but the extent of his physical occupation is a matter of fact, which can be measured."

(37) It can therefore be said that possession is a conclusion of law defining the nature and status of a particular relationship of control by a person over land while occupation is a question of fact.

(38) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and a requisite intention to possess (anuimus possidendi). A person claiming to have "dispossessed" another must similarly fulfil both these requirements. However, a further requirement which the alleged dispossessor claiming the benefit of the Real Property Limitation Ordinance 1940 must satisfy is to show that his possession has been adverse within the meaning of the Ordinance. Para 8(1) of Schedule 1 of the Limitation Act 1980 (UK) defines "adverse possession" as follows:

"8.(1) No right of action to recover land shall be treated as accruing unless the land is in possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as "adverse possession"); and where the preceding provisions of this Schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land."

Para 8(2) of Schedule 1 of the Limitation Act 1980 (UK) provides:

"8 (1) ...

(2) Where a right of action to recover land has accrued and after its accrual, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be treated as accruing and no fresh right of action shall be treated as accruing unless and until the land is again taken into adverse possession."

(39) In *Buckinghamshire County Council v. Moran* (supra) Slade LJ who delivered the main judgment of the Court of Appeal (with which Nourse and Butler Sloss LJJ agreed) stated at p. 640 B that he agreed entirely with the passage from the dissenting judgment of Stamp LJ in Wallis's case [1975]QB 94, CA, 109-110 in which Stamp LJ stated:

> *"Reading the judgments in Leigh v. Jack, 5 Ex D 264, and Williams Brothers Direct Supply Ltd. v. Raftery [1958] 1 QB 159, I conclude that they establish that in order to determine whether the acts of user do or do not amount to dispossession of the owner the character of the land, the nature of the acts done upon it and the intention of the squatter fall to be considered. Where the land is waste land and the true owner cannot and does not for the time being use it for the purpose for which he acquired it, one may more readily conclude that the acts done on the waste land do not amount to dispossession of the owner. But I find it impossible to regard those cases as establishing that so long as the true owner cannot use his land for the purpose for which he acquired it the acts done by the squatter do not amount to possession of the land. One must look at the facts and circumstances and determine whether what has been done in relation to the land constitutes possession."*

Consideration of the cross-examination and Analysis of the evidence

(40) At paragraph 6 of his Defence the Defendant referred to the "disputed parcel of land" and in his Response to the request for further and Better Particulars the Defendant did not identify same by way of reference to the plan marked 'C' to the Statement of Case and tendered as court exhibit A. However, during the course of the Claimant's cross examination, Attorney at Law for the Defendant accepted that the Defendant was claiming an entitlement to a portion of the area that the Claimant earmarked as a roadway shown on the said plan marked 'C'.

(41) During his cross examination the Defendant was asked whether the 'disputed land' to which he referred formed part of the roadway as shown on the Claimant's survey plan but the Defendant's reply was evasive and he said that the roadway was a fabrication.

(42) Based on the evidence and the position adopted by the Defendant's Attorney at Law during the Claimant's cross examination, the Court found as a fact that the 'disputed parcel of land' upon which the Defendant's dwelling house stands does fall within the area referred to as a roadway as reflected in the Claimant's survey plan.

(43) With respect to the Defendant's occupation of the dwelling house, the Defendant's father said in cross examination that the Defendant and one of his cousins had occupied the tool shed and that following a dispute the cousin burnt down the said tool shed but he could not recall the year in which the shed was burnt.

(44) The Court noted that the Claimant's witness, Bhagrati Maharaj, who surveyed the land in 2001 indicated that there was in fact the remains of a burnt out shed on the western boundary of the roadway. The Court also noted that the Defendant's witnesses, Marcel Martin and Sheldon Pascal gave a different version of events and they said that the Defendant's sister lived on the disputed land before the Defendant occupied same. Marcel also stated that he did not know the boundaries of the land occupied by the Almarales family.

(45) In his evidence the Defendant said that the land that he was in occupation of belonged to the State. In cross examination he said that he had applied for the land from the Commissioner of State Lands and he insisted that the disputed portion of land was State land and he said that for all the years he was on the land he never saw the Claimant and the Claimant made no claim to the said land.

(46) Though the Defendant contended that he occupied the disputed land and lived in the dwelling house thereon since 1998, the Court noted that his application for water and electricity was quite recent. During cross examination he was asked how old he was when he went into occupation of the disputed land and he gave different ages 12, 13, 14 and 15. His pleaded case however was quite clear he pleaded that he moved into the house in 1998 and in 1998 he would have been 24 years old. In cross examination the Defendant also stated that paragraph 7 of his Defence which stated, inter alia: "*The 2nd Defendant further contends that by virtue of his legal interest in the said lands and his*

uninterrupted and undisturbed possession since 1984, he is entitled to treat with the land as he chooses" was not true and he accepted that in 1984 he would have been only 10 years old and that he was not at that time in "uninterrupted and undisturbed possession" of the disputed lands.

(47) The documentary evidence from T&TEC and WASA when were exhibited in RL and TB1 proved to be of invaluable assistance to the Court. The application for a water connection was filled out as if the supply for water to the Defendant's dwelling house was a supply to lands owned by the Defendant's parents by virtue of the lease from the State. The Defendant and his parents were however acutely aware that the 'disputed parcel of land' upon which the Defendant's dwelling house stood did not in fact form part of the land for which they had a lease and so the representation made to WASA in this regard was misleading and inaccurate.

(48) Further at the time the application was made on the 4th November, 2010, the Defendant's parents had already assigned the leased land to Kall Co. Ltd. The Court is therefore firmly of the view that there was a clear and calculated attempt by the Defendant and his parents to misrepresent and deceive WASA so as to obtain a water supply to the Defendant's house. The Court finds that the level of dishonesty displayed is disturbing and completely unacceptable. The Court also noted that in his response to question 12 (c) of the Claimant's request for further and better particulars the Defendant said the he applied for water in 2009, the documentary evidence however shows that it is his parents who made the said application and the stated date of 2009 was also incorrect.

(49) The Defendant swore to a statutory declaration when the application for an electricity supply from T&TEC was made. In the said declaration he said that there was no dispute concerning the land upon which his house stood. The said statement was not true since at the time the declaration was sworn the Defendant did know, having been confronted by the Claimant, that the Claimant was contending that he (the Claimant) was the owner of the land. In his response to the Request for Further and Better Particulars, the Defendant said that he had never seen or spoken to the Claimant but in cross examination he admitted that he did in fact have a conversation with the Claimant.

(50) While the Court noted that the Defendant admitted that he had difficulty reading, his responses in cross examination were clear and he came across as an intelligent man. He appeared to fully understand all the questions posed to him and his responses were generally focused and addressed the issues at hand.

(51) As a result, the Court formed the view the Defendant was in no way overwhelmed nor did he have any difficulty in relation to the delivery of his evidence. The Court therefore considered all the Defendant's responses as they were given and disregarded any suggestion that the Defendant's lack of education may have contributed to some of his statements in cross examination which contradicted his evidence in chief.

Locus in quo

(52) Having seen the disputed portion of land the Court was unable to make a determination as to whether the structures were recently constructed or whether they had been there for an extensive period of time. The Court noted the existence of stones and tiles on areas of the disputed land and noted that the outhouse had the appearance of an old structure. The Court was however cognizant of the fact that old material could be used to erect structures and so the site visit did not assist in the Court's determination as to whether the structures were constructed in 2010 or before. The Court did however note that the Defendant's parent's house was located a substantial distance away from the Defendant's dwelling house and therefore the Court formed the view that it was not likely that the Defendant could have received electricity 'juice' from his parents house as he contended.

Findings of fact

(53) Having considered the evidence in detail the Court did not accept the Defendant's evidence as it related to his alleged possession of the disputed portion of land. The information contained in the T&TEC and WASA applications impacted the Defendant's credibility in a significant way. The court noted that in the T&TEC declaration dated March 2011, the Defendant stated that he had been on the land for 20 years. This

statement was inconsistent with the Defendant's pleaded case which was that he lived in the dwelling house since 1998.

(54) The Court also noted that the application was made after the pre action protocol letter was issued and that both the T&TEC and WASA applications were made after the Defendant's father had assigned his lease of the State lands to Kall Co. Ltd. The statements made by the Defendant and his father to WASA and T&TEC were deliberately dishonest, deceptive and deplorable. The Court therefore formed the view that the Defendant was an untruthful witness and that his claim to the disputed land was devoid of truth and the Court rejected same.

(55) In the circumstances, the Court found that the evidence of the Claimant and his witnesses was more reliable and credible than the Defendant's evidence. The evidence of the Claimant's surveyors was not contradicted and the Court found their evidence to be cogent and compelling.

(56) The Court accepted as a fact, that as at 2001, the disputed area of land i.e. the land that the Claimant referred to as the roadway, was clear and that the structures now standing on same were not there in 2001.

(57) The Court also found as a fact that the Claimant spoke to the Defendant on the 8th January 2011 and told the Defendant that he was trespassing and that the Defendant did reply that he had applied for the land a long time ago.

(58) The Court also accepted and found as a fact that the disputed portion of land that the Defendant is currently in occupation of forms part of the Claimant's roadway. The Court rejected the Defendant's contention that he lived on the disputed portion land since 1998 and found that it was more likely and plausible that the Defendant resided with his parents at their residence on the lands leased to them by the State, up to the time that same was sold to Kall Co. Ltd. The Court also finds that it is more likely and plausible that it is at the time of the sale/assignment to Kall Co. Ltd. appeared to be certain, that

the Defendant moved into the disputed portion of land and thereafter made the applications for electricity and water.

(59) The Court on a balance of probability rejected the Defendant's version of events and found that there was no credible evidence to suggest that the Defendant and his family were or had been in continuous and undisturbed possession of the disputed portion of land for 16 years, as claimed. The Defendant's family may have for a period in the past used the disputed land as evidenced by the burnt out tool shed however such use was not continuous for a period of over 16 years. In addition, the construction of a bridge by itself, over an area of the land does not suggest continuous possession and control over the area of the disputed land.

Application of the law to the facts

(60) Having regard to the Court's findings of fact in the matter, the Court is of the view and holds that the Defendant has not acquired any interest in or over the disputed portion of land.

(61) The issue that has to now be determined is whether the Claimant is entitled to the relief sought. The Defendant in his submissions argued that the Claimant's case is essentially one for possession and relied on the dicta of Wooding CJ in *Olga Charles* (supra). In that case the Court of Appeal found that the certified copy of a title deed entered into a few months before the matter was not sufficient proof of title.

(62) The facts in the instant matter are however distinguishable. The Claimant's title deed dates back to over 20 years and in any event the Court is of the view that in accordance with the observations of Lord Diplock in the Ocean Estates case (supra), the Claimant can rely upon any documentary title including a conveyance of land to himself on the basis that he is entitled to the estate and interest in the land, subject only to purported proof of continuous and exclusive possession by the Defendant, (and the Court has

already concluded the Defendant was not in continuous, and exclusive possession of the lands as he claimed).

(63) The Claimant pleaded at paragraph 1 of his Statement of Case that he was the owner of lands of which the disputed portion forms part. As the owner of land, the Claimant would have the right to possession of same unless he was disposed of same.

(64) In the circumstances the Court finds no merit in the Defendant's submission as it relates to the Claimant's pleaded case with respect to his title and the Court is of the view that the Claimant is entitled to pursue the relief claimed with respect to possession of the disputed land. The Court is of the view, however, that the Claimant led no evidence that would enable and justify an award for damages for Trespass or for an award for aggravated damages.

(65) Accordingly the Court makes the following orders:

1. The Defendant is to demolish and remove from the portion of land that he currently occupies all structures that stand on the said land including the small dwelling house, outhouse, water tanks and antecedent plumbing, all electrical wiring connected to the said dwelling house and any other structures now standing on the said portion of land which is shown as a roadway and demarked on the Claimant's survey plan dated 14th June, 2011 and marked as court exhibit 'A' and which said plan was annexed to the Claimant's Statement of Case as exhibit 'C'.

2. The Defendant is to remove all the aforementioned structures referred to at 1 above within 28 days of the date of this order.

3. The Defendant shall on or before the expiration of 28 days of this order deliver up to the Claimant vacant possession of the said disputed portion of land.

4. The Defendant his servant and/or agents are hereby restricted from entering upon the Claimant's parcel of land show as a roadway in the survey plan

marked as Court exhibit ‘A’ or from carrying out any works or erecting any structures thereon.

5. The Defendant is to pay to the Claimant the cost of this action in the sum of $14,000.00

6. Liberty to apply.

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FRANK SEEPERSAD

JUDGE