

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2016-02735

BETWEEN

DEXTER ALLEYNE

First claimant

CANDICE JOEFIELD-ALLEYNE

Second claimant

JOHN RODNEY

Third Claimant

AND

CHARLES D'ABREAU

First defendant

KATY ANN D'ABREAU

Second defendant

LORENZO D'ABREAU

Third Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Ms. D. Moore-Miggins for the claimants

Mr. L. Phillips for the defendants

Judgment

1. This is a claim for possession of land. By lease dated the 8th April, 2013, (“the lease”), the first claimant, (“Dexter”) and the second claimant, (“Candice”) leased one lot of land (“the subject land”) from the third claimant, (“John”) for a period of ninety nine years at a rent of \$500.00 per month and commenced construction of their three bedroom concrete house. The subject land forms part of a twelve-acre parcel of land situate at Whim Village, Tobago (“the lands”). The Deed was not registered.
2. John claims that he is currently in the process of bringing the lands under the Real Property Ordinance. The Warden’s Assessment Roll of St. David from the Scarborough Revenue Office shows that Raniel Patrick Edwards (“Raniel”) is the assessed owner of the lands. According to John, Raniel is his predecessor in title. As such, it is the claim of John that he and his family are the owners of the lands.
3. According to the claimants, the defendants occupy a portion of the lands owned by John. John avers that the parcel of land occupied by the first defendant was rented to him by his (John’s) deceased mother, Dolly Rodney.
4. By letter dated the 25th April **2013**, the first and second defendants’ then attorney-at-law wrote to John demanding that he cease and desist from harassing, intimidating and interfering with the first and second defendants and their peaceful occupation and enjoyment of their homes. The letter further stated that the first and second defendants were given permission by Dolly Rodney and Vertille Richards (John’s sister) respectively to occupy a portion of the lands as tenants.
5. By letter dated the 19th April, **2016**, the defendants’ present attorney-at-law wrote to the claimants indicating that according to his instructions, the first defendant was in exclusive, uninterrupted and continuous possession of the lands for over thirty-two years. As such, by this letter the defendants claimed that John was not the paper title owner of the land and that if he was, any paper title had by him had been extinguished. Dexter and Candice were therefore instructed to cease and desist from continuing to erect any building on the lands.

6. Dexter and Candice allege that on the 17th April, 2016 the second and third defendants wrongfully entered upon the parcel of land rented by them and abused them. They further allege that the second defendant declared that the land they were building their house on belonged to her and that they had to obtain her permission in order to continue their construction.
7. Consequently, by Amended Claim Form filed on the 8th February, 2017 the claimants seek a declaration that Dexter and Candice are tenants of the lands, possession of the lands and an injunction restraining the defendants from entering and/or remaining on the lands. They also seek a declaration that the defendants are not entitled to enter and remain on the lands occupied by the claimants or any portion thereof. They also seek injunctive relief.
8. By Amended Defence and Counterclaim filed on the 28th March, 2017 the defendants deny that the first and second defendants entered the lands as tenants and further deny giving instructions for the preparation of letter dated the 25th April, 2013. According to the defendants, the first defendant entered upon the lands in 1984 after being informed that the owner of same had died. It is therefore their case that the first defendant did not have permission to enter the lands. After entering the lands, the first defendant cultivated various crops upon same, built his home thereon and has lived there up to the present date. The defendants aver that in 1993 the second defendant entered into joint possession of the lands with the first defendant. In 2005 she built her house on the lands and resides there since.
9. The defendants claim that Dexter and Candice entered upon a portion of the lands which the first and second defendants were in possession of and destroyed their crops whilst preparing for construction. The defendants further claim that neither John nor any member of his family has title to the lands. Therefore, the defendants argue that John could not lawfully lease any portion of the lands to Dexter and Candice.
10. As such, the defendants claim that the first and second defendants have acquired possessory title to the lands since they have been in continuous and undisturbed possession of same for over sixteen years. Consequently, the defendants seek inter alia a declaration that the first and second defendants are the owners of the lands.

11. It is to be noted that the first two claimants having brought the claim, the defendants in their defence pleaded possessory title by way of adverse possession. Such a plea could not be properly made against the first two claimants whose case was that they were only tenants. In those circumstances, the third claimant was subsequently joined as it was the case for the first and second claimants and his case that the third claimant was the owner of the lands.

Issues

12. The issues for determination are as follows;

- i. Did the first and second defendants enter upon the land which they occupy as tenants or as trespassers;
- ii. If they entered as trespassers have they been in adverse possession of the lands;
- iii. Whether the third claimant and his family were in possession of the lands;
- iv. Whether the third claimant had the authority to lease a portion of the lands to the first and second claimants; and
- v. Whether the first and second claimants destroyed the first and second defendants' crops as claimed by the defendants.

The case for the claimants

13. The claimants gave evidence for themselves and called one other witness, Vertille Rodney-Richards ("Vertille").

14. John and Vertille are siblings. Their mother, Dolly Rodney ("Dolly") died in 1996. During cross-examination, John testified that he migrated to the United States of America ("USA") in the 1970's. Although he still travels to the USA frequently, Tobago has been his primary residence for the past four years. According to John, Dolly and his family have been in possession and control of the lands which includes the subject land. He and his family cleaned, maintained and paid the taxes for the lands. He testified that Dolly inherited the lands from his grandfather, James Rodney ("James") who in turn obtained it from Raniel

Patrick Edward (“Raniel”). There was however no deed of conveyance to James but John is in the process of bringing the lands under the provisions of the Real Property Act (“RPA”) in order to facilitate a proper subdivision of the lands so that he could distribute same amongst his family members and all of tenants of the lands. He further testified that whilst surveying the lands in 2013, for the purpose of the application to bring same under the RPA, there was no objection at any time by the defendants or anyone else.

15. During cross-examination, John was referred to the Warden’s Assessment Roll of St. David dated the 7th February, 2017. He agreed that Raniel was the person named in the Assessment Roll as being the assessed owner of the lands. He testified that James’ mother was married to Raniel. John further testified during cross-examination that he calls himself the assessed owner of the lands as his application to the Lands and Surveys Department has since been approved.

16. John testified that he came to know Dexter and Candice shortly before he entered into the lease with them in April, 2013. During cross-examination, John testified that although he does not have a deed for the lands, he represented himself to Dexter and Candice as the owner of the lands. The purpose of the lease was to allow Dexter and Candice to occupy and use a portion of the lands to construct their three-bedroom house. Dexter and Candace began construction shortly after executing the lease. Their house is now about forty percent complete.

17. John testified that the portion of land which was leased to Dexter and Candice for ninety-nine years comprises of 627.4 square metres (6755 square feet) with a right of way attached thereto. During cross-examination, John was referred to the first schedule of the lease. He testified that the land that was leased according to the first schedule of the lease was 5000 square feet (50’x100’) more or less. In the first schedule of the lease, the land leased to Candice and Dexter by John was described as follows;

“ALL AND SINGULAR situate at Whim Village in the Parish of St. David in the Island of Tobago measuring FIFTY FEET by ONE HUNDRED FEET (50’ x 100’) be the same more or less being a portion of a larger parcel of land and entered in the Assessment Roll of the

Warden's Office, Tobago as No. R-111 and bounded on the North by Lands of the Owner on the south by lands of the Owner on the East by lands of the Owner and on the West by Mary's Hill Road or howsoever the same maybe butted and bounded which parcel of land."

18. During cross-examination, John was referred to a survey plan of the lands dated the 28th September, 2013. He testified that the area on the plan which shows 6755 square feet is where Dexter and Candice cleared and built the foundation for their house. He further testified that although that area exceeds 5000 square feet, he gave them permission to clear more. He also testified that contrary to the first schedule of the lease, the survey plan does not show that Mary's Hill Road is to the west of the portion of lands leased to Dexter and Candice. Moreover, he testified that the road reserve shown on the plan was cut by his nephew and not by Dexter and Candice. This road reserve measuring ten metres wide was not shown on the previous survey plan of the lands dated the 6th December, 2016.
19. According to John, the first defendant, Charles D'abreau ("Charles") is about eighty years of age and resides on a portion of the lands. The second defendant, Katy D'abreau-Makenzie ("Katy") is the Charles' daughter and the third defendant, Lorenzo D'abreau ("Lorenzo") who is a police officer is Katy's son. John testified that in or around the 1990's, Dolly rented a portion of the lands comprising one lot (5000 square feet) to Charles. He further testified that Charles constructed a small shack thereon and has lived there ever since. Moreover, he testified that Charles paid rent to Dolly, Vertille and him. Charles' lot of land is adjacent to the portion of land rented to Dexter and Candice. During cross-examination, John testified that in the 1980's Charles paid him rent once in the sum of \$60.00. This evidence contradicted John's testimony that Dolly began to rent the portion of the lands to Charles in the 1990's. He further testified during cross-examination that Charles paid Dolly approximately \$50.00 per month to rent the one lot of land.
20. John testified that Katy and Lorenzo also reside on one lot of the lands. However, their lot is not adjacent to the portion of lands occupied by Charles, Dexter and Candice. According to John, Vertille rented that portion of land to Katy sometime in 2008. Katy built a dwelling house on the portion of land she rented from Vertille.

21. As such, it was the testimony of John that the portions of land occupied by Kathy and Charles were rented from the Rodney family and that at no time was the agreement meant to give them any interest in the lands above and beyond that held by tenants. He testified that Charles and Katy paid rent as recently as 2013. Vertille annexed several receipts to her witness statement. One of those receipts which was dated the 20th March, 2013 showed that Katy paid the sum of \$300.00 for “*renting one piece of the lands*”. The other receipts range from the year 2004 to 2013 and show various sums paid by Katy for the purpose of rent of a piece or parcel of land. There is also a receipt for rent paid by Charles in the year 2006 for “*renting of land from August 2005 to December 2005*”.
22. By letter dated the 14th February, 2008 John and some of his siblings wrote to Katy stating that they were the grandchildren of James and were therefore the only true beneficiaries of the lands. The letter further stated that Vertille exceeded her authority when she purported to lease a portion of the lands to Katy. Consequently, the letter instructed Katy to cease construction upon the portion of land rented to her. John testified that Katy did not however pay any heed to the letter and proceeded to complete her home and pay rent to Vertille.
23. On the 25th April, 2013 Katy and Charles caused a letter to be sent to John, Dexter and Candice. By this letter, Katy and Charles stated that they are tenants of the lands and that Charles who had been given permission by Dolly to occupy the lands on the undertaking that he would cultivate and maintain the lands (which he has been duly and faithfully doing), has been in occupation of same for approximately twenty-three years. The letter further stated that John may have illegally sold a portion of the lands occupied by Charles.
24. John testified that he did not rent a portion of the lands occupied by the defendants to Dexter and Candice. That Katy’s lot is not adjacent to the land rented to Dexter and Candice and so she was unaffected by the construction done by Dexter and Candice. He further testified that although Charles’ parcel of land is adjacent to the land rented by Dexter and Candice, his portion is not the same portion rented to Dexter and Candice.
25. According to John, there may have been a few trees planted by Charles in the area giving access to the portion of land rented to Dexter and Candice. He testified that those trees

were not planted on the lot of land rented to Charles and so he willingly removed some of those trees. During cross-examination, John testified that Charles without permission planted trees around the land rented to him thereby exceeding the portion of land rented to him. He further testified during cross-examination that when he took Dexter to see the lands, there was two lime trees in the area giving access to the portion of land rented to Dexter and Candice and that those were the trees that were removed.

26. **Vertille** is seventy-three years of age. Some of her evidence was the same as John's and so there is therefore no need to repeat that evidence. She testified that she came to know Charles about twenty years ago when Dolly rented him one lot of the lands. During cross-examination, she testified that her cousin, Christopher James had asked for Dolly's permission for Charles to occupy a portion of the lands. She further testified during cross-examination that Dolly gave Charles permission in 1997 to occupy a portion of the lands. She however changed her evidence and stated that it was in 1987 that Dolly had given permission to Charles to occupy a house spot (one lot) on the lands when it was pointed out to her that she stated that Dolly had died in 1996. Moreover, during cross-examination she testified that initially Dolly and Charles did not have a rental arrangement but that he (Charles) started to bring "*some change and provision that he planted*".

27. Vertille did not know the boundaries of the land rented to Charles. She testified that neither she, Dolly nor John has ever lived on the lands.

28. She testified that Charles initially paid the rent for the land to Dolly but that he would sometimes give her (Vertille) the rent. After Dolly's death Charles paid rent to Vertille. During cross-examination, she testified that when she visited the lands, Charles would pay her the rent monies and/or ask her whether Katy paid her the money. She further testified during cross-examination that there was no fixed rate of rent. That Charles would sometimes give her some money and/or fruits or vegetables he had harvested such as bananas, potatoes and provision.

29. During cross-examination, Vertille testified that she rented one lot of the lands to Katy in or about 2004. She further testified during cross-examination that Katy paid her \$50.00 per

month to rent the one lot of land. Moreover, during cross-examination she testified that Charles and Katy did not pay any rent money to John. This was inconsistent with John's testimony that Charles paid him rent once.

30. She testified that she issued several receipts to both Katy and Charles. She further testified that she could not find her receipt books which contained the duplicates of the receipts that she issued but some receipts which she could have found were attached to her witness statement. During cross-examination, Vertille initially testified that she had a receipt book specifically for the purpose of issuing receipts to Charles and Katy when they paid rent for the land. As such, she was asked how she was able to find some of the receipts and not all of them if she had a receipt book for that specific purpose. She then testified that there were multiple books and one was not used for the sole purpose of issuing receipts to Katy and Charles. That her father had a house rented out and so the books were also used for issuing receipts for that purpose.

31. During cross-examination, Vertille testified that Katy took her to the offices of an Attorney-at-law, Martin George and Company. She further testified that she spoke to the secretary and an attorney at the office. Moreover, she testified that their visit to attorney's office was in relation to this matter.

32. **Dexter** is a thirty-seven year old teacher. Candice who is also a teacher is his wife. Some of Dexter's evidence was the same as John's and therefore there is no need to repeat that evidence.

33. Dexter testified that he and Candice rented a portion of the lands from John. During cross-examination, he testified that John did not inform him that he was the owner of the lands. He testified that John told him that his (John's) grandfather, James was the owner of the land as he was the caretaker of same for many years and so the lands belonged to John's family. Moreover, during cross-examination, Dexter testified that John did not show him a deed for the land.

34. According to Dexter, in April, 2013 Candice and he cleared a house spot on the portion of land leased to them and began construction of their house. During cross-examination, Dexter testified that the land leased to him comprises 6755 square feet. He was referred to the first schedule of the lease which stated that the land rented comprises of 5000 square feet. Dexter therefore agreed that according to the lease, 5000 square feet of the land was rented to him. During cross-examination, Dexter was referred to the first photograph attached to Charles' witness statement at "C.D.2". He testified that the distance from the shed shown in the photograph to his foundation was approximately fifteen feet. He further testified that the distance from his foundation to Charles' trees was more than fifteen feet.
35. During cross-examination, Dexter was referred to survey plan dated the 28th September, 2013. He testified that the area that Candice and he cleared and constructed the foundation for their home is shown on the plan as 6755 square feet. He further testified that his shed and electricity pole are outside of the 6755 square feet. He agreed that 6755 square feet exceeded the amount of land which was rented to him as per the lease. He further agreed that the plan does not show Mary's Hill road to the west of the 6755 square feet. He denied cutting the road reserve shown in the survey plan. He testified that he cut the road leading to the back of his shed. He was then showed the second photograph attached to Charles' witness statement at "C.D.2" and asked whether the vehicle in the background was his and if it was parked on the road cut by him. He admitted that the vehicle was his but testified that pathway where the vehicle was parked always existed and that he did not cut same.
36. He testified that on the 17th April, 2016 Kathy and Lorenzo wrongfully entered onto the land leased to Candice and him and assaulted them. That Lorenzo pointed his finger menacingly in their faces and used threatening language towards them. Lorenzo also said *"all yuh talk nah. Talk! Ah only want all yuh to talk. Is a different scene when I am here!"*
37. Dexter testified that Lorenzo did the aforementioned in the presence of Katy and Charles and that Katy also abused Candice and him by using the most unbecoming and obscene language. Additionally, that Katy declared that the land on which they were constructing their house belonged to her and that they had to obtain permission from her to continue

their construction. Katy further threatened to demolish their structure and stated that they would never live in peace on the lands. Dexter and Candice did not respond to Katy.

38. By letter dated the 19th April, 2016 defendants' attorney-at-law wrote to the claimants stating that Charles has acquired possessory title to the lands as he has been in possession of same for over thirty-two years. This letter further stated that Dexter and Candice unlawfully entered upon the lands and began constructing a house. As such, by this letter, Charles through his attorney demanded that Dexter and Candice cease and desist from continuing to erect any building on the lands.
39. By letter dated the 2nd May, 2016 Dexter and Candice through their attorney-at-law responded to the above mentioned letter. In this letter, the defendants were informed that Dexter and Candice entered into an agreement with John to purchase a portion of the lands and that John was in the process of regularizing his title to the lands. Katy and Lorenzo were instructed to desist from harassing, molesting, abusing and/or otherwise interfering with Dexter and Candice.
40. Dexter and Candice also made a formal complaint to the Police Complaints Authority ("PCA") and the Superintendent of Police. By letter dated the 8th June, 2016, the PCA responded to their complaint stating that PCA was prevented from commencing or continuing an investigation of a matter for which the subject of the complaint was the subject of judicial proceedings. The PCA further stated that it can exercise its functions in relation to the matter regarding the alleged conduct of the officer (Lorenzo) and that the matter was receiving attention.
41. Dexter denied that the defendants suffered any loss whatsoever and that Candice and he did the acts of destruction and damages alleged on the lands occupied by the defendants. He admitted that Candice and he cleared the parcel of land leased to them and entered upon same but he testified that their doing so was lawful as same was done pursuant to their lease with John. He further denied that Candice and he unlawfully entered upon the lands occupied by the defendants. He testified that they did enter onto Charles' premises but always with Charles' consent or by his invitation. He further testified that Charles was

always friendly to them and supportive of their activities on the lands. That Charles would talk to them in a friendly manner and would always show affection to their four year old son, Enrique.

42. According to Dexter, Charles permitted Candice and him to remove a lime tree and a few banana trees to accommodate their construction works. The removal of those trees was done by an excavator. During cross-examination, Dexter testified that the lime tree and banana trees were on the bank of the lands: *See the fourth photograph attached to Charles' witness statement and marked "C.D.2"*. Dexter testified that Charles on his own volition removed a few trees and also removed all the limes from the lime tree and told them that he (Charles) did so to facilitate their construction. He further testified that Candice and he did not push down and/or destroy any bearing fruit trees or excavate any portion of the defendants' land or create any terrace thereon. That whatever was removed was either with the consent of Charles or by Charles himself.
43. Dexter denied that there were any breadfruit or other fruit trees on the parcel of land leased to Candice and him. He further denied reaping any fruits from trees thereon but testified that if he did do so, it was not done unlawfully. During cross-examination, Dexter denied that there were fowl pens with live poultry on the lands.
44. According to Dexter, there were no protestations by the defendants until April, 2013 when Candice and he excavated a house spot on the lands to commence their construction. He testified that a claim relating to the destruction of fruit trees was initiated against Candice and him in the Magistrates Court but that Charles withdrew the claim. He further testified that Candice and he were not notified that a valuator was visiting the lands to value the fruit trees which were destroyed and so they were not present when the valuator allegedly visited the lands on the 15th May, 2013.
45. Dexter denied that Candice and he cut a road on the defendants' lands or that the construction of their building was illegal. He testified that he has never claimed any portion of the lands occupied by or rented to Charles or deprived Charles or Katy of the use and

enjoyment of their lands. He further denied threatening, abusing and using obscene language towards the defendants.

46. Dexter admitted that the photographs exhibited by the defendants depicted the area of the lands the defendants occupy. He testified that the photographs also show that all the defendants' fruit trees were intact and untouched. He further admitted that Candice and he stood in front of the gazebo on the premises of Charles (as shown in one of the photographs) but stated that they were there with the permission, consent and/or by invitation from Charles who had expressly invited them to come over and bring their son who he (Charles) had always shown love and affection. According to Dexter, on the date of the photograph, Candice and he had gone to view their structure because of Katy's threats to destroy it. Charles called out to their son and told him to come over. As parents, they accompanied their son to Charles' premises as they have done before when he (Charles) had invited them.

47. Dexter testified that Katy and Lorenzo were passing in their vehicle at the same time and so they stopped and came out. Katy began to quarrel and told Charles not to speak to Dexter and his family as they were Satan. He further testified that Katy then took out her phone and began taking photographs of Candice, their son and him at the gazebo while Lorenzo stood nearby and watched. Thereafter, Dexter, Candice and their son left Charles' premises and as they were walking away they heard Katy shouting at Charles and saying "*I will cut your ass if you continue to talk to these people*". During this encounter, Dexter and Candice did not say anything to Katy.

48. According to Dexter, Candice, Charles and he always enjoyed a great relationship. He testified that it was Katy who was hostile and abusive towards them. That she constantly reproached Charles for speaking to them and their son.

49. Since May, 2016, the defendants have not entered upon the lands rented by Dexter and Candice but they continue to harass them. Whenever Katy sees them on their lands, she would leave whatever she is doing so that she could issue threats to them. The threats that

she would issue is that she would demolish their building on her “*D’abreau lands*”. Katy is usually in the company of Lorenzo when issuing the threats.

50. Dexter testified that he and Candice fear that unless the defendants are constrained, they will continue to harass, molest and/or interfere with them and their construction. Dexter and Candice are mindful of Katy’s threat that they will never live in peace on the lands.

51. **Candice** is thirty-seven years of age. Her evidence was the same as Dexter’s and as such there was no need to repeat it. During cross-examination, she testified that John told her that 1) Raniel was the owner of the lands, 2) Raniel had died, 3) the Rodney’s family were the caretakers of the lands and 4) he, John was in the process of bringing the lands under the RPO.

52. During cross-examination, Candice testified that Charles is like a father to her. She further testified that she and Dexter obtained Charles’ permission to remove some fruit trees and that Charles removed some fruit trees on his own volition to help them with the excavation process. She also testified that the lime tree was on the bank of the lands. She could not recall where the banana trees were located. Moreover, she testified that there were only shrubs on the portion of lands where her foundation was constructed.

The case for the defendants

53. The defendants called three witness, Charles, Katy and Glenroy Smart (“Glenroy”).

54. **Charles** testified that since 1984 he has been in possession of the lands which was abandoned at that time. He entered the lands after being informed that the owner of same had died. During cross-examination, he testified that Christopher James had told him that Raniel who was the owner of the lands had died. Using a cutlass and an axe, Charles cleaned and cleared the lands which was densely overgrown with gliricidia, mahogany and other huge trees. He further testified that he cleared the lands in portions and as he cleared, he planted coconut trees, mangoes, golden apples, pommerac, pommecythere, limes,

lemons, cashew trees, pineapples, cherries, plums, manderines, custard apples, tamarind, breadfruit trees and other crops and ornamental flowers.

55. In 1984, he also constructed a wooden shed which he used to rest, have lunch, and house his tools and other items when he worked the lands. In 1988, he took up residence at the lands as he constructed a house thereon using timber and galvanize sheets. He testified that Katy who at that time lived nearby would often visit and assist him with the cultivation. In the following year, he extended his house and continued to reside there up to the present time.

56. According to Charles, in October, 1993, Katy entered into joint possession of the lands with him. In 2005, she built a two bedroom wooden house on a portion of the lands. She also took care of the crops on the lands and planted other crops including coconuts, mangoes, limes, lemons, manderines, custard apples, cashew, cherries and crotons.

57. Charles denied that John or any relative or family member of his has title to the lands. He testified that they have not been in possession of the lands or any portion thereof. He further denied that Katy and he were tenants of any member of John's family. As such, Charles denied that Katy and he paid rent to any member of John's family and that their possession of the lands was limited to one lot.

58. According to Charles, on the 12th April, 2013 and several days thereafter, Dexter and Candice entered the lands without Katy's or his permission. He testified that Dexter and Candice with the use of a backhoe pushed down and destroyed several bearing coconut trees, pomecythere trees, avocado trees and other bearing fruit trees. During cross-examination, he testified that the trees were pushed down into a precipice after they were bulldozed. He further testified that they excavated a portion of the lands creating terraces for the construction of their house. He denied removing any of his trees on his own volition and giving permission to remove trees to accommodate the construction works being done.

59. He testified that Dexter and Candice also cut a road on the portion of land passing in front of his house and in close proximity thereto to facilitate vehicular access to their

construction. This was also done without his permission. He further testified that during the excavation, three of his fowl pens which contained live poultry were buried with dirt which caused his poultry to die and the destructions of the pens.

60. Charles and Katy employed the services of a valuator, Felix Cordner (“Cordner”) to assess the damages caused by the excavation done. The cost of the valuation was \$600.00. During cross-examination, Charles testified that he did not inform Dexter and Candice that Cordner was visiting the lands to assess the damages. He further testified during cross-examination that he did not demand any payment from Dexter and Candice for the damages done.

61. Cordner prepared a valuation report dated the 15th May, 2013. There was no objection to this report at trial. In this report the following damages were recorded;

i.	Two bearing mammie apple trees at \$155.02 per tree	-	\$230.04
ii.	Four bearing chilli plum trees at \$11.17 per tree	-	\$44.68
iii.	Fourteen bearing Chinese coconut trees at \$111.60 per tree	-	\$1562.40
iv.	Thirteen bearing plantain trees at \$24.18 per tree	-	\$314.34
v.	Twenty stools of bearing banana trees at \$40.75 per stool	-	\$815.00
vi.	Twenty-five stools of sugarcane at \$75.00 per stool	-	\$1875.00
vii.	Two bearing cherry trees at \$104.78 per tree	-	\$209.56
viii.	80 holes of sweet potato at \$.57 per hole	-	\$45.60
ix.	Sixty bearing stools of cassava at \$2.56 per stool	-	\$153.60
x.	Two bearing chatine trees at \$15.00 per tree	-	\$30.00
xi.	Two bearing avocado trees at \$122.38 per tree	-	\$244.76
xii.	Three bearing soursop trees at \$77.56 per tree	-	\$232.68
xiii.	Two bearing breadfruit trees at \$131.12 per tree	-	\$262.24
xiv.	Two bearing cashew trees at \$131.12 per tree	-	\$262.24
xv.	Two bearing lime trees at \$52.07 per tree	-	\$104.14
xvi.	Four bearing Julie mango trees at \$135.35 per tree	-	\$541.40
xvii.	Eighty-seven holes of rosemary trees at \$0.87 per tree	-	\$73.95
xviii.	Fifty feet of ½ inch PVC pipelines	-	\$66.00

62. The cost for the damages to the poultry and the three fowl pens were \$1,200.00 and \$3,000.00 respectively. These damages were not mentioned in the valuation report of Cordner.
63. According to Charles, following their entry onto the lands on the 12th April, 2013 Dexter and Candice without Katy's or his permission erected a foundation for a building. He testified that Dexter and Candice often entered the lands in the vicinity of his house without his permission and threatened, harassed, abused and used obscene language towards Katy, Lorenzo and him. He further testified that Dexter and Candice have occasionally (without Katy's or his permission) reaped the fruits from several trees planted by Katy and him on the lands.
64. During cross-examination, Charles testified that Vertille's son and a man called Bengay began constructing on the lands. He further testified that he did nothing to stop either men from building on the lands. When he was asked if he did anything to stop Dexter and Candice from building on the lands, he stated, "*no I say that is their business, if they want to build let them build.*" When asked if he did not say to himself that he had to get Dexter and Candice off the lands as same is his, he stated, "*no, live and let live*". Charles also testified that the reason why he did not tell John he could not lease the land to Dexter and Candice was because he (Charles) knew that he was on his lot of land and so whatever happened on the rest of the lands did not concern him. Moreover, he testified that he had no problem with Dexter and Candice building on the lands even though they were interfering with his crops. As such, it was his testimony that he has no objections to Dexter and Candice continuing to build their house on the lands.
65. During cross-examination, Charles testified that he knows Dexter and Candice's son Enrique. He further testified that he called Enrique over by him to talk and play.
66. During cross-examination, Charles testified that he does not know anything about the letter dated the 25th April, 2013.

67. **Katy** is forty-two years of age. Some of her evidence was the same as Charles' and so there was no need to repeat that evidence. During cross-examination, she testified that she never paid any Land and Building Taxes for the lands. Further during cross-examination, she testified that she knew when John visited the lands in August, 2013 to have same surveyed. She testified that she did nothing when John surveyed the lands because he only surveyed the lands and did not cut it.
68. She denied that Lorenzo and she threatened, assaulted or harassed Dexter and Candice. She testified that it was Dexter and Candice who threatened, harassed and abused Charles, Lorenzo and she.
69. During cross-examination, Katy testified that she did not take any photographs of the trees that were cleared during the excavation because the trees were bulldozed and pushed over a precipice at the same time. That most of the trees that were pushed over the precipice were covered with dirt. She further testified during cross-examination that notwithstanding the fact that the trees were pushed over the precipice and covered with dirt, Cordner could have seen the damage because he frequently visited the lands to purchase fruits. She also testified that the fowl pens were omitted from the valuation report because Cordner is an elderly man and so he forgot to put in lots of stuff in the report.
70. Katy denied giving instructions for the preparation of letter dated 25th April, 2013 which stated that Charles and she were tenants of the lands. She testified that she was taken to the attorney's office by a third party who spoke to the secretary of the attorney and who also without her knowledge gave contrary and incorrect instructions to the secretary. She further testified that when she found out what had occurred, Lorenzo and she visited the attorney's offices and complained that the letter was incorrect as Charles and she were never tenants of the lands. As a result of her complaint, she was refunded a portion of the fees she paid for the preparation and execution of the letter. No receipt was provided to the court to show this refund. During cross-examination, Katy testified that she did not write to the recipients of letter dated the 25th April, 2013 to inform them that the contents of the letter was incorrect.

71. During cross-examination, Katy denied ever receiving and/or seeing letter dated the 14th February, 2008. Further, during cross-examination, Katy was shown the receipts attached to Vertille's witness statement which showed that Vertille was paid rent by Charles and her. She denied that those receipts were true.
72. During cross-examination, Katy testified that Vertille's son and Bengay are doing construction on the land. She further testified that she did not challenge the construction being done by those men. Moreover, during cross-examination Katy denied that Charles was good and kind to Dexter and Candice. She further denied that Charles likes Dexter's son, Enrique.
73. **Glenroy** was born in 1962 and has lived at Whim, Tobago for his entire life. He testified that as he lives in close proximity to the lands, he is very familiar with same. He would pass by the lands frequently to get to and from his house. There is also a field located next to the lands which he visited almost every day over the years to take part in various sporting activities. He testified that the lands can be clearly seen from the field. During cross-examination, he testified that he did not know who the owner of the lands was.
74. According to Glenroy, prior to Charles entering the lands, same was unoccupied. He testified that it was overgrown with bush and trees such as gliricidia. He further testified that he first saw Charles on the lands in the early 1980's and that Charles cut and cleared the lands and planted all different types of crops. During cross examination, he testified that Charles entered the lands in 1984. He testified that Charles also built his house on the lands in the early 1980's. Glenroy observed Katy helping Charles with his crops on the lands. He further observed that Katy planted crops on the lands as well.
75. In his witness statement, Glenroy testified that absolutely no one else apart from Katy has occupied any part of the lands since Charles cleared the lands and began living on same in the 1980's. He further testified that sometime in the early 2000's Katy built her house on the lands. During cross-examination, Glenroy testified that Katy built her house on the lands either in 2005 or 2006. He further testified during cross-examination that there are three foundations on the lands besides Charles' house.

76. He testified that in 2013 he noticed that a backhoe had cleared a large portion of the lands and that the backhoe had pushed down a lot of trees planted by Charles and Katy over the years. Subsequently, he saw a foundation for a house being built on the portion of the lands the backhoe had cleared. He further saw Dexter and Candice on the lands and later found out that they were responsible for the clearing of the trees and the building of the foundation.

Adverse Possession

77. **Section 3 of the Real Property Limitation Act Chapter 56:03** provides as follows;

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

78. Further, **Section 22 of the Real Property Limitation Act Chapter 56:03** provides as follows;

“At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished.”

79. In the case of **Grace Latmore Smith v David Benjamin Civ. App 67 and 68 of 2007** at paragraph 48, per Mendonca JA it was recognized that in order for a claim in adverse possession to be made out, there must be an absence of consent of the paper title owner or his predecessor in title, factual possession and an intention to possess by the occupier. In Grace Latmore supra it was accepted that the principles set out in the authority of **JA Pye (Oxford) Ltd v Graham [2002] UKHL 30** applied in this jurisdiction. Factual possession signifies a degree of exclusive physical custody and control and the question of whether

the acts of the occupier are sufficient to meet this must depend on the circumstances of the case. The intention to possess means “an intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with paper titleso far as is reasonably practicable and so far as the processes of the law will allow.”: *See JA Pye supra, Lord Browne-Wilkinson, paragraph 43.*

Issues 1 & 2

Submissions of the defendants

80. The defendants submitted that the claimants’ allegations that Charles and Katy occupied one lot of the lands as tenants and paid rent to Dolly, Vertille and John were fabricated. That Vertille and John who sought to advance those allegations were exposed as unreliable and untruthful witnesses due to the inconsistencies within their testimony. Some of those inconsistencies were as follows;

- i. Vertille during cross-examination testified that Dolly had rented one lot of the lands to Charles in 1997. However, in her witness statement she testified that Dolly died in 1996.
- ii. In her witness statement, she testified that she was familiar with the alleged rental arrangement however, during cross-examination she could not say how many square feet was allegedly rented to either of the defendants nor could she give the boundaries of either plot.
- iii. The alleged rental receipts she tendered contained various inconsistent sums, all of which contradicted her oral testimony as to the rent allegedly paid by Charles and Katy. During cross-examination Vertille claimed that the original receipts were detached from the receipt book and issued to Charles and Katy and therefore the duplicates of the receipts remained in the receipt book. However, she could not explain why she was able to annex a few receipts and not all of the duplicates which would have remained in the receipt books over the years. She then testified that

receipt books were used to produce other receipts for other lands her father owned elsewhere and so the receipts produced were the only receipts in those respective books. This was neither pleaded nor in her witness statement. Further during cross examination she testified that could not find the receipt books. When confronted by the fact that two of the copies of the receipts annexed in her witness statement clearly showed that the receipts were attached to receipt books, she again contradicted herself by saying she actually found the receipt books.

- iv. John during cross-examination testified that he was paid rent once by Charles. His testimony was directly contradicted by Vertille's testimony when she testified during cross-examination that rent was never paid to him.

81. The defendants submitted that in light of the aforementioned inconsistencies and blatant contradictions within the evidence of John and Vertille, there can be no doubt that their claim that Charles and Katy occupied the lands as tenants was completely false and/or fabricated.

82. Further, the defendants submitted that the court should disregard letter dated the 25th April, 2013 which described Charles and Katy as tenants of the lands. The defendants submitted that the court should accept Katy's evidence that no such instructions were given to the Attorney. According to the defendants, Katy was forthright, consistent and unshaken in cross-examination when she testified that when she got a copy of the letter after it had been sent out, she complained to the Attorney that the letter did not contain her instructions and got a refund of a portion of her fees. The defendants submitted that the court should note that the letter contained other inaccuracies including that Katy began occupying the lands two years prior to the letter which would have been 2011. According to the defendants, that statement even contradicted the claimants' case that Katy began occupying the lands in 2004.

83. As such, the defendants submitted that based on the evidence, Charles and Katy have proven that they entered the lands without permission from anyone, cultivated upon same, built their houses thereon and remained in exclusive, continuous and uninterrupted

possession thereof for more than sixteen years. The defendants further submitted that on the basis of their factual possession for the relevant period with the requisite intention to possess which can be inferred from their physical acts of possession, Charles and Katy are entitled to a declaration that they are the owners of the lands and that any title, interest or right of John (which he has clearly not proven) has been accordingly extinguished.

The submissions of the claimants

84. The claimants submitted that the key question for determining these issues is whether the court accepts that letter dated the 25th April, 2013 (“the 2013 letter”) was written based on defendants’ instructions and therefore represented a correct statement of the circumstances surrounding the defendants’ occupation of the lands. According to the claimants, the defendants are seeking to disassociate themselves from the letter by claiming that the friend or third party who took Katy to the attorney’s office gave the attorney’s secretary incorrect information about the defendants. The defendants are therefore claiming that the contents of the letter was not per their instructions.

85. The claimants submitted that the court can be sure that Vertille was not the friend or third party who took Katy to the attorney’s office since same would have been definitely pleaded by the defendants. According to the claimants, the secrecy surrounding the name of this “friend” and/or “third party” attacks the credibility of the defendants’ explanation. The claimants further submitted that Katy did not state why she (an adult woman with no pleaded disabilities) had to be taken to a lawyer’s office by a third party and/or why this third party or friend was speaking to the secretary on her behalf while she, Katy was paying for the service. Moreover, the claimants submitted that Katy’s evidence that she returned to the attorney’s office and received a refund of a portion of the monies she paid for the preparation and execution of the letter was unsubstantiated.

86. The claimants submitted that one would have expected that the defendants would have been in a rush to clarify to the recipients of the 2013 letter that an error had been made. That although the defendants’ present attorney-at-law did write a second letter to the claimants, in that second letter no reference was made to the 2013 letter. The claimants

further submitted that the defendants attempt to resile from the position they so eloquently and comprehensively set out in the 2013 letter is self-serving and intended to build a case for adverse possession (after the fact).

87. The claimants submitted that the court has on record two totally contradictory letters written by the defendants' attorneys concerning their status on the lands whereas the claimants have put forward one consistent case before the court which was ably supported by some elements of the defendants' case, particularly the 2013 letter. As such, the claimants are asking the court to find that the 2013 letter was a true statement of the defendants' status on the lands. According to the claimants, such a finding will dispose of the defendants' claim in adverse possession.

Findings

88. Upon an examination of the evidence, the court finds that the contemporaneous documents supports the case of the claimants and in so supporting demonstrates the implausibility of the defendants' case. According to the Privy Council case of ***Horace Reid v Dowling Charles & Percival Bain Privy Council App. No. 36 of 1987***, page 6 per Lord Ackner, where there is an acute conflict of facts, the trial judge must check the impression that the evidence of the witnesses makes upon him against the following;

- i. contemporary documents, where they exist;
- ii. (ii) the pleaded case; and
- iii. (iii) the inherent probability or improbability of the rival contentions.

89. By letter dated the 14th February, 2008 John and some of his siblings wrote to Katy stating that they were the grandchildren of James and were therefore the only true beneficiaries of the lands. The letter further stated that Vertille exceeded her authority when she purported to lease a portion of the lands to Katy. Consequently, this letter instructed Katy to cease construction upon the portion of land rented to her. Although, Katy denied receiving this letter, this letter supports the claimants' case that Vertille rented a portion of the lands to Katy.

90. The court agrees with the submissions of the claimants that an important facet in determining whether Charles and Katy were tenants of the lands is whether the court accepts that letter dated the 25th April, 2013 (“the 2013”) was written on the instructions of the defendants and therefore represents a true and accurate statement of the circumstances surrounding their occupation. The 2013 letter which was addressed to John and copied to the Assistant Commissioner of Scarborough Police Station, Vertille, Dexter and Candice stated as follows;

“...We act on behalf of Ms. Kathy McKenzie and her father Charles Darbreau who have been residing lawfully as tenants on property situate at Mary’s Hill, Tobago.

Our clients have instructed us that permission was given to Kathy McKenzie two (2) years ago by your sister Vertille Richards to occupy a portion of the family’s 12 acre parcel of land at Mary’s Hill, Plymouth Road. Our client’s father Charles Darbreau who had been living as a tenant on the said property for approximately twenty three (23) years, was also given permission and licence twenty three years ago by your mother Dolly Ann Rodney, to occupy and reside on the said property as a tenant on the undertaking that he would cultivate and maintain the land and the property and this he has been doing duly and faithfully. We are instructed that approximately three (3) years ago you were repatriated from the United States to Tobago and from that time up to the present, you have been disturbing our client’s peaceful occupation and quiet enjoyment upon the said land.

...We are instructed that you may have illegally sold or attempted to illegally sell a portion of the family land which also includes a portion which Mr. Darbreau occupies. You are well aware that you have no title, claim or entitlement in your own right to be able to sell, transfer, deal with or pass on title to the said property unilaterally without reference to your other family members and we hereby call upon you to cease and desist from your nefarious activities as aforesaid...”

91. In their Amended Defence, the defendants denied having given instructions for the preparation of the 2013 letter. They pleaded that Katy was taken to the attorney’s office by a friend of Dexter and Candice, that the friend spoke to the secretary of the attorney and

unbeknownst to Katy gave contrary and incorrect instructions to the secretary. They further pleaded that when Katy found out about the letter, she and Lorenzo went to the attorney's office and made a complaint that the letter did not contain their instructions and that they were betrayed by the friend. Due to the complaint, a portion of the fee paid for the execution letter was refunded. In her witness statement, Katy denied giving instructions to her then attorney-at-law that Charles and she were tenants of the lands. She testified that she was taken to the attorney's office by a third party and that without her knowledge the third party gave incorrect instructions to the secretary of the attorney. She further testified that when she found out what had occurred, Lorenzo and she went to the attorney's office and complained that the letter did not contain their instructions and as a consequence was refunded a portion of the fees paid for the letter.

92. The closer the court examines the reasons put forward by the defendants to disassociate themselves from the 2013 letter, the more it reeks of untruth. The court agrees with the submissions of the claimants that the fact that the defendants failed to mention the name of the "friend" or "third party" who allegedly took Katy to the attorney's office attacks the credibility of the explanation. The court further agrees with the submission of the claimant that Vertille was not the "friend" or "third party" who took Katy to the attorney's office. Vertille during cross-examination admitted that she accompanied Katy to the offices of the attorney and spoke to the secretary of the attorney and the attorney. However, the court finds that it accords with common sense that if Vertille was the person who took Katy to the attorney's office then same would have been pleaded in the Defence and in Katy's witness statement especially given the fact that Katy knows Vertille.

93. Further, during cross-examination, Katy was asked if there was any follow up letter sent to the recipients of the 2013 letter informing them of the purported inaccuracies contained in the 2013 letter. She testified that there was no such letter. The court agrees with the submissions of the claimants that one would have expected there would have been a rush to correct such a grave inaccuracy. Instead, Katy purportedly made a complaint to the attorney that the contents of the letter was incorrect and received a refund of a portion of the fees she paid to the attorney. The court finds that not only was there no documentary evidence such as a receipt to substantiate her evidence that she received such a refund but

that her evidence does not accord with common sense. It accords with common sense that if Katy did approach her then attorney-at-law about the purported inaccuracies contained in the 2013 letter, her attorney would have attempted to revoke the 2013 letter and also issue a letter which reflected the true instructions of Katy, as opposed to just refunding a portion of the fees paid to him.

94. Approximately three years later, the defendants through their present attorney-at-law wrote to claimants by letter dated the 19th April, 2016 claiming to have obtained a possessory title to lands. This letter made no mention of the 2013 letter. By letter dated the 18th June, 2016, the claimants' attorney-at-law brought the 2013 letter to the attention of the defendants. The defendants did not respond to the claimants' letter dated the 18th June, 2016 and it was due to their non-response that this action was initiated. The court is left to ask a common sense question, namely, why would the defendants decline to clarify the circumstances that brought about the 2013 letter, when they were in fact in possession of an explanation for same. The answer is simple, it must be that Katy did give those instructions to her then attorney-at-law and so she did not have an explanation for the 2013 letter at that time. The court therefore agrees with the submissions of the claimant that the defendants attempt to now resile from their position as set out in the 2013 was for the main purpose of building a case of adverse position after the fact.

95. Further, the attorney-at-law who executed the 2013 letter was not called to give evidence and no explanation was given for his absence and it is reasonable to presume that he would have had information on the letter and the instructions for same which would have been helpful to the court. The court therefore finds that it is more probable than not that the contents of the 2013 letter were true and correct and that Katy did give those instructions.

96. Additionally, having reviewed the evidence the court finds that the inconsistencies within the evidence of Vertille and John did not undermine the credibility of the case for the claimants. The testimony of Vertille during cross-examination that Dolly rented a lot of the lands to Charles in 1997 was clearly an error on her part and the court so finds. Further, when her evidence pertaining to the receipts is scrutinized, it is clear that it was not inconsistent. As the court understands, she testified that she had a receipt book specifically

for the purpose of issuing receipts not specifically for the purpose of issuing receipts to Katy and Charles. Therefore, her evidence during cross-examination was consistent with her evidence within her witness statement that is, she was only able to find some receipts because not all receipts were in one receipt book. Also the inconsistency within Vertille's and John's testimony concerning rent being paid to John was not substantial as it is reasonable to infer that since John only collected rent once, Vertille did not know of same. Additionally, as John did not live in Tobago at that time it was not unreasonable for him to have collected the rent only once. The court therefore rejects the defendants' submission that the receipts exhibited by Vertille were fabricated to bolster the claimants' case.

97. Further, it is the finding of the court that the receipts entered into evidence demonstrate on the whole, that is more likely than not that there was in fact a tenancy over many years contained in the receipts and this evidence supports the case for the third claimant that the defendants had been tenants even before the dates set out in the receipts produced.

98. Consequently, the court finds that Charles and Katy did obtain permission from Dolly and Vertille to occupy the lands as tenants. Therefore, having entered upon the lands with permission, Charles and Katy could not in law have been in adverse possession of same. They cannot rely on that doctrine and so their counterclaim must be dismissed.

99. Further, it is clear that neither Charles nor Katy had the requisite intention to possess the lands to the exclusion of all others. Charles during cross-examination made it abundantly clear that he did not do anything to stop Dexter and Candice from constructing on the lands. He testified that he had no problem with them building on the lands. As such, it is clear to the court that Charles never had any intention to possess the lands although he may have cultivated upon same.

100. Further, during cross-examination Katy testified that Vertille's son and a man called Bengay started construction on the lands. She testified that she did nothing to stop either men from constructing on the lands. The defendants submitted that if such construction had taken place it could only have been subsequent to the claimants' pleading in 2016 and witness statements in 2017 since no such matters were referred therein. As

such, the defendants submitted that the construction would have been a recent entry on the land long after the requisite sixteen year period had elapsed. Even if those constructions were begun recently, if Charles and/or Katy had an intention to possess the lands they would not have allowed anyone to begin construction on same without any objections and the court so finds.

101. Additionally, the evidence of Glenroy did not assist the case for the defendants and has no real probative value since it is not inconsistent with the evidence on the part of John that the land was rented to Charles and he proceeded to build on the house spot.

102. No evidence was provided to the court as to the duration of the tenancy given to Katy and Charles. If the duration of the tenancy of Charles and Katy has expired, they will be tenants holding over since Vertille continued to accept rent from them. In the case of *Dougal v McCarthy [1891-94] All ER Rep 1216 at 1219*, Smith LJ stated as follows;

“The law is that, if it is shown that the landlord consented to the tenant holding over, and that the tenant agreed to hold over, there is an inference of law that the tenant holds over upon the old terms as tenant from year to year.”

Issue 3

The submissions of the defendants

103. The defendants submitted that John has not provided any deed to establish that he is the owner of the lands or any portion thereof. The defendants further submitted that there was no evidence to show how the lands allegedly passed from Raniel (the assessed owner of the lands) to James (John’s grandfather) or to the Rodney family. Moreover, the defendants submitted that the claimants have not proven that John, Dolly and/or any member of the Rodney family was in possession of the lands or any portion thereof.

104. According to the defendants, John and Vertille made the same bald statements at paragraph 2 of their witness statements that *“Ever since I know myself Dolly Rodney and my family have been in possession and control of a parcel of lands comprising 12 acres situate at Whim”*. The defendants submitted that there was no evidence as to any precise period of the alleged possession or the particular acts of possession required to substantiate their claim. The defendants further submitted that Vertille claimed that their grandfather James cultivated and maintained the land but again no period was given nor was there any details as to the alleged cultivation. According to the defendants, without more, such evidence would be hearsay and not within her personal knowledge. In cross examination Vertille admitted that neither Dolly, John nor she lived on the lands. She further admitted in cross examination that John migrated to the United States in 1967 and only recently returned to Tobago. As such, the defendants submitted that on the evidence the claimants have definitely not shown any possession of the lands by John, Dolly or any other member of the Rodney family.

The submissions of the claimants

105. The claimants submitted that although they have not put forward any deed or document of title before the court, they rely on subsidiary documents and certain actions consistent with their ownership of the lands. That those documents include the assessment roll which shows Raniel as the assessed owner of the lands. According to the claimants, John claims that Raniel was an ancestor of the Rodney family and that over the years the lands were in possession of James and Dolly who rented the lands to Charles. The claimants submitted that the defendants are in no position to challenge the ancestry of the Rodney family.

Findings

106. Upon an evaluation of the evidence, the court finds that although their acts of possession were sparse, John, Vertille and their family members always treated the lands as theirs and therefore were in possession of same. Further, as the court found that Charles

and Katy were given permission to occupy the lands by Dolly and Vertille, it follows that they knew that the Rodney family were claiming to be the owners of same.

107. The court does not agree with the submissions of the defendants that the claimants did not to show how the lands passed from Raniel (the assessed owner of the lands) to James (John's grandfather) or to the Rodney family. During cross-examination, John testified that James' mother was married to Raniel. Therefore, it is reasonable to infer that the lands would have passed to James due to the relationship his mother had with Raniel. Further, the court does not agree with the submissions of the defendants that the claimants have not proven that John, Dolly and/or any member of the Rodney family was in possession of the lands or any portion thereof. The following is a discussion of the evidence of the possession of John, Dolly and their family.

108. According to the evidence of the claimants, Dolly inherited the lands from James who in turn got it from Raniel. John testified that he and his family cleaned, maintained and paid the taxes for the lands for several years. The court accepts the submissions of the defendants that John did not give the precise period when he and his family would have cleaned, maintained and paid the taxes for the lands. However, John testified that sometime in the 1990's Dolly give permission to Charles to occupy the land. John did contradict his evidence during cross-examination when he testified that sometime in the 1980's Charles had paid him rent for the portion of the lands he occupied. The court found that this inconsistency was immaterial since the substantive issue was whether Dolly gave permission to Charles to occupy the lands. As the court found that permission was given to Charles by Dolly, Dolly was therefore treating with the lands as hers at that point in time and so was therefore in possession of same.

109. Although, Dolly died in 1996 and John resided abroad, Vertille continued to receive the rent monies for the lands from Charles and the court so finds. Vertille and her brother Aldwin Warner in 2004 rented a portion of the lands to Katy. Vertille and Aldwin were therefore dealing with the lands as though it belonged to them and their family.

110. In 2008, when John and his family members realized that Vertille and Aldwin had rented a portion of the lands to Katy, they called upon Katy to cease and desist from entering the lands. However, according to John, Katy proceeded to complete her house on the lands and pay rent to Vertille. According to the rent receipts exhibited by Vertille, Katy paid rent in the sum of \$300.00 up to the 20th March, 2013.

111. In 2013, John rented a portion of the lands to Dexter and Candice. This showed that John was again dealing with the lands as though it belonged to him and his family. Further, John surveyed the lands in 2013 for the purpose of making an application to bring the lands under the provisions of the RPO. Additionally, John testified that his nephew cut the road reserve measuring ten metres wide shown on the survey plan dated the 28th September, 2013. Again this is demonstrative that John and his family treated the lands as theirs. Therefore, the court finds that John and his family members were in possession of the lands.

Issue 4

112. The court having found that John and his family members were in possession of the lands, it follows that John did have the authority to lease a portion of the lands to Dexter and Candice.

Issue 5

The submissions of the defendants

113. The defendants submitted that the extent of Dexter's and Candice's unlawful actions was clearly highlighted during cross examination. That it was shown that even if the John had the requisite title to lawfully grant the lease to Dexter and Candice, they still would have acted unlawfully. According to the defendants, whilst the lease purported to grant an area of 5,000 square feet of the lands, survey plan dated the 28th September, 2013 shows that Dexter and Candice cleared and constructed their foundation on an area comprising 6,755 square feet. Further, the boundaries of the area cleared were not in

conformity with those set out in the lease. According to the lease, Mary's Hill Road should lie to the west of the area cleared by Dexter and Candice. The defendants submitted that to comply with the lease the area cleared should have been much further east instead of being within such close proximity to Charles' house shown as 'wh' on the said survey plan. According to the defendants, the aforementioned facts support the defendants' case and show on a balance of probabilities that the area cleared by Dexter and Candice was in the possession of Charles and Katy and that the area was where their crops were cultivated.

114. The defendants submitted that there was no evidence that the specific area forming the subject of the purported lease was ever identified on the ground to Dexter and Candice by the John or that they were otherwise guided in clearing the area by a survey plan when they entered the land in April 2013. According to the defendants, during cross-examination Dexter and Candice admitted that when they entered and cleared the land they did not need to talk to anyone or obtain anyone's permission as they already had their lease. The defendants submitted that this again supports their case that Dexter and Candice wrongfully entered the lands and unlawfully removed their trees and crops without permission.

115. According to the defendants, the photographs annexed as "C.D.2" to Charles' witness statement further strengthened the defendants' case. The defendants submitted that the court should note the following;

- i. The photographs show the extremely close proximity of Dexter's and Candice's foundation to Charles' house and to his trees that remained standing;
- ii. The survey plan dated the 28th September, 2013 shows that Dexter and Candice's galvanize shed and electricity pole (both of which they admitted to erecting in cross examination) are clearly outside of the already exceeded area of 6,755 square feet;
- iii. The road reserve 10 metres wide which the defendants contend was unlawfully excavated by Dexter and Candice did not exist on the previous plan tendered by the claimants but was shown on the survey plan dated the 28th September, 2013.

116. The defendants submitted that all of the aforementioned matters prove that on a balance of probabilities that the area excavated by Dexter and Candice was in the

possession of Charles and Katy, their trees and other crops were planted thereon and on the said road reserve which was cut by Dexter and Candice to facilitate access to their foundation. As such, the defendants submitted that Charles and Katy are entitled to succeed on their Counterclaim for special damages in the sum of \$7,741.98 for the damaged crops and trees. According to the defendants, the said sum has been proven by way of the valuator's report annexed to Charles' witness statement as "C.D.1" which was not challenged by the claimants.

The submissions of the claimants

117. The claimants submitted that they admitted to the removal of about two trees only and that same was done with the blessings of Charles who helped to remove trees himself. According to the claimants, Charles virtually admitted that he had no problem with the trees being removed. The claimants further submitted that no claim was made in the defendants' relief for damages to crops. Moreover, the claimants submitted that the valuation report was done on the 15th May, 2013, three weeks after the alleged damage was done. Additionally, the claimants submitted that Charles admitted that the valuator did not see the destroyed crops as same were down a precipice.

Findings

118. The court finds that the portion of the lands cleared by Dexter and Candice was much more than that which was rented to them as per the lease. However, during cross-examination, John testified that he gave them permission to clear more of the lands. The court further finds that the lands cleared by Dexter and Candice do not conform to the boundaries as set out in the first schedule of the lease. However, there was no evidence before the court as to the boundaries of the land occupied by Charles and Katy. Therefore, the court will be engaging in speculation if it was to find that Candice and Dexter encroached upon the lands occupied by them.

119. Dexter and Candice admitted to excavating the lands and also admitted to removing a lime tree and a few banana trees. However, they testified that Charles gave them permission to remove those trees and that he also removed a few trees on his own volition. Even though Charles denied giving them permission to remove the trees and further denied removing trees on his own volition, the court finds that Charles appears to be close and cordial with Dexter and Candice but that Katy is not and she appears to have exerted a lot of control over the elderly Charles. The court therefore finds that it is more probable than not that Charles would have given permission to Dexter, Candice to remove a few trees. Further, it became abundantly clear that that was in fact the case when during cross-examination, Charles in no uncertain words testified that he had no problem with Dexter and Candice building on the lands.

120. Further, the court finds that the valuation report prepared by Cordner could not have reflected the alleged damages as both Katy and Charles testified that when the excavation was being done the trees were pushed down into a precipice. During cross-examination, Katy testified that notwithstanding the fact that the trees were pushed over the precipice and covered with dirt, Cordner could have seen the damages because he frequently visited the lands to purchase fruits. She also testified that the fowl pens were omitted from the valuation report because Cordner is an elderly man and so he forgot to put in lots of stuff in the report. In his report, Cordner stated as follows;

“... I visited and inspected a property situate at Mary’s Hill Tobago and saw where an Escavator completely destroyed bearing fruit trees and growing crops belonging to Charles. A list was handed over to me with growing crops and fruit trees and as a result of that list I take notes at that time and I hereby submit this valuation report as follows...”

121. It can therefore be reasonably inferred from the above excerpt that Cordner prepared the valuation report not on what he saw but based on a list which was handed to him by either Katy or Charles. The court therefore finds that damages claimed by the defendants via the valuation was untrue. Consequently, the court finds that Dexter and Candice did not destroy the defendants’ crops.

122. Finally, the court finds that it was Katy and Lorenzo who threatened, assaulted, abused and harassed Dexter and Candice. It is clear from the evidence that Katy was the one who was always hostile towards Dexter and Candice. Therefore, it is reasonable to infer that her son, Lorenzo would have supported her in those acts of harassment.

Costs

123. The claimants' claim was not a liquidated claim so the court stipulates the value of their claim to be \$50,000.00. However, the counterclaim was partially a liquidated claim in the sum of \$10,941.98 and a claim for possession of the lands by way of adverse possession. In that case the court also stipulates the value of the counterclaim as being one of \$50,000.00. The court will order the defendants to pay to the claimants the prescribed costs of the claim and counterclaim.

Disposition

124. The judgment of the court is therefore as follows;

- a) It is declared that the first and second claimants are tenants of the one lot of land situate at Whim Village in the Parish of St. David in the Island of Tobago measuring fifty feet by one hundred feet be the same more or less being a portion of a larger parcel of land and entered in the Assessment Roll of the Warden's Office, Tobago as R-111 and bounded on the north by lands of the owner, on the south by lands of the owner, on the east by lands of the owner and on the west by Mary's Hill Road or howsoever the same maybe butted and bounded.
- b) It is declared that the first and second claimants are entitled to occupy the amount of 1,755 square feet which they occupy at present in excess of the tenanted portion.

- c) It is declared that the defendants are tenants of the parcel of land occupied by them only forming part of the larger twelve-acre parcel of land and that their possession does not extend to any part of the lands occupied by the claimants.
- d) The defendants, their servants and/or agents are restrained from harassing, molesting, abusing, threatening or otherwise interfering with the first and second claimants and their quiet and peaceful enjoyment of their possession of the lands they occupy and are also restrained from entering upon the lands occupied by the first and second claimants.
- e) The counterclaim is dismissed.
- f) The defendants shall pay to the claimants the prescribed costs of the claim based on the value of the claim being one of \$50,000.00.
- g) The defendants shall pay to the claimant the prescribed costs of the counterclaim based on the value of the counterclaim being one of \$50,000.00.

Dated the 16th day of March 2018

Ricky Rahim
Judge