ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.3 OF 1996

BETWEEN:

JULIAN ASHTON

Plaintiff

and

VERONICA FORBES

Defendant

Appearances:

Arthur F Williams Esq for the Plaintiff
Olin JB Dennie Esq for the Defendant

2000: April 13, 17

JUDGMENT

[1] MITCHELL, J: This is a land dispute. The facts are mainly agreed. Argument after the conclusion of the evidence in the case centered on a novel point of law argued strenuously by counsel for the Plaintiff.

[2] The facts as I find them are as follows. The Plaintiff and the present Defendant are neighbours at Arnos Vale in St Vincent. The original Defendant was the husband of the present Defendant. He died in the year 1997 after the commencement of this action. In 1998 the present Defendant was substituted as a party to these proceedings for her late husband. She stands in these proceedings in the place of her husband. The Defendant's husband and the Plaintiff had both purchased their lands from the government of St Vincent. They hold their title to their adjoining lots by virtue of two Crown grants. The

Defendant's husband purchased first, and obtained his deed on 11 June 1979. The Plaintiff paid for his land over a period of years and got his deed on 25 November 1988. The Plaintiff had negotiated to purchase his land from the government in about 1980. When he went to the land to examine it in 1980, the Defendant and her husband had already built their house on the adjoining lot since 1979. The Defendant and her husband shortly after building their house had encroached onto the neighbouring lot of government land. They had built an extension to their house that stretched over their boundary. The Defendant's husband has taken in, according to the undisputed survey carried out in 1990, some 510 sq ft of the neighbouring lot. This is the lot that the Plaintiff negotiated to purchase from the government in 1980 and took title to in 1988.

[3] The Plaintiff had not been able to pay for his lot immediately he agreed to buy it. He had paid down a deposit in 1980, and he completed paying for the lot in the year 1988. That was when he got his deed. He went onto the land and built his house in about 1990. Since he built his house he had been trying to get the Defendant and her late husband before her either to remove the trespassing extension of their house or to pay him the value of the 510 sq ft that they have taken in. As they refused to do so, he brought this action against them in 1996.

[4] The question before the court was, had the Plaintiff slept on his rights for too long a period to be able to succeed in a case against the Defendant? The governing law is the Limitation Act, Cap 90 of the Revised Edition 1990 of the Laws of St Vincent and the Grenadines. Section 17(1) of that Act provides:

> No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

Part II to the Schedule to the Limitation Act makes a special provision when the land that is being squatted or encroached on is government or Crown land. It provides at section 10 as follows:

> . . . [S]ection 17(1) shall apply to the bringing of an action to recover any land by the Crown with the substitution for the reference to twelve years of a reference to thirty years.

Section 19 of the Limitation Act further provides as follows:

> . . . [A]t the expiration of the period prescribed by this Act for any person to bring an action to recover land . . . the title of that person to the land shall be extinguished.

[5] The encroachment by the Defendant and her husband, it is agreed, first occurred in the year 1980. The owner of the land in dispute, it is agreed, at that time in 1980 was the Crown. The Plaintiff owned the land in dispute from the year 1988 at the latest. He may have had an equitable interest in the land from as early as 1980, but there was no evidence he went into possession of his lot until he had his deed in 1988. By the provisions of section 17(1) the Crown could have commenced an action against the Defendant and her husband from the time of the encroachment in 1980. The Plaintiff was able to commence an action against the Defendant only on his acquiring title to the land in 1988. It is undisputed that the limitation period for the extinguishment of the title of the Crown to any of its land is 30 years. If the period of encroachment commenced, as I find it did in this case, in the year 1980, then the title of the Crown to the land in dispute in this case, if the Crown had remained the owner of the land in question, would not be extinguished until the year 2010. If the owner of the land at the time of the encroachment had been a private individual, that individual's title to the 510 sq ft would have been extinguished in about the year 1992. Did it make a difference that time started running when the owner was the Crown and that the subsequent owner brought

his action after the limitation period for an individual had expired but before the limitation period for the Crown had run its full course? This action was not commenced until the year 1996. It is not in dispute that the law is that the commencement of an action in the High Court stops time running. Time stopped running against the Plaintiff on 3 January 1996 when he issued his writ in this case. It was pleaded by the Defendant and submitted by counsel for the Defendant that the title of the Plaintiff had been extinguished by virtue of the above provisions of the Limitation Act. It was strenuously submitted by counsel for the Plaintiff that a squatter on Crown land, which land is subsequently sold to a private individual, must prove adverse possession against the private individual who has become the successor in title to the Crown for the full period of 30 years. Counsel was adamant that the period of 12 years did not apply in such a case. The Defendant in this case, he submitted, had to have dispossessed the Crown and subsequently the Plaintiff for the full period of 30 years.

[6] There was another small point of law that arose on the Plaintiff's statement of claim and from his testimony. The point was not taken up by counsel for the Plaintiff in closing argument, but neither was it abandoned. It should be dealt with here before ruling on the main legal submission of counsel for the Plaintiff. From his statement of claim and from his testimony, the Plaintiff suggested that in this case time had stopped running against him even before the issue of his writ. The Plaintiff claimed that an acknowledgment of his title by the original Defendant had occurred. At some stage around 1980, when the Plaintiff took the first surveyor onto the land he was negotiating with government to purchase, the Plaintiff realized that the Defendant and her husband had encroached onto the lot that he was purchasing. He testified that he discussed the encroachment with the late husband of the Defendant, and that the husband had agreed to pay him $5.50 per sq ft for the land that the husband of the Defendant had encroached on. That is one of the few disputed allegations in this case. For what it is worth, I do not believe the Plaintiff that there was an agreement by the Defendant or her husband to purchase the area that they had encroached on. Even if they had told the

Plaintiff that they would pay him, that did not help the Plaintiff with the problem he faced. Sections 29 and 30 of the Limitation Act make provisions that govern alleged acknowledgments of the title of the owner by a person aversely occupying the owner's land. Conspicuous among these provisions is the requirement that any such acknowledgment must be in writing. The reason for this provision is obvious. It is too easy for a Plaintiff to allege an oral acknowledgment of his title in this way. The court will have great difficulty in determining which of the parties is telling the truth if an oral acknowledgment of the kind alleged by the Plaintiff could suffice to stop time running. So, the law requires such an acknowledgment to be in writing. The alleged acknowledgment by the husband of the Defendant in this case of the title of the Plaintiff to the 510 sq ft was not in writing. The Defendant denied the alleged acknowledgment in her pleadings and in her evidence. The Plaintiff is unable to prove an acknowledgement that would stop time running against him.

[7] Now, to return to a ruling on the main submission of counsel for the Plaintiff, that the limitation period that applies in this case is 30 years. Counsel for the Plaintiff was unable to come up with any law to buttress his submission on this point. I find the legal position to be as follows. The Crown's 30-year limitation period does not pass to a purchaser from the Crown. I cannot agree with counsel for the Plaintiff that this is a necessary and obvious consequence of purchase from the Crown for the protection of purchasers from the Crown. I may observe obiter that a purchaser from the Crown has his rights protected by having his survey done at the time of purchase and paying for and taking title only to the area that is not in dispute. If a purchaser from the Crown attempts to acquire a disputed area of land from the Crown, then he takes the risk of acquiring a lawsuit. His rights are also protected by having conveyancing counsel do the relevant searches both of title and of the land in question and giving him the usual assurance that his title to the land he believes he is purchasing is unassailable. If he purchases land that a squatter has settled on, then he must move the court quickly and within the limitation period that applies to him to have the squatter ordered to remove from

his land. If he fails to issue his writ within the time prescribed for him, then he will find that the court is unable to help him, and the squatter will be held to have a good defence against his claim. The Plaintiff, on his taking title to the lot of land in question, including the 510 sq ft that had been encroached on by the Defendant and her late husband, was required by the Limitation Act to commence his action against the Defendant within 12 years of the 1980 encroachment. He had failed to do so until 1996, and the Defendant had a good defence under the Act to the claim that he had brought against her.

[8] The Plaintiff's suit is dismissed. The Defendant will have her costs to be taxed if not agreed

I D MITCHELL, QC
High Court Judge