

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2003/0177

BETWEEN:

1. GEORGE DONALD BARCLAY
2. THOMAS PATRICK BARCLAY
3. JUNELYN PATTERSON BARCLAY
4. MONA COX nee BARCLAY

Claimants

AND

HILDA CLEMENT nee LA PIERRE

Defendant

Appearances:

Dr. Francis Alexis, Q.C. with Mr. Ian Sandy for Claimants
Ms. Dia Forrester for Defendant

2010: September 23, 24
2011: July 13

JUDGMENT

[1] **PRICE FINDLAY, J.:** The Claimants in this matter claimed the following relief:

- (1) A Declaration that the Claimants are the owners in possession of a lot of land comprising by admeasurement Forty Four (44) Acres and Three (3) Rods English Statute Measure situate at the L'ance La Roche Estate in the island of Carriacou in the State of Grenada as recorded in the Deeds and Land Registry of Grenada in Liber 4-93 at page 467.
- (2) An injunction restraining the Defendant whether by herself, her servants or agents or howsoever otherwise from selling or purporting to sell or offering

or advertising for sale or otherwise dealing with or purporting to or attempting to deal with the said lot of land.

- (3) A Declaration that the Statutory Declaration made by Winston Thomas Fleary of Belvedere in the island of Carriacou in the State of Grenada and recorded in the Deeds and Land Registry of Grenada in Liber 20-92 at page 404 is null and void and of no effect as against the Claimants on the grounds that the said Statutory Declaration is both fraudulent and misleading since the Defendant has never at any point in time either occupied or been in possession of the land above mentioned.
 - (4) An order setting aside the said Statutory Declaration.
 - (5) An order canceling the entry in the registry books in the Deeds and Land Registry relating to the said Statutory Declaration of Winston Thomas Fleary.
 - (6) Costs.
 - (7) Interest.
 - (8) Such further and other relief as this Honourable Court may deem just.
- [2] The Defendant in her defence alleged that the Claimants had been dispossessed of the land in question since 1946. She alleged that she and others before her had been in possession of the land since 1946.
- [3] She also relies on a Statutory Declaration sworn to by Winston Fleary and dated 25th April 1992, in which he stated that the Defendant had been in possession of the land going back at least 20 years.
- [4] The Defendant also asserted in her defence that “the Plaintiffs’ claim herein is barred and the Plaintiffs’ title (if any, which is denied) was, prior to the beginning of this action, extinguished by virtue of the provisions of the Limitation Act, Cap 173.”

- [5] The Claimants called four witnesses: Thomas Barclay, Mona Cox, Cloyde Roberts and Erskime Patterson.
- [6] Thomas Barclay, Mona Cox and Cloyde Roberts all testified that as children, they knew that George Barclay owned an estate at L'ance La Roche or Anse La Roche in Carriacou.
- [7] Both Thomas and Mona testified that George Barclay, their father, owned the estate and they used to help him look after animals, work garden and bring lunch for relatives who worked on the estate.
- [8] Cloyde Roberts testified that the estate lands owned by George Barclay were used by persons, including his parents, to plant garden with the permission of George Barclay. Persons also tended animals on the said estate.
- [9] Thomas Barclay also gave evidence that his father George Barclay (now deceased) showed him the boundaries of the estate at L'ance (Anse) La Roche. He also testified that one of the persons who his father gave permission to be on the land was Clement La Pierre, the father of the Defendant.
- [10] He stated that Clement La Pierre and his family lived at Bogles and not in L'ance (Anse) La Roche. He testified that on one ever lived at L'ance (Anse) La Roche and that he did not know the Defendant nor her father to own any lands at L'ance (Anse) La Roche.
- [11] Mona Cox supported her brother's assertions that the Defendant's father was allowed to rear animals and plant crops on the lands of George Barclay. She stated that Clement La Pierre depended on her father's kindness and after her father's death, their mother's and the children's kindness to continue to use the lands at the estate.
- [12] Both Thomas and Mona testified that they knew Rosa Turpin, she lived in Bogles, and that she had left Carriacou to go to Aruba. She never returned. In fact she died in Aruba.

- [13] As far as they were aware, their father did not sell or give any of his lands to Rosa Turpin.
- [14] Both siblings left Carriacou, one in 1956, the other in 1957. Both testified that they visited Carriacou regularly while they lived abroad. Both were not aware of Clement La Pierre owning any lands in L'ance (Anse) La Roche. Both testified that nothing had changed during their visits back to the island.
- [15] Indeed, Thomas testified that on those visits he would walk the estate, generally to see what was going on in the area. He said that from the 1970s up to present no one worked gardens in the area any more, or even tied animals. The animals would just be running loose. He described the estate as being a "jungle".
- [16] Erskime Patterson's evidence consisted of his purchasing stones from the Barclay family, which came from the estate lands, and that he never saw a house on the estate at L'ance (Anse) La Roche.
- [17] Both Mona Cox and Thomas Barclay amplified their witness statements and both testified that they knew the Defendant growing up in Bogles and not on the estate. They both testified that they saw the Defendant with her parents on the estate lands owned by their father. She was assisting her parents with tending their garden and rearing animals on the estate.
- [18] Other persons also had gardens and tended animals on the estate. Their names were: Baby Melville, Vera Rosemin, and Julia Gill, among others. They both reiterated that their father gave these and other persons permission to work the lands of the estate.
- [19] They also say that they do not know of Winston Fleary living at L'ance (Anse) La Roche, or of him occupying any lands in the area. He lived in Belvedere, which was approximately one (1) mile from L'ance (Anse) La Roche. Mona Cox testified that her family has been paying the taxes on all 44 acres of land at L'ance (Anse) La Roche.

- [20] In cross-examination, Thomas Barclay said he knew Jonathan Roseman. He testified that Mr. Roseman was his uncle and was close to his parents, but he denied that Jonathan Roseman oversaw the estate for his parents; he said it may have been possible but not to his knowledge. He was adamant that he was not aware that Mr. Roseman represented the family at the survey the Defendant had carried out in 1992. He was unaware if he pointed out boundaries at that survey.
- [21] He also testified that Freddy Barclay was his cousin, who had a common law relationship with Rosa Turpin. He was unaware of his father having sold any land to Rosa Turpin. He was unaware that Rosa Turpin paid taxes for 22 acres of land at L'ance (Anse) La Roche.
- [22] He indicated that his father had told him that he gave Clement La Pierre permission to use the land. His father told him this when he was about 11 – 12 years old.
- [23] He denied that Clement La Pierre ever occupied 22 acres of land without his father's permission. He stated that Mr. La Pierre shared the produce he grew on the estate with his father.
- [24] He stated that when he returned to Carriacou he would walk the estate. He said he could see the north of the estate from the south, and from the east he could see the west. He said the estate was not flat, nor was it a continuous slope; some gradients are higher than others.
- [25] He denied that Clement La Pierre ever dispossessed his family of 22 acres or any land at L'ance (Anse) La Roche. He repeated that Clement La Pierre was on the land with his father's permission.
- [26] Mona Cox, in cross-examination, stated that Clement La Pierre rented lands from her father and occupied those lands rearing goats and sheep. She said the contents of the Statutory Declaration were misleading. She denied that Winston Fleary or any of the Fleary family ever rented land at L'ance (Anse) La Roche.

- [27] She was not aware whether Rosa Turpin had purchased land from her father. She and Rosa Turpin were not close. She was unaware that Rosa Turpin's name appeared on the Government rolls for 22 acres of land at L'ance (Anse) La Roche.
- [28] She said as far as she knew her brother Thomas Barclay paid the taxes for the lands at L'ance (Anse) La Roche.
- [29] She agreed that if Clement La Pierre was renting lands at L'ance (Anse) La Roche he would be acting as the owner of the land. But she denied that the Defendant's family had rented any lands at L'ance (Anse) La Roche to any third parties.
- [30] She knew nothing of the survey in 1992, but she denied that Jonathan Roseman pointed out boundary markers on behalf of the family.
- [31] She confirmed that Baby Melville, Julia Gill and Vera Rosemin all reared animals on the same lands that Clement La Pierre had his animals. Everyone planted the same bed.
- [32] Cloyde Roberts' cross-examination was that he had never seen the Defendant or the Flearys, especially in the last 20 years, on the lands of L'ance (Anse) La Roche, but he remembers Clement La Pierre planting crops on the land.
- [33] Erskime Patterson recalled Clement La Pierre working lands for the Barclays at L'ance (Anse) La Roche. He repeated that he knew of no one living at L'ance (Anse) La Roche when he was growing up in the area. He also testified that he bought boulders from the Barclay family.
- [34] The Defendant called three (3) witnesses, the first being Eliza Hamlet. She stated that she knew the Defendant's parents, she was a flower girl at their wedding. She also knew Rosa Turpin. She said that Rosa Turpin left her personal effects and land (22 acres at L'ance (Anse) La Roche) to Clement La Pierre when she left for Aruba in 1946.
- [35] She said she worked the lands with others and Clement La Pierre, planting crops from 1947 to 1951.

- [36] She testified that her parents rented land from Clement La Pierre at L'ance (Anse) La Roche from 1947 – 1981. She says that there was no dispute with the La Pierres and the Barclays over the land.
- [37] She went to Aruba and when she returned to Carriacou in 1956 her parents were still renting land from Clement La Pierre; and when she left for England in 1968 the position was the same.
- [38] In cross-examination she stated that Clement La Pierre's wife was her aunt and that Winston Fleary was her brother. She said that she knows that her brother Winston rented lands at L'ance (Anse) La Roche from Clement La Pierre. He planted crops and reared animals there.
- [39] She said that she found out "by talk" that Rosa Turpin left 22 acres of land to Clement La Pierre. She said she never saw a deed by which Rosa Turpin left 22 acres to Clement La Pierre.
- [40] She admitted that other persons worked the land at L'ance (Anse) La Roche; she remembered Baby Melville, Vera Roseman and Julia Gill working lands at L'ance (Anse) La Roche.
- [41] She admitted that she was not in Carriacou between 1951 and 1956 and again after 1968. She did not know what was going on during those times. She said that she knew that persons sometimes rent and sell lands which they do not own.
- [42] Hilda Clement testified on her own behalf. She stated that from childhood, she grew up on the lands tending animals on the L'ance (Anse) La Roche estate. She said these lands belonged to her father.
- [43] She and her nine siblings grew up working and cultivating the estate until they all migrated, as late as 1981.
- [44] She also testified that throughout their occupancy since 1946 there was no dispute as to the ownership of the estate. The family had undisturbed possession of the lands and did as they wished with it, without hindrance or let.

- [45] She had taken over possession of the lands from her father who she said got possession from Rosa Turpin. She said it was her understanding that Turpin bought the lands from the Barclays.
- [46] In cross-examination she said that her father never had permission from George Barclay (deceased) to use the lands in question.
- [47] She denied that her father ever shared the produce from the lands with George Barclay; he sold some and he kept some for his family.
- [48] She saw Winston Fleary on the questioned lands; she said her father gave Winston Fleary permission to do so. She denied that Baby Melville was on the lands that her father occupied. She tended beasts.
- [49] She could not recall either Vera Roseman or Julia Gill being on the lands in question.
- [50] Her father used a good bit of the 22 acres for his beasts and another portion for his farming. She could not say the exact amount of land her father used. It was not George Barclay's land her father used. Her father was put in charge of the land by Frederick Barclay and Rosa Turpin. She does not say how Barclay and Turpin came into possession of the lands.
- [51] In 1992 a survey of the lands was carried out, no one objected to the survey. She was present as was Winston Fleary and Jonathan Roseman.
- [52] She admitted that in her witness statement she never said that Frederick Barclay put her father in charge of the land.
- [53] She took over the lands in 1990 when her father died. She took over the lands from him. When shown the Statutory Declaration where Winston Fleary deposed that her possession was over 20 years from 1992, she stated that she was in possession from at least 1972. But she testified that between 1959 – 1989 she lived in the United Kingdom. She admitted that she had no first hand knowledge of what happened at L'ance (Anse) La Roche between 1959 – 1989.

- [54] She testified that she was in the West Indies in 1970. She came from England in 1989. Her father died in 1990 and then she went into possession.
- [55] She said she was born in 1939 and that Rosa Turpin left Carriacou in 1946. She was then seven (7) years old. It was her understanding that Rosa Turpin had bought the land. From whom she bought the land she did not say. She had never seen a deed for Rosa Turpin purchasing the land. She had never seen a document whereby Rosa Turpin left the land in the possession or control of her father, Clement La Pierre.
- [56] She then changed tack slightly by saying that it was after Winston Fleary swore the Statutory Declaration that she began to have possession, that is, after April 1992.
- [57] She reiterated that her father occupied 22 acres of land, that they (her family) paid taxes on 22 acres of land, that Rosa Turpin owned the 22 acres of land.
- [58] She insisted that her father occupied the disputed lands through the authority of Rosa Turpin; that the Barclays never gave her father permission to occupy the lands. She could not speak to the Barclays allowing other persons to occupy the lands. She was unaware if her father ever made any claim to the land. She admitted that the first time anyone had laid claim to the land was after her father's death.
- [59] Gretlyn Bedeau also testified that she was born in 1938 and she knew her father Clement La Pierre in possession of 22 acres of land at L'ance (Anse) La Roche. Again, she does not state how she came to that knowledge.
- [60] She further stated that prior to her leaving for England in 1960 she was sent to pay taxes for Rosa Turpin.
- [61] She knew her father planting the disputed lands, and that he sold wood to the factory to boil lime. She was also aware that her father rented lands to other persons, Moses Fleary and Ethel Phillip being two such persons.

- [62] She knew the Barclay family, they were neighbours. There was no dispute about the lands at L'ance (Anse) La Roche. There was no dispute until her father died and the Defendant, her sister, administered and took over from their father.
- [63] In cross, she stated she knew Baby Melville not as planting crops at L'ance (Anse) La Roche but rearing animals. Baby Melville used lands belonging to Taffie Barclay (George Barclay, deceased). She could not recall Vera Rosemin farming lands at L'ance (Anse) La Roche, but she remembered Julia Gill rearing animals, also on Taffie Barclay's lands.
- [64] She testified that her father did not share his produce with George Barclay, he kept it to mind his family. She also insisted that her father did not have permission from George Barclay to work the land, but her father's permission was derived from Rosa Turpin and Freddy Barclay. She also stated that she knew of Winston Fleary farming lands at L'ance (Anse) La Roche.
- [65] She knew her father got permission to use the lands from Rosa Turpin and Freddy Barclay because he told her so. She said that her father paid taxes on the land till the day he died; but her father never claimed the land while he was alive.
- [66] She admitted that the Defendant was away from Grenada and specifically Carriacou for about 30 years. She said that the Defendant was in possession of the land in question when the Statutory Declaration was made.
- [67] She was aware that it was 22 acres because there was a bound.
- [68] The Defendant's case is based on the premise that Clement La Pierre entered into possession of the disputed lands in 1946 on the permission of Rosa Turpin and Frederick Barclay, and that he occupied and worked the land openly, freely, continuously and exclusively for over 40 years. They also alleged that Rosa Turpin was listed on the Government roll for 22 acres of land at L'ance (Anse) La Roche.

- [69] The Defendant has, however, failed to show the Court how Rosa Turpin and Freddy Barclay, through whom they claim, came into possession or ownership of the disputed lands.
- [70] These lands were registered to George Barclay, deceased, by way of an Indenture of Conveyance made on the 17th July 1922 between himself and one Marie Moss. The estate purchased comprised 134 acres and 3 roods of land situate at the L'ance (Anse) La Roche Estate. This is not in dispute. By way of an Indenture of Conveyance dated 14th May 1923 between Susannah Thomas Jane Roberts and George Barclay the said 134 acres and 3 roods were partitioned and the said George Barclay became the owner of 44 acres 3 roods of the said lands.
- [71] Frederick Barclay was the nephew of George Barclay, deceased. He lived at Bogles and, according to Thomas Barclay, was not close to his father. Freddy Barclay had a common law relationship with Rosa Turpin, and there is no evidence of any transfer of property at L'ance (Anse) La Roche from George Barclay, deceased, to either Freddy Barclay or Rosa Turpin, either in common or jointly.
- [72] If, as is stated, Rosa Turpin at some time was paying taxes on 22 acres at L'ance (Anse) La Roche, there is no cogent evidence before this Court as to how she came to be doing so. There is no evidence before this Court that either Freddy Barclay or Rosa Turpin ever occupied or worked or owned the land in question. All the evidence is, is that Rosa Turpin turned the land over to the Defendant's father in 1946 prior to leaving for Aruba.
- [73] No documentation has been presented to this Court to convince it that Rosa Turpin ever was in a position to pass the lands at L'ance (Anse) La Roche to Clement La Pierre.
- [74] I believe the evidence of the Claimants that Clement La Pierre occupied the lands at L'ance (Anse) La Roche by way of permission from their father, George Barclay, deceased. The Defendant's father was one of many persons to whom George

Barclay gave permission to plant crops and rear animals on the lands he owned at L'ance (Anse) La Roche. These persons include Baby Melville, Vera Rosemin and Julia Gill.

- [75] I believe that Clement La Pierre occupied a small area of land, but not the 22 acres the Defendant and her witnesses want the Court to believe he occupied.
- [76] I find that Clement La Pierre did nothing to dispossess the Claimants' father or the Claimants themselves of the disputed lands at L'ance (Anse) La Roche.
- [77] There is no evidence that Clement La Pierre fenced the lands or did anything with the lands which would have indicated to the Claimants and to the world at large that he was now in possession of the lands to the exclusion of all others.
- [78] I have already indicated that I do not believe that Clement La Pierre rented lands at L'ance (Anse) La Roche to others.
- [79] Cultivating lands or rearing animals on lands are not sufficient to establish claims to the possessory title to land. They are not acts sufficient to show an adverse possession of land to the detriment of those who have the paper title to the questioned lands.
- [80] I also believe that Clement La Pierre ceased rearing animals and planting crops at L'ance (Anse) La Roche not in 1988 as testified to by the Defendant, but sometime in the early 1970s. I accept the evidence of Thomas Barclay in this regard that farming and other agricultural activities on the L'ance (Anse) La Roche estate had ceased by the 1970s. I believe him when he stated that as of up to the time of his witness statement in February 2004, the place was a jungle with animals on the loose.
- [81] The Defendant makes much of her assertion that Rosa Turpin paid the taxes on the disputed lands. She asserts that the only logical explanation as to why her name was on the tax roll for 22 acres of land at L'ance (Anse) La Roche was because she was the owner.

- [82] I pause here to note that the Defendant has not produced a copy of the tax roll for lands at Carriacou nor has she produced one receipt evidencing payment of land taxes by either Rosa Turpin, Frederick Barclay or the Defendant herself.
- [83] The payment of land taxes is not indicative of ownership of land. The Defendant and her sister both gave evidence that Rosa Turpin and then the Defendant paid the land taxes for 22 acres of land at L'ance (Anse) La Roche. They ask that due weight be given to this alleged fact. They have submitted that the Taxes Management Act, Cap 29 requires that the owners of land pay land taxes for the acreage they occupy. But that Act also provides for tenants and persons who have a charge on taxed property to pay taxes and either deduct them from the rent or recover them from the owner.
- [84] It stands to reason that persons paying land taxes is not necessarily an indication that they are the owners of that property.
- [85] In the circumstances of this case, with the facts before the Court, I cannot and do not find that Rosa Turpin was ever the owner or even the occupier of those 22 acres of land at L'ance (Anse) La Roche.
- [86] I find that Clement La Pierre did not get the 22 acres at L'ance (Anse) La Roche from Rosa Turpin; she did not have it to give. She never owned or occupied them.
- [87] The question is: How did Clement La Pierre come into occupation of the lands at L'ance (Anse) La Roche.
- [88] I find that the evidence of the Claimants as to how the Defendant's father came into occupation of the disputed lands to be more compelling than that of the Defendant.
- [89] The Defendant does not have a paper title and does not claim to have one. The Claimants have asserted, and I accept, that Clement La Pierre came into occupation of the lands at L'ance (Anse) La Roche by permission given him by their deceased father, George Barclay.

- [90] No evidence has been led as to when Clement La Pierre entered into occupation, but it would have been sometime after the 1923 partition which gave George Barclay his 44 acres of land.
- [91] I find as a fact that Clement La Pierre did not at any time occupy 22 acres of land. At best on the evidence Mr. La Pierre occupied a small section of land, maybe half an acre for planting crops and another small portion for grazing his animals.
- [92] I find that Clement La Pierre was not the only person who was allowed to occupy George Barclay's lands. I find that other persons were also allowed to use various portions of the estate for planting and for rearing animals. This finding is supported by the Defendant's witness, Eliza Hamlet.
- [93] The Defendant seeks to hang her hat on the assertion that Clement La Pierre acted as owner of the disputed lands to the exclusion of the Barclays by renting portions of the lands to third parties. No one was called who could substantiate this allegation, even though one of the persons who it is alleged rented lands from Mr. La Pierre, Winston Fleary, was present in court but was never called as a witness in this matter.
- [94] The Defence is grounded in the Limitation of Action Act Section 4 Cap 173. This section reads as follows:
- "4. No person shall make an entry or distress, or bring an action to recover any land, but within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to some person through whom he claims, or, if the right has not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make the entry or distress, or to bring the action, has first accrued to the person making or bringing it."
- [95] This section bars the bringing of an action to recover land but within twelve years next after the time at which the right to bring the action first accrued to some person through whom they claim.

[96] This has to be read in conjunction with section 27 of the Act, which reads as follows:

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

[97] Even though not couched in the terms of adverse possession, this I find is the essence of the defence in this matter.

[98] In order to satisfy the defence, the Defendant has to satisfy the following requirements:

[99] Firstly, possession has to be without the permission of the person with the proper title to the land. One must enter the land without permission from the beginning, or having entered with permission, it must have expired.

[100] Secondly, one has to show that one has sufficient exclusive occupation to constitute possession continuously for the prescribed period.

[101] Thirdly, such possession must be adverse to the possession of the holder of the paper title. The person claiming must exercise control of the land with the intention to exclude the owner of the land on his behalf and for his benefit. He must intend to possess the land.

[102] Fourthly, the possession must be *nec vi nec clam nec precario*, that is, without force, openly and without permission.

[103] For a party to succeed in a defence of adverse possession, all the requisite elements must exist. Should any element be missing, the defence fails and adverse possession is not made out.

- [104] Where, as here, possession is with the permission of the owner, there is no adverse possession.
- [105] Alleyne, J. in **Lett v Davis & Jones** GDAHCV 1994/0463 stated:
- “Where the occupier of premises is in possession by the owner’s leave, his occupation may not be an independent possession by him, but the possession of the owner himself, so that the owner is in possession through the occupier as his licensee.”
- [106] I find that the Defendant cannot claim possession by way of either Rosa Turpin or through Clement La Pierre.
- [107] I do not find that Clement La Pierre paying land taxes sufficed to dispossess the Claimants or their father of the lands at L’ance (Anse) La Roche or proves that Rosa Turpin or Clement La Pierre ever owned the lands in dispute. The mere payment of taxes for lands does not entitle the person so paying to claim ownership of those lands.
- [108] With respect to the Defendant’s claim to the property by way of the Statutory Declaration of Winston Fleary, I find that there are discrepancies between the times set out in the Declaration and the oral testimony of the Defendant.
- [109] The Declaration stated that the Defendant had been in possession for over 20 years. (The Declaration was made in 1992.) This means that she was in possession of the questioned lands at least from 1972.
- [110] However, the Defendant in her defence stated that she was away from Carriacou from at least 1959 to 1989. Contrast this with another paragraph in her defence where she stated that her father remained in possession until his death in October 1990. In her oral testimony she declared that her father remained in possession in the year 1989.

[111] She further testified that she did not really come into possession until after Winston Fleary swore the Statutory Declaration in April 1992. In fact the survey plan attached to the said Statutory Declaration was done in February 1992.

[112] The Defendant insists that her father occupied 22 acres at L'ance (Anse) La Roche, and her witness stated she knew it was 22 acres because there was a bound. However, in her oral testimony the Defendant stated that her father "occupied a few acres well", not 22 acres of land.

[113] Bearing in mind the evidence of the Claimants that Clement La Pierre occupied two areas on the L'ance (Anse) La Roche estate, one for his crops, the other for his animals. The evidence which I accept is that these two areas were far less than the 22 acres claimed by the Defendant.

[114] I find that even if I were to accept the contents of the Statutory Declaration, and the evidence of the Defendant, her occupation of the lands at L'ance (Anse) La Roche beginning in 1992, the claim having been filed in April 2003, the requisite twelve year statutory period would not yet have expired.

[115] I also take careful note of the words of Alleyne J in **Phibiana Geroge v Dorothea Corion and others**:

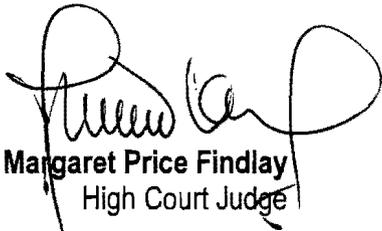
"I do not consider this Statutory Declaration to be of any value as a document of title, nor does it have value as evidence in the case, since Jones can be no more than a witness of fact. He has not given *viva voce* evidence and there has been no opportunity for him to be cross-examined or his veracity tested or assessed. I have not taken the Statutory Declaration into account."

[116] It is the same here; Winston Fleary was not a witness and could not be cross-examined as to the truth of his statements in the declaration. I therefore find the declaration to be of little assistance in the matter.

[117] Further, I agree with Counsel for the Claimants, the Defendant has not testified that she has ever worked the land herself or done anything with respect to the land to demonstrate that she has taken possession of the land to the exclusion of either the Claimants or others. Having a survey carried out in 1992 does not rise to the required level.

[118] Having considered all of the evidence, I make the following orders:

- (1) A Declaration that the Claimants are the owners in possession of a lot of land comprising by admeasurement Forty Four (44) Acres and Three (3) Rods English Statute Measure situate at the L'ance La Roche Estate in the island of Carriacou in the State of Grenada as recorded in the Deeds and Land Registry of Grenada in Liber 4-93 at page 467.
- (2) An injunction restraining the Defendant whether by herself, her servants or agents or howsoever otherwise from selling or purporting to sell or offering or advertising for sale or otherwise dealing with or purporting to or attempting to deal with the said lot of land.
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- (4) The said Statutory Declaration is hereby set aside.
- (5) The entry in the registry books in the Deeds and Land Registry relating to the said Statutory Declaration of Winston Thomas Fleary is hereby cancelled.
- (6) Costs in the sum of \$10,000.00.


Margaret Price Findlay
High Court Judge