THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. : ANUHCV 2012/0256

BETWEEN:

CARLTON LEWIS

Claimant/Applicant

AND

NEIL COCHRANE
As President of the Antigua Turf Club

Defendant/Respondent

Appearances:

Mr. Hugh Marshall Jnr. with Ms. Kema Benjamin for the Claimant/Applicant
Mr. Ralph Francis with Mr. George Lake for the Defendant/Respondent

_____

2012: August 3
September 5

_____

RULING

[1] Thomas W.R. Astaphan J.: This is an Application by the Claimant/Applicant, Mr. Carlton Lewis, filed on the 22nd May, 2012 for an Injunction restraining the Antigua Turf Club, acting through its President, the named Defendant/Respondent, (hereinafter the Antigua Turf Club and Neil Cochrane shall be referred to as "Defendant/Respondent") restraining "…the Defendant [Respondent], its members, servants and agents from trespassing upon the Claimant's lands or otherwise entering upon the lands of the Claimant situate at Cassada Gardens and known as the

Cassada Gardens Race Track and more particularly described in the Land Registry as Registration Section: Barnes Hill and Coolidge; Block: 41 2094A Parcels 420 & 421." (Hereinafter referred to as either/and/or, "the lands", "the parcels", "parcels 420 & 421"). The application further asks that the Defendant/Respondent "…render upon oath a true account of any monies received and all income obtained from any enterprise carried out upon the lands during the period 8th April 2012 until further Order of this Court."

[2] THE PLEADINGS

(a) The Claimant/Applicant filed on the May 22nd 2012, a Fixed Date Claim Form, a Statement of Claim and this Application.

(b) On June 22nd 2012, an Amended Fixed Date Claim Form and an Amended Statement of Claim were filed by the Claimant Applicant.

(c) On 10th July, 2012, the Defendant/Respondent filed a Defence.

(d) Previously, on April 5th 2012, the Claimant/Applicant had filed an Application to have Neil Cochrane joined as the named Defendant in his capacity as President of the Antigua Turf Club, it being an unincorporated body. An Affidavit entitled "First Affidavit of Carlton Lewis" was filed in support thereof on the said day.

(e) Carlton Lewis filed a Second Affidavit on May 22nd 2012, and a Third Affidavit on 27th July, 2012.

(f) The Defendant/Respondent filed an Affidavit on July 11th 2012, (Neil Cochrane), a Supplemental Affidavit on 24th July, 2012, (Neil Cochrane), and another on the 24th July, 2012, (Walter George).

(g) The Claimant/Applicant filed Submissions on 30th July, 2012 and the Defendant/Respondent filed Submissions on 31st July, 2012. On August 1st 2012, the Claimant/Applicant filed a "Skeleton Reply".

(h) On 2nd August, 2012 the Defendant/Respondent filed two Applications seeking Leave to add the Attorney-General as a Party to the proceedings as an Ancillary Defendant. This was supported by an Affidavit of even date. Also filed on that date was an "Amended Defence and Counterclaim".

(i) On August 10th, 2012, the Defendant/Respondent filed an Application seeking Leave to file an Amended "Statement of Case". Filed in support was an Affidavit dated that day. Also filed on 10th August by the Defendant/Respondent was a "Further Amended Defence and Counterclaim".

(j) The items at (h) to (i) do not trouble us in the Application under consideration, but are included for the sake of completeness. Those Applications will be heard and determined otherwise.

[3] THE FACTS

(The Claimant/Applicant's Version)

a) That he is the proprietor of a Leasehold interest in the lands duly granted to him by the Government of Antigua and Barbuda in April 2000 for a Term of 25 years commencing 1st April 2000. [The Defendant/Respondent admits this fact]

b) That the Defendant/Respondent "...is an organization that traditionally used the lands for Horse Racing events." [The Defendant/Respondent admits this fact]

c) That the Defendant/Respondent "…have no permanent presence on the lands and have events seasonally usually at Easter, though for the last three Easters they have had no events." [The Defendant/Respondent vigourously deny that assertion]

d) That, "Since the Crown leased these lands to me there have been repeated objections from members of the Defendant organization." [This assertion is neither admitted nor denied by the Defendant/Respondent, but appears, on the totality of the evidence to be a fact, and I so find.]

e) That there have been communications between the Attorney-General of Antigua and Barbuda with respect to the Lease, as well as communications by the Claimant/Respondent with the Development Control Authority of Antigua and Barbuda with respect to certain approvals to carry-out certain works on the lands. [The Defendant/Respondent does not admit or deny these assertions. On the totality of the evidence I find these to be facts.]

f) That the Claimant/Applicant has "…observed that construction was being carried out on my lands, this of course is being done without my approval", and that the Defendant/Respondent "…is making public statements about carrying out improvements to the lands he calls "Cassada Gardens Racetrack". Talks between the Defendant association and the Cabinet [of the Government of Antigua and Barbuda] were reported in the media..," [The Defendant/Respondent neither admits nor denies these assertions. On the evidence before me I find these to be facts, and for reasons which will become apparent later on in this Ruling, the Defendant/Respondent did not require the Claimant/Applicant's approval for the works carried out on the lands.]

g) That the Claimant/Applicant instructed his attorneys to write to the Defendant/Respondent to seek to resolve this matter and that they cease trespassing upon the lands. [The Defendant/Respondent does not deny or admit these assertions, save to counter by way of a letter in response, saying that the Claimant/Applicant has "…no interest in the lands." I find this to be a fact.]

h) That the Defendant/Respondent has conducted races for profit and intends to continue doing so. [The Defendant/Respondent admits conducting races, and the intention to continue doing so, but states that they very rarely, if ever, make any profits. Further, they say, that is exactly the purpose for which the lands were "given" to them by the Government of Antigua and Barbuda in or about 1964]

i) That "…the Attorney-General appears to be encouraging the Defendants but insist on my legal rights and that they are not to be continuously violated as if they do not exist." [The Defendant/Respondent neither admits nor denies the foregoing assertion. I refrain from finding this to be a fact for reasons which are stated in paragraph 16 below.]

j) That the Claimant/Applicant "…accept[s] that the lands over which I have a lease have been used for horse racing for many years. However, I challenge that the Defendant has (sic) enjoyed the use since 1960 as alleged in Mr. Cochrane's first affidavit as the defendant is an unincorporated organization and there is no evidence or record as to when

it was formed. In any event the issue remains, under what terms the Defendant occupied the lands." [The Defendant/Respondent denies these assertions and adamantly asserts that they have been in actual occupation and possession of the lands since at least 1964, and that they have conducted horse racing at the site continuously, save for when they have had to make repairs as a consequence of either hurricane and/or water damage from heavy rains, or on at least one occasion in July 2010, when the Claimant/Applicant took heavy equipment to the tracks thereby rendering it impossible for the Equidae to safely circumnavigate the racecourse. I accept as fact the Defendant/Respondent's version.]

k) That at the time the Crown granted him the Lease the Defendants were not in actual occupation of the lands. That he does accept that from time to time they conducted horseraces at the site and exercised horses. However, he asserts, he does not "...recall observing continuous occupation in the year 2000 when my lease [sic] was issued." [On the totality of the evidence before me I accept as fact the Defendant/Respondent's evidence as to their continuous possession, occupation and user of the lands, since at least 1964.]

l) That, upon advice of Counsel Learned in the Law, the most the Defendant/Respondent enjoyed was a "tenancy at will"

(The Defendant/Respondent's Version)

a. That in or about 1964, the Government of Antigua and Barbuda gave the lands to the Antigua Turf Club for the purpose of developing, arranging and promoting the sport of horse racing in Antigua and Barbuda. [The Claimant/Applicant does not deny or admit this. I find this as fact.]

b. That the Government has, over the years contributed monies to this end. [Again, the Claimant/Applicant does not deny or admit this. This I find to be a fact.]

c. That as recently as November 2011 the Department of Public Works of the Government of Antigua and Barbuda assisted the Defendant/Respondent in the conducting of remedial

works on the lands, which works were necessitated by the Claimant/Applicant's aforesaid deployment of heavy equipment on the race track and its environs. [In the face of these assertions the Claimant/Applicant stands mute. I find it to be a fact.]

d. That over the past 45 years the Defendant/Respondent has occupied the lands carrying on the business of horse racing, conducting races some 12 to 20 times a year. [Claimant/Applicant admits the carrying on of horseracing for "many years", but denies the frequency asserted by the Defendant/Respondent. I find the Defendant/Respondent's version to be fact.]

e. That it has maintained the track and has had to repair and "resod" the track, and replace rails and other infrastructure during the period the 1960's to 2010. [The Claimant/Applicant inferentially disputes these assertions, as well as those in the next following paragraph, stating that there were no "permanent" structures on the lands. I find the Defendant/Respondent's version as a fact.]

f. That horse owners purchased horses, built stables upon the lands, constructed feed rooms "etc." and have employed persons full time to care and exercise the horses. All on the lands in question. [I find this as a fact.]

g. They assert that at no time prior to his letter of 16th February 2012 did the Claimant/Applicant prevent, or try to prevent, them from so doing. This, presumably, since 2000 when the Claimant/Applicant was granted the Lease by the Crown. So that for the entire period between 2000 when he was granted his Lease and February 16th, 2012, the Claimant/Applicant sat by and did absolutely nothing to stop or otherwise interfere with the Defendant/Respondent's peaceful enjoyment of the lands, save for the heavy equipment invasion of 2010. [The Claimant/Applicant neither admits nor denies these assertions. I find these assertions to be facts.]

h. That whenever the tracks were destroyed by storm the "stake holders" have rebuilt the facility. The last such time being in 2000. [I find this to be a fact.]

i. That, consequent upon the Claimant/Applicants actions referred to in paragraph (h) above, races were cancelled for 18 months while the Defendant/Respondent undertook the repairs necessary to resume horse racing. [None of this is contested by the Claimant/Applicant, and are therefore found to be facts.]

j. That in fact the Claimant/Applicant himself entered into an arrangement with the Defendant/Respondent whereby the Claimant/Applicant would promote horse racing on the lands on behalf of the Turf Club. This in 1997 when the Claimant/Applicant approached the Defendant/Respondent with such a proposal. [I find this to be a fact.]

k. That, apart from the episode in 2010, they have been in undisturbed, uninterrupted and exclusive possession and occupation of the lands continuously, since at least 1964 when the Government "gave" them the lands for the purpose set out above. [The Claimant/Applicant disputes the regularity and continuity of said occupation. I accept the Defendant/Respondent's version as fact.]

l. All this, submits the Defendant/Respondent, gives rise to an overriding interest in the lands in favour of the Antigua Turf Club. [The Claimant/Applicant states that what the Turf Club had, at its highest, was a Tenancy at Will which was determined by the grant of the Lease to him by the Government of Antigua in 2000.]

m. Additionally, there is the Affidavit of Mr. Walter George. Mr. George asserts that he is an 80 year old automobile mechanic. He has been such for the past 63 years. That in or around 1970 he was granted permission by the Ministry of Agriculture, Lands and Fisheries to purchase a parcel of land at Cassada Gardens upon which to build and operate his mechanic shop. The area allotted to him included the Club House which the Defendant/Respondent now occupies as such. There were concrete columns of the allotted land. They were to accommodate 12 stalls for horses. In order to commence construction of his mechanic shop, Mr. George removed the concrete columns. Before he could go any further says Mr. George, he was stopped by the Ministry of Lands. They informed him that the parcel which they had allocated to him was to be kept as a part of the Cassada Gardens Race Track. He was relocated to a site to the south side of Old

Parham Old. His parcel is registered as Registration Section: New Winthorpes & Cassada Gardens Block: 42 1992B Parcel: 163. He is aware that horseracing was being carried on at Cassada Gardens at that time, in the 1970's. [This evidence is uncontroverted and I find it to be fact.]

The Court's Findings of Fact

[4] Based upon the Affidavit evidence before me, and in addition and complementary to the above findings of fact, I find as fact the following:

a) The Government of Antigua & Barbuda is the Registered Proprietor of Parcels 420 and 421.

b) In, at the latest, 1964, the Government of Antigua and Barbuda put the Defendant/Respondent into possession of the whole of these parcels for the purpose of developing, organizing, arranging and promoting the sport of horseracing in Antigua and Barbuda.

c) Over the years since at least 1964 the Defendant/Respondent have expended vast sums of money in the purpose of the development and promotion of horseracing in Antigua and Barbuda in accordance with the understanding under which the Government of Antigua and Barbuda put them into possession of the lands.

d) Over these past 48 years, funds have been provided by the Private Sector, private persons and members, amongst others, and, according to the uncontroverted evidence of the Defendant/Respondent, by the Government itself for these purposes. During some remedial work done to the track, the Government's Public Works Department assisted. I therefore have no hesitation in finding as an uncontroverted fact, on the evidence in this Application, that, not only did the Government of Antigua and Barbuda put the Defendant/Respondent into possession of the lands for the stated purpose, but that the Government, however sporadic it may have been, actively involved itself in assisting in the attainment of that purpose. That is perfectly reasonable, as an established Horse Racing Facility in the State provides benefits to the socio-cultural and tourism aspects of the

Nation. In other words, it would be in the Public Interest if Horse Racing was successfully established in Antigua and Barbuda, and it is not a difficult intellectual exercise to discern that this was the Government's purpose in 1964. A symbiotic relationship, if ever there was one.

e) The Club have been in exclusive possession and occupation of the lands undisturbed – save for the disturbance caused by the Claimant/Applicant destroying the track etc. in 2010 - from around 1964, and have done all what they were supposed to do with the lands, namely; develop, arrange, organize and promote the sport of horseracing in Antigua and Barbuda. That this has gone on for all the years since 1964 was not essentially disputed by the Claimant, save as to frequency. They have, according to the affidavit evidence of Neil Cochrane, President of the Turf Club, "All during the period from the 1960's to 2010... regularly put on its races some 12 to 20 times a year…" I accept the evidence of the Defendant/Respondent on these points over that of the Claimant/Applicant.

f) Over the years Members of the Club and racehorse owners have constructed stables and the like on the lands. Some employees of the Turf Club have constructed homes on the lands. All of this was known to the Government of Antigua and Barbuda, and, on the evidence before me, clearly by the Claimant/Applicant. Except for the 2010 incident involving the Claimant/Applicant, no one, particularly the Government of Antigua and Barbuda attempted in any way or at any time to prevent any of this. Neither before the 2000 Lease, nor after, has the Government objected to anything which the Turf Club did on the lands. Except in 2000, and this by necessary implication, when they granted the Lease to the Claimant/Applicant.

g) As stated earlier, on the uncontroverted affidavit evidence of the Defendant/Respondent in this Application, the land owner, the Government, actively encouraged the development of the racing facility by providing monies, as well as Public Works assistance on at least one occasion, to the Club.

h) The evidence shows that the Claimant himself was not only aware, but that he himself actively participated in 1997 in the promotion etc. of horseracing on the lands, working on the basis of an arrangement entered into between himself and the Turf Club. I find this as a fact.

i) In 2000 the Government of Antigua granted a Lease of these very parcels to the Claimant/Applicant. [The fact and validity of this Lease were acknowledged and admitted by Learned Counsel for the Defendant, Mr. Ralph Francis. Mr. Francis argued, however, that the Defendants/Respondents have an overriding interest in the said lands, which overriding interest impacts the Lease. The Claimant denies this and argues that the creation of the Lease by the Registered Proprietor terminates what was in effect a Tenancy at Will, or a Licence, created by the Government putting the Defendant into possession for the purposes stated above. This, in a nutshell, is the issue which undergirds the Application before me. What is the nature of the Interest, if any, which has been created in favour of the Defendant/Respondent on the facts of this case, and what is the effect of that interest, if any, on the Lease of the lands granted to the Claimant/Applicant.]

The Submissions

[5] The Claimant/Applicant argues that, based upon the decisions in (a) Patel v. W.H.Smith (Eziot) Ltd. and Another[1], (b) *Stanford International Bank Ltd. v. Lapps* (Antigua and Barbuda)[2], and (c) the learning set out in *"Injunctions"* seventh edition, David Bean at page 39,and *Blackstone's Civil Practice* at page 501, paragraph 37.46, the grant of the Lease by the Government of Antigua and Barbuda extinguished the Licence, or Tenancy at Will, created in favour of the Defendant/Respondent by the Government of Antigua and Barbuda putting the Defendants into possession of the Parcels for the purposes of horseracing.

[1] CA [1987] 1 W.L.R. 853
[2] [2006] UKPC 50 (20 November 2006)

[6] The Claimant/Applicant further argues that he is entitled to possession of the parcels based upon his duly granted and duly registered Lease thereof. The Defendant/Respondent, says he, are "Trespassers" who must be enjoined to give up vacant possession of the parcels to him.

[7] Further, says the Claimant/Applicant, the Defendant Antigua Turf Club have no reasonable Defence to his Claim, therefore the Injunction should be granted. They admit the grant of the Lease. They admit the validity of the Lease. They claim some overriding interest without specifying what that may be. Off the land they must go, says he.

[8] Further, submits Mr. Marshall, the grant of the Injunction sought falls within *American Cyanamid Co. v Ethicon Ltd*.[3], namely; (a) that the application for the Injunction and the Claim are substantially the same, and (b) the material facts are not in dispute and, (c) there is no arguable defence.

[9] In furtherance of his application, the Claimant/Applicant urges the Court to apply the principles of Law in following cases and materials:

a) Stanford International Bank Ltd. v Austin Lapps[4], In this case Mr. Lapps went into occupation of a piece of land owned by the Crown situated next to the Vere Bird International Airport in Antigua. This piece of land abutted Mr. Lapps' Hotel. Mr. Lapps went into occupation with the blessings of the Prime Minister of Antigua and Barbuda and stored upon the land, inter alia, construction materials. Sometime after the Crown – the Government of Antigua and Barbuda, - acting through Cabinet, granted a Lease of that piece of land to Stanford International Bank Ltd.

   There was no evidence lead in the case that the Cabinet of the Government of Antigua and Barbuda had at any time approved Mr. Lapps' occupation and use of the land. In fact the Judgment of Lord Scott of Foscote in this case states this: "The evidence of the Cabinet Secretary makes it tolerably clear that there was never any affirmative consent by

[3] [1975] AC 396
[4] [2006] UKPC 50

the Cabinet to Mr. Lapps taking possession of the 0.6 of an acre. He went into and remained in occupation of the land to the knowledge and with the encouragement of the Prime Minister but nothing has been shown to their Lordships to indicate that the Prime Minister had any authority to create a tenancy at will over this small piece of Crown land." His Lordships further stated that there was no evidence of any acts by Mr. Lapps of the Government which could give rise to a tenancy at will, but that "…their Lordships [were] content to proceed on the footing that Mr. Lapps did enjoy that status."

Their Lordships Held that that tenancy at will was determined by the grant of the Lease by the Government, an act inconsistent with the continuation of such a tenancy, which grant of the Lease was "…evidence of the intention of the Crown, acting by the Government of Antigua and Barbuda, to terminate the tenancy at will." It was Held that such determination of the "tenancy at will" took place when Mr. Lapps had knowledge of the grant of the Lease, which occurred when he had received a letter from the Attorneys for the Bank dated 25 July 1996.

On the basis of this case The Claimant/Applicant says that (a) what the Turf Club enjoyed, at its highest, was a "tenancy at will" and that (b) same was terminated by the Crown granting the Lease to Mr. Lewis, it being inconsistent with the continuation of the "tenancy at will", and (c) the termination occurred on 16th February 2012 when the Turf Club received the letter from Mr. Lewis' lawyers informing the Turf Club of the existence of the Lease. This latter point is a rather generous concession to the Turf Club by Learned Counsel Mr. Marshall, as the evidence emanating from Mr. Cochrane's affidavits makes it abundantly clear that the Turf Club had knowledge of the grant of the Lease to Mr. Lewis prior to that date.

(b) Patel and Others v W.H. Smith (Eziot) Ltd. and Another[5], This case, from the Court of Appeal of England, Held: "…that a landowner whose title was not disputed was prima facie entitled to an injunction to restrain trespass on his land, even if the trespass did not harm him, although there could be exceptional circumstances which would make the granting of an injunction

[5] [1987] 1 W.L.R 853

inappropriate; that on an interlocutory application such an injunction should, in the absence of such exceptional circumstances, be granted unless the defendant satisfied the court that there was an arguable case that he had a right to do that which the plaintiff alleged to constitute a trespass; that only if the defendant could show such an arguable case should the court go on to consider the balance of convenience, the preservation of the status quo and the adequacy of damages as a remedy, that since the defendants' use of the yard for parking and stationing the dustbin was at least equally consistent with toleration or licence by the plaintiffs and their predecessors as with user as of right and could not be shown to have arisen against the will of the plaintiff's predecessors, the defendants had shown no arguable case that they had a right to park cars in the yard beyond that which was incidental to the right of way, that the court could not be satisfied that the plaintiffs would not be harmed if the injunction were not granted and that, accordingly, the qualified injunction sought would be granted."

The facts, as set out in the Headnote of the case, were: "The Plaintiffs and the first defendant were freehold owners of adjoining properties. Prior to 1948 both properties had been in common ownership and the conveyance of that year to the first defendant's predecessor in title had conferred a right of way over the yard of the property subsequently acquired by the plaintiffs, which included the right to park vehicles in the yard for the purpose of loading and unloading. From 1948 onwards the first defendant and his predecessor had used the yard for parking up to eight vehicles, generally in a single line along the length of the outside wall of the yard, and on becoming the tenant of part of the first defendant's property, the second defendant continued so to park in the yard and had placed a dustbin against the wall of the yard. In 1978 the plaintiffs, on becoming the owners of their property, objected to the defendants' use of the yard for parking but took no steps to prevent it. In 1986 the plaintiffs commenced proceedings for an injunction restraining the defendants from parking or placing articles in the yard or allowing other persons to do so. The defendants by their defence claimed, inter alia, the right to park for the purpose of loading and unloading pursuant to their right of way and a prescriptive right to park eight vehicles along the outside wall of the yard, by virtue of a lost modern grant or 20 years' user as of right. The judge refused the plaintiffs' application for an interlocutory injunction on the basis that there was a serious issue to be tried, that damages were unlikely to be an adequate remedy for the defendants if they ultimately won, and that the balance of convenience was against the making of the injunction." The

plaintiffs then appealed seeking a qualified injunction which would not have the effect of preventing the defendants exercising their right of way. The qualified injunction was granted.

(C) Blackstone's Civil Practice *2009* page 501 paragraph 37.46

I quote the salient parts of this paragraph:

> "No defence
> In *Official Custodian for Charities v Mackey* [1985] Ch 168 Scott J said that the American Cyanamid principle: 'are not, in my view, applicable to a case where there is no arguable defence to the [claimant's] claim'. The court will not consider the balance of convenience, but will grant the relief claimed subject to the usual equitable considerations. Injunctions have been granted on this basis in cases of clear trespass (*Patel v W.H. Smith (Eziot) Ltd* [1987] WLR 853) and of clear breach of contract….Similarly, if all that is at issue on the merits is a simple point of construction, the court will resolve it and dismiss or grant the application accordingly…
> Alternatively, where there is no defence with real prospects of success the claimant may apply for summary judgment including a final order for an injunction, instead of applying for an interim order…"

The Claimant/Applicant relies on this learning in support of his submission that the Defendant/Respondent has no arguable defence and therefore, without further ado, the injunction should be granted.

The Defendant/Respondent's Submissions

[10] The Defendant/Respondent's position as evidenced in their Submissions, both Oral and written, and in their Affidavits, is quite succinct. It is this:

i). In or about at least 1964, the Government of Antigua and Barbuda gave them the lands for the purpose of developing and promoting horse racing in Antigua and Barbuda.

ii). That, pursuant thereto, they have been in possession and occupation of the lands ever since.

iii). That they have been developing and promoting the sport of horse racing at and from the lands ever since.

iv). That they have expended vast sums of money over these many years for the purpose for which they were put into possession and occupation of the lands.

v). That these monies came from, inter alia, the Members of the Turf Club, the Private Sector, members of the Public and, tellingly, *the Government of Antigua and Barbuda itself!*

vi). In fact, they say, when in 2011 they had to undertake major repairs as a result of the Claimant/Applicant's actions, *the Public Works Department of the Government of Antigua and Barbuda assisted.*

vii). That the Claimant/Applicant does have a duly granted registered Lease which is in full accordance with the Law.

viii). But, says they, We, the Antigua Turf Club, have an overriding interest to which that Lease is subject.

In support of their contentions the Defendant/Respondent submits the following cases and materials:

(a) FBO 2000 (Antigua) Limited v (1) Vere Cornwall Bird Jr, (2) Attorney General of Antigua and Barbuda, (3) Stanford Development Company[6], This case upon which the Defendant/Respondent seeks to rely appears to this court to be inapplicable to the case at Bar because the facts therein, and the issues and Law, are distinguishable. That case dealt with the issue of the existence of a right emanating from an agreement between FBO and the Government of Antigua and Barbuda with respect to the granting of a Lease to FBO by the Government, and the subsequent attempt by the Government to cancel that arrangement in favour of one with Stanford Development Company. The ultimate remedy sought and obtained was that of Specific Performance.

As I understand the Defendant/Respondent's case, they are relying on the equitable principle of Proprietary Estoppel based on the facts of the case at Bar.

[6] *[2008] UKPC 51*

(b) Yeoman's Row Management Limited and Another v Cobbe[7], The essential principle enunciated in this case is that of Proprietary Estoppel. Lord Scott of Foscote states it thus at paragraph 14 to 15 of the judgment:

> "…I want first to consider as a matter of principle the nature of a proprietary estoppel. An "estoppel" bars the object of it from asserting some fact or facts, or, sometimes, something that is a mixture of fact and law, that stands in the way of some right claimed by the person entitled to the benefit of the estoppel. The estoppel becomes a "proprietary" estoppel – a sub-species of a "promissory" estoppel – if the right claimed is a proprietary right, usually a right to or over land but, in principle, equally available in relation to chattels or choses in action. So, what is the fact or facts, or the matter of mixed fact and law, that in the present case, the appellant is said to be barred from asserting? And what is the proprietary right claimed by Mr. Cobbe that the facts and matters the appellant is barred from asserting might otherwise defeat? ...And what proprietary claim was Mr. Cobbe making that an estoppel was necessary to protect?"

At paragraph 16 states: "My Lords, unconscionability of conduct may well lead to a remedy but, in my opinion, proprietary estoppel cannot be the route to it unless the ingredients for a proprietary estoppel are present. These ingredients should include, in principle, a proprietary claim made by a claimant and an answer to that claim based on some fact, or some point of mixed fact and law, that the person against whom the claim is made can be estopped from asserting. To treat a "proprietary estoppel equity" as requiring neither a proprietary claim by the claimant nor an estoppel against the defendant but simply unconscionable behaviour is, in my respectful opinion, a recipe for confusion."

At paragraph 18 Lord Scott says this: "Oliver J (as he then was) stated the requirements of proprietary estoppel in a "common expectation" class of case in a well-known and oft cited passage in Taylor Fashions Ltd v Liverpool Victoria Trustees Co. Ltd[8]:

> "if A under an expectation created or encouraged by B that A shall have a certain interest in land, thereafter, on the faith of such expectation and with the knowledge of B and without objection by him, acts to his detriment in connection with such land, a Court of Equity will compel B to give effect to such expectation."

[7] *[2008] UKHL 55*
[8] [1982] QB 133 at 144

Note the reference to "a certain interest in land". *Taylors Fashions* was a case where the "certain interest" was an option to renew a lease. There was no lack of certainty; the terms of the new lease were spelled out in the option and the lessees' expectation was that on the exercise of the option the new lease would be granted. The problem was that the option had not been registered under the Land Charges Act 1925 and the question was whether the freeholders, successors in title to the original lessors who had granted the option, could be estopped from denying the right of the lessees to exercise the option… An expectation dependent upon the conclusion of a successful negotiation is not an expectation of an interest having any comparable certainty to the certainty of the terms of the lessees' interest under the *Taylor Fashions* option. In the Taylor Fashions case both the content of the estoppel, i.e. an estoppel barring the new freeholders from asserting that the option was unenforceable for want of registration, and the interest the estoppel was intended to protect, i.e. the option to have a renewal of the lease, were clear and certain."

The Defendant/Respondent also relies upon the case of Plimmer v Mayor of Wellington[9]. In *Yeoman's Row* Lord Scott dealt with *Plimmer* in this way: "…the question was whether the appellant, Mr. Plimmer, had a sufficient "estate or interest" in the land to qualify for statutory compensation when the land became vested in the Wellington Corporation. Plimmer had occupied the land under a revocable licence from the Corporation's predecessor-in-title and at the request of that predecessor-in-title had made extensive improvements to the land. The Judicial Committee held that these circumstances "were sufficient to create in his [Plimmer's] mind a reasonable expectation that his occupation would not be disturbed…" In effect, the owner of the land became estopped from asserting that the licence remained revocable. That was sufficient to constitute the licence an "estate or interest" for compensation purposes. The *Plimmer* case does not, in my opinion, assist Mr. Cobbe, whose expectation was that of further negotiations leading, as he hoped and expected, to a formal contract. To the extent that he had an expectation of a "certain interest in land", it was always a contingent one, contingent not simply on the grant of planning permission but contingent also on the

[9] (1884) 9 App. Cas. 699

course of the further contractual negotiations and the conclusion of a formal written contract."

Of relevant interest to the case at Bar is the case of Inwards v Baker[10] of which Lord Scott had this to say in *Yeoman's Way* at paragraph 22: "…was a case in which an indulgent father had encouraged his son to build a bungalow on his, the father's, land. The son had done so in the expectation, encouraged by his father, that he, the son, would be permitted to remain in occupation. The Court of Appeal held that the son had an equity entitling him to live in the bungalow as long as he wished. In effect the father, and after his death the trustees of his will, were estopped from denying that the son's licence to occupy the land was an irrevocable one. The case was on all fours with *Plimmer's* case, which was relied on both by Lord Denning M.R. (36/37) and by Danckwerts LJ (38) in their respective judgments. The principle that, if A, an owner of land, encourages B to build on his, A's, land on the footing that B will be entitled thereafter to occupy the new buildings for as long as he wishes and B, taking A at his word, then acts accordingly, A will be estopped from denying the right of B to continue to occupy the new buildings, is undoubted good law but is a principle of no assistance to Mr. Cobbe in the present case."

On the principles of law enunciated in the above cases, the Defendant/Respondent say that they do indeed have an interest, and that interest is an overriding interest based upon the facts and circumstances of their possession, which, materially, have not been disputed. They say that they do indeed have a Defence, a good and arguable Defence.

What does the Court say?

[11] The undisputed, and the accepted facts of (i) the Government of Antigua and Barbuda putting the Defendants into possession of the parcels in, at the latest 1964, for the purposes of the development and promotion of horseracing in Antigua and Barbuda, (ii) the Defendants, the Members of the Turf Club, the public, horse racers, as well as the very Government of Antigua and Barbuda having donated and/or expended sums of money, time, effort and in-kind services in

[10] [1965] 2 QB 29

pursuit thereof, all to the knowledge of the Government of Antigua and Barbuda and the Claimant/Applicant, (iii) the undisturbed, (save for the one occasion in 2010 when the Claimant bulldozed the track) and continuous occupation, possession and user by the Antigua Turf Club of the parcels to the exclusion of all others, including the Government of Antigua and Barbuda, and (iv) the undisputed evidence of Mr. Walter George, clearly and unambiguously establish to this Court's satisfaction that the Defendant/Respondent do indeed have a good and arguable Defence.

[12] This is not a case like the *Lapps* case. Whether or not there ever was a Cabinet decision to put the Turf Club into possession of the lands is, in my considered opinion, of no moment. The Government of Antigua and Barbuda contributed in cash and in kind to the purpose of the development and promotion of horseracing on the lands. They benefitted by the development of horseracing in Antigua and Barbuda by the Social, Cultural and economic and touristic impact on the Country. The Government has sat back from 1964 up to 2000 and did nothing to stop the Defendant/Respondent; and other persons from expending monies on the lands for the purpose of the development and promotion of horseracing in Antigua and Barbuda. The Government cannot now be heard to demand to exercise its rights of proprietorship of the lands to the detriment of the Defendant/Respondent. It is easily, and quite reasonably, inferred from the facts of this case, that it was the expectation of the Antigua Turf Club that they would have the use of the lands for the purpose of the development and promotion of horseracing, indefinitely. Equally so, the inference that, at least up until 2000, that was the intention of the Government of Antigua and Barbuda.

While it is true that both the Limitation Act and the Registered Land Act purport to prohibit prescriptive title to Crown Lands, the Defendant/Respondents defence is not based on limitation but on their having an overriding interest through the operation of equitable principles. I am relieved that these Acts do not purport to disapply the operation of such principles and remedies as against the crown

The Injunction Sought

[13] The Defendant/Respondent, the Antigua Turf Club, claim to have an equitable interest in Parcels 420 and 421. It would be an overriding interest. On the undisputed, and the accepted facts in

this case, and on the principles enunciated in Plimmer's case and Yeoman's Row case, I find that the Defendant/Respondent's Defence to the Claimant's Claim is arguable.

[14] The balance of convenience, on the facts of this case, makes it clear that the status quo must be maintained. In the event that it becomes necessary, Damages to the Claimant/Applicant will suffice.

[15] If the Defendant/Respondent is ultimately successful in establishing their right to equitable relief, its occupation of the lands, if ever it was, will have been elevated from the insecure right of the tenant at will and the act of the Government of Antigua and Barbuda in granting a lease to the Claimant/Applicant cannot have terminated the Defendant /Respondents interest. This is precisely why equity grants such remedies in the first place.

[16] I therefore dismiss the Claimant/Applicant's application for an Injunction.

[17] The Defendant/Respondent is to have its Costs in the sum of E.C $ 1,500.00.

Thomas W.R. Astaphan
High Court Judge (Ag)