

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2013/0190

BETWEEN

LAYNE INVESTMENTS LIMITED
EDWIN D. LAYNE AND SONS LIMITED

CLAIMANTS

AND

RUDOLPH AUGUSTUS BLACKETTE
KATY CHANCE

DEFENDANTS

Appearances:

Mrs. Rochelle Forde-Duncan with her Mr. Duane Daniel for the claimants.
Mr. Ronald Marks with him Ms. Chantal Belmar for the 1st defendant.
Ms. Maia Eustace for the 2nd defendant.

2019: Mar. 26 & 28

Apr. 4

May 2

JUDGMENT

BACKGROUND

[1] Henry, J.: Mr. Rudolph Blackette resides at Arnos Vale, Saint Vincent and the Grenadines where he operates a small business. He has done so since about 1982. He maintained that he owns the **land on which he resides ('the disputed property')**. **The property has a common boundary with a commercial property registered to and operated respectively by Layne Investments Limited and**

Edwin D. Layne and Sons Limited ('the claimants')¹. Ms. Katy Chance has lived on the disputed land with Mr. Blackette from about 2003, in a common law relationship.

[2] Layne Investments Limited (**'Layne Investments'**) **claimed that it has been the owner of the disputed land** at all material times. It alleged that Mr. Blackette and Ms. Chance entered its land as tenants at will in 1982² and 2003³ respectively, with the understanding that they would vacate it whenever Layne Investments was ready for it. Mr. Blackette and Ms. Chance refuted this assertion.

[3] The Layne companies averred that Mr. Blackette and Ms. Chance individually and jointly asked them to sell them the disputed land. They alleged that Mr. Blackette approached them in 2011 and agreed to sell them his interest in the disputed property. They adduced a written document which purportedly contains the referenced agreement. The claimants claimed that Mr. Blackette reneged on the agreement and later finalized another agreement with them to sell his interest in the disputed property.

[4] Mr. Blackette countered that the Layne companies offered to buy the land and the structures on it from him and that he was pressured into signing the referenced document. He claimed that the contents were not explained to him fully and that the claimants took advantage of his poor reading skills and pressured him into signing the document.

[5] Layne Investments and Edwin D. Layne and Sons maintained that Mr. Blackette and Ms. Chance have always acknowledged that they are the owners of the disputed property. They alleged that they have suffered loss and damage. They claimed special damages, a declaration that Mr. Blackette and Ms. Chance are not entitled to enter and use the disputed property; an injunction to restrain them from entering it, damages and costs.

[6] Ms. Chance filed no defence to the claim. In his Defence, Mr. Blackette alleged that he purchased

¹ Referred to collectively as 'the Layne companies'.

² On or about 18th August 1982.

³ On or about 2nd December 2003.

the disputed property from one Addie Jackson in 1982. He filed an ancillary claim in which he claimed to be owner of the property by virtue of adverse possession. He sought orders declaring him to be the owner of the disputed property; and an injunction restraining the claimants from molesting or interfering with his peaceful possession of the property and costs.

ISSUES

[7] The issues are:

1. Whether Rudolph Blackette and/or Katy Chance occupy the disputed property as tenants at will of Layne Investments and Edwin D. Layne?
2. Whether Rudolph Blackette was influenced unduly into signing the agreements dated May 16th 2011 and September 25th 2012?
3. To what remedies is Layne Investments Limited, Edwin D. Layne and Sons Limited or Rudolph Blackette entitled?

ANALYSIS

Issue 1 – Do Rudolph Blackette and/or Katy Chance occupy the disputed property as tenants at will of Layne Investments and Edwin D. Layne?

[8] Layne Investments and Edwin D. Layne pleaded that the former is and was at all material times the owner of and entitled to possession of the disputed land which is described in Deed of Exchange No. 1195 of 2001⁴ and shown on survey plan G2048. The plan and the Deed reflect that the referenced land comprises 5,259 square feet. The Deed formalized an agreement between **Commercial Enterprises Limited ('CEL') as Vendor, Layne Investments as purchaser and Edwin D. Layne as the third party.** It was dated 9th April 2001.

[9] Pursuant to the agreement, CEL purported to convey to Layne Investments the disputed property in exchange for a parcel of land to be transferred to CEL by Layne Investments and Edwin D. Layne. The particulars of that second parcel of land were not included in the Deed of Exchange. It was **referred to as 'the hereditaments and premises as are more particularly described in ... another Indenture of even date made between the same parties.'** No such other Indenture was produced at

⁴ Registered on 11th April 2001.

the trial. The Deed of Exchange identifies Layne Investment and not Edwin D. Layne as the purchaser. Edwin D. Layne is not named as a co-transferee. Significantly, although Edwin D. Layne pleaded that it is and was the owner of the disputed property, it is not recorded in any Deed or other title document as owner of the disputed property. It acknowledged that it is a lessee of Layne Investment. I find therefore that Edwin D. Layne does not own the disputed property.

- [10] The Registration of Documents Act⁵ (**'the Act'**) provides by section 5 that every document registered pursuant to its provisions will have the effect of creating and conveying to the holder, a prior title, right and interest in the property which is the subject of such registration. It follows that from the date of registration (i.e. 10th April 2001) the referenced Deed of Exchange conveyed to Layne Investment any title, right and interest which was vested in CEL. The Deed of Exchange described that title as:

'... ~~the~~ said hereditaments and inheritance thereof in fee simple ~~in possession~~ UNTO AND
TO THE USE OF the PURCHASER its successors and assigns ...'

Notably, the Deed of Exchange did not rehearse the factual or legal basis or root of title through which CEL became seised of that interest in the disputed land.

- [11] **The words 'in possession' were struck out in the Deed. Alongside them** in the margin were markings which conceivably are initials. They are indecipherable. The parties were unable to agree what those markings represented. No handwriting expertise was available at the trial. Suffice it to say, on the face of the document, it is clear that the words were deleted.

- [12] The Layne companies submitted that **there is no indication whether the deletion of the words 'in possession' was done before execution and registration of the deed or after registration and** execution of the said deed. They contended that there is no evidence that the markings on the said deed are initials of the parties executing the said deed, (or either of them) or any other third parties, because they are indecipherable. They argued that there is no evidence by way of declaration or otherwise which addresses any alterations to the said deed.

⁵ Cap. 132 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

[13] They submitted that in all the circumstances, the validity of the said deed is not challenged and the considerations as set out in the *Winchcombe v Pigot*⁶ are not applicable. They invited the court to take no notice of the deletions and the attendant markings on the said impugned deed of exchange. In the *Winchcombe* case⁷ the court held that a deed becomes void if it is altered in a material point by the plaintiff or a stranger without the obligee's privity. **The court also held that if the obligee alters the deed even in an immaterial manner, the deed is thereby rendered void. However, if a stranger alters a deed in an immaterial way without the obligee's privity the deed would not thereby be invalidated.**

[14] The learned authors of **Halsbury's Laws of England**⁸ provide guidance on how the court should treat an alteration on a deed where no evidence has been adduced to explain the circumstances under which it was made. They list several authorities in which it was held that a deed which has been altered by erasure or interlineation or in any other way before it is so executed does not affect the validity of the deed⁹. They cautioned that regarding a deed that has been so altered, it is the customary to note in the attestation clause what alteration has been made, and this practice should be followed always. The learned authors also noted that in the in the absence of evidence to the contrary, any alteration, erasure or interlineation appearing upon the face of a deed is presumed, to have been made before the execution of the deed¹⁰.

[15] In light of the foregoing, I infer that the alteration of the Deed of Exchange was made before its execution. In such a case, the parties to the Deed are taken to have intended to agree what is recorded in the amended Deed. It follows that the vendor CEL was thereby acknowledging that it was not in possession of the property it was transferring to Layne Investment by that document.

[16] **It is important to note at this juncture that Layne Investments' claim is that from 10th April 2001, it**

⁶ (1614) 2 Bulst 246, 11 Co Rep 26b, 1 Roll Rep 39, Moore KB 835, 77 ER 1177, [1558-1774] All ER Rep 50.

⁷ A digest report of which was provided by the claimants.

⁸ Volume 32 (2019) para. 281 (Lexis Nexis edition).

⁹ *Cole v Parkin (1810) 12 East 471; and Doe d Lewis v Bingham (1821) 4 B & Ald 672.*

¹⁰ Including *Doctor Leyfield's Case (1611) 10 Co Rep 88a at 92b.*

would have assumed ownership of the referenced 'said hereditaments and inheritance thereof in fee simple'. It is equally important to be mindful that such assumption of ownership would be subject to any overriding or other equitable interest which any third party might have obtained in the disputed land. Furthermore, in view of CEL's tacit acknowledgment that it was not in possession of the disputed land at the time, Layne Investment cannot logically claim that it assumed possession of the disputed land on the date of execution and registration of the Deed of Exchange.

[17] Layne Investment averred that after the conveyance to it, that it leased the disputed property to Edwin D. Layne at an annual rent of \$23,672.00. Mr. Gregory Gumbs of G. O. Gumbs & Co. testified that his company served as auditors for the Layne Companies. He averred that Layne Investment owns the disputed land and rented it to Edwin D. Layne. Mr. Wayne Alexander provided similar testimony. He is employed by Edwin D. Layne as Manager and participates at the board meetings of the Layne companies.

[18] Layne Investment and Edwin D. Layne referred to themselves as the owners of the disputed property both in the pleadings and in the evidence. They abandoned this posture early in the trial and were resolute that Layne Investment was the owner and Edwin D. Layne lessee of the parcel. I consider it necessary to highlight the main areas where this conflict arose in the pleadings and the evidence.

[19] The claimants acknowledged in their pleadings and testimony that Mr. Blackette has occupied the disputed property from August 18th 1982. They contended that he has done so as their tenant at will and that he approached them at different times, (including May 16th 2011) seeking to purchase it from them. They claimed that Mr. Blackette visited their solicitor's chambers with his brother Coldric Blackette and negotiated a payment for the building he occupied on the land. They pleaded that 'he offered \$69,000.00' to which a counter offer of \$30,000.00 was made by the Layne companies, before the parties finally agreed to the sale of 'the property' for the sum of \$60,000.00. They added that the sale was conditioned on the offer being accepted within one week.

[20] The main witness for the Layne Companies was Mr. Wayne Alexander. His account largely mirrored **the claimants' pleadings**. He stated that he started working for Edwin D. Layne on 1st October 1995. **He averred 'the records show that** Rudolph Blackette lived without paying rent to the Claimant for occupying its property since the 18th August 1982 on the understanding that whenever they were ready for use of their land he will vacate same.' (bold added) He provided no such records and no direct evidence of the circumstances in which the referenced understanding was communicated and agreed.

[21] Mr. Alexander testified that Mr. Blackette and Ms. Chance approached him individually and collectively and told him that they were interested in buying the land which they were occupying or alternatively would be willing to sell the structure they had on the land to Layne Investment and Edwin D. Layne. He insisted that Mr. Blackette approached him regarding the sale of the building on the disputed land, but never in relation to sale of the land. Under cross-examination, he admitted that before March 26th 2019¹¹ he was not aware that Layne Investment did not own the disputed land before 2001. On being shown Deed of Exchange No. 1195 of 2001 he stated that he was just realizing that Layne Investment got title from CEL only in 2001.

[22] Mr. Alexander stated that Mr. Blackette came to see him on May 16th 2011 with his brother as pleaded. He repeated the particulars set out in the pleadings as to what transpired at that meeting. He explained that when Mr. Blackette did not take up the offer and refused to collect the cheque within the stipulated one week period so a letter dated July 30, 2012 was sent to him by the **claimants' lawyer demanding that he 'collect his monies and remove the structure from the said land'**. A copy was produced. Mr. Blackette denied receiving that letter. The letter did not mention Layne Investments.

[23] It was addressed to Rudolph Augustus Blackette and stated in part:

'We write on behalf of our client Edwin D. Layne and Sons Ltd ...

We are instructed that you have been in occupation of 5,259 sq ft of our client's land located in Arnos Vale. We are also instructed that on the 16th May 2011 you signed an

¹¹ On the first hearing date of the trial.

agreement whereby you agreed to be paid the sum of \$60,000.00 for your structure that is **located on our clients' land. ...**

We are further instructed that our client notified you to collect the agreed amount of \$60,000.00 and to date you have failed to collect the said sum and/or remove the said **structure from our client's land.**

Our client has given you adequate notice to collect the amount payable to you and to remove the said structure from the said portion of land and to have failed to do same, **Accordingly, we are hereby requesting that you remove the structure forthwith...'**

[24] Layne Investment and Edwin D. Layne pleaded further that Mr. Blackette returned to them on 25th September 2012; indicated then that he was willing to accept the sum of \$60,000.00 for the structure he had built on the land and signed an agreement to that effect. Mr. Blackette admitted that this meeting took place.

[25] Mr. Alexander testified that he met with Mr. Rudolph Blackette at the chambers of the Layne **companies' lawyer** on that day. He indicated that another agreement was made at that meeting. It is useful to reproduce both agreements.

[26] The first one contained the signatures of Rudolph Augustus Blackette and Coldric Blackette. It states:

'SAINT VINCENT AND THE GRENADINES

AGREEMENT

I, Rudolph Augustus Blackette of Arnos Vale hereby acknowledge that I have occupied lands to the extent of 5, 259 sq ft as Lot number 1 on plan G2048 belonging to Edwin D. Layne and Sons Ltd. for a number of years.

I also agree to being paid by Edwin D. Layne and Sons Ltd. for the structure which I built on the land on the basis of fair market value.

The value that I have suggested is \$69,000.00 and I am willing to accept a sum of \$60,000.00. I am prepared to keep this offer open for one (1) week.

Dated: 16th May 2011.

Rudolph Augustus Blackette

Dated: 16th May 2011

Coldric Blackette'

- [27] **The second 'agreement'** also signed by Mr. Blackette. The signature of Niakesha Debique appears on the line reserved for the witness. It provides:

'SAINT VINCENT AND THE GRENADINES

AGREEMENT

I, Rudolph Augustus Blackette of Arnos Vale hereby acknowledge that I have occupied lands to the extent of 5,259 sq ft as Lot number 1 on plan G2048 belonging to Edwin D. Layne and Sons Ltd. for a number of years as a tenant at will.

I always recognized that Edwin D. Layne and Sons Ltd. is the owner of the lands.

I also agree to be paid by Edwin D. Layne and Sons Ltd. for the structure which I built on the land on the basis of fair market value.

The value that I have suggested is \$69,000.00 and I am willing to accept a sum of \$60,000.00.

Dated: 25th September 2012

Rudolph Augustus Blackette

Dated: 25th September 2012

Witnessed by:

- [28] **The second 'Agreement' differs in five material respects from the first:**

1. The date of execution is different.
2. The first is signed by him and Coldric Blackette while the second is signed by Mr. Rudolph Blackette in the presence of a witness.
3. The second includes an acknowledgement that Mr. Blackette occupies the disputed property as a tenant at will. The first does not.

4. The second includes an admission that Mr. Blackette recognizes Edwin D. Layne and Sons Ltd. as owner of the disputed property. The first did not.
5. While the first agreement includes a timeline for acceptance of the offer, the second has no such limitation.

[29] It is worth noting that while the parties were content to refer to the referenced documents as agreements, they were not executed by Layne Investment or Edwin D. Layne. They were in effect one-sided offers by Rudolph Blackette to Edwin D. Layne and Sons Ltd. which included certain 'admissions' or 'acknowledgements'. Significantly, the documents make no mention of Layne Investments.

[30] Mr. Blackette **maintained that he was approached by 'Bunny' whom he later identified as Wayne Alexander, Edwin D. Layne's Manager. He claimed that 'Bunny' sought information from him** regarding the sale of the disputed land and structures from him to Edwin D. Layne. He denied attempting to purchase the disputed land from the Layne companies. He insisted that he is the owner and that he always maintained this in his dealings with the Layne companies. He pleaded that at the meeting with Layne companies he stated that the price agreed must be enough to enable him to build a residence for himself and re-establish his business.

[31] Mr. Blackette testified that after buying the land and the parlour on it from Addie Jackson in 1982, he moved there and kept the land clear and planted trees on it including golden apple, coconut, lime, plantain and plums. He averred that he did renovations and constructed a living area and has since lived there except for a brief period when he was experiencing domestic issues with Ms. Chance.

[32] He recalled that when the Layne companies acquired the land adjacent to the disputed land that they fenced their property. He stated that Bunny came to him once asking him to sell his land and buildings. He said that he told him that he was not interested in selling because that was all he **owned. Mr. Blackette explained that around 2011 he received a telephone call from Ms. Sylvester's** office and went there accompanied by his brother. He stated that he met Bunny there and they had a conversation regarding how much he wanted for his property.

[33] He suggested the sum of \$90,000.00 to which Mr. Alexander rejoined with an offer of \$60,000.00. He indicated that he dropped his price to \$80,000.00. He said that at that juncture he was told that Ms. Chance was trying to buy his lands and he got worried. He claimed that he therefore signed the paper that the lawyer gave to him, but never returned to collect the money because his property is worth more than that.

[34] Mr. Blackette testified that at that time his living situation with Ms. Chance was so bad that he stayed away from his house some nights but would return in the morning to run his shop. He said that Bunny kept calling him about purchasing his land and asking him about his relationship. He **explained that one day he received another call and returned to the lawyer's office where he was** presented with an offer to buy his land and buildings. He said that he was going through such a difficult time with Ms. Chance at that time, he did not have anyone to advise him and no assistance from an independent lawyer so he signed the agreement. He said he never returned to collect any money because he did not feel that he signed of his own free will.

[35] Mr. Blackette testified that his lawyer has since read to him and explained the documents he signed and on which the Layne companies are relying. He insisted that he has never considered the disputed land and structures to belong to them. He maintained that they belong to him. He added that he has never given Ms. Chance permission to speak to anyone about his land and she is not entitled to claim what he has worked so hard for over the years. On that subject, Mr. Alexander recalled that Ms. Chance wrote him a letter dated June 15th 2010 asking to purchase the disputed land.

Katy Chance letter

[36] **He produced a copy of the letter. It was addressed 'To whom it may concern'.** In it, Ms. Chance said she would like to purchase a piece of land as Arnos Vale where she and Mr. Blackette were operating a small business and living. She offered \$30,000.00 on condition that she could get a loan. She also indicated that she was prepared to pay \$500.00 per month. It appears that the addressee did not respond to the letter.

[37] Ms. Chance did not state in the letter, how it was that she started living on the property and with whose authority. I infer that she was of the view that the addressee owned the land. Mr. Alexander

did not say on whose behalf he received the letter. It can be inferred that as manager for Edwin D. Layne that he could have received it in that capacity. I accept that Ms. Chance did write that letter to Edwin D. Layne. She has not denied this. However, in view of the fact that Edwin D. Layne is not registered as owner of the disputed land, the implicit acknowledgment by Ms. Chance that Edwin D. Layne was in possession of the disputed land is not borne out by the evidence as will be demonstrated later.

[38] Layne Investment and Edwin D. Layne submitted that Mr. Blackette commenced occupation of the disputed land in **August 1982 with the legal owners' permission on the understanding that** whenever the owners were ready to use of the land, he would vacate. They contended that he was granted an uncertain interest in the land with no fixed time for determination. They reasoned that in the circumstances, the law presumes the existence of a tenancy at will. They relied on several legal authorities in support, including **Hill and Redman's Law of Landlord and Tenant**¹²; Richardson v Langridge¹³; Buck v Howarth¹⁴ and Doe d. Davies v James Thomas¹⁵.

[39] The claimants submitted further that the original tenancy at will was impliedly determined by the transfer of the land to Layne Investment by Deed of Exchange No. 1195 of 2001. The Layne companies argued that after CEL transferred title to Layne Investment, a second tenancy at will was created whereby they granted Mr. Blackette permission to continue in occupation.

[40] They argued that Ms. Chance joined Mr. Blackette around 2003 as a tenant at will on the disputed land with their permission. Layne Investment and Edwin D. Layne contended that Mr. Blackette and **Ms. Chance were aware of their (the Layne companies') title to and interest in the land, as** evidenced by their actions. They submitted that the agreements dated May 16, 2011 and September 25, 2012 made between them and Mr. Blackette regarding compensation for the structure on the land points to such a conclusion. They argued further that, Mr. Blackette and Ms.

¹² No publication year or Edition number were provided.

¹³ (1811) 128 ER 277.

¹⁴ [1947] 1 All ER 324.

¹⁵ (1851) 6 Exch 854.

Chance at all material times recognized and acknowledged that they were occupying land belonging to the Layne companies with their permission.

[41] Layne Investment and Edwin D. Layne submitted that the tenancy at will was determined on July 30, 2012 when the letter was issued by their solicitors to Mr. Blackette and Ms. Chance demanding that they vacate the land or by the initiation of these proceedings. The Layne companies contended that it was only at either point that Mr. Blackette and Ms. Chance became trespassers. I fail to see how a letter addressed to Mr. Blackette terminated the tenancy at will with Ms. Chance which was allegedly concluded between the Layne companies or one of them and Ms. Chance directly. The allegations on which the claimants brought this claim and on which they relied do not support such finding.

[42] Mr. Blackette countered that he owned the disputed land at all material times by virtue of the purchase from Addie Jackson. He submitted that in any event his occupation and use of the disputed land as his own since 1982 would **have extinguished the owner's right of action to recover** the land from him after 12 years. He submitted further that the limitation period expired in 1994 in accordance with section 17 (1) of the Limitation Act¹⁶. He argued that the limitation period had elapsed and the right of action had accrued, without interruption to his use and enjoyment of the disputed property.

[43] He contended that CEL was the owner or title holder of the disputed property and surrounding premises between 1982 and 2001, as acknowledged by the Layne companies and their witnesses. Mr. Blackette argued that at no time did CEL interrupt his enjoyment of the premises and was not joined as a party to these proceedings. He argued that the facts in this case closely align with those outlined in *Edward Hall v Charlie Grecia et al*¹⁷ where it was established that the **defendant's undisturbed use of the land was enough** to establish adverse possession. He contended that he relies on adverse possession as the core of his defence to the claim.

¹⁶ Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

¹⁷ SVGHCV1998/0322.

- [44] Layne Investment and Edwin D. Layne submitted that the Limitation Act in Saint Vincent and the Grenadines mirrors the UK Limitation Act 1980. They argued that in the circumstances of this case, paragraph 4 of Schedule 1 provides that the right of action accrues on the date on which the tenancy at will is determined. They submitted that it is only at this point that time starts to run in favour of the occupier.
- [45] The Layne companies submitted that a tenancy at will may be express or implied and is a tenancy under which the tenant is in possession, and which is determinable at the will of either landlord or tenant. They argued that a tenancy at will is implied when a person is in possession by the consent of the owner without payment of rent, his possession is not that of servant or agent, and is not enjoyed by virtue of any freehold estate or any tenancy for a certain term. They submitted further that anything which amounts to a demand of possession, although not expressed in precise and formal language, is sufficient to indicate the determination of the landlord's will, including any act done by the owner on the premises which is inconsistent with the continuance of the tenancy. They argued that if the tenant continues in possession after such knowledge, he may be treated as a trespasser as was held in *Doe d. Davies v. James Thomas*.
- [46] They contended that Mr. Blackette's and Ms. Chance's actions demonstrate that they were aware that the arrangement was a tenancy at will; as evidenced (in Mr. Blackette's case) by the signing of the document dated the 11th May 2011; and (in Ms. Chance's case) by the presentation of the letter dated 15th June 2010 in which she made an offer to purchase the said parcel of land. They argued that these documented facts buttress the evidence that Mr. Blackette and Ms. Chance recognized and acknowledged that they were occupying land belonging to the Layne companies with their permission.
- [47] The Layne companies argued alternatively that if the Court rejects the arguments that a tenancy at will existed, then it is more probable the case for Mr. Blackette that he was of the view that he was the owner of the land, albeit mistakenly. They contended that to that end his actions in negotiating, for the sale of both what he owned (according to him) better accords with his being of the opinion that that he had owned the building and the land. They reasoned that in view of this, Mr. Blackette is estopped from relying on the defence of adverse possession.

[48] They argued that Mr. Blackette and Ms. Chance became trespassers and time started to run from the 30th July 2012, when the letter was issued by their solicitors to them demanding that they vacate the land. They submitted that since the claim was filed on August 20, 2013, Mr. Blackette is unable to establish the requisite 12 year period of adverse possession and his defence and counterclaim must fail.

Adverse possession

[49] Mr. Blackette prosecuted his defence asserting throughout that he is the owner of the disputed land. He based his ownership defence and ancillary claim simultaneously on his alleged purchase from Addie Jackson and on adverse possession. It has been established in law that a claim to **ownership of land in one's right is inconsistent with a defence of adverse possession.**¹⁸ Mr. Blackette chose to hedge his bets and proceeded with both limbs of his two-pronged defence. He is precluded by law from doing so. This legal principle was articulated in the case of *Celestine Arnold v Carlton Baptiste* by the Court of Appeal of the Eastern Caribbean Supreme Court.

[50] **I now turn to examine Mr. Blackette's claim to ownership of the disputed land through purchase.** He recounted that from 1982 up to the present, he occupied the disputed land to the exclusion of all else except Ms. Chance. His witness Robert Christopher Lewis gave credible testimony about his knowledge of the use of the nearby land which is owned by Layne Investment and use of the disputed land over several years from his childhood. He also said he knows where the boundary pegs for the disputed land were placed and had a clear idea of where the boundary to the Layne **Investment's property ended. He was adamant** that it was separate from the disputed land. He explained that as a child, he and his school mates were prevented from passing through the property which is owned by Layne Investment but was owned by another company then. He maintained that the boundaries have remained unchanged since that time.

[51] It is trite law that he who asserts must prove. Layne Investment and Edwin D. Layne prosecuted this claim from the inception on the basis that they both own the disputed land. They maintained this posture throughout their pleadings. They pleaded that Layne Investment owned the disputed

¹⁸ *Celestine Arnold v. Carlton Baptiste* GDAHCVAP2008/011. See also *Althea James et al v Eva Fortune* ANUHCV2002/0590.

land when Mr. Blackette and Ms. Chance became their tenants at will respectively in August 1982 and December 2003. They both sought damages for trespass to land.

[52] The Layne companies pleaded at times that that Layne Investment is the owner of the land and in some places that Edwin D. Layne is a co-owner. They also timed the commencement of such ownership from 1982. Several paragraphs of the Statement of claim demonstrate this. Four such paragraphs provide respectively:

(1) The First Named Claimant is an was at all material times the owner and entitled to possession of land described in schedule to Deed bearing registration Number 1195 of 2001. ...

(4) Since on or about the 18th day of August 1982 the First Named Defendant entered unto the **Claimant's** premises located at Arnos Vale as a tenant at will on the understanding that whenever the Claimants were ready for the use and occupation of their land the First Named Defendant will vacate same. ...

(5) On or about the 2nd day of December 2003 the **First Named Defendant's** common law wife the Second Named Defendant entered the said property located at Arnos Vale as tenant at will on the understanding that whenever the Claimants were ready for the use and occupation of its said land the Second Named Defendant will **vacate same.**'

(13) The First Named Defendant and Second Named Defendant by their conduct have always acknowledged the Claimants to be the owners of the said property.¹⁹
(Underlining added)

[53] In their Reply to Mr. Blackette's Defence and Defence to Counterclaim, Layne Investment and Edwin D. Layne maintained the posture that they jointly own the disputed land. They alleged:

2 ... At all material times the Claimants are owners in possession of the lands set out in the statement of claim.

4 As to paragraph 4 of the Defence, the Claimants repeat paragraph 4 of their Statement of Claim.

¹⁹ Paragraphs (1), (4), (5) and (13) of the Statement of Claim filed on 20th August 2013.

13 ... **At all times the** First Named Defendant acknowledged that the Claimants owned the lands and the First Named Defendant occupied the same as tenant at will.

16 ... **the** First Named Defendant has always acknowledged the Claimants as owners of the land and repeatedly requested to sell the building thereon to the Claimants.²⁰
(Underlining added)

[54] **The companies'** repeated and consistent interchange and inconsistencies regarding which of them purportedly owns the disputed land, and from when is not limited to the pleadings. It started with **the 'agreements' signed by Mr. Blackette, both of which referred to Edwin D. Layne as owner of the disputed property.**

[55] The claimants attempted to address that in their submissions. They argued that the inclusion of the Edwin D. Layne as owner in the agreements was a simple mistake. They reasoned that the issue **which is more pertinent is Mr. Blackette's acknowledgement** when he signed the said document. They contended that by signing it, Mr. Blackette demonstrated that he understood and acknowledged someone as owner who had better title than he.

[56] On this score, Mr. Blackette has maintained that he never acknowledged either Layne Investment or Edwin D. Layne to be the owner of the disputed land. **That's the crux of his defence. The evidence revealed that the 'agreements' were prepared by Ms. Sylvester, who was Edwin D. Layne's solicitor. She represented** herself as such in the letter of 30th July 2012 on which the claimants have placed some reliance. It is addressed to Mr. Blackette. Mr. Alexander also acknowledged that he was the one who instructed Ms. Sylvester to prepare the agreements on Edwin D. Layne's behalf. **He admitted that by that 'agreement' he represented that Edwin D. Layne owned the disputed land. Furthermore, their witness admitted that he was not aware that the registration of title was made in Layne Investment's sole name.**

[57] None of the witnesses testified that either Layne Investment or Edwin D. Layne owned the disputed land in 1982 or any time before 2001. **Mr. Alexander's assertion that Mr. Blackette lived there from 1982 without paying rent to either company is not contested. Significantly, there is no evidence that**

²⁰ Paragraphs 2, 13, 16 and 17 of the reply to Defence filed on 29th November 2013.

Mr. Blackette or Ms. Chance was occupying the disputed land from 1982 or 2003 respectively, to 2001 with permission from CEL. The submissions by Layne Investment and Edwin D. Layne to this effect are not borne out by the evidence. I therefore reject them.

[58] **Similarly, except for Mr. Alexander's bald statement that Mr. Blackette and Ms. Chance were given** permission by Layne Investment to remain in occupation of the disputed land was devoid of details or credible specifics. Mr. Alexander failed to produce the records which the claimants and he alleged reflects such an arrangement. I do not accept that any such understanding was arrived at between the Layne Investment or Edwin D. Layne and Mr. Blackette or Ms. Chance. **Mr. Blackette's** signing of the May 2011 and September 2012 documents does not create a tenancy without more.

[59] **The evidence does not support the Layne companies' claim that they gave Mr. Blackette or Ms. Chance** permission to occupy the disputed land. I believe Mr. Blackette's **account that he bought the** parlour from Addie Jackson and went into occupation of the disputed land consequent on that concluded sale. As to whether Addie Jackson had a title, interest or right to pass an equitable or legal interest in the disputed land to Mr. Blackette, there is no evidence on which to make such a finding. I therefore make none.

[60] **However, I am satisfied that when Mr. Blackette's and Ms. Chance's occupation of the disputed** land commenced, it was not pursuant to any arrangement that either of them would vacate it when Layne Investment, Edwin D. Layne or CEL wanted it for their use. I am bolstered in this conclusion by a number of considerations.

[61] The Layne companies have provided no explanation why they or CEL would bestow on Mr. Blackette or Ms. Chance the seemingly substantial benefit of rent-free exclusive occupation of the disputed property for so many years. The circumstances surrounding that claim are murky at best. Although no explanation is warranted in law, it would have been reasonably expected that one would have been proffered.

[62] It appears that Edwin D. Layne has demonstrated that it appreciated the need to engage a lawyer to advise it in relation to its dealings with Mr. Blackette and perhaps Ms. Chance. Although Mr. **Alexander did not state that he was authorized to negotiate with Mr. Blackette on Edwin D. Layne's**

behalf, I accept that this can be inferred by the course of dealings he had with Mr. Blackette. I draw no such inference in relation to Layne Investment since Mr. Alexander did not indicate that he was authorized to act for them in that respect. His account made no reference to any such authority. The Deed of Exchange also demonstrated that the Layne companies have used the services of lawyers on more than one occasion.

[63] Their apparent delinquency in taking steps to remove Mr. Blackette and Ms. Chance prior to 2011 and solicit the services of a lawyer to do so is puzzling. However, I draw no adverse inference from **those circumstances. Above all, the claimants' difficulty in** making and maintaining a cohesive account about the ownership of the property, spanned a period of no less than 8 years (from the date of the first agreement to the trial date). This suggests that they were themselves not sure about the efficacy of their claims.

[64] Mr. Blackette attacks the Deed of Exchange as being problematic. He submitted that the deletion of **the words 'in possession' would necessitate initialing by the parties or authorized parties effecting** the deed to regularize it and render it effective and legally binding. He cited the case of *Lombard Finance Ltd v Brookplain Trading Ltd and others*²¹. In that case, the court held that an immaterial alteration to a deed which was not approved by the parties would not invalidate it and if it was made in good faith would not amount to a forgery. This has been dealt with earlier.

[65] Mr. Blackette submitted further that alternatively, even if the deed is considered to be valid there **was a solid attempt to delete the words 'in possession'.** He argued that such an attempt serves as acknowledgment by the parties to the deed that the maker of the Deed was dispossessed of the land. He contended that the facts reveal that dispossession was done by him from 1982. There is some merit to this argument.

[66] **This circumstance supports Mr. Blackette's contention that he was in possession of the land up to** 2001 when the Deed was being executed. By implicitly acknowledging the dispossession, CEL was effectively telescoping to the world at large that it was not in possession of the disputed land.

²¹ [1991] 2 All ER 762.

- [67] This brings me back to the observation made earlier that the Deed does not refer to a root of title. The absence of details from the Deed about the prior owner(s) of the subject land is of concern. In the absence of a registration of land system in the State of Saint Vincent and the Grenadines, persons acquiring a legal interest in land register such interests by registration of deeds. This involves the cumbersome process of searching the Deeds registry and tracing and recording in the deed the line of legal predecessors in title. Without this **'root of title'** information there is no certainty **about the validity of the vendor's or donor's claim to an interest in the subject property.** Deed of Exchange No. 1195 of 2001 is defective in this regard. Neither Mr. Blackette nor Ms. Chance took exception to it. I highlight this as another deficiency to Layne Investment's and **Edwin D. Layne's** claim that they own the disputed property.
- [68] The Layne companies have outlined the main legal principles underlying the creation and determination of a tenancy at will. Having executed the Deed of Exchange and accepted the **deletion of the words 'in possession' they have also represented that CEL was** not in possession of the disputed land in 2001 when it purported to transfer the land to Layne Investment. Even if the Deed had the effect of conveying an interest to Layne Investment, that interest would only have been the interest that was vested in CEL at the time of the conveyance, and did not extend to possession of the disputed land. In the premises, I infer this and find from all of the evidence that Mr. Blackette was in possession of the disputed land from 1982 through 2001 and that he remained in possession up to the present.
- [69] The Layne companies argued that in 2011 and again in 2012 Mr. Blackette acknowledged them to be the owners of the disputed land. They contended that this acknowledgment revived their title and interest in the land. **They submitted that the May 2011 and September 2012 'agreements'** would have been binding despite the expiration of the limitation period and that a fresh accrual of time would have begun based on the said agreements. They relied on the decision in the case of *Colchester Borough Council v Smith et al*²² in support of this assertion. The authorities do not support this argument.

²² [1992] 2 WLR 728.

[70] Once more, the judgment in *Celestine Arnold v Carlton Baptiste* is instructive. In that case, Her Ladyship, Justice of Appeal Dame Janice Pereira expounded on what a dispossessed person loses and what a squatter acquires in such circumstances. She adopted and reproduced the learning contained in a legal treatise by the learned authors of **Cheshire's Modern Law of Real Property**²³ **under the rubric** 'What the dispossessed person loses.' **They stated:**

'The dispossessed person ... lose[s] the title to possession that he could have previously enforced against the squatter. To that extent, his title is finally destroyed and there is no method by which it can be revived, not even by a written acknowledgement given by the squatter.

But the restricted effect of the extinguishment must be realized. It extinguishes nothing more than the title of the dispossessed against the squatter. ...'

[71] Borrowing from Cheshire further, the learned Justice of Appeal rehearsed what the squatter obtains through adverse possession. She wrote:

'What the squatter acquires. It follows from what has been said, that the sole, though substantial, privilege acquired by a squatter is immunity from interference (*my emphasis*) by the person dispossessed. ...

There is no transfer, statutory or otherwise, to the squatter of the very title held by the dispossessed person.

"He is not at any stage of his possession a successor to the title of the man he has dispossessed. He comes in and remains in always by right of possession, which in due course becomes incapable of disturbance as time exhausts the one or more periods allowed by statute for successful intervention. ..."²⁴

[72] An apparent conundrum presents itself on the facts of this case. On the one hand, Mr. Blackette is precluded in this claim from relying on the defence of adverse possession since he claims to be the owner of the disputed property. On the other hand, the documentary evidence supports a finding

²³ 12th Ed. p. 901.

²⁴ Per Lord Radcliffe in *Fairweather v St. Marylebone Property Co. Ltd.* [1963] AC 510 at 535.

that the person claiming to be the legal owner has acknowledged that it was not in possession of the subject land when it acquired an interest in 2001. In other words, Layne Investment was placed in the shoes of CEL on the date of execution of the Deed of Exchange – an owner who had been dispossessed of the hereditaments being conveyed.

[73] However, Mr. Blackette does not need to rely on adverse possession in order to claim the protection provided by section 17 of the Limitation Act. He can simply block the cause of action by protesting that it is time-barred, in accordance with the Act²⁵. This is the legal effect of section 17 of the Limitation Act which is similar to section 15 (1) of the UK Limitation Act. He has done so. As held in the *Celestine Arnold* case, a cause of action which is barred by the Limitation Act cannot be revived.

[74] This is specifically provided in section 29 (1) of the Limitation Act. It makes provision for the date of accrual of a cause of action for recovery of land, to be treated as having accrued at a later date if the squatter acknowledges the title of the owner. It must be read in conjunction with subsection (7) which provides that a current period of limitation may be repeatedly extended by further acknowledgments. However, a cause of action which has been barred by the Limitation Act cannot be revived by a subsequent acknowledgment. It follows that the agreements signed by Mr. Blackette did not revive any cause of action which either Layne Investment or Edwin D. Layne might have had against him in trespass.

[75] Mr. Blackette submitted that he had a defence of limitation bar to the action brought against him. He did not expressly refer to section 17 (1) of the Limitation Act until the trial and later in his submissions. **Mr. Blackette pleaded in an imprecise way that the companies' claims are statute-barred.** It appears that the Layne companies have interpreted his defence and counterclaim in that light. They have argued those points. He pleaded:

'The First Defendant claims to be owner of lands admeasuring 5259 square feet of land situate at Arnos Vale by virtue of adverse possession and will rely upon the Limitation Act Cap. 129 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009'.

²⁵ Halsbury's Laws of England, Volume 68 (2016) para. 1018 (Lexis Nexis edition).

The case proceeded on the basis that this defence had been invoked and I will conclude it on that basis.

[76] Section 17(1) of the Limitation 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.'

Simply put, this provision bars an action to recover land which is launched more than 12 years after the cause of action accrued.

[77] Mr. Blackette relied on this provision for two purposes:

1. to refute the assertion by Layne Investment that it is the owner of the disputed property; and to **rebut Layne Investment and Edwin D. Layne's contentions that he is a tenant at will whose** tenancy was determined by notice to quit or by this claim; and
2. to establish that he had acquired an equitable interest in the disputed property through adverse possession. I have already addressed this.

[78] If he established either assertion, he would have disproved the claim that he is a tenant at will of Layne Investment Ltd. or Edwin D. Layne. The provisions of the section 17 (1) of the Limitation Act are determinative of those issues. In other words, if the owner of land or his agent delays more than 12 years to take action to recover the land, after someone has trespassed on it, the law stipulates **that the owner's title to the subject land** ceases to exist on the 12 year anniversary of the initial trespass (i.e. the date the cause of action accrued), but only if the trespass has continued uninterrupted from the inception.

[79] **In view of the foregoing, I find that the 'agreements' signed by Mr. Blackette in May 2011 and September 2012 could not and did not have the effect of reviving any interest or title that Layne Investment or Edwin D. Layne had in the land.** Such claims became statute barred in August 1994. For the foregoing reasons, I find that the cause of action against Mr. Blackette accrued to CEL and by extension to Layne Investment in August 1982 became time-barred and incapable of being

revived in August 1994²⁶. By extension, I conclude **that Ms. Chance's occupation of the disputed property** was not pursuant to any permission granted by either Layne Investment or Edwin D. Layne, there being insufficient evidence of such understanding. Accordingly, I find that Mr. Blackette and Ms. Chance were not tenants at will of CEL, Layne Investment or Edwin D. Layne.

Issue 2 – Was Rudolph Blackette influenced unduly into signing the agreements dated May 16th 2011 and September 25th 2012?

[80] Having found that Mr. Blackette was not a tenant at will of any of the claimants in this case, it is unnecessary for me to consider whether he has established that he was unduly influenced into signing the referenced agreements. I refrain from doing so.

Issue 3 – To what remedies is Layne Investments Limited, Edwin D. Layne and Sons Limited or Rudolph Blackette entitled?

[81] Layne Investment and Edwin D. Layne have failed to establish their claim against Mr. Blackette and Ms. Chance. It is therefore dismissed. The prayers for damages, declaratory and injunctive relief are also refused.

[82] Mr. Blackette has successfully invoked the provisions of section 17 (1) of the Limitation Act which limits the period for launching an action to recover land. However, he has not made out his claim that he has occupied the disputed property by adverse possession. Even if he had, as pointed out by the court in *Celestine Arnold v Carlton Baptiste*, that is not a legal basis on which the court can grant him title to the disputed property. His ancillary claim is dismissed.

COSTS

[83] Mr. Blackette and Ms. Chance are entitled to prescribed costs. Layne Investments Limited and Edwin D. Layne & Sons Limited shall pay prescribed costs of \$7500.00 to Rudolph Blackette and Katy Chance pursuant to CPR 65.5 (2) (b).

²⁶ Pursuant to section 17 and paragraph 1 of Part 1 of the Schedule to the Limitation Act.

ORDER

[84] It is accordingly ordered:

- (1) **Layne Investments Limited's and Edwin D. Layne & Sons Limited's claim** against Rudolph Blackette and Katy Chance is dismissed.
- (2) Judgment is entered for Rudolph Blackette and Katy Chance.
- (3) Layne Investments Limited and Edwin D. Layne & Sons Limited shall pay prescribed costs of \$7500.00 to Rudolph Blackette and Katy Chance pursuant to CPR 65.5 (2) (b).
- (4) **Rudolph Blackette's claim for declaratory relief is denied.**

[85] I gratefully **acknowledge the assistance of the parties' legal practitioners for their written submissions.**

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar