THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(Civil)

SAINT LUCIA

SLUHCV2016/0468

BETWEEN:

JACQUELINE EMILIEN

Claimant

and

MARY FLOTON
aka ROSELINE EVANS

Defendant

Before:
The Hon. Mde. Justice Kimberly Cenac-Phulgence High Court Judge

Appearances:
Mr. Alvin St. Clair of Counsel for the Claimant
Ms. Rowanna-Kay Campbell with Ms. Rene St. Rose of Counsel for the Defendant

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2019: January 30;
May 9.

JUDGMENT

[1] CENAC-PHULGENCE, J: In this claim, the claimant, Ms. Jacqueline Emilien ("Ms. Emilien") seeks an order that the defendant, Ms. Mary Floton, also known as Ms. Roseline Evans ("Ms. Floton"), give up possession of the property registered as Block and Parcel Number 1251B 1415 ("the Property") situate at Grande Riviere in the quarter of Gros Islet and that Ms. Floton remove her dwelling house from the Property.

Background

[2] The claim was initially filed on 29th July 2016. An amended claim was filed on 22nd November 2016 wherein the relief sought remained unchanged, but the claimants were named as (1) Jacqueline Emilien as Executrix of the estate of Jenny Jane Emilien, her mother and (2) Jacqueline Emilien personally. The locus standi of the first claimant was challenged in the amended defence of Ms. Floton filed on 26th January 2017. At pre-trial review and by order dated 15th October 2018, the first claimant being Ms. Emilien as executrix of the estate of Jenny Jane Emilien was struck as a party to the claim as it was noted that, at the date of filing of the claim, the Property was registered in the name of Ms. Emilien personally and not in her capacity as executrix of her mother's estate.

Family Relations

[3] It is important to establish the familial relations in this claim. Ms. Emilien is the daughter of Jenny Jane Emilien. Ms. Floton is the daughter of Wellington Florton ("Wellington Florton") and the niece of Jenny Jane Emilien. Jenny Jane Emilien and Wellington Florton are siblings being the children of Gonzague Anthony also known as Florton Placide also known as Florton Marius ("Gonzague Anthony"). Gonzague Anthony is therefore the grandfather of Ms. Emilien and Ms. Floton. Ms. Floton and Ms. Emilien are first cousins.

The Amended Claim

[4] Ms. Emilien is the registered proprietor of the Property having been registered as proprietor in June 2015 as seen from the land register. Ms. Emilien alleges that Ms. Floton resides on the Property without permission and has a wooden dwelling house on the Property. Despite repeated requests for Ms. Floton to vacate the Property, she has refused to do so and according to Ms. Emilien, intimates that neither she nor her mother own the Property.

The Amended Defence

[5] Ms. Floton filed an amended defence on 26th January 2017. In response to Ms. Emilien's claim, Ms. Floton raises the defence of prescription. She avers that she has acquired title by prescription having lived initially on the larger parcel of land registered as 1251B 358 ('the Land") of which the Property was part from 9th March 1954 when she was born. She avers that from 1984 she has been in continuous, undisturbed, peaceful, public and unequivocal possession of the Property, a period of over 30 years with the intention to possess the Property. Ms. Floton avers that by virtue of this she is entitled to remain in possession of the Property which she currently resides on.

[6] These are the particulars of prescription as pleaded in Ms. Floton's defence:

(a) "The Defendant has been living on the property since 1984 to the present date hereof and constructed a house thereon in 1984.
(b) Since 1984, the Defendant has been in continuous possession of the property.
(c) That since 1984, the Defendant has maintained and planted crops and trees on the property including grapefruit trees, orange trees, ackee trees, avocado trees, pumpkins and others.
(d) The Defendant is known and recognized as the owner of the property by virtue of her unequivocal action and having lived on the property for over 30 years.
(e) The Defendant's possession of the property has been uninterrupted, continuous, peaceable, unequivocal, and as proprietor…."

The Claimant's Reply to the Amended Defence

[7] In her reply, the claimant avers that permission had been granted by her grandfather, Gonzague Anthony to Ms. Floton's father, Wellington Florton to reside on the land with his family which included Ms. Floton until 1989 at a spot which is not the same spot where Ms. Floton currently resides. Jenny Jane Emilien had purchased the land from Gonzague Anthony in 1977 subject to a usufruct in favour of Gonzague Anthony. In 1989, Jenny Jane Elimien purchased the usufruct from Gonzague Anthony. After 1989, the claimant avers that Jenny Jane Emilien gave Wellington Florton and his family including Ms. Floton permission to live on the land. After Wellington Florton died, the claimant avers that Ms. Floton, her mother and

brother were allowed to live on the land with the permission of Jenny Jane Emilien. After Gonzague Anthony, her grandfather passed, Ms. Floton approached her aunt Jenny Jane Emilien and requested a place to put her house. Jenny Jane Emilien allowed Ms. Floton to place her house at the spot where it currently exists. The claimant further avers that several surveys were executed on the land and subdivisions undertaken with no objection from Ms. Floton. The claimant denies that Ms. Floton has met the requirements to obtain title to the Property by prescription and further that she has done nothing to exercise her alleged rights.

Issues

[8] The issues for the Court's determination are as follows:

(a) Whether Ms. Floton can successfully raise the defence of prescription to defeat Ms. Emilien's claim for possession of the Property, i.e. Block and Parcel No. 1251B 1415? (The negative prescription issue). In short, whether Ms. Floton's possession is continuous, uninterrupted, public, peaceable, unequivocal and as proprietor.

(b) Whether Ms. Emilien is entitled to possession of the Property?

The Negative Prescription Issue

[9] In response to Ms. Emilien's claim, Ms. Floton has raised the defence of prescription. The law relating to prescription is to be found in the Civil Code of Saint Lucia[1] ("the Code"), the Supreme Court-Prescription By 30 Years (Declaration of Title) Rules[2] and the Land Registration Act[3] ("the LRA"). The Code confirms that prescription can be positive or negative[4]. As a starting point, it must be noted that the Court of Appeal in the case of Moses Joseph et al v Alicia Francois consolidated with St. Torrence Matty et al v Alicia Francois[5] held that

[1] Cap. 4.01, Revised Laws of Saint Lucia 2013.
[2] Cap. 2.01, Revised Laws of Saint Lucia.
[3] Cap. 5.01, Revised Laws of Saint Lucia.
[4] Article 2074 of the Code.
[5] SLUHCVAP2011/0025 consolidated with SLUHCVAP2012/0037, delivered 15th April 2015 with written reasons delivered 21st August 2015.

the same elements required for establishing positive prescription apply equally in a case where negative prescription is being set up as a bar to the claim.

[10] In order to establish prescription, articles 2103A and 2057 of the Code clearly establish that user of the land must be nec vi, nec clam, nec precario or as Lord Hoffman put it 'not by force, nor stealth, nor the licence of the owner'.[6] Article 2103A states as follows:

> "2103A. Title to immovable property, or to any servitude or other right connected therewith, may be acquired by *sole and undisturbed possession for 30 years*, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of court."

[11] Article 2057 states that:

> "For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor."

The claimant's Evidence

Ms. Jacqueline Emilien **("Ms. Emilien")**

[12] Ms Emilien's evidence is that Ms. Floton resides on the Property without her permission and has erected a wooden dwelling house thereon. By letter dated 22nd May 2013 written on behalf of Ms. Emilien's mother, Jenny Jane Emilien, Ms. Floton was informed that the property was for sale and that she would be given first option to purchase but that if she was not willing to purchase, she would have to vacate the property by 30th June 2013.

[13] Ms. Emilien traces the history of the proprietorship of the property. Her mother, Jenny Jane Emilien was the owner of two parcels of land which she bought from her father Gonzague Anthony by Deed of Sale executed on 24th February 1977 with a life interest reserved to Gonzague Anthony. On 22nd March 1989, Gonzague Anthony executed a Deed of Sale of the life interest to Jenny Jane Emilien. During

[6] R. v. Oxfordshire County Council ex p. Sunningwell Parish Council [2000] 1 AC 335 at 350.

the Land Registration and Titling Project (LRTP)[7], Ms. Emilien says that Jenny Jane Emilien claimed the Property and was registered as the proprietor.

[14] Ms. Emilien says that Gonzague Anthony died on 12th January 1993. After 1977 and before 1989, Ms. Emilien says that Gonzague Anthony who still had a life interest in the Property gave permission to Ms. Floton's father, Wellington Florton to live on the land in the general area where parcel 993 is. After 1989 when Jenny Jane Emilien acquired the life interest in the property, she allowed her brother Wellington Florton and his family (Ms. Floton, her brother and mother) to continue to live on the property.

[15] When Wellington Florton died, Jenny Jane Emilien continued to allow his family, his wife, son and daughter to live on the land in the general area where parcel 993 is. Then she says in about 1991 or 1992, Ms. Floton approached Jenny Jane Emilien and asked for permission to place a wooden house where she currently occupies. She says that Ms. Floton initially went to her grandfather Gonzague Anthony for permission and was told that she had to get permission from Jenny Jane Emilien and not him. Ms. Emilien's evidence is that when Ms. Floton received permission from her mother Jenny Jane Emilien to put her house on the spot on the Property, her grandfather Gonzague Anthony was still alive.

[16] Ms. Emilien says she recalls that it was her father Gilbert Emilien who went with Ms. Floton to show her where to place the house. At that time, the land was not subdivided and was parcel 358. When Ms. Floton put her house on the land in the spot she was shown which is now what is parcel 1415, (no subdivision had taken place as yet) she left her brother in the house on parcel 993.

[7] This is the terminology commonly used to describe the Land Adjudication Process and the Land Registration process which took in the mid-1980s under the Land Adjudication Act and the Land Registration Act.

[17] Ms. Emilien refers to letters dated 7th February 1994 and 16th February 1995 as evidence that Ms. Floton was asked to vacate the Property and letters dated 29th March 2001 and 22nd May 2013 which gave Ms. Floton the option to purchase the spot where her house was located, failing which she was to vacate the property. These letters were written to Ms. Floton on behalf of Jenny Jane Emilien, the then proprietor.

[18] Ms. Emilien says she surveyed and subdivided the original parcel 358 into lots with Ms. Floton occupying parcel 995 with the intention of selling that parcel to her if she so desired. The first survey was done in June 2014 Ms. Emilien says. She speaks of another survey done in 2016 which subdivision created parcels 1415 and 1416, with 1415 being the parcel currently occupied by Ms. Floton. Ms. Emilien says all these surveys and subdivisions were done and Ms. Floton never objected to them being conducted.

Mr. Gilbert Emilien ("Mr. Emilien")

[19] Mr. Emilien was the husband of Jenny Jane Emilien and the father of Ms. Emilien. He says he recalls when Ms. Floton came to his wife asking for permission to place her house on the spot it is currently because his wife had asked him to show Ms. Floton where to place the house and he had done so. He clearly says that he cannot recall the exact date when this happened, but it was sometime in 1991 or 1992. He says he also recalls Ms. Floton saying that she had gone to Gonzague Anthony, her grandfather and he had directed her to Jenny Jane Emilien as the person from whom she needed to get permission. Mr. Emilien says he did point the spot out to Ms. Floton and that is the same place the house is today.

The Defendant's Evidence

Mr. Joseph Merius ("Mr. Merius")

[20] Mr. Merius is the cousin of both Ms. Emilien and Ms. Floton. Mr. Merius says he knew Ms. Floton and her parents and siblings residing in a house on a section of the land which was formerly known as parcel 358 and that up to the time of

Wellington Florton's death in 1975, Ms. Floton and her siblings and parents were the only persons living on parcel 358. After 1975, other family members came to live on different sections of parcel 358.

[21] In 1984, Mr. Merius says Ms. Florton relocated from her parents' house and went to live on another section of parcel 358 where she built a wooden house. That section he says is parcel 1415 where she has been in occupation. He says Ms. Floton's children grew up in the house on parcel 1415 and he says she planted and reaped several crops on the land. He says he knows that she pays for electricity and that the electricity meter is recorded in her name. Mr. Merius says Ms. Floton never sought permission from anyone to reside on the land.

[22] When asked in cross-examination which family members moved onto the property after 1975, Mr. Merius said it was Ms. Floton's brother, Herbert, Ms. Emilien's mother, Jenny Jane Emilien in 1980, Joseph Sonson after 1980 and one Bernard who came in the late 1990's. He agreed that all of these people were on parcel 358 from 1984 apart from Sonson whom he said came in 1989. He agreed that Ms. Floton was not the only one on parcel 358 after 1984.

Ms. Mary Floton ("Ms. Floton")

[23] Ms. Floton's evidence is that she has resided on the area of land which is currently registered as parcel 1415. At the time of filing of the claim she says she had been in occupation for thirty-two years. Ms. Floton says she began to occupy parcel 1415 in 1984 when it was still part of the larger parcel registered as parcel 358. She proceeds to give a historical account of the subdivision of parcel 358. However, the matter of the subdivision of parcel 358 is not in dispute. Parcel 358 was subdivided into parcels 995, 994 and 993 in February 2003. Parcel 995 was then subdivided into parcel 1400 which was then in 2016 subdivided into parcels 1414, 1415, 1416 and 1417.

[24] Ms. Floton says she was not present when any of the surveys were carried out. Ms. Floton says she was born on the land and grew up in her family home on the land known as parcel 358 but at a different section from the area which she now occupies and which is registered as parcel 1415. Ms. Floton says the house which she grew up in was built by her parents and she lived there until 1984 when she moved to the section which is now parcel 1415 (the Property). When she moved to the Property known as parcel 1415, Ms. Floton erected a wooden house on concrete pillars and began to occupy the said area of land as her own. Ms. Floton says she did not receive neither did she seek any permission from Ms. Emilien or Jenny Jane Emilien to occupy the Property or build her house there or to cultivate the land.

[25] Ms. Floton says since she took possession of the Property she has planted several trees. She says she also raised her two children on the land. The electricity is registered in her name and she exhibited her account information from the St. Lucia Electricity Services Limited as proof. Ms. Floton says she has lived in open, peaceful and undisputed possession of the area of land known as parcel 1415 and still resides there and exercise all powers as owner. Ms. Floton says as a consequence, Ms. Emilien is not entitled to possession of parcel 1415.

Discussion

[26] The starting point to my mind is to determine whether Ms. Floton was in sole and undisturbed possession or as the Code puts it, continuous and uninterrupted possession for 30 years. It is important to state at the outset, that from her pleadings, it is clear that Ms. Floton is claiming prescription in relation to Block and Parcel 1251B 1415 solely which is the area of land which she currently occupies.

[27] Counsel for the claimant, Mr. Alvin St. Clair ("Mr. St. Clair") submits that Ms. Floton has not possessed the Property for the prescribed period of thirty years and that the filing and service of the claim in 2016 before the expiration of the thirty-year period serves to interrupt Ms. Floton's possession thereby making her defence of prescription unsustainable.

[28] Mr. St. Clair referred extensively to the case of Moses Joseph et al v Alicia Francois consolidated with St. Torrence Matty et al v Alicia Francois[8] in his closing submissions and argued that Ms. Floton's period of prescription started in October 1986 which was from the date of first registration, and that if in fact she had occupied the Property from 1984, first registration under the LRTP would have interrupted prescription. Ms. Floton would therefore have lost those two years and have to start counting from 1986 for the purposes of calculating the prescriptive period.

[29] Counsel for the defendant, Ms. Rowana-Kay Campbell ("Ms. Campbell") asks the Court not to rely on the Moses Joseph case but to follow the Privy Council judgment of Noel Gregson Graham-Davis et al v Henry Strickland Charles et al,[9] an appeal from the Eastern Caribbean Supreme Court in Antigua and Barbuda.

[30] Given that the Graham-Davis case was only referred to when the Court posed a question as to whether Ms. Floton would have satisfied the thirty-year requirement for prescription, I gave directions for the parties to file further submissions specifically addressing that issue in light of the Moses Joseph Court of Appeal decision and the Graham-Davis Privy Council decision. The claimant and defendant filed their further submissions on 7th and 4th February 2019 respectively.

[31] Ms. Floton's evidence is that she has been occupying the Property from 1984 when she moved there. That is the evidence of Mr. Merius as well. Ms. Emilien's evidence is that Ms. Floton was only occupying the Property from about 1991-1992 after she obtained permission from Jenny Jane Emilien. There is clearly a dispute on the evidence as to when Ms. Floton began occupying the Property which must be resolved. It is clear on the evidence that Ms. Floton did not always occupy the area now known as parcel 1415, but when did she commence her occupation of that Property?

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[8] SLUHCVAP2011/0025 consolidated with SLUHCVAP2012/0037, delivered 15th April 2015 with written reasons delivered 21st August 2015.
[9] (1992) 43 WIR 188.

[32] In cross-examination, Mr. St. Clair put it to Ms. Floton that the averment that she was occupying the Property from 1984 was only made in her amended defence and had not been raised in the earlier defence. Ms. Floton was adamant that she did occupy the Property from 1984. Mr. St. Clair asked Ms. Floton how old were her children to which she responded 'the girl is 46. She was born in 1972 and the boy is 47. He was born in 1971'.

[33] Ms. Floton agreed in cross-examination that her children were born in the house where her brother lived and not in the house which she now occupies on the Property (parcel 1415). When asked how old the children were when she relocated to the Property, she said her daughter was 20 years old and her son was 16 years, but she could not remember as it was so long ago. It is clear from the dates of birth given that the two children are a year apart in age.

[34] If one takes the evidence of Ms. Floton of the age of her daughter when she relocated to the Property, that would put her relocation somewhere about 1992 which then would square with the evidence of the claimant that Ms. Floton's occupation of the Property commenced about then. If her son is one year older than the daughter, then that lends even more credence to the claimant's evidence of the date of Ms. Floton's occupation. Even if I accept that her son was 16 years when she relocated to the Property, that would mean she relocated in about 1987 which does not assist Ms. Floton's defence.

[35] Based on the evidence, I am inclined to accept that Ms. Floton's possession of the Property started in about 1992 as being more credible and I so find. This is consistent with her evidence on cross-examination and the claimant's evidence. On the evidence, I do not accept that Ms. Floton occupied the Property from 1984 at all.

Analysis

[36] In Moses Joseph which Mr. St. Clair relies on, learned Chief Justice Pereira examined the effect of the Land Registration and Titling Project (LRTP) on prescription. It is worth quoting parts of this judgment as I believe they impact significantly on the instant case. In Moses Joseph the trial judge had found that the appellant's possession was interrupted by the first registration and that the period of possession post first registration fell short of the required thirty years.

[37] This is what the learned Chief Justice said at paragraphs 25-27 of the judgment:

> "[25] In our view the learned judge was right to recognise the intervention of the LRTP which by the conjoint effect of the LAA and the LRA, provided an entirely new all embracing and comprehensive scheme designed to adjudicate upon and provide registered title to all lands in Saint Lucia. It provided for a process for hearing disputed claims or claims to the same land by different parties; for the conduct of investigations to ascertain ownership, and finally for appeals from decisions of the adjudicator as to ownership and other rights claimed. It was a holistic scheme implemented for the purpose of bringing certainty to the ownership and identification of lands in Saint Lucia. It provided for a system of land registration (the "Torrens system") similar to that undertaken and implemented in the 1970s in a number of Commonwealth Caribbean States and United Kingdom Overseas Territories.
>
> "[26] In having regard to the entire scheme of the LRTP it is inconceivable that the learned judge should reckon the prescription period for the purpose of defeating the claim of Jacob Fanus as commencing from some period prior to when Jacob Fanus made his claim during the LRTP from which his registered title then flowed. To argue that Jacob Fanus' title which he himself only obtained by long possession in 1987 pursuant to the adjudication process was by that time extinguished by the appellants having prescribed against him would be nonsensical and an utter disregard for the land adjudication process where registered title could be obtained not only based on documentary title but also by possessory title. Indeed Jacob Fanus' *'greater title'* against which the appellants could prescribe only crystallised in 1987 as a result of the adjudication and registration in his name pursuant to the LRTP.

> "[27] For similar reasons reliance on Articles 1978, 2084 and 2085 of the Civil Code does not assist the appellants, and, no matter how ingenious the attempt, these Articles cannot be made to fit into the LAA and LRA scheme which came into operation in the State of Saint Lucia notwithstanding the Civil Code. While the LAA may have become spent in terms of its operational life having regard to its objective, the LRA is very much a part of Saint Lucia's legal landscape and it coexists alongside the Civil Code. The Articles of the Code prayed in aid by the appellants are simply inapplicable to the prescription defence as relied upon by them. Accordingly, the learned judge was right to hold that the relevant period for the **purposes of prescription operating as a bar to Jacob Fanus'** claim must be reckoned, not from some time prior to the LRTP, but as commencing from the time Jacob Fanus became registered proprietor in 1987. As such, the defence of prescription was bound to fail as this period fell far short of the thirty (30) year period by which the claim could be prescribed." (my emphasis)

[38] It is clear from Moses Joseph that the period of prescription is to be reckoned from the date of first registration. If I accept Ms. Floton's evidence that she has been occupying the Property from 1984 (which I do not), then her period of possession would have been interrupted by first registration which, from the land register, is recorded as 29th October 1986. The period of possession would have to be calculated from 1986 and not 1984.

[39] If as I have found Ms. Floton started occupying the Property in 1992 then her period of possession for the purposes of calculating prescription would run from 1992.

Interruption of Prescription

[40] In addition to prescription being interrupted by first registration under the LRTP, the Code provides in article 2085 that:

> "2085. A judicial demand in proper form, served upon the person whose prescription it is sought to hinder, or filed and served conformably to the Code of Civil Procedure when a personal service is not required, creates a civil interruption."

[41] Mr. St. Clair therefore argues that the filing and service of the claim interrupted Ms. Floton's period of prescription. In David Sweetnam et al v The Government of Saint Lucia et al,[10] Justice of Appeal Gordon said this in relation to the proper interpretation of article 2085 of the Code:

> " The law in St. Lucia has never been amended to harmonise with either the Quebec or Louisiana laws as amended. It must therefore follow that prescription in St. Lucia is only interrupted civilly by the commencement of a suit before a court of competent jurisdiction and the proper service of such suit on the party whose prescription it is sought to interrupt. This conforms absolutely with plain ordinary meaning of the language of article 2085."

[42] Applying the cases of Moses Joseph and David Sweetnam seems to bring a conclusion to the matter. An analysis of the evidence shows the following:

(a) Jenny Jane Emilien was registered as proprietor during the LRTP. That was not contradicted in any way on the evidence.

(b) First registration in relation to the Property was on 29th October 1986.

(c) The claim against Ms. Floton was filed on 29th July 2016 and served on 17th October 2016.

(d) Between first registration (29th October 1986) and the service of the claim (17th October 2016) is 29 years 11 months and 17 days, a mere 12 days short of the thirty-year period required to ground a claim in prescription.

(e) If as I have found Ms. Floton only occupied the Property from 1992 at the earliest, then she would still not satisfy the 30 year period since between 1992 and the time of filing and service of the claim would only be 25 years, 5 years shy of the 30 years.

[43] Based on the above analysis, Ms. Floton's defence of prescription would fail and cannot be sustained against the claimant's claim for possession. The discussion on whether first registration interrupts prescription would not even be necessary given the finding at (e) above, as the prescriptive period could only run from 1992.

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[10] SLUHCVAP 2005/0042 (delivered 28th October 2005 at para 11).

[44] The defendant's submissions as regards whether Ms. Floton satisfies the thirty-year period of prescription are contained in the further submissions filed on 4th February 2019. Ms. Campbell's initial submissions never addressed the issue as she had not considered the effect of the pronouncements made in Moses Joseph on Ms. Floton's case.

[45] Ms. Campbell relies on the case of Graham-Davis and suggests that this Court should not follow the Court of Appeal decision in Moses Joseph and should instead apply Graham-Davis.

[46] I will now take a look at the Graham-Davis case. The facts of Graham-Davis were that in 1975 the appellants obtained a certificate of title to the Bluff consequent upon a memorandum of transfer on sale dated 7th July 1975. Following the introduction in September 1975 of new legislation governing the registration of title to land, the appellants obtained registration in the Land Register as absolute proprietors of the Bluff on 24th October 1978.

[47] The respondents claimed that notwithstanding the appellants registered title they had a superior title derived from the prescriptive possession of one John D. Charles who for many years was the owner or manager of the Patterson's and Horsford estate until the sale to the Crown of the whole estate except the Bluff in about 1956 or 1957. John D. Charles continued to live in the house on the Bluff until his death in November 1974. John D. Charles had during 1971 conveyed the whole of the Bluff to the respondents or their predecessors in title. By letter dated 3rd October 1975 the appellants required John D. Charles' disponees all of whom were in possession of different parts of the Bluff to give up that possession. In 1985, the appellants initiated proceedings in the High Court against the disponees seeking declarations that they were owners in fee simple and were entitled to possession.

[48] The respondents counterclaimed for declarations that they were entitled to possession of their respective parcels of land by virtue of the Real Property Limitation Act and that the appellants' certificate of title was void and should be cancelled. The High Court dismissed the appellants' claim and upheld the respondents' counterclaim which decision was upheld by the Court of Appeal.

[49] Ms. Campbell places reliance on the utterings of the Privy Council in relation to a submission of counsel for the appellants that 'the appellants title having been registered under the Registered Land Act, any prescriptive period must run from the date of that registration, which was less than twelve years before the commencement of the present proceedings.' The Privy Council indicated that they had no doubt this argument was unsound. They went on to say thus:

> "The scheme of the 1975 legislation was that an interest registered under the Title by Registration Act would be registered in the 1975 Land Register without alteration but that such registration would not affect the existence of overriding interests such as rights acquired or in the process of being acquired by prescription. This was an eminently logical approach since many of the overriding interests detailed in section 28 are of a character which might very well not be apparent to an officer visiting the land in the performance of his duties under the Land Adjudication Act. It would be manifestly unfair that a person who had acquired or was in the process of acquiring an overriding interest in a parcel of land and upon whom no specific notice had been served should forfeit such interests simply because he had not become aware of the publication by the adjudication officer of the statutory notice under section 6 of the Land Adjudication Act 1975. It was no doubt one of the purposes of section 28 of the Registered Land Act to avoid such unfairness. In their lordships' opinion the proviso to section 15 left the adjudication officer with no alternative but to record that ownership of the Bluff should be vested in the appellants. In so doing he made no decision as to the validity of the disponees' counterclaim, leaving it to them to pursue their remedies through the courts. Indeed, the acceptance by some of the disponees that it would be futile for the adjudication officer to record evidence emphasised that this was the case. It follows that the respondents did not lose any overriding interests which they or their predecessors in title possessed at the date of the appellants' registration and are in no way barred from seeking now to enforce those interests. In the event of their success in this appeal it will be open to them to apply to the Registrar of Titles for registration as proprietors under section 135(2) of the Registered Land Act." (my emphasis)

[50] This pronouncement in my view must be looked at in the context of the specific legislative provisions of the Land Adjudication Act of Antigua and Barbuda[11] ("Antigua LAA") which while similar in many respects, contain some differences which I believe are important.

[51] In Graham-Davis, prior to the High Court claim filed by the appellants, the respondents had made a claim to the Bluff under the new scheme of registration based on duly registered deeds of conveyance. There being a dispute between the appellants and respondents, the adjudication officer purported to adjudicate the dispute based on section 15 of the Antigua LAA and issued the following statement:

> "The powers conferred in me by the Land Adjudication Act 1975 do not empower me to vary any interest in land registered under the Title by Registration Act. I shall, however, record the evidence as submitted by claimants and their witnesses and this will be available to the court in the event of an appeal under section 24(1) of the Land Adjudication Act 1975, or to the registrar in the event of an application under section 127 of the Registered Land Act 1975 to lodge a caution, under section 132 of the Registered Land Act for a restriction to be made or under section 135 of the Registered Land Act for registration as proprietor of land acquired by prescription."

[52] Then the adjudicator decided that ownership shall be recorded as vested in the appellants as the registered proprietor by virtue of their certificate of title and that the existence of counterclaims by the other parties in the dispute would be recorded by means of a note to the registrar at paragraph 12 of the adjudication record.

[53] Section 15 of the Antigua LAA provides as follows:

> "(1) If in any case –
>
> (a) …
>
> (b) there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them, the Demarcation Officer or the Recording Officer as the case may be shall refer the matter to the Adjudication Officer.

[11] Cap. 234, Laws of Antigua and Barbuda.

> (2) The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under subsection (1), having regard to any law which may be applicable, and shall make and sign a record of the proceedings:
>
> Provided that nothing in this section shall empower the Adjudication Officer to vary any interest in land registered under the Title by Registration Act." (my emphasis)

[54] Therefore, though the respondents made a claim, relying upon their deeds of conveyance made to them by John D. Charles, during the new land registration process, they never had the benefit of their claim being adjudicated. This was because of the proviso above which required that an interest/title registered under the Title by Registration Act, which the appellants had, must be registered in the 1975 Land Register without alteration. In the circumstances, the High Court and Court of Appeal concluded that the prescriptive rights of the respondents, by virtue of being in occupation, must be deemed to have been overriding interests protected by section 28(g) of the Registered Land Act 1975 of Antigua and Barbuda.

[55] It is clear that where there were disputes and competing claims to a piece of land that the adjudication officer under the Antigua LAA could not vary any interest in land. That would have been a matter for the Court. The LAA gave the adjudication officer the right to adjudicate on the basis of long possession where there were no other claims based on a certificate of title. There was no right of adjudication where title or other interest had been registered under the Title by Registration Act. It would make sense therefore, for the Privy Council to have held that on the particular facts of Graham-Davis, first registration could not interrupt prescription where the respondents had in fact made a claim during the land registration process, but that claim was simply not adjudicated based on the proviso to section 15(2) of the Antigua LAA.

[56] The LAA in Saint Lucia does not contain the proviso contained in the Antigua LAA and therefore the adjudicator in Saint Lucia had full powers to adjudicate and determine interests and competing claims and make a final determination on a dispute based on applicable principles of land law and subject to the review process as detailed in the LAA. The LRTP in Saint Lucia was therefore an all-encompassing procedure requiring all persons who had interests in land whether based on long possession or other documentary title to come forward. Unlike Antigua, the adjudicator under the Saint Lucia LAA had full and wide powers. That is a major distinction between the Moses Joseph case and the Graham-Davis case.

[57] Indeed as Mr. St. Clair points in his further submissions filed on 7th February 2019, Moses Joseph did not simply arrive at a conclusion that registration interrupts prescription. It must be remembered that in Moses Joseph, counsel for the appellants had argued based on article 1978 of the Code which says that registration does not interrupt prescription. As I understand the judgment, first registration under the LRTP is what was said to interrupt prescription and not just registration. This is what the learned Chief Justice had to say at paragraph 25 of the Moses Joseph judgment:

> "[25] With the greatest of respect to counsel for the appellants these arguments, again unsupported by authority, in our view miss the point. They appear to completely overlook the fact that the LRTP was not simply about registration of title but very importantly that all first registrations were predicated upon an adjudication under the LAA. This was so whether it flowed from a contested claim or (as is the case here) an uncontested claim. As the Privy Council said in Louisen v Jacob at paragraph 39:
>
> > "The LAA and the LRA were intended to operate as two interlocking elements of the process of first registration of title. The LAA was concerned, as its name indicates, with the adjudication of claims to land ownership. If there were competing claims the adjudication officer was to decide them in a quasi-judicial capacity, weighing up the evidence and applying principles of land law. Even if there was no contest between claims, the recording officer still had to subject the claim to scrutiny (section 14 refers to "such investigation as he or she considers necessary") before completing and signing the adjudication record for certification by the adjudication

> officer. Once it became final the certified record was to be passed to the Registrar (as provided in section 10 of the LRA) for first registration. If the confirmed adjudication record appeared to be in order there would be no reason for the Registrar to seek to go behind it." (my emphasis)

[58] Mr. St. Clair further argues that the LRTP process with the inherent judicial process which it represented did in fact interrupt prescription. Counsel ventures to say that technically it is not first registration that interrupted prescription but rather the judicial process under the LRA and LAA during the LRTP which culminated in the first registration. That may be a better formulation and clearer explanation as to the effect of the LRTP process on prescription. However, whatever the case, there is no doubt that the LRTP process ended with first registration in relation to all lands adjudicated in Saint Lucia. That was the start of the new land registration system in Saint Lucia. It would make complete nonsense of the process and defeat the intention of the LRTP if a person could rely on possession before the LRTP process to ground a claim in prescription when the very LRTP gave an avenue for such person to claim if they met the legal requirements to make a claim based on long possession. The LRTP was meant to have brought a fresh start to land registration in Saint Lucia.

[59] Section 6 of the Antigua LAA provides that the notice which was to be prepared by the adjudication officer was to have done several things, one being 'to declare that any interest in land within the adjudication section which is registered under the Title by Registration Act will be carried forward to the new register established under the Land Registration Act;' Section 6 of the Saint Lucia LAA is in same terms as its Antiguan counterpart except that it does not contain a similar reference to land registered under any former system of registration or Act being automatically carried forward to the new register.

[60] When I examine section 6 and the proviso to section 15(2) of the Antigua LAA, it makes sense that the Privy Council would have rejected the notion that any prescriptive period had to run from the date of registration under the Land Registration Act (the new Act) because there would not have been any avenue for the adjudicator to have decided competing claims in circumstances such as those in Graham-Davis. That I think makes all the difference and why I believe that the pronouncements of the Privy Council on which Ms. Campbell relies must be considered and applied within the confines of the peculiar legislative provisions and factual circumstances of Graham-Davis and are not to be of general application.

[61] Ms. Campbell submits that the only Act under which Jenny Jane Emilien could have obtained registration in 1986 was the Land Registration Act ("LRA") and not the Saint Lucia LAA as the LAA did not provide for registration. This is a misunderstanding of the LRTP process. The adjudication process is what ultimately led to first registration and the opening of a land register with respect to a particular piece of land. Whilst the LAA did not provide for registration, it was part of a scheme which provided for demarcation, adjudication and ultimate registration in the land register under the LRA - the LRTP. The evidence of Ms. Emilien is that her mother acquired title to parcel 358 under the LRTP, the date of first registration being 29th October 1986. That was not disputed by the defendant. That title according to section 23 of the LRA is indefeasible and can only be rectified on the basis of fraud or mistake. Title registered under the LRA is also subject to section 28 which provides for overriding interests.

[62] Ms. Floton does not in her defence plead or raise the issue of overriding interests whether pursuant to section 28(f) or (g). Indeed, in her written submissions, Ms. Campbell submits that the defendant in the case at bar pleaded prescription in her defence and unlike the appellants in Moses Joseph, the defendant in support of the prescription defence argued section 28(f) in the legal submissions filed before trial. Having not pleaded section 28(f), it cannot be that the Court is being asked to adjudicate on an issue simply raised in submissions. The basis for the prescription

defence as pleaded is that Ms. Floton has met the requirements to establish prescription not that she is working towards acquiring the requirements. However, I will address the matter because I think it is important to bring some clarity to section 28(f).

Section 28(f) of the LRA

[63] Ms. Campbell submits that where section 28(f) of the LRA speaks to rights in process of being acquired by virtue of any law relating to prescription it could only mean that the adverse possessor does not have 30 years yet, but is already in possession of the land and the prescriptive period has started to run. In other words, Ms. Floton was in the process of acquiring prescription from the date of her possession and this could only be interrupted in accordance with the Civil Code.

[64] I must confess I have difficulty accepting these submissions. Counsel for the claimant, Mr. St. Clair submits that the expression "rights acquired" in the phrase 'rights acquired... by prescription' means, by reason of the existence of the Supreme Court-Prescription By 30 Years (Declaration of Title) Rules **("the Rules")** under which an application must be made and granted; that which has been pronounced by the High Court or the Registrar of Lands, but not yet registered or recorded against the land register.

[65] He goes on that the expression "in the process of being acquired…by prescription" means the process by which the right is acquired, namely the procedure under the said Rules. Mr. St. Clair submits that possession prior to thirty years means nothing and is itself not a right or interest and therefore could not be what is meant by 'in the process of being acquired by prescription.'

[66] Mr. St. Clair further submits that prescriptive title can be obtained by a trespasser who has possessed for thirty years once he meets the requirements of article 2057 of the Code. However, that trespasser without the requisite possession for thirty years cannot be deemed to have any rights or interest which a court or any law can

protect. Mr. St. Clair argues that to suggest that a mere two years possession as a trespasser, since Ms. Floton says she is on the land without permission from anyone, gave her any rights or interest which the law protects cannot be correct. I totally agree with Mr. St. Clair's submissions.

[67] It is important to note that for one to establish prescription in addition to the possession having to be continuous, uninterrupted, peaceable, public, unequivocal and as owner, it must be for a period of thirty years. Without the thirty years, continuous, uninterrupted, peaceable, public and unequivocal possession means absolutely nothing. Indeed, in Graham-Davis, the rights protected by section 28(f) had already crystalized as the prescriptive twelve-year period under the Registered Land Act had already been attained at the date when the respondents made their claims under the new registration system. I agree with Mr. St. Clair that it certainly could not have been the intention of the Privy Council to suggest that someone who has been in possession for only two years and a trespasser had an interest which was protected under section 28(f).

[68] It is clear from Graham-Davis that the land registration scheme which operated in Antigua before 1975 was that initial registration of land required judicial approval and that a title registered under the Title by Registration Act could only be superseded by a prescriptive title acquired under the Real Property Limitation Act where the court had directed the Registrar of Titles to issue a certificate of title to that person claiming under section 34 of the former Act. That system is not in any way similar to that which operated in Saint Lucia prior to the Land Registration and Titling Project (LRTP) and the introduction of the Land Registration Act.

[69] Ms. Campbell also argues that if Moses Joseph is correct, time is to be reckoned from the date of registration in relation to section 28(c) of the LRA-rights acquired by compulsory acquisition; section 28(i) of the LRA - article 1188 community property and this could not have been the intention of Parliament. I must confess that this argument is not even plausible because Moses Joseph deals with

prescription and interruption of prescription. It does not deal with the rights acquired under compulsory acquisition or under community property. In neither of these cases is the concept of interruption of these rights known to the law and further these areas are governed by specific legislative provisions.

[70] The intention behind the LRTP as has been said in many cases was to bring certainty to the land registration process in Saint Lucia and was not meant to be left open so that a registered proprietor would never know when he would be faced with an unsuspecting claim against him for prescriptive title based on possession which pre-dated the adjudication process. If it were otherwise what would be the point of asking persons with interests even based on long possession or prescriptive claims to come forward and present their claims during the LRTP?

[71] I conclude by saying that I am of the view that Graham-Davis does not contradict or affect the decision of our Court of Appeal in Moses Joseph for all the reasons outlined above and should be distinguished on its own facts and I see no reason that I should not follow the decision in Moses Joseph.

[72] I therefore find that Ms. Floton has not satisfied the thirty-year period required by article 2103A of the Code, being one of the requirements required to establish a claim in prescription. Even if one considers the various permutations possible, Ms. Floton would still not satisfy the thirty-year period- (a) possession and occupation from 29th October 1986, date of first registration; or (b) 1992-being the date which I found on the evidence as being the date when Ms. Floton entered into possession of the Property. In either of the above cases, prescription would have been interrupted by the filing and service of the claim, the latter date being 17th October 2016 (see paragraph 41 above).

[73] If I am wrong on the issue of the thirty-year period, and it is the case that Ms. Floton has satisfied the thirty-year requirement and her possession was continuous and uninterrupted, then I go on to consider the other elements which must be satisfied for establishing prescription. Article 2057 requires that the user be continuous and uninterrupted, peaceable, public, unequivocal and as proprietor.

Whether Ms. Floton's Possession was Peaceable

[74] The second element of possession required is that the defendant must show that her occupation of the property was peaceable. In Alicia Francois v Moses Joseph et al which decision was upheld on appeal,[12] Georges J [Ag.] said that 'the authorities have shown that occupation by force does not require any physical violence.' He went on to say that mere objection by the owner to the use of the land will suffice. Notices to quit he said are examples of objection.

[75] The evidence of the claimant revealed four letters written on behalf of Jenny Jane Emilien, the mother of the claimant, Ms. Emilien and the former proprietor of the Property to Ms. Floton as follows:

(1) 7th February 1994 - letter refers to a portion of land situate at Grande Riviere in the quarter of Gros Islet and states that Ms. Floton lived in a wooden dwelling house for some years now with her consent but without lease, right or title. The letter further stated that she no longer consented to Ms. Floton remaining in the house and served to demand that she remove her house on the property forthwith.

(2) 16th February 1995 - letter refers to a portion of land situate at Grande Riviere in the quarter of Gros Islet and was a notice to quit which demanded that Ms. Floton quit and deliver up possession of the property on or before 1st May 1995.

(3) 29th March 2001 - letter refers to a portion of land situate at Grande Riviere in the quarter of Gros Islet and indicated Jenny Jane Emilien's interest in selling

[12] SLUHCV2004/0611 (delivered 15th August 2011, unreported).

the portion of the land which Ms. Floton occupied to her and granted her first option to purchase.

(4) 22nd May 2013 - this letter stated that Jenny Jane Emilien was the owner of a parcel of land registered as Block and Parcel 1251B 995 which parcel was once part of a larger parcel owned by her and registered as Block and Parcel 1251B 358. The letter further stated that Ms. Floton now resided on parcel 995 and demanded that she vacate the parcel of land and remove the wooden house which she erected thereon by 30th June 2013. An offer to sell a spot from parcel 995 was also made to Ms. Floton.

[76] All of these letters were served on Ms. Floton. In three of the letters, Ms. Floton was given notice to quit the property by a certain date. In cross-examination, Ms. Floton denies having received any of the letters. However, the letters all contain information on service showing that they were served on her. The defendant submits that these letters do not amount to possession or any act of physical control. The fact that the letters were sent by Jenny Jane Emilien is of no moment. Prescription lies against the Property and not the proprietor and follows the property notwithstanding that the proprietor may change. I accept the claimant's evidence that the letters were sent and served on Ms. Floton. As Georges J [Ag.] found in Moses Joseph, the letters would have operated as Jenny Jane Emilien's protest to Ms. Floton's use and occupation of the Property. The fact that they did not state a specific parcel of land does not take away from the fact that the letters referenced the portion of land situate in Grande Riviere which is where Ms. Floton resided. The fact that Ms. Floton disregarded the notices for her to vacate the property nullifies her claim to title by prescription as this would be tantamount to occupation of the land by force. Ms. Floton's possession cannot therefore be said to have been peaceable.

Whether Ms. Floton's Possession was Public

[77] In this regard, I am satisfied from the evidence that Ms. Floton's possession was public. The evidence of Ms. Emilien herself revealed that both she and her mother knew about the wooden structure erected on the Property by Ms. Floton. Ms. Emilien in her evidence said that she knew that Ms. Floton had electricity. In cross-examination she admitted that she did not know when last she went to where Ms. Floton lives and also accepted that it was possible that Ms. Floton had planted crops on the land. The mere fact that the letters all acknowledged the fact of Ms. Floton's wooden structure on the land serve to support a finding that there was no stealth or concealment in Ms. Floton's possession of the Property.

Whether Ms. Floton**'s** Possession was Unequivocal?

[78] Ms. Emilien averred in her amended statement of claim that Ms. Floton was occupying the Property without her permission. As the evidence unfolded, it became unclear whether Ms. Floton had or had not been given permission to be on the Property. Ms. Floton for her part was adamant that she did not get any permission from anyone to occupy the Property.

[79] In cross-examination, Ms. Emilien was questioned as to the seeming inconsistencies in her evidence. In the statement of claim, it alleges that Ms. Florton was residing on the Property without the permission of the claimant. When asked who "claimant" referred to, she confirmed it was her mother, Jenny Jane Emilien, the previous proprietor and herself. In her witness statement at paragraph 3, Ms. Emilien says that Ms. Floton was residing on the Property without her permission. Then in paragraphs 17 and 18, Ms. Emilien suggests that in about 1991 or 1992, Ms. Floton approached her mother, Jenny Jane Emilien for permission to put her house on the spot where it is currently and permission was given, which directly contradicts her allegations that Ms. Floton has been occupying without permission. At least it would appear from Ms. Emilien's own evidence that Ms. Floton was occupying with permission of Jenny Jane Emilien. The letter of 9th February 1994 clearly stated that Ms. Floton lived on the Property with the consent of Jenny Jane

Emilien which again contradicts the claimant's earlier allegation that Ms. Floton had occupied the property without permission.

[80] The evidence as it unfolded also revealed that Wellington Florent died on 24th March 1975. Counsel for the defendant therefore suggested that neither Gonzague Anthony nor Jenny Jane Emilien could have given him permission to occupy any part of the property. However, whilst it certainly is the case that by the time Jenny Jane Emilien acquired the property in 1977, Wellington Florton was deceased, it is possible that Gonzague Anthony, the original owner of the land who was still alive and had a life interest could have given permission to Wellington Florent to occupy the land with his family as Ms. Emilien testifies. It cannot be the case that Jenny Jane Emilien would have given Wellington Florton any permission as he was dead by 1975 and she only acquired the land by Deed of Sale in 1977. It may be more plausible that Jenny Jane Emilien gave Wellington Florton's wife and family permission to continue to remain on the property after Gonzague Anthony died in 1993. The evidence of Ms. Emilien that between 1977 and 1989, Gonzague Anthony gave permission to Wellington Florton to occupy the property is also not plausible because Wellington Florton had died in 1975.

[81] Counsel also pointed to the fact that in the reply of the claimant filed on 14th February 2018, the claimant alleges that Gonzague Anthony had already passed when Ms. Floton approached Jenny Jane Emilien for permission to put her house on the property whereas in her witness statement, she says that Gonzague Anthony was still alive. This appears to be a contradiction and it did not appear that Ms. Emilien was quite sure about the details of the permission that she alleges was given.

[82] In cross-examination, Mr. Emilien said he was not present when Ms. Floton spoke to his wife but his evidence is that his wife had asked him to show her where to put the house. He was consistent that the year was about 1991 or 1992 but he said he could not recall the exact dates. Mr. Emilien appeared not quite sure of his testimony and I would agree with Ms. Campbell when she says that Mr. Emilien

seemed to have one story no matter the question he was asked. Mr. Emilien also said in answer to the question whether Mary had come to his wife to ask for permission at any time that Mary (Ms. Floton) had come to ask his wife for a place to put the house and his wife replied to her to go and ask her father which does not sync with his evidence in chief. I did not find Mr.Emilien's evidence regarding Ms. Floton having asked for permission from his wife to put her house on a spot on the land to be very credible.

[83] Given Ms. Floton's very adamant stance in cross-examination that Jenny Jane Emilien did not own the land, I would find it hard to accept that she would have asked her for permission. It seems more the case that Ms. Floton having lived on the land albeit on another area, simply packed up and moved to where she currently occupies and placed her wooden house since she was moving out of the family house. I do not accept the claimant's evidence on the issue of permission having been given to Ms. Floton given the inconsistencies in the evidence presented.

[84] I therefore find that Ms. Floton occupied the Property without permission from Ms. Emilien or her mother, Jenny Jane Emilien and as a trespasser. In considering whether Ms. Floton's possession is unequivocal the Court must also consider whether her actions in relation to the Property evinced a clear intention to possess the land as proprietor.

Did Ms. Floton have the intention to possess the Property to the exclusion of all other persons, as proprietor?

[85] In the case of Cora Matthews v Sonia Patterson[13] the Court of Appeal said that for a person to acquire a possessory title that person must have the intention to possess the land to the exclusion of all other persons including the owner with the paper title. The absence of such intention is fatal, according to Cora Matthews.

[13] SVGHCVAP2000/0007.

[86] The principles to be applied by the Court in determining whether a person was in adverse possession (prescription in Saint Lucia) were outlined in the case of Powell v McFarlane[14] and were approved by the House of Lords in J A Pye (Oxford) Ltd and another v Graham and another.[15] In Pye the court said that two elements were necessary for legal possession:

1. A sufficient degree of physical custody and control ("factual possession");
2. An intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess or animus possidendi").

[87] In Pye the court quoted Slade J in Powell who said this:

> ""(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus, an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. …. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.'"

[88] In Pye, the court found that the Grahams were in occupation of the land which was within their exclusive physical control. The paper owner, Pye, was physically excluded from the land by the hedges and the lack of any key to the road gate. The Grahams farmed it in conjunction with Manor Farm and in exactly the same way. They were plainly in factual possession.

[14] (1977) 38 P & CR. 452.
[15] [2002] 3 AER p. 865.

[89] The Pye case was applied and approved by the Caribbean Court of Justice (CCJ) in Toolsie Persaud Limited v Andrew James Investments Limited et al.[16] The CCJ made the point that in order to establish an intention to possess, it must be shown that factual possessor is independently in possession so that it is obvious to any dispossessed true owner (or any true owner who has discontinued possession of his land) that he needs to assert his ownership rights in good time if he is not to lose them.

[90] In the case at bar, Ms. Floton has a wooden house on the Property and from the evidence she planted trees and crops on the land. She has the electricity connection in her name. Ms. Emilien could not contradict this at all and I think it would be the case that Ms. Floton was in factual possession. The next question to be determined is whether Ms. Floton also had the intention to possess.

[91] The evidence reveals that several surveys were conducted for the purposes of subdividing the property, perhaps a total of three over the period after 1986. Ms. Floton says she was not present at any of the surveys. Ms. Emilien says that is not correct. She says Ms. Floton was notified but chose not to participate and even when she knew about the surveys, she made no objection to the fact that Ms. Emilien or her mother before her had undertaken same. It is interesting that nowhere in her evidence does Ms. Floton say that she was not notified of the surveys. She simply says she was not present when the surveys were done. This is a significant omission. If surveys are being done on property on which you occupy and you do not think that the person carrying out the survey owns the land as Ms. Floton pleaded, why then would you not attend the survey to register your objection and assert your rights?

[16] CCJ Appeal No CV 1 of 2007 delivered 15th July 2018 at paras 27-29..

[92] Whilst Ms. Campbell looked at the survey from the perspective of whether it was capable of interrupting prescription, it is clear that there is nothing in the law of Saint Lucia which supports this. The case of Brandis v Craig[17] cannot be relied on for that principle. However, the discussion in the case of the effect of a survey and its meaning as relates to the intention to possess of a prospective prescriptive owner is instructive. In Brandis, Luckhoo LJ of the Guyana Court of Appeal said:

> "It is my view that the evidence of the survey was evidence of a substantial act of the taking of physical possession of the land by the owner …and negatives any intention on his part to abandon or discontinue possession. It was evidence which did not evince merely an intention to go into possession under title but went in proof of an effectual re-entry animo possidendi, thereby materially affecting the appellant's defence of prescription which she had set out to prove. The evidence of the survey constituted evidence of the exercise by Ganga Persaud of the powers of dominion over the land."

[93] Ms. Campbell also suggests that the case of National Insurance Board v Christopher Matthew Alsace,[18] should not be followed as it relied on the Brandis case. I do not accept this submission as the principle espoused in the case is sound and Brandis was not relied on for the aspect of a survey interrupting prescription but for its effect on the determination of an intention to possess. At paragraph 27 of this judgment, Saunders J said:

> "In assessing a claim made by prescription a court focuses not only on the acts and intention of the person claiming by prescription but also on the acts and attitude of the paper title owner. The acts and attitude of the latter can serve to rebut or help to confirm the claim that the person prescribing has enjoyed possession that is continuous and uninterrupted, peaceable, public, unequivocal and as proprietor. If there is evidence that a documentary owner has discontinued possession or abandoned the land, well that is one thing. But if during the period of possession claimed by the adverse possessor, the paper title owner has evinced an active assertion of title by, for example, carrying out surveys of the land in question, then it is difficult to see how the occupation by the adverse possessor can attain the character required by Article 2057."

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[17] (1981) 30 WIR 136.

[18] SLUHCV1999/0257, delivered 14th March 2003, unreported.

[94] Saunders J found that the surveys were cogent evidence of the paper title owner's continued possession of the said lands. I do not find that there is sufficient evidence to conclude that Ms. Floton had the intention to possess the Property (parcel 1415). Her actions do not evince such an intention.

[95] Ms. Floton's evidence is that she planted trees on the Property but there is no evidence to suggest that this was done to demarcate the Property. It would appear that she simply planted trees for her benefit and not to exclude anybody else from the Property. The connection of electricity to my mind is not evidence of an intention to possess the Property as it would have been done as a matter of convenience to Ms. Floton and not to establish any ownership to the Property. Planting of trees may amount to possession provided that there is a clear boundary marking out the extent of the land cultivated as in the case of Powell. There is also no evidence from Ms. Floton that she made any attempts to exclude anyone else from the Property. Although Ms. Floton pleaded that she is known and recognized as the owner of the Property and Mr. Merius said this in his evidence in chief, there was no evidence to support this except the bald statement.

Conclusion

[96] Based on the foregoing, I find that Ms. Floton has not proven all the elements required to establish prescription and that is fatal. She did not have continuous, uninterrupted possession for thirty years. Her possession although public could not be said to be peaceable as the evidence revealed that letters had been sent to her asking that she vacate the land, clearly showing objection to her presence on the Property. I also find that on the evidence Ms. Floton did not show that her possession was unequivocal or that she had the intention to possess the Property. In all the circumstances therefore, Ms. Floton has not proven her defence of prescription and the defence must fail.

[97] Ms. Floton made no counterclaim for compensation for improvements to the Property and no evidence was led in that regard and the matter therefore does not fall to be determined by this Court.

Order:

[98] The Order is therefore as follows:

(1) Judgment is therefore entered for the claimant.

(2) The defendant is to give up possession of the property registered as Block and Parcel No. 1251B 1415 to the claimant within 60 days of today's date.

(3) The defendant is to remove her wooden dwelling house and all debris arising from such removal from the said Block and Parcel No. 1251B 1415 within 60 days of today's date.

(4) Prescribed costs to the claimant in accordance with CPR 65.5 in the sum of $7,500.00.

[99] I thank counsel for their submissions in the matter.

Kimberly Cenac-Phulgence
High Court Judge

By the Court

Registrar