

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
A.D. 2022**

CLAIM NO. NEVHCV2020/0095

BETWEEN:

In the matter of the Title by Registration Act, Chapter 10.19, Section 34

In the matter of the Limitation Act, Chapter 5.09, Section 6

In the matter of an Application by Randy Jeffers representative of the Estate of Pamella Jeffers for a Certificate of Title in lieu of the Registered Proprietor in the original certificate of title for 1,393.60 square feet in an area situate at Low Street in the parish of St Paul in the Island of Nevis

BETWEEN:

RANDY JEFFERS (representative of the Estate of Pamella Jeffers)

Applicant

And

WATERFRONT PROPERTIES (NEVIS) LIMITED

Respondent

Before: His Lordship Justice Patrick Thompson Jr.

Appearances: Mrs. Marlene Uter Bent of counsel for the Applicant
Ms. Elizabeth Harper of counsel for the Respondent

2022: May, 31st
July, 27th & 28th
December, 5th

JUDGMENT

Thompson Jr. J:

1. Randy Jeffers and Lester Jeffers are two of the sons of the late Pamela Jeffers.
2. By a request filed on October 2nd, 2020 Randy Jeffers applied for a certificate of title as personal representative of his late mother's estate for a parcel of land comprising of 1,393.60 square feet at Low Street, in the parish of St Paul's, Nevis ("the land").
3. Randy Jeffers' application for a certificate of title in respect of the land is opposed by Waterfront Properties Ltd ("Waterfront"). The registered proprietor on the certificate of title is Waterfront. Waterfront are vehemently opposed to any such certificate of title being issued to Randy Jeffers thus necessitating these proceedings.

Preliminary Point 1: Substitution of Parties

4. Waterfront's objections can be dealt with in the following way. Firstly, Waterfront contended that Randy Jeffers was not the correct party to be advancing this application. In their view, the Administrators of the Estate of Pamela Jeffers, being Randy Jeffers and Lester Jeffers, in their administrative capacity were the proper parties to bring these proceedings. Waterfront argued that they had put Randy Jeffers on notice that he was not the proper party to bring these proceedings since either October 2020 or February 17th, 2021. Randy Jeffers' application to substitute himself and his brother in their administrative capacity was not filed until May 2022.
5. Mrs. Uter Bent, counsel for Randy Jeffers accepted their default in belatedly filing their application to substitute and accepted their liability to pay agreed costs in the sum of \$1,250.00 to Waterfront. Those costs represented the time and expense Waterfront's legal practitioners had expended in arguing that substitution was required before Randy and Lester Jeffers filed their application to do so.

Preliminary Point 2: Locus Standi

6. Secondly, Waterfront contended that even with substitution, the Jeffers' application was doomed to fail since the right to apply for title by prescription was a personal right which vested in Pamela Jeffers. As a result of her untimely death, that right came to an end and did not pass to Randy or Lester Jeffers on her intestacy. Ms. Harper, counsel for Waterfront contended that Randy and Lester Jeffers thus had no standing to bring these proceedings even as administrators for their late mother's Estate.
7. In BVIHCV 2017/0004 Shirley Hodge v The Chief Registrar of Lands at paragraph 57 Ellis J stated:

"A fundamental principle of the common law is that possession of land is without more capable of giving a good title against the rest of the world save someone having a better legal right to possession. The principle that title to land is dependent on the better right to possession is embodied in our legal systems which have repeatedly applied the dictum in Asher v Whitlock."
8. Ellis J at paragraph 75 referring to Burton v Elvin (1993) 46 W.I.R. 117 also highlights that:

“It follows that it is entirely appropriate for a personal representative to advance a case for prescriptive title on behalf of the estate of a person in respect of whom there was sufficient acts of possession and ownership proven to the requisite degree and for the prescribed period. Further, the fact that the personal representative was not in occupation at the time of application would not without more militate against an application for prescriptive title.”

9. Asher v Whitlock (1865) L.R. 1 Q.B. 1, Burton v Elvin and Shirley Hodge v Registrar of Lands and others all highlight the principle of possessory title being capable of transmission on death. In this Court’s view, those authorities provide a complete answer to Waterfront’s submissions on this issue.

The factual case for the Jeffers family

10. Waterfront’s third contention was to dispute the significant evidence of occupation which the Jeffers’ had called in these proceedings. In support of their application for a certificate of title, the Jeffers called the following witnesses.
 - (i) Randy Jeffers
 - (ii) Lester Jeffers
 - (iii) Leighton Selkridge
 - (iv) Judith Slack
 - (v) Lecia Jeffers Browne
 - (vi) Tesson Danet
 - (vii) Jonessa Jeffers
11. I do not propose to recite their evidence for the purposes of this judgment. I will simply summarize the salient parts of their evidence. Their evidence can be neatly divided in this way. The immediate members of the Jeffers family, that is to say, the offsprings of Pamella Jeffers are, Randy Jeffers, Lester Jeffers, Lecia Jeffers Browne, Tesson Danet and Jonessa Jeffers. Leighton Selkridge and Jonessa Judith Slack are elderly neighbours of the Jeffers family and spoke to their knowledge of the Jeffers clan and their occupation of the land for a number of years.
12. I hope that I can be forgiven for summarizing their evidence in chronological order as opposed to the order in which they were called but that seems to me to be the ideal way of organizing their evidence.
13. The oldest member of the Jeffers family was Mr. Tesson Danet. Mr. Danet’s affidavit filed on June 14th, 2022 was tendered in evidence as his evidence in chief. He was 52 years old and was born at Low Street on the land. According to him, he and 5 siblings (4 younger, 1 older) grew up with his mother on the land. He always believed that his mother owned the land. He knew that a Mr. Ashton Scarborough lived on the land and that his mother looked after Mr. Scarborough by cooking and washing for him and he believed that Mr. Scarborough had given his mother the land and that she had put her house on the land. As far as he knew his mother never paid rent to anyone for the land.
14. When he was cross examined there was some dispute as to whether his mother built a house on the land or ‘put’ (presumably the house was built elsewhere and transported to the land) and Mr. Danet maintained that his mother built the house on the land. It was his evidence that there were two wooden houses on the land. One of the houses was that of Mr. Ashton Scarborough and the other

was his mother's house. He accepted that his knowledge of how his mother came to reside on the land was based on what his mother had told him.

15. The next oldest member of the Jeffers family was Lecia Jeffers Browne. Unsurprisingly, Mrs. Browne's evidence was in similar vein to that of Mr. Danet. She too was born on the land and lived there with her siblings. When she was about 13 or 14 years old she recalled that her mother had a court case with a Mr. Ross in relation to the land and based on what her mother had told her she believed that her mother had won the case. She also knew that Mr. Ross had put up a wall to separate his property from the property that she believed her mother owned.
16. In cross examination, she too accepted that what she knew of how her mother came to reside on the land was based on what her mother had told her. She knew that Mr. Ross was challenging her mother's ownership of the land and she knew that while Mr. Ross had brought the case against her mother she believed that he did not show up to court. As far as she knew there were no other challenges to her mother's ownership of the land save that in or about 2020 Waterfront were also challenging her family's ownership of the land.
17. Lester "Smoothie" Jeffers was next in line and confirmed that he and his brother Randy Jeffers were the administrators of their late mother's estate. He too was born on the land and had grown up there and believed that it was owned by his mother. It was his evidence that when he was about 18 years old he was employed at the Four Seasons Resort and assisted his mother in renovating the house. These renovations meant that the house was turned to face the road and a concrete bathroom, kitchen and an extra room were added on to the house.
18. In cross-examination, he accepted that he was aware of the case brought by Mr. Ross in which he claimed that the land was his. He did not know if there were other cases brought by other persons like Mr. Ross but he believed that the Ross case was thrown out and he believed that his mother had won the case. He accepted that he was young when the wall was built and could not recall who built the wall. He remembered meeting with a Mr. Stephen Burditt. He met with Mr. Burditt because he believed that Mr. Burditt wanted to buy the land from his family. He did not know that Mr. Burditt would say that the land belonged to Waterfront. He disputed Mr. Bowrin's recollection of any conversation(s) they would have had about the land.
19. Randy Jeffers was the penultimate member of the Jeffers family and his evidence confirmed that he too was born on the land and lived there with his siblings. His brother Lester and his niece Jonessa continue to live on the land to this day. He believed that his family had been in occupation of the land for over 50 years. His mother died in on March 2nd, 2010 and his family continued in occupation of the land after her death. Randy Jeffers' evidence in chief confirmed that his family spent significant monies to improve the land, never paid rent to anyone and they all believed that it was their land.
20. In cross examination, Randy Jeffers confirmed that he too thought that his mother had won the case with Mr. Ross. He did not know about the case with Mr. Ross until 2020 when he spoke with his neighbours. He accepted that living somewhere does not mean that you own that place. He presumed that the wall was built in 1984 because his mom had won the case against Mr. Ross and that wall was built to separate his mother's property from that of Mr. Ross. He knew that Dexter Bowrin was the representative of Waterfront but he did not recall having any conversation with Mr. Bowrin in which he acknowledged that his mother did not own the land or asking whether Waterfront

had 'deep pockets' in order to relocate them. He believed that the land that had been sold to Waterfront by its previous owners was separate from the land that his family had been occupying for over 50 years.

21. The final member of the Jeffers family that was called as a witness was a Ms. Jonessa Jeffers. Jonessa is the daughter of Lecia Jeffers Brownee and the granddaughter of Pamela Jeffers. She too had resided at the land since her birth and believed that the land was owned by her late grandmother. She accepted that it is possible that there could have been other challenges to her grandmother's ownership of the land that she did not know about. She was aware of the Dexter Bowrin challenge and shocked by it. She recalled that one Sunday morning in February 2020 she woke up to the sound of a backhoe on the land and called her uncles Randy and Lester Jeffers.
22. So much for the Jeffers family. The evidence of Leighton Selkridge was in the following terms. Mr. Selkridge was aged 75 and had grown up with the late Pamela Jeffers in Low Street. He knew that Pamela Jeffers and her family had been living on the property for over 50 years. It was his evidence that there was a chattel house that Pamela Jeffers moved onto the land but that about 20 years ago a concrete foundation was built on the land. Mr. Selkridge said that over 30 years ago a boundary wall was constructed by the late Austin Ross, that wall divided the land owned by Pamela Jeffers and the land owned by Waterfront.
23. Finally, Mr. Selkridge recited his understanding of the history of the owners of the land owned by Waterfront.
 - (i) It was first owned by Ashton Scarborough then sold to an Austin Ross.
 - (ii) After Austin Ross died, Mr. Ross' brother sold the land to Ross Warner.
 - (iii) Ross Warner then sold the land to Ulrick 'Panco' Morton
 - (iv) Panco sold the land to some Canadians.
24. In cross examination Mr. Selkridge confirmed that he did not know anything about any house being moved on to the land by Pamela Jeffers. He knew that she had all her children in the house on the land. He agreed that the wall does not go all the way down to the end of the street and that he would not have known all of Pamela Jeffers' business so that other persons could have spoken to her to challenge her ownership of the land. He did not know Waterfront or whether Waterfront were the Canadians that Panco had sold the land to. He did not know of any controversy between Pamela Jeffers and anybody in respect of that land.
25. The final witness on the case for the Jeffers family was Judith Slack. Ms. Slack now lives at Craddock Road but had only moved there less than 10 years ago. She had previously lived at Low Street and was very familiar with the land in question. She was aged 70 having been born on January 11th, 1950 and was very familiar with Pamela Jeffers since they had gone to school together.
26. She knew that Pamela had lived on the land for well over 50 years, having moved her wooden chattel house onto the land when she had her 1st son, Tesson Danet. It was her evidence that the land was part of a larger piece of land that was owned by her grandfather, Ashton Scarborough. According to her, Ashton Scarborough had told Pamela to place her house on the land and gave it to her (Pamela). After her grandfather had passed away, her grand-uncle came from America and did not demand rent from Pamela or tell her to leave the land. A concrete wall separates Pamela's

land from the land owned by Waterfront. That wall was built over 30 years ago by a previous owner of the land owned by Waterfront and Pamela and her family had been in open and undisturbed possession of the land for a number of years.

27. In cross examination, she said that when her affidavit says that the house was 'put' on the land that was a mistake, signature notwithstanding. She did not say that. She maintained that Pamela built a house on the land and did not move a house onto the land. She did not know if her grandfather had papers for the land or whether he actually owned the land but she believed that he did and that he had given a part of that land to Pamela Jeffers. She agreed that while there were things that she would not know, it was her evidence that Pamela told her most important things. They both grew up in Low Street and lived as one (she and Pamela) and she was certain that Pamela did not pay rent for her occupation of the land. She had heard about Waterfront but did not know who owned it.

The factual case for Waterfront

28. Waterfront's factual case was gleaned from the tenor of their cross-examination of the Jeffers witnesses and the evidence of Dexter Bowrin. Mr. Bowrin's several affidavits were tendered in evidence. In summary his position was that Waterfront's title was indefeasible (more on this later). No title was ever obtained in the name of Pamela Jeffers during her lifetime. Ashton Scarborough did not own the land and Pamela Jeffers did not own the land or dispossess the previous owners.
29. Waterfront did not dispute the fact that the Jeffers had been occupying the land in the way that had been described by their witnesses. Mr. Bowrin indicated that he had spoken with Randy and Lester Jeffers and that they knew that they were 'encroaching' on the land. It was Mr. Bowrin's evidence that Randy Jeffers asked him if Waterfront had deep pockets to pay for his family's relocation. In his view (Bowrin) the conversations with Randy and Lester were cordial and not contentious. Mr. Bowrin recalled that one Sunday morning in February 2020 he had sent a contractor with a backhoe with the intent of placing a chain link fence on the land. He then got a call from Randy Jeffers and left where he (Bowrin) was and went to the land. There he spoke with Randy and Lecia and Jonessa Jeffers who were upset and carrying on and since he didn't want to escalate the situation he told them to let the lawyers deal with it. It was his evidence that he told Randy to get his lawyer and he will get his.
30. Mr. Bowrin further testified that he has workmen ("Nutsie" and "Rocky") who would cut the grass and maintain the property and that when Waterfront bought the property there was a house on the property. The area then became a hotspot and the tenants in the house moved so Waterfront removed the roof and windows to discourage other persons from making use of the property for any illicit activity.
31. In cross examination, Mr. Bowrin stated that he was one of two directors of Waterfront. A copy of the annual return for Waterfront for March 2022 was shown to him and he confirmed that on the annual return he is listed as the only director of Waterfront. He accepted that Waterfront bought the property in 2009 and that he didn't visit the property when it was purchased although he drove by the property almost every single day. He couldn't say whether Pamela Jeffers had a house or whether that house was affixed to the land or could be moved. He accepted that he knew that Pamela Jeffers had occupied the land for a number of years. He agreed that he knew that Pamela Jeffers died in 2010

and accepted that Waterfront took no steps to disturb the Jeffers' family occupation of the land between 2009 and 2019.

32. On the plan for the property he pointed out the location of the rented house, the Jeffers residence and the concrete wall. He knew that the land had been surveyed in 2019. He knew that Austin Ross had challenged Pamela Jeffers' occupation of the land and that that challenge was the only challenge that he knew of in relation to the land. He accepted that the Jeffers appeared to have renovated their residence over the years but did not know when these renovations were done. Finally, he did not accept that Waterfront had not challenged the Jeffers' occupation of the land until 2020 and maintained that Lester and Randy had acknowledged Waterfront's ownership of the land and had sought compensation for relocation.

Court's Factual Findings and Analysis

33. It is common ground between the parties that Pamela Jeffers and her family have resided at Low Street, Charlestown, Nevis since 1962 or thereabout. Mr. Bowrin and Waterfront have not disputed the fact of her occupation or that of her offspring for the past 50 plus years.
34. Therefore, the issue of whether the house was 'put' on the land initially or built there is no real significance to the issues to be ultimately resolved. Valuable judicial time was spent noting the answers of the witnesses to this question. In this Court's view, the witnesses were clear that the house had been built there and there was no knock on impact on their credibility in view of their affidavit evidence that the house had been 'put' there and their viva voce evidence that the house had been built there. It is clear that everyone accepts that the Jeffers residence had been in the same spot at Low Street for over 50 years.
35. It is true that none of the descendants of Pamela Jeffers could conclusively say that there had never been any challenge to Pamela Jeffers occupation of the land. As far as this Court can reasonably discern, none of them are omniscient. Their knowledge is therefore limited to what they know as a fact for themselves. That is to be balanced by their knowledge and belief as gleaned from their occupation of the land (as a family) for in excess of 50 years.
36. It is entirely possible that at some point in their occupation of the land (aside from the Waterfront and Ross challenges) someone may have challenged Pamela Jeffers occupation of the land. Her children would not necessarily have known of these challenges. What is critical however, is the fact that Waterfront is not alleging that there were these additional challenges. Waterfront, as part of their case are arguing that it is entirely possible that someone else may have mounted a challenge. That is materially different. The fact of another challenge (if proved) would simply mean that Pamela Jeffers' occupation of the land was not a peaceable one. The possibility that someone may have done so does not mean that her occupation was not a peaceable one.
37. It is significant that Pamela Jeffers' occupation appears to have been a peaceable one save for the 1984 challenge by Mr. Ross and the 2020 challenge by Waterfront. Aside from those 2 separate challenges, there is no evidence from which this Court can find that her occupation was anything but peaceable. Waterfront accept that between 2009 and 2019 they were content to take no steps to enforce their right to possession of the land. It has not escaped this Court's attention that none of Waterfront's several predecessors in title sought to exclude Pamela Jeffers and her family from

possession. On that basis, there is no evidence from which this court can find that anyone aside from Mr. Ross in 1984 and Waterfront via these proceedings have sought to challenge the Jeffers family's occupation of the land from 1962 to date.

38. This Court has carefully considered the evidence adduced by both sides in relation to the land and in particular the various deeds of conveyance and pleadings in respect of the 1984 challenge by Mr. Ross. This Court finds that the following chronology sets out the root of Waterfront's title and puts into square focus the scope of the arguments on the indefeasibility of their title.

- (i) By a deed of conveyance made on July 12th 1983. Eric Cecil Scarborough conveyed the land¹ to Austin Ross in consideration of the sum of EC\$12,754.00.
- (ii) Austin Ross dies on May 25th, 1985.
- (iii) Nelson Ross, brother of Austin Ross was granted letters of administration in the Estate of the late Austin Ross on September 25th, 1990.
- (iv) By a deed of assent² made on April 29th, 1991, Nelson Ross vested the land in himself as personal representative and sole beneficiary of the Estate of the late Austin Ross.
- (v) Nelson Ross dies on February 8th, 1992.
- (vi) By his last will and testament dated May 9th, 1991, Nelson Ross appointed Keith Edwards and Anthony Pugh to be his executors.
- (vii) The grant of probate of the last will and testament of Nelson Ross was resealed in Nevis on November 30th, 1992.
- (viii) By a power of attorney dated September 7th, 1992, Anthony Pugh appointed Cecil Byron as lawful attorney for him.
- (ix) By a deed of conveyance³ dated 30th November 1993, Cecil Byron as lawful attorney for Anthony Pugh conveyed the land to Austin Warner in consideration of the sum of EC\$160,000.00.
- (x) By a deed of conveyance dated February 5th, 1999, Austin Warner conveyed the land to Ulrick Hanley in consideration of the sum of EC\$145,000.00.
- (xi) By a deed of conveyance dated April 30th, 2010 Ulrick Hanley conveyed the land to Waterfront in consideration of the sum of EC\$500,000.00.
- (xii) On October 24th, 2019, Waterfront is issued with a Certificate of Title in respect of the land.

¹ This deed of conveyance refers to the land as "a lot or parcel of land with its appurtenances"

² That deed of assent refers to the land as "that lot of land with the concrete dwelling house standing thereon"

³ That deed of conveyance refers to the land as "that lot or parcel of land.....together with the dwelling house erected thereon"

39. In view of this Court's factual findings above, there is no real need to decide whether Mr. Bowrin is speaking the truth in his conversation with Randy and Lester Jeffers or whether the Jeffers sought compensation for their removal from the property or were 'cordial' and not contentious about their likely removal from the property. All the same and for the avoidance of doubt, this Court has little difficulty in accepting the evidence of the Jeffers family and their witnesses and wholeheartedly rejecting Mr. Bowrin as a witness of truth.
40. Mr. Bowrin's evidence was frankly incredible. If he were to be believed, the Jeffers' (Randy and Lester) were aware of the fact that they were encroaching and were cordial in their discussions with him about their relocation. This is to be contrasted with their considerable efforts to obtain a certificate of title via these proceedings. If the Jeffers, were in fact cordial it then makes a nonsense of their trenchant efforts to resist Waterfront's efforts to dispossess them. Why spend all this time and money on litigating a matter that you had already accepted you were destined to lose even before lawyers were instructed? In this Court's view it is far more likely that Mr. Bowrin misrepresented the nature of the conversations with the Jeffers. This Court has no difficulty in finding that there were conversations between Mr. Bowrin and Randy and Lester Jeffers but that those conversations were either not cordial or did not discuss Waterfront's claim to the land.
41. Mr. Bowrin's evidence that this lack of contention on the part of the Jeffers' led him to dispatch a backhoe on a Sunday morning in February to erect a fence on the land suggests that there was significant contention between the parties. Fencing is the clearest sign of dominion over land. This Court finds that the dispatching of the backhoe was the first salvo in these hotly contested proceedings. His evidence that he did not want to escalate things further was frankly ludicrous. There are few things more calculated to escalate a land dispute than to dispatch a backhoe to someone's house on a Sunday morning. Mr. Bowrin's alleged surprise at the response of the Jeffers clan to his so called efforts to not escalate matters confirms his economical approach to the truth.
42. So much for the facts. The facts have to be applied to the relevant law and before setting out the relevant legislative background I can do no more than cite the words of the learned authors of Commonwealth Caribbean Land Law at page 268 of their text in the following terms:
- "Purchasers should be made to feel secure in the titles which they have acquired; they should not be haunted by fear of litigation, defending stale claims which question the title of their vendors. But the basis of this policy becomes questionable where there is a viable and effective land registration system which does not give room for protracted uncertainty as to where the title to land lies at any given time."*
43. The foregoing is a leitmotif that will inform this Court's analysis of the law and judgment in this matter.

Legislative Framework

44. The starting point is Section 6(3) of the Limitation Act which provides:

"No action shall be brought by any other person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him or her or if it first accrued to some person through whom he or she claims , to that person."

45. I can do no better than cite the reasoning of President Saunders at paragraph 6 in the CCJ case of **David George v Albert Guye [2019] CCJ 19** in interpreting the identical section in the Dominican legislation that:

"Limitation statutes bar persons from bringing court actions that might otherwise be valid and reasonable. Ordinarily they do so only on the basis of the inordinate length of time a claimant took before a claimant could have instituted the action"

46. To use an analogy, Section 6(3) operates as a shield, that is to say it protects a person in occupation of land from any action seeking recovery of the land if the action is brought 12 years or more after the right to bring that action has accrued. Section 6(3) provides for a right but does not confer a title on the person in occupation of the disputed land.
47. In Arnold Celestine v Baptiste HCVAP2008/011 (not considered by the CCJ in *George v Guye*) Justice of Appeal George-Creque (as she then was), in her judgment at paragraphs 13, 14 and 15 in the Court of Appeal considered this very issue on the facts before her:

"The second and more substantive challenge made by counsel is that it was simply not open to the trial judge, having found that Mr. Baptiste was the paper owner, to proceed nevertheless, to grant a declaration of possessory ownership of the Land on Mr. Baptiste's claim. In essence, what Mr. Baptiste succeeded in doing was to invoke the Limitation of Actions Act as a sword in acquiring a declaration of ownership of the Land rather than using limitation as a shield against any claim made by Mr. Celestine, the paper owner to the Land. Indeed, Mr. Celestine has brought no claim for recovery of the Land. It is most unusual for statutes of limitation to confer positive benefits or rights on those invoking such provisions. The whole purpose of such statutes growing out of public policy considerations and well recognized over many years, was to bar stale claims, or, put another way, they are designed to encourage the timeliness of claims. The Limitation of Actions Act of Grenada is no exception in this regard.

Sections 4 and 27 of the Act warrant setting out:

"4. No person shall bring an action to recover any land, but within twelve years next after the time at which the right to.....bring the action, has first accrued to some person through whom he claims, or, if the right has not accrued to any person through whom he claims, then within twelve years next after the time at which the right to....bring the action, has first accrued to the person... bringing it."

"27. At the determination of the period limited by this Act to any person forbringing an action, the right and title of that person to the land for the recovery whereof the....action might have been... brought within that period shall be extinguished."

Counsel for Mr. Baptiste sought to rely on these provisions in support of his contention that Mr. Baptiste had acquired ownership of the Land and for defending the trial judge's declaration to this effect. With the utmost respect to counsel and the learned trial judge, this approach is quite wrong. On a proper construction of these sections of the Limitation Act, it becomes clear, in my view, that these provisions do no such thing. It appears to have been overlooked that these provisions are directed at the right of the paper owner to bring a claim for recovery of land and limit the time frame

within which the paper owner may do so. This contemplates that the paper owner must have become dispossessed of the land – by the adverse possessor. What these provisions do not permit or contemplate is the situation where, as here, the adverse possessor brings a claim against the paper owner and then sets up the limitation bar as against the paper owner as a basis upon which the adverse possessor becomes entitled to ownership of the land.”

48. The Jeffers family contends that they have been in continuous occupation of the land since 1962 and this Court is satisfied that is established by the evidence. They therefore contend that Waterfront is not entitled to bring these proceedings for the recovery of possession of the land.
49. Firstly, these proceedings by Waterfront are not proceedings for the recovery of land. The Jeffers have applied for a Certificate of Title under the Title by Registration Act and Waterfront, as holders of the title to the land have objected (as they are entitled to do) to the issuing of a Certificate of Title to the Jeffers family. There are no proceedings for recovery of possession afoot, although it is clear that the likely effect of any ruling in favour of Waterfront will be to dispossess the Jeffers family.
50. Secondly, Section 6(3) may have been a complete defence by Pamela Jeffers in 1984 to the suit filed by Mr. Ross. Mr. Ross’s suit explicitly sought the recovery of possession and at paragraph 2 of her defence Pamela Jeffers contended that she intended to rely on Section 6(2⁴) of the Limitation Act as her defence to Mr. Ross’s suit. The chronology is significant. Mr. Ross dies in May 1985 and his suit was adjourned on 20th November 1985 without a future date being fixed. This Court was not told what steps were taken by either side to have the matter adjudicated upon and resolved during this interregnum but on February 14th, 2001 the Ross suit was struck out by Master Hugh Rawlins (as he then was).
51. It does not appear that the Ross suit was ever adjudicated on its merits. If that were the case, these proceedings may well have been considerably shorter. It would behoove the Jeffers family to have had the Ross suit heard and determined on the merits but Pamela Jeffers can be forgiven for having thought that she had won the proceedings. Pamela Jeffers would have been relying on her legal practitioner to advise her as to the next best course of action to take in these proceedings since her lawyer would or should have known that a dismissal of the suit without more is not a finding that her limitation defence had been made out.
52. The Jeffers family finds themselves in an unenviable position. They have occupied a parcel of land for over 50 years. Everyone is agreed that the house has come a long way from its humble beginnings. The land around the house has also been transformed. A public road has been built on reclaimed land to the front of the house so that the sea no longer laps at the house. This has meant that the land has appreciated in value. Waterfront Properties is therefore an apt description.
53. Counsel for the Jeffers family contends that their client has obtained a title under the Limitation Act as a result of their proven 50 plus years of occupation of the land. Counsel for Waterfront rejects this contention and contends that since the Jeffers have not obtained a title under the Title by Registration Act they do not have title to the land and are essentially trespassers.

⁴ What is currently Section 6(3) of the Limitation Act and provided for a 12 year limitation period

54. The resolution of this issue requires this Court to interpret the Title by Registration Act and relevant case law from the Eastern Caribbean Supreme Court, Privy Council and Caribbean Court of Justice.

Title by Registration Act

55. Section 34(1) of the Title by Registration Act provides:

“Where any person has acquired, or claims to have acquired, under the Limitation Act. 5.09 the ownership of land brought under the operation of this Act, he or she shall present a request to the Registrar of Titles to have a certificate of title issued to him or her in lieu of the registered proprietor in the original certificate of title, and the person who has acquired or claims to have acquired, such ownership shall not be entitled to maintain any suit in regard to such land until he or she shall have obtained a certificate of title thereto”

56. Section 34(1) of the Title by Registration Act provides that ownership of land is acquired or may be acquired under the Limitation Act. The narrow question to be considered by this Court is whether the words “*ownership of land*” under Section 34(1) is synonymous with title to the said land. The Jeffers say clearly this must be the case and rely on the reasoning of the majority in the CCJ in the case of David George v Albert Guye in support of their position. Unsurprisingly, Waterfront rely on the 2 minority judgments of Justices Anderson and Burgess in David George v Albert Guye in support of their position that title to registered land is only obtained after a party complies with Section 12 of the Title by Registration Act.

57. The opinion of the majority in George v Guye was delivered by President Saunders. President Saunders found that in Dominica, the Real Property Limitation Act incorporated the 1833 UK Limitation Act which meant that:

“After the squatter has enjoyed your land continuously for the statutory 12 year period, your right and title (his emphasis) are extinguished and the squatter obtains a title that supersedes that of the registered proprietor”

58. The majority in George v Guye found that the legislation in Dominica did not provide for any formal procedure to mark the extinguishment of the original owner’s title after the squatter had been in possession for 12 years and as such title could be extinguished without notification or formality to the holder of the title to the land.
59. The minority (Anderson and Burgess) in George v Guye held a different view. While the thrust of Justice Anderson’s dissent was directed at indefeasibility of title (more on that later), Justice Burgess was of the view that all that the squatter acquired was a defence to an action by possession by the owner. In other words, squatting for 12 years did not equal a transfer of title to the land that the squatter was occupying.
60. Resolving the question of exactly what is acquired or acquirable as ‘ownership of land’ under the Titles by Registration Act is not an easy question. All the same, this Court proposes to address the question in the following way.

61. Firstly, the majority in George v Guye appear to have conflated ownership with title. I say so for the following reasons. At paragraph 6 of his judgment, President Saunders states with emphasis that the owner's right and title to the land are extinguished after 12 years. There is no dispute that the right to possession of the land, that is to say for the purpose of ejecting the squatter, is extinguished. What is less clear is how the title of the owner is also extinguished. In this Court's view, there is a clear and material distinction between a right to ownership and actual title to land.
62. Secondly and with the greatest of respect for the opinion of the majority, the Dominican High Court and appellate authorities⁵ cited at paragraphs 17-22 of their opinion do not lead to the conclusion expressed at paragraph 23 of the majority's opinion. None of those authorities expressly or implicitly provide that the title (my emphasis) of the registered proprietor is extinguished. There is no dispute that a squatter can rely on 12 plus years of occupation to successfully resist an action for recovery of that occupation by the registered owner. That is the effect of the Dominican authorities. Those authorities do not however discuss the position of the title held by the registered owner.
63. In this regard, this Court finds the minority opinion of Justice Burgess highly persuasive and preferable to that of the majority opinion. At paragraph 105 of the judgment of the Court in George v Guye, Mr. Justice Burgess rhetorically asked what does extinguishment of the right and remedy mean?
64. In his view, the answer lay in both the view of the learned authors of Cheshire and Burn's Modern Law of Property that "the statutory effect of twelve years adverse possession is merely negative; not as Baron Parke once said, 'to make a parliamentary conveyance to the person in possession'.....there is no transferto the squatter of the very title held by the dispossessed person."
65. Justice Burgess derived further support for that view from the reasoning of Lord Radcliffe in the House of Lords in Fairweather v St Marylebone Property Co Ltd [1963] A.C. 510 at page 535 in the following terms:

"It is necessary to start, I think, by recalling the principle that defines a squatter's rights. 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. His title, therefore, is never derived through but arises always in spite of the dispossessed owner. At one time during the 19th century it was thought that section 34 of the Act of 1833 had done more than this and effected a statutory transfer of title from dispossessed to dispossessor at the expiration of the

⁵ George v Rosalie Estates (1965) 13 WIR 401; Green v Joseph Dominica High Court Suit 277 of 1987, Judgment delivered July 30, 1990; DM 1990 HC 7(JustisOne); Phillips v James Dominica High Court Suit No 183 of 1995, Judgment delivered March 7, 1997; DM 1997 HC 1(JustisOne); Castaways Development Ltd v. Castaways Hotel Ltd. et al. Dominica High Court Suit No. No. 590 of 1995, Judgment delivered November 21, 2000; DM 2000 HC 8(JustisOne); Laville v Hill Dominica High Court, DOMHCV 2001/0378, Judgment delivered May 29, 2003; DM 2003 HC 4(JustisOne) Burton Riviere v Judith Durand DOMHCVAP 2006/013, Judgment delivered November 10, 2010; DM2010 CA 3(JustisOne) Aldie Martina Toussaint v Mary Austrie DOMHCV2003/0186, Judgment delivered 27 January 2012; DM 2012 HC 1(JustisOne)

limitation period. There were eminent authorities who spoke of the law in just these terms. But the decision of the Court of Appeal in 1892 in *Tichborne v. Weir* (1892) 67 L.T. 735; 8 T.L.R. 713 put an end to this line of reasoning by holding that a squatter who dispossessed a lessee and "extinguished" his title by the requisite period of occupation did not become liable in covenant to the lessee's landlord by virtue of any privity of estate. The point was fully considered by the members of the court and they unanimously rejected the idea that the effect of the limitation statute was to make a "Parliamentary conveyance" of the dispossessed lessee's title or estate to the dispossessing squatter.

In my opinion this principle has been settled law since the date of that decision. It formed the basis of the later decision of the Divisional Court in *Taylor v. Twinberrow* [1930] 2 K.B. 16 in which it was most clearly explained by Scrutton L.J. that it was a misunderstanding of the legal effect of 12 years' adverse possession under the Limitation Acts to treat it as if it gave a title whereas its effect is "merely negative" and, where the possession had been against a tenant, its only operation was to bar his right to claim against the man in possession. I think that this statement needs only one qualification: a squatter does in the end get a title by his possession and the indirect operation of the Act and he can convey a fee simple."

66. Justice Burgess's analysis of the law is preferable for the following reasons. The issue of squatter's rights was conclusively heard and determined by the House of Lords since 1963 but by the Court of Appeal in *Tichborne v Weir* in 1892 and the Divisional Court in *Taylor v Twinberrow* in 1930. It is significant that neither of these authorities were considered by the majority in delivering their opinion in *Guye v George*. Secondly, Lord Radcliffe was very clear and consistent with his language. That is to say, his analysis speaks to squatter's rights and the incidents of those rights being a right to possession. In other words, a right to possession as a defence mechanism against other prospective claims to possession does not transmute into a title in the hands of a squatter.
67. Assume for the sake of argument that the paper owner subsequently dispossesses the squatter, what then becomes of the title of the paper title owner? Is that title still valid or is it extinguished for all time so that the paper owner could only seek to establish their own 12 year period of possession in order to subsequently dispossess the former squatter?
68. In the foregoing hypothetical, the legal fiction of title passing from owner to squatter is with the greatest of respect, flawed. Even if the paper owner regained possession of the land, he would have nothing and could do nothing because title is now vested in the squatter. That cannot be right. If President Saunders's analysis is correct, the holder of the indefeasible paper title in possession even after the squatter had been dispossessed would have nothing. Their title, though indefeasible would be worthless and their possession would count for naught until they had next been in possession for 12 years. In this Court's view, what the squatter has after 12 years is the right to occupation of the land, possibly to the exclusion of all interlopers. What the squatter does not have is a title to the land.

Indefeasibility

69. The word 'indefeasible' is defined in the First Schedule to the Titles by Registration Act in the following terms:

“The word used to express that the certificate of title issued by the Registrar of Titles and the notings by him or her thereon, cannot be challenged in any Court of law on the ground that some person, other than the person named therein as the registered proprietor, is the true owner of the land therein set forth.....except on the ground of fraud connected with the issue of such certificate of title.....or that the title of the registered proprietor has been superseded by a title acquired under the Limitation Act Cap 5:09 by the person making the challenge. The word also means that the certificate of title being issued by the Government of the State, the Government of the State is, with the exceptions above mentioned, prepared to maintain the title in favour of the registered proprietor, leaving anyone justly aggrieved by its issue to bring an action for money damages against the Government of the State.”

70. For the avoidance of doubt, no argument that Waterfront's title was obtained as a result of fraud connected with the issue of the certificate of title was raised by the Jeffers family. The Jeffers family contends that Waterfront's title was superseded by a title acquired under the Limitation Act. Waterfront contends that the Jeffers family have not obtained any such superseding title under the Limitation Act.
71. The discussion of indefeasibility in the judgment of Justice Anderson is also critical to this Court's analysis of the relevant law. Firstly, the issue of supersession was not fully argued in any of the Dominican cases referred to by the majority in George v Guye. Secondly, the majority in George v Guye found that Lord Jauncey's reasoning in the Privy Council in Graham-Davis and another v Charles and others (1992) 43 WIR 188 was surplusage and irrelevant to his reasoning in that matter.
72. With the greatest of respect to the majority in George v Guye this Court does not find that the reasoning of Lord Jauncey is mere surplusage. Prescriptive title under the Real Property Limitation Act could only properly arise where a court had directed the Registrar of Titles to issue certificate of title to the person claiming such title. This reasoning is consistent with the well-established line of authority flowing from and discussed in Fairweather v St Marylebone Property Co Ltd above.
73. Even if I am mistaken in my interpretation of the cases and their principles I am persuaded by the reasoning of Mr. Justice Burgess at paragraph 129 of the CCJ's judgment in George v Guye in the following terms:

“It would mean that even though the Title by Registration Act was enacted for the express purpose of achieving certainty in land title by declaring a certificate of title indefeasible, the Act would be treated as keeping the unregistered adverse possessory title lurking in the shadow to undermine the very certainty which the certificate of title of the registered owner is intended to secure.”

74. To apply the reasoning of the majority would be to preserve the very mischief which the legislation in St. Christopher and Nevis was enacted to guard against. It is noteworthy that the Sections 23 and 28 of the Antiguan Registered Land Act (discussed in Graham-Davis et al v Charles et al) provides for the vesting of absolute ownership in the hands of the registered proprietor subject to overriding interests which are not noted on the Register. Overriding interests include “rights acquired or in the process of being acquired by virtue of any law relating to the limitation of actions or by prescription or the rights of a person in actual occupation of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed”.

75. The Antiguan legislation makes it clear the exact ambit of what the registered proprietor of land in Antigua is entitled to. No registered proprietor in Antigua could complain if his title were successfully challenged by a person relying on prescription. The legislation in St Christopher and Nevis does not provide for any such possibility. The title of the registered proprietor in Nevis is indefeasible unless either (i) fraud is proved or (ii) the Registrar of Titles was directed to issue a title pursuant to Section 12 of the Title by Registration Act. Neither of those eventualities have occurred and as such the indefeasible title of Waterfront Properties trumps any right or claim by the Jeffers family to the land in question.
76. Given the above findings, I am persuaded by the decision of Alleyne C.J [Ag.] in Burton Riviere v Judith Durand HCVAP2006/013 at paragraph 8 regarding this court's jurisdiction:
- "Clearly, given the finding of the learned judge that the respondent never paid rent since 1984, and never abandoned the land, the learned judge was clearly right in holding the appellant's claim to be statute barred in terms of the Real Property Limitation Act. We would however comment that, in light of the provisions of section 33 of the Title by Registration Act, it would not have been within the jurisdiction of the learned judge to order that the respondent be issued a Certificate of Title to the disputed land even if a counterclaim had been filed. The parties are bound by the statutory provisions of section 33 of the Title by Registration Act with respect to any dealings in relation to this statutory title."
77. As a result, this Court cannot now issue a certificate of title to the Jeffers family in respect of the land although no such relief has been sought.

Judicial Precedent

78. This Court's decision to follow the minority in George v Guye can be accounted for in the following way. Firstly, the decision of the majority in George v Guye is by a majority of 3 to 2. There is no concurring judgment from Justice Wit explaining his reasoning (not that there ought to be) but this Court is faced with 4 competing judgments on a point of substantial legal importance. Secondly and more importantly the nature of this Court's dilemma is clearly expressed by Justice Anderson at paragraphs 71-73 of his judgment in George v Guye.
79. Simply put the decision of the CCJ in George v Guye is a highly persuasive but not binding authority on this Court as the Privy Council and not the CCJ is the final court of appeal for the Federation of St Christopher and Nevis. Even without this court's comments above, this Court is bound both by the reasoning of its own Court of Appeal in George v Guye and the Privy Council in Graham-Davis et al v Charles et al. Once it is accepted that the views of the majority in George v Guye are only highly persuasive then with the greatest of deference to those learned jurists, this Court is entitled to choose for itself and does attach itself to the views of the minority in George v Guye.
80. Finally, it is noteworthy that the majority of CCJ in George v Guye is to be balanced by the fact that of the 9 judges that heard the matter, the 3 in the majority in George v Guye are to be contrasted with the 6 eminent jurists (first instance judge, unanimous ECSC court of appeal and 2 dissenting

judgments in the CCJ) who held a different view. Those matters together with the weight of established authority has lead this Court to the decision that it has taken.

81. Ultimately, the Privy Council may be called upon to resolve and settle the law since if this matter were to engage their attention they would have the benefit of several judgments from this court, the Court of Appeal and the CCJ in order to assist them in resolving this important area of law with real and lasting implications for our small island developing states.

Costs

82. Waterfront has successfully objected to the grant of a Certificate of Title to the Jeffers family. They are thus entitled to their prescribed costs. Their success is however limited by the fact that they unpersuasively sought to dispute the Jeffers' occupation of the land. The facts were overwhelmingly stacked against them in this regard and the extensive cross examination of the Jeffers' family and their witnesses did not help matters. The resolution of these factual issues occupied a significant amount of the Court's time in this matter.
83. Had Waterfront focused their energies on the law and remained either neutral or less combative (as they were entitled to do) on the facts then they would have been entitled to all of their costs in this matter. This Court therefore discounts their costs by 1/3 so that they are entitled to 2/3 of the prescribed costs of 15% of the value of the land in the sum of EC\$9,176.99.
84. This Court wishes to put on record its gratitude to all counsel and witnesses engaged in this matter for their efforts in ensuring that the matter was able to proceed with all due expedition once it landed on this Court's docket.
85. No doubt this decision is likely to provoke strong feelings among the Jeffers family as it is entirely understandable why they may feel aggrieved to learn that they do not own the home that several generations of their family have occupied for over 50 years. This Court takes no joy in its findings in this matter. These words will be of little comfort to the Jeffers family but it is hoped that Waterfront may do something to assuage the undoubted hurt and disappointment likely to flow from this decision.

**Patrick Thompson Jr.
Resident High Court Judge**

BY THE COURT

REGISTRAR