

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT VINCENT AND THE GRENADINES

SVGMCVAP2021/0008

BETWEEN:

SALLY KING

Appellant

and

DAPHNE PAYNTER

Respondent

Before:

The Hon. Mde. Vicki Ann Ellis

Justice of Appeal

The Hon. Mr. Trevor M. Ward

Justice of Appeal

The Hon. Mde. Cadie St. Rose-Albertini

Justice of Appeal [Ag.]

Appearances:

Dr. Linton Lewis for the Appellant

Mr. R. Akin S. John for the Respondent

2025: November 14;
2026: July 27.

Magisterial civil appeal – Appeal against findings of fact – Recovery of possession – Section 3(1) of the Recovery of Possession Act – Whether the evidence before the magistrate satisfied the requirements of section 3(1) of the Recovery of Possession Act – Estoppel by payment of rent - Pleadings of fraud

This is an appeal from a decision of the magistrate's court in Saint Vincent and the Grenadines in which the learned magistrate granted an application brought by the respondent for the recovery of possession of land pursuant to section 3(1) of the **Recovery of Possession Act** ("the Act").

The learned magistrate found as a fact that the respondent is the Executrix of the will of Marie Prince, who died leaving a plot of land in the Town of Calliaqua to Alice Manderville (deceased), Loraine Bascombe and Pamela Kirby. The respondent, who was responsible for managing the parcel of land including the collection of rent from the appellant, initiated the claim in her capacity as agent for the estate of the aforementioned individuals (or "the landlords"). At trial, the respondent adduced in evidence Deed of Assent No. 3232/2009 executed on 3rd September 2009 between the executors of the will of Marie Prince (herself and one Douglas Williams) of the one part, and Alice

Manderville, Pamela Kirby and Loraine Bascombe of the other, as evidence of the landlords' title to the land in question.

The appellant and her siblings resided on the land with her father since childhood. Though her father subsequently moved to another parcel of land, the appellant continued to reside there and paid rent to the respondent for the years 2007, 2008, 2009 and 2010.

The respondent served the appellant with a notice to quit dated 7th May 2019 and subsequently instituted the claim for the recovery of possession of the land. The appellant however argued that the land in question never belonged to Marie Prince, whom she alleged had acted fraudulently in purporting to convey the land to herself, and that she had never been a tenant of Marie Prince and had never accepted the respondent as her landlord. She claimed that the land belonged to her father, Nathaniel King, and produced some land tax receipts purporting to show that her father had paid some land taxes.

The learned magistrate granted the order for possession upon being satisfied on the evidence that the landlords held legal title to the land and that the respondent had standing to make the application as she was an "agent" of the landlords within the meaning of the Act. The magistrate also found that the respondent had proven that Marie Prince had let the appellant's father into initial possession of the land and that the appellant was a tenant at will whose tenancy was properly determined by a legal notice to quit. The appellant's claim that her father was the owner of the land was accordingly not accepted as the learned magistrate found that there was no evidence to support such a claim to ownership.

Dissatisfied with the decision of the learned magistrate, the appellant lodged its notice of appeal on 2nd June 2021 with the sole ground of appeal being that the decision of the learned magistrate cannot be supported by the evidence. The issues for determination however are: (i) whether the evidence before the magistrate satisfied the requirements of section 3(1) of the Act; (ii) whether the landlords held legal title to the land; and if not, (iii) what is the effect of the payment of rent by a tenant who is put into possession by a landlord who does not have any title or estate in the leased premises or whose title is proved to have been acquired by fraud?

Held: dismissing the appeal and awarding costs to the respondent to be assessed if not agreed within 21 days of the date of delivery of the judgment, that:

1. An appellate court should not interfere with a trial judge's findings of primary facts unless satisfied that the judge was plainly wrong. The word "plainly" does not describe the appellate court's level of confidence that it would have reached a different conclusion, but the relevant question is whether the decision under appeal is one that no reasonable judge could have reached. This need for appellate caution in reversing the judge's evaluation of facts is grounded in good sense, namely that the trial judge has the benefit of assessing the witnesses and actually hearing and considering the evidence as it emerges.

Volpi v Volpi [2022] EWCA Civ 464 applied; **Browne's Construction Limited v First Caribbean International Bank Limited** SVGHCVAP2015/0008 (delivered 20th July 2018, unreported) applied.

2. Estoppel between landlord and tenant arises when two parties agree to become landlord and tenant and do so become, and applies even where the landlord does not have legal title to the property at the time he puts the tenant into possession. The payment of rent can be treated as prima facie evidence of the landlord's title unless the tenant proves fraud or misrepresentation. If a tenant paid rent without knowing the true title position the tenant may still challenge the landlord's title, but only by proving that a third party has a better title. It is not enough merely to prove that the landlord had no title. It follows that as a general proposition, if there is evidence of misrepresentation or fraud in obtaining rent, the payment of rent will not be treated as evidence of the landlord's title is not in doubt.

National Westminster Bank Ltd v Hart [1983] 2 All ER, 177 applied; **Industrial Properties (Barton Hill) Ltd v Associated Electrical Industries Ltd** [1977] QB 580 applied; **Carlton v Bowcock** (1884) 51 LT 659 applied.

3. It is trite however that allegations of fraud must be specifically pleaded with great particularity and proven. A party alleging fraud must adduce credible and reliable evidence identifying the precise nature of the fraud and the manner in which it was perpetrated. In this case, while the evidence showed uncertainty on the respondent's part as to the precise source of Marie Prince's title to the land, it does not itself prove fraud or establish that Marie Prince did not properly acquire title to the land. More conclusively, not only did the oral evidence of the appellant and her witnesses fail to establish fraud, but the issue of fraud was also not specifically raised or alleged in the written evidence filed in the defence of the claim and the documents which purportedly evince fraud were also not exhibited during the trial. The appellant's arguments in relation to fraud defeating estoppel lack an evidential foundation.

Lazarus Estates Ltd v Beasley [1956] 1 QB 702 applied; **Re B (Children)** [2008] UKHL 35; **Fiona Trust & Holding Corp v Privalov** [2010] EWHC 3199 (Comm) considered; **Jafari-Fini v Skillglass Ltd** [2007] EWCA Civ 261 considered.

4. The evidence adduced clearly established the landlords' title, the authority of the respondent to act as their agent and that the appellant clearly acknowledged the landlords' title by paying rent for years. The doctrine of estoppel that prevents a tenant from denying their landlord's title therefore holds firmly in this case. This is so even if legal title were in doubt because the evidence established that Marie Prince put the appellant's father into possession of the land; that he was paying rent to her; and the appellant subsequently paid rent to the respondent. The payment of rent provided prima facie evidence of the landlords' title, and the appellant is estopped from denying the landlords' title in the absence of fraud or misrepresentation and having failed to establish any better title. The appellant has failed to prove fraud and therefore cannot deny the landlords' title. There is no basis whatsoever for disturbing the magistrate's findings of fact which were properly open to her on the evidence presented during the trial.

JUDGMENT

- [1] **WARD JA:** This appeal from the jurisdiction of Saint Vincent and the Grenadines challenges the order of the magistrate for the Third District that the respondent is entitled to the recovery of possession of premises which were then in the possession of the appellant, and which the appellant was ordered to vacate within six months. The sole ground of appeal contained in the notice of appeal filed on 2nd June 2021 is that “the decision cannot be supported by the evidence.” This is one of the statutory grounds of appeal permitted by section 9(h) of the **Magistrates (Civil Divisions Appeal) Act**.¹ It is immediately clear, therefore that this appeal is against findings of facts made by the learned magistrate.

The Background

- [2] Before the magistrate was an application brought by the respondent, in her capacity as agent, for the recovery of possession of land, pursuant to section 3(1) of the **Recovery of Possession Act** (“the Act”).² Section 3(1) provides:

“When and so soon as the term of interest of the tenant of any house, land or other corporeal hereditaments held by him at will, or for any term not exceeding seven years, either without being liable to the payment of any rent or at a rent not exceeding one thousand two hundred dollars a year, has ended, or has been duly determined by a legal notice to quit or otherwise, and such tenant or (if such tenant does not actually occupy the premises or only occupies a part thereof) any person by whom the same or any part thereof shall be then actually occupied, neglects or refuses to quit or deliver up possession of the premises or of such part thereof, respectively, the landlord of the premises, or his agent, may cause the person so neglecting or refusing to quit and deliver up possession, to be served (in the manner hereinafter mentioned) with a written notice, in the form set out in the Schedule, signed by the landlord or his agent, of his intention to proceed to recover possession under the authority and according to the mode prescribed in this Act.”

- [3] The facts as found by the magistrate are that the respondent is the Executrix of the will of Marie Prince, who died leaving a plot of land in the Town of Calliaqua

¹ Cap. 31 of the Revised Laws of Saint Vincent and the Grenadines 2009.

² Cap. 131 of the Revised Laws of Saint Vincent and the Grenadines 2009.

to Alice Manderville (deceased), Loraine Bascombe and Pamela Kirby. The respondent initiated the claim in her capacity as agent for the estate of Alice Manderville, Loraine Bascombe and Pamela Kirby. In this judgment I will refer to the respondent's principals as "the landlords". The respondent had been the person responsible for managing the parcel of land, including collection of rent from the appellant after her aunt, Marie Prince, became ill and her subsequent death.

- [4] At trial, the respondent adduced in evidence Deed of Assent No. 3232/2009 executed on 3rd September 2009 between the executors of the will of Marie Prince (herself and one Douglas Williams) of the one part, and Alice Manderville, Pamela Kirby and Loraine Bascombe of the other, as evidence of the landlords' title to the land in question.
- [5] The appellant and her siblings resided on the land with her father since childhood. Her father eventually moved to another parcel of land but she continued to reside on the land. She paid rent to the respondent for the years 2007, 2008, 2009 and 2010. At some stage, the evidence does not state when, the appellant offered to purchase the land from the respondent, but no agreement was reached.
- [6] Eventually, the respondent served the appellant with a notice to quit dated 7th May 2019 and subsequently instituted Civil Claim No. 63/2020 in the Magistrates' Court for recovery of possession of the land.

The Defence

- [7] The appellant's case below was that the land in question never belonged to Marie Prince, whom she alleged had acted fraudulently in purporting to convey the land to herself, and that she had never been a tenant of Marie Prince and had never accepted the respondent as her landlord. She claimed that the land belonged to her father, Nathaniel King, and produced some land tax receipts purporting to show that her father had paid some land taxes.

The Magistrate's Reasons

- [8] In summary, the magistrate granted the order for possession because she was satisfied on the evidence that the landlords held legal title to the land and that the respondent had standing to make the application as she was an “agent” of the landlords within the meaning of the **Act**. The magistrate also found that the respondent had proven that Marie Prince was the person who put the appellant’s father into initial possession of the land and that the appellant was a tenant at will who had been paying rent to the respondent and whose tenancy was properly determined by a legal notice to quit.
- [9] She dismissed the appellant’s claim that her father was the owner of the land, holding that she had not produced any deed or legal document proving such ownership, and in relation to the land tax receipts that she had produced, the magistrate found that the appellant could not verify whether the taxes related to her father’s current property or any other property.

The Appellant’s Submissions on Appeal

- [10] On behalf of the appellant, Dr. Linton Lewis submitted that the magistrate erred in ordering possession because the evidence did not establish that Marie Prince owned the land in dispute, thus eroding the respondent’s claim to be acting as agent. Dr. Lewis submitted that while the respondent claimed that Marie Prince obtained the land from Edith Dougan by will, the two parcels of land referred to in the will of Edith Dougan, and referred to in the grant of probate of that will, did not include the parcel of land in dispute. According to the appellant’s submissions, the one-sixth share in a parcel of land mentioned in Edith Dougan’s will related to another property, while the other parcel of land referred to in the will was situated opposite the property in which Marie Prince was said to have had a one-sixth share. Dr. Lewis further submitted that the respondent ultimately accepted under cross-examination that she did not know how Marie Prince acquired the disputed land.
- [11] The appellant’s argument was advanced on two principal bases: first, that Edith Dougan neither owned land in the relevant area nor bequeathed the disputed land to Marie Prince. Secondly, that Marie Prince fraudulently caused a Deed of

Assent to be made in her own favour in respect of the disputed land, thereby purporting to convey the land to herself. Dr. Lewis submitted that, if those matters were correct, Marie Prince breached her fiduciary duty as executrix of Edith Dougan's estate and engaged in self-dealing. He emphasised that, upon the death of a testator, estate assets must be managed and distributed by the executors in accordance with the law. In his submission, Marie Prince failed to do so because the disputed land was not an asset passing under Edith Dougan's will and, even if it had been, Marie Prince was not entitled to appropriate it for herself.

[12] Dr. Lewis further contended that, by registering the Deed of Assent in her favour, Marie Prince may have committed offences, including under section 5 of the **Stamp Act**, and sections 112, 114, 115 and 116 of the **Criminal Code**, relating among other things to the giving of false information to public officers. On that basis, he submitted that no estoppel could arise to prevent the appellant from challenging the respondent's claim to possession.

[13] Basing himself on the foregoing, Dr. Lewis submitted that in the circumstances, the appellant could challenge the landlords' title and the respondent could not rely on estoppel because "fraud unravels all". He argued that estoppel is an equitable doctrine and that a party seeking equitable relief must come to the court with clean hands and that fraud is a recognized exception to an assertion of estoppel. Reliance was placed on **Greer v Kettle**³ and **Lazarus Estates Ltd v Beasley**⁴ which the appellant says address the circumstances when a tenant is not estopped from challenging his landlord's title. The appellant relied on **Lazarus v Beasley** for the proposition that if the landlords' title was procured by fraud perpetrated by Marie Prince, then notwithstanding the payment of rent by the appellant, she may nonetheless challenge the landlords' title and the landlords would not be entitled to possession.

³ [1938] AC 156, at 171 - 172.

⁴ [1956] 1 QB 702, at 706, 709 and 712.

The Respondent's Submissions

[14] On behalf of the respondent, Mr. Akin John's principal submission was that the appellant was estopped from denying the landlords' title. He relied on the principle that a tenant who has paid rent to, or otherwise acknowledged a landlord is generally precluded from disputing that landlord's title. In this regard, he relied on the learning in **The Law of Real Property, Megarry and Wade**.⁵

[15] In particular, reliance is placed on the passage that states:

"...the landlord cannot question the validity of his own grant, nor can the tenant question it once he is in possession and has the benefit of the lease, for so long as a lessee enjoys everything which his lease purports to grant, how does it concern him what the title of the lessor, or the heir or assignee of his lessor, really is? It is otherwise if the tenant is disturbed by title paramount, i.e. if some title superior to the landlord's is made good against him; for then he may be liable for mesne profits to the adverse claimant, and he can reclaim rent paid to the landlord. But in the absence of an adverse title the tenant cannot repudiate his obligations under the lease...Even if the landlord is not the true owner when he granted the lease, the tenant may not deny his title to grant it if in fact he has the benefit of it."

[16] The respondent relied on similar dicta in **Industrial Properties (Barton Hill) Ltd v Associated Electrical Industries Ltd**.⁶ and on paragraph 1079 of **Halsbury's Laws of England** under the rubric: "Estoppel by payment of rent" where the learned authors state in part (footnotes excluded):

"Payment of rent is prima facie a recognition of the title of the person to whom is paid, and operates as an estoppel against the tenant if he disputes that title. If the payment is to a person by whom the tenant was not let into possession, the tenant is not estopped by the payment from disputing the title of the person to whom the payment has been made; he may show that rent was paid de bene esse, or through a mistake, or in consequence of a misrepresentation by the person receiving the rent, but he must show a better title in someone else; and he is not allowed simply to impeach the title of the person to whom he has paid rent unless he can show that the title of his landlord has determined."

⁵ 8th Edition, para 17-125 at pages 798-800.

⁶ [1977] 2 WLR 726.

[17] In relation to the allegations of fraud levelled by the appellant, Mr. John submitted that there was no evidence before the court that any of the impugned documents was invalidated by any court or had otherwise lost legal efficacy. In his submission, they therefore remained valid documents.

[18] Accordingly, Mr. John submitted that the appellant's complaint amounted, at its highest, to a mere impeachment of title. That, he argued, was insufficient to displace the operation of the doctrine of estoppel, since the landlord's title had not been determined or set aside by any competent court or authority, the appellant had not established that there was anyone with a better title and she had acknowledged the landlords' title by paying rent.

Discussion

[19] It is important to remind that an appellate court is expected to exercise restraint when invited to disturb a lower court's findings of fact; in this case, the magistrate's finding was that the landlords held proper legal title to the disputed land. The circumstances when it would be appropriate to do so are closely circumscribed. It is long established by the highest authority that an appellate court should not interfere with a trial judge's findings of primary facts unless satisfied that the judge was plainly wrong. The word "plainly" does not describe the appellate court's level of confidence that it would have reached a different conclusion. Even if the appellate court is certain that it would have decided the matter differently, the relevant question is whether the decision under appeal is one that no reasonable judge could have reached; See **Volpi v Volpi**.⁷

[20] The rationale for this restraint was explained by this Court in **Browne's Construction Limited v First Caribbean International Bank Limited**,⁸ which adopted the Privy Council's dicta in **Beacon Insurance Company Limited v Maharaj Bookstore Limited**.⁹ At paragraph 54, the Privy Council stated that the rule is justified by:

"reference to good sense, namely that the trial judge has the benefit of assessing the witnesses and actually hearing and considering their

⁷ [2022] EWCA Civ 464.

⁸ SVGHCVAP2015/0008 (delivered 20th July 2018, unreported).

⁹ [2014] UKPC 21.

evidence as it emerges. Consequently, where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it. This can also be justified on grounds of policy (parties should put forward their best case on the facts at trial and not regard the potential to appeal as a second chance), cost (appeals can be expensive), delay (appeals on fact often take a long time to get on), and practicality (in many cases, it is very hard to ascertain the facts with confidence, so a second, different, opinion is no more likely to be right than the first)."

- [21] The court also found apposite the observation by Lord Hoffman in **Biogen Inc v Medeva PLC**:¹⁰

"The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (as Renan said, *la vérité est dans une nuance*), of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."

- [22] The point is well made that even the most careful textual reading of a judgment expressing a judge's specific findings of fact cannot fully capture the overall impression created by the primary evidence upon him or her. The emphasis, relative weight and nuances, which may have been important to the judge's overall assessment cannot be transported through the pages and so deference must be accorded to such findings.
- [23] I keep these principles foremost in mind when I come to assess the evidence and the magistrate's conclusions thereon.

¹⁰ [1996] UKHL 18.

- [24] The appellant's challenge to the magistrate's order for possession is rooted in a challenge to the legitimacy of the title of Marie Prince, through whom the landlords claim to derive their title to the disputed land. Clearly, the magistrate entertained no doubt about the legitimacy of that title. The nub of the appellant's case was that while she paid rent for a period of years, she stopped doing so when she discovered that the land belonged to her father but which Marie Prince had fraudulently vested in her own name, purportedly under the will of Edith Dougan who never owned that parcel of land. On that basis, the appellant claims to be entitled to challenge the title of the landlords who claim through Marie Prince.
- [25] The respondent's position in a nutshell is that the evidence clearly established the title of the landlords and the authority of the respondent to act as their agent in an action for recovery of possession, and the appellant has failed to prove that that title was acquired by fraud. Secondly, even if, which is denied, the landlords' title is defective, a tenancy by estoppel operates to bar any challenge by the appellant to the landlords' title, she having paid rent for a number of years and having failed to adduce any evidence that some other person has a better title to the land.
- [26] The appeal therefore engages the following broad issues: (i) whether the evidence before the magistrate satisfied the requirements of section 3(1) of the Act; (ii) whether the landlords held legal title to the land; and if not, (iii) what is the effect of the payment of rent by a tenant who is put into possession by a landlord who does not have any title or estate in the leased premises or whose title is proved to have been acquired by fraud? Can the tenant deny the landlord's title in an action for possession?
- [27] Because the issue relating to estoppel between landlord and tenant formed the centre piece of arguments deployed by both sides in this appeal, I will address the relevant legal principles in relation to this issue first.

[28] A helpfully simple explanation of the concept of estoppel between landlord and tenant is given in **National Westminster Bank Ltd v Hart**.¹¹

“Estoppel between landlord and tenant is estoppel by convention and arises when two parties agree to become landlord and tenant and do so become. The landlord cannot derogate from his grant, and the tenant cannot dispute the landlord's title:

‘When the parties have acted in their transaction upon the agreed assumption that a given state of facts is to be accepted between them as true, then as regards that transaction each will be estopped against the other from questioning the truth of the statement of facts so assumed.’”

[29] The doctrine is firmly rooted and applies even where the landlord does not have legal title to the property at the time he puts the tenant into possession. This emerges clearly from the dicta of Lord Denning in **Industrial Properties (Barton Hill) Ltd v Associated Electrical Industries Ltd.**,¹² where, in overruling the case of **Harrison v Wells**¹³ which had held to the contrary, Lord Denning expressed and illustrated the doctrine thus:

“In the course of discussion we were referred to many authorities, old and new. I have considered them all - and others too - but the result can be stated thus: If a landlord lets a tenant into possession under a lease, then, so long as the tenant remains in possession undisturbed by any adverse claim – then the tenant cannot dispute the landlord's title. Suppose the tenant (not having been disturbed) goes out of possession and the landlord sues the tenant on the covenant for rent or for breach of covenant to repair or to yield up in repair. The tenant cannot say to the landlord: “You are not the true owner of the property.” Likewise, if the landlord, on the tenant's holding over sues him for possession or for use and occupation or mesne profits, the tenant cannot defend himself by saying: ‘The property does not belong to you but to another.’”

[30] It is to be noted, however, that this rule does not preclude the tenant from proving that the landlord's title or interest in the property has determined or come to an end, as was the case in **Serjeant v Nash Field & Co.**¹⁴ where a lessee let premises to a tenant who occupied the premises and continued to pay rent after

¹¹ [1983] 2 All ER, 177 at 179.

¹² [1977] QB 580.

¹³ [1967] 1 QB 263.

¹⁴ [1903] 2 KB 304.

the lessee's title had expired, unknown to the tenant. It was held that it was a defence for the tenant to prove that the lessee's title had determined. But for present purposes, this is not the appellant's contention. She asserts that she was entitled to stop paying rent once she discovered that the land in fact belonged to her father and not to the landlords.

[31] This makes the present case more kindred with the early case of **Carlton v Bowcock**.¹⁵ In that case the landlord, Watson, let premises to the defendants for 5 years. He died during the term of the lease, leaving the reversion to the plaintiff, his executor. Agents for the plaintiff collected rent from the defendants and issued receipts variously on behalf of "Watson's Executors", Watson's representatives and Watson's trustees". The defendants did not ask on whose behalf the rent was being collected and were unaware that it was being collected for the plaintiff. The agent eventually discovered that there was some doubt about the validity of Watson's will and whether it had been effective to pass title to the plaintiff. The tenants sought to challenge the plaintiff's title on the basis that the payments were made under a mistake or in ignorance of the true state of the title.

[32] After reviewing a number of authorities, Cave J summarized the principles in the following terms:

"I think the conclusions to be drawn from these cases are: (1) That where a person claiming to be assignee of the reversion attains payment of rent from the tenant by fraud or misrepresentation, such payment is no evidence of title, but that receipt of the rent is *prima facie* evidence of title where there is no such fraud or misrepresentation; (2) that where rent is paid by the tenant under such circumstances as to amount to *prima facie* evidence of title, the person receiving the rent is in as good a position as if he were actually in possession: and that, although it is open to the tenant to prove, if he can, that he paid the rent in ignorance of the true state of the title, and that some third person is the real assignee of the reversion, yet he must show such a title in that third person as would entitle him to a verdict in ejectment, and that it is

¹⁵ (1884) 51 LT 659. This case was followed in *Hindle v. Hick Bros. Manufacturing Co. Ltd.* [1947] 2 All E.R. 825, another case of an assignment of the reversion where the Court of Appeal followed and approved the decision in *Carlton v Bowcock* 51 LT 659.

not enough to show that the person to whom the rent was paid has no title, his receipt of the rent being sufficient until better title is shown.”

- [33] The tenants failed to establish that there was a third party with a superior title, and their payment of rent was treated as proof of the plaintiff’s title.
- [34] The case has been cited¹⁶ as authority for the general propositions that payments can be treated as prima facie evidence of the landlord’s title unless the tenant proves fraud or misrepresentation. If a tenant paid rent without knowing the true title position the tenant may still challenge the landlord’s title, but only by proving that a third party has a better title. It is not enough merely to prove that the landlord had no title.
- [35] Against that legal background, the appellant’s defence must be assessed by reference to the evidence actually before the magistrate. It is therefore necessary to examine the material on which the magistrate relied in finding that the respondent had established the landlords’ title to the land and, as their agent, was entitled to recover possession. Before considering the documents exhibited at trial, it is necessary to identify what was not before the magistrate and is not before this Court, particularly because some submissions relied on matters not in evidence; a point taken by the respondent at paragraph 1.7 of its further submissions in reply filed on 1st December 2025 as directed by this Court.
- [36] A large part of the appellant’s submissions was based on what is purportedly disclosed by the Grant of Probate of the will of Edith Dougan and the annexed will. While the respondent was shown these documents under cross-examination and was asked a couple of questions about the land referred to in the will, neither the will of Edith Dougan nor the Grant of Probate relating to it were exhibited in the Court below by the appellant although she was obviously in possession of them at the time. This is clear from the meticulous contemporaneous record kept by the magistrate of each document that was

¹⁶ See e.g. *Hindle and Another v Hick Brothers Manufacturing Co. Ltd* [1947] 2 All ER 825.

exhibited. The respondent exhibited the undermentioned documents endorsed by the magistrate as follows:

- (1) D.P.1 – Letters of Administration for Estate of Alice Manderville;
- (2) D.P.2 – Affidavits from Loraine Bascombe and Pamela Kirby;
- (3) D.P.3 – Probate Instrument;
- (4) D.P.4 – Two receipt (sic) for rent;
- (5) D.P.5 – Copy of Survey Plan G47/21 dated the April 21st 2009, measured as 3,271 square feet;
- (6) D.P.6 – Letter from Valuation office;
- (7) D.P.7 – May 7th 2019 letter from Elizabeth Law Chambers;
- (8) D.P.8 – Seven Receipts for land taxes.

[37] The exhibits produced by the appellant are recorded as:

- (1) SK1 – Letter from Foster Hannibal;
- (2) SK2 – 38 Tax receipts plus merger proposal to alter valuation.

[38] The foregoing exhibits represent an exhaustive list of the documents exhibited during the trial.

[39] In further written submissions filed on 11th December 2025, the appellant, in an apparent attempt to address this evidential deficiency submitted at paragraph 2.2:

“With respect to paragraph 1.7 of the respondent’s submissions, the respondent was cross examined extensively on the contents of the Deed of Assent, the Will of Edith Dougan and the Grant of Probate of the Will of Edith Dugan. Those legal documents formed part of the oral and written submissions which were presented to the Magistrate during the trial.”

[40] With all due respect to counsel, referring to documents in oral and written submissions cannot convert them into exhibits when they were never adduced in evidence. Furthermore, the appellant did not avail herself of the processes available to seek leave of this Court to adduce the Grant of Probate of the will

of Edith Dougan, the will of Edith Dougan nor the Deed of Assent, by which Marie Prince allegedly fraudulently vested the land in her own name, as fresh evidence on this appeal. Whether such an application would have met with any success is another matter given that they were available at the date of trial. The point is they were not exhibited below and are not exhibits before us, and, in my view, they were improperly included in the appeal hearing bundles, where it is noted, they are not endorsed with any exhibit numbers.

[41] To the extent therefore that the appellant seeks to rely on these documents to impeach the landlords' title on the basis of fraud and to challenge the magistrate's finding in relation to it, these documents cannot avail.

[42] Moreover, in any event, while the appellant may have been able to cross-examine on these documents without putting them into evidence in an attempt to impeach the witness, nothing elicited in the cross-examination of the respondent can remotely be characterised as evidence proving fraud. It is by now trite that allegations of fraud must be specifically pleaded with great particularity and proven. Indeed, in the case of **Lazarus v Beasley** on which the appellant relies for the broader proposition that if fraud is established the tenant is not estopped from denying the landlords' title notwithstanding payment of rent, Denning, L.J. stated:

“No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever.” (Emphasis added)

[43] The degree of cogency required to prove fraud is high. A party alleging fraud must adduce credible and reliable evidence identifying the precise nature of the fraud and the manner in which it was perpetrated. Although the civil standard remains the balance of probabilities, the evidence must be sufficiently cogent to justify so serious a finding. The authorities make clear that cogent evidence is required before a court will find fraud or other discreditable conduct. In **Re B**

(**Children**),¹⁷ the House of Lords confirmed that the question remains whether the allegation is proved on the balance of probabilities. In **Fiona Trust & Holding Corp v Privalov**,¹⁸ Andrew Smith J summarised the position by reference to the need for cogent evidence where fraud or dishonesty is alleged. The same principle is reflected in **Jafari-Fini v Skillglass Ltd**¹⁹ and **Markel v Higgins**:²⁰ the more serious the allegation, the stronger the evidence required to overcome the inherent improbability of the conduct alleged.

[44] As a general proposition, the principle that if there is evidence of misrepresentation or fraud in obtaining rent, the payment of rent will not be treated as evidence of the landlord's title is not in doubt. This is clear from **Carlton v Bowcock** discussed earlier. As will be seen presently, the issue is whether fraud has been established in this case to the standard dictated by the authorities discussed in the preceding paragraph.

[45] The respondent's evidence under cross-examination when presented with the Grant of Probate of the will of Edith Dougan and the annexed will is captured in a few sentences, which, incidentally, undermines the appellant's rather lavish assertion in the written submissions that the respondent was "cross examined extensively" on these documents. The actual extent of it is reflected in the Record of Appeal at page 28:

"I don't know who gave the land to Marie Prince. I assumed she got it from the Dougans. She was the beneficiary of Edith Dougan's estate. She got a portion of the house in which they lived and she got a piece of land. She got the land that now houses the John Dougan's shop. I have seen a document for the estate of Edith Dougan. (Witness is shown a Grant of Probate for the estate of Edith Dougan 12/1962). It shows two parcel (sic) of land. The Probate exhibited in (sic) showed reference to two parcels of land. According to the will the 1/6th share of the land where the Dougans lived and a piece of land opposite the property are what is in her will. I confirmed seeing these two pieces of land on the document you are showing me. The piece of land belonged to the Dougans. Marie Prince was adopted by Edith Dougan, but it was not a legal adoption Marie Prince died in 2008. I don't know when the

¹⁷ [2008] UKHL 35.

¹⁸ [2010] EWHC 3199 (Comm).

¹⁹ [2007] EWCA Civ 261.

²⁰ [2009] EWCA Civ 790.

Deed of Assent was made. I recently read it, it states that Marie Prince got the subject land pursuant to the will of Edith Dougan.”

[46] In short, the evidence shows uncertainty on the respondent’s part as to the precise source of Marie Prince’s title to the land, but it does not itself prove fraud or establish that Marie Prince did not properly acquire title to the land. Indeed, the Deed of Assent by which it is alleged Marie Prince fraudulently vested title to the land in herself was never even shown to the respondent, although she was asked about it. Evidence was therefore elicited of the purported contents of documents that were not exhibits in the case.

[47] The witnesses called by the appellant do not advance the claim of fraud. Walter Sandy, a seventy-six-year-old resident of Calliaqua gave evidence. The relevance of his evidence on the issue of Marie Prince’s title is his assertion that Marie Prince never lived on the land although she did reside “by Mr. Dougan’s shop” in Calliaqua at some point. He testified that a lady from Bequia had previously bought the land on which Nathaniel King lived and then subsequently sold it to him. He further testified:

“Buildings are on the property. There was a board house there when Hannibal lived there. An old lady lived in the house. Then the lady from Bequia lived there then Nathaniel King lived there. He still lives there. Mr. King bought the board house.”²¹

[48] None of this evidence establishes fraud nor does it establish that Nathaniel King held legal title to the land. Indeed, he accepted under cross examination that Nathaniel King had never presented him with any Deed to any property in which he resided. Needless to say, his evidence that Marie Prince never lived on the land is irrelevant: the respondent never asserted that she had.

[49] The other witness called by the appellant was Foster Hannibal, Clerk of the Calliaqua Town Board. The material part of his evidence is that he did not know Edith Dougan to own the disputed land and that he had received payment on

²¹ Record of Appeal, p. 31.

behalf of Mr. King for the concrete house in which Mr. King lived and the board house on the disputed land. This evidence takes matters no further as will become apparent when I discuss the documentary evidence in relation to payment of land taxes later in this judgment.

[50] Indeed, not only does the oral evidence of the appellant and her witnesses fail to establish fraud, the issue of fraud was not specifically raised or alleged in the written evidence filed in the defence of the claim.

[51] In my view, the appellant's arguments in relation to fraud defeating estoppel lack an evidential foundation and cannot take flight. The appellant contended in her written submissions:

"2.6 Probate of the Will of Edith Elizabeth Dougan (deceased) was granted by the High Court of Justice in St. Vincent and the Grenadines on 10th April 1962, bearing registration number 12 of 1962. The description of the properties that formed part of the estate of Edith Elizabeth Dougan does NOT list the property in dispute as belonging to or forming part of the estate of Edith Elizabeth Dougan. The lot of land situate in Calliaqua that is listed as a property of the said estate was given by will to Earl Lindsay and Lyn Dublin in equal shares. That said land was acquired by Earl Lindsay by virtue of a possessory title bearing registration number 1332 of 2015. By the said will Marie Prince was also gifted one sixth share in the property where Edith Elizabeth Dougan lived. That property is stated in the will as belonging to Edith Elizabeth Dougan's father. It is not the disputed land. There is no other land in Calliaqua that formed part of the estate of Edith Elizabeth Dougan.

2.7 In light of the foregoing, Marie Prince, to put it mildly surreptitiously conveyed the disputed land to herself. Marie Prince never lived on the disputed land. No one has ever seen her around the disputed land. There is an affidavit from a 90 year old man, Mr. George Hurias Phillips who was born in Calliaqua within close proximity of the disputed land. He claims that no Dougan ever owned that parcel of land and certainly Marie Prince whom he knows very well has never visited or shown any interest in that parcel of land. As a matter of fact, he has never heard or known of Marie Prince being associated with or connected to that parcel of land. It is therefore submitted that Marie Prince could not have conveyed proper title of that land to herself or to any other person. If Edith Elizabeth Dougan did not own that land or have any interest in that land she could not have conveyed proper title to Marie Prince. Therefore, Marie Prince could not have conveyed proper title to the landlords. The doctrine of *Nemo dat Quod Non Habet* precludes the landlords from having proper title to the land."

[52] It is bad enough that the appellant seeks to introduce evidence that was not adduced at trial into her written submissions. However, the appellant cannot seek to challenge the landlords' title and allege fraud when she never produced the very documents which she claims evince the fraud, i.e. the Grant of Probate and the will in relation to Edith Dougan's estate - which according to the appellant, would show that the disputed land was never part of Edith Dougan's estate. Nor did the appellant exhibit the Deed of Assent by which it is alleged Marie Prince "surreptitiously" vested herself with title to the land. It has not been suggested or proved that the respondent or any of the landlords knew of or were party to any fraud in the acquisition of the title to the land. At root, the problem the appellant faces here is that there is not a shred of cogent evidence of fraud in the acquisition of the landlords' title. Presently, I will consider whether the evidence established that the appellant's father held title to the land, which is another hurdle the appellant must surmount.

[53] The only document relating to title that was exhibited at the trial was Exhibit "DP3", which is Deed of Assent No. 3232/2009 executed on 3rd September 2009 between the executors of the will of Marie Prince (Daphne Paynter and Douglas Williams) of the one part and Alice Manderville, Pamela Kirby and Loraine Bascombe (the landlords) of the other. This is found at page 39 of the Record of Appeal. The description of the land contained in the schedule to the said Deed is as follows:

"All that lot piece or parcel of land situated at Calliaqua in the Parish of Saint George in the State of Saint Vincent and the Grenadines and abutted and bounded on the NORTH by lands in the possession of one Cynthia John on the SOUTH by a Road on the East by lands in the possession of the Cambridge family on the West lands in the possession of one Nathaniel King or howsoever otherwise butted bounded known distinguished or described TOGETHER WITH all ways waters water courses rights lights liberties privileges and easements and all other easements and all other appurtenances thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong to or be appurtenant thereto."

- [54] The evidence of the size of that parcel of land comes from the Survey Plan G47/21 produced by the Lands and Survey Department,²² which shows the land measures 3,271 square feet. The obvious relevance of this Deed of Assent was to establish the title of the landlords for whom the respondent was acting as agent.
- [55] The respondent also exhibited a letter from the Government of Saint Vincent and the Grenadines Property Valuation Division of the Inland Revenue Department (Exhibit DB6 at p. 78) This states that Nathaniel King owned a “small timber structure” bearing Tax ID No. **8751PP005491**. That structure was said to sit on a parcel of land registered to the landlords by virtue of the said Deed of Assent No. 3232/2009. The land on which the timber structure sits bears Tax ID No: 138444. Tax payments in relation to both the structure and the land were said to be currently up to date.
- [56] While that document does not identify the taxpayer for either the timber structure or the land, the appellant exhibited a number of receipts for payments made by her father Nathaniel King. These are found at pages 90 -97 of the hearing bundle and are exhibited as “SK2”. The Tax ID No referenced in respect of each receipt is **8751PP005491**. As clearly established by exhibit “DB6” this is the property Tax ID for the small timber structure owned by Nathaniel King which stood on the land belonging to the landlords. Thus, manifestly, and contrary to the appellant’s assertions, these receipts do not prove payment of taxes for the disputed land. Notably, even the appellant’s witness, the Clerk to the Town Board, speaks of receiving payments on behalf of Nathaniel king in relation to the “board house” only; not the land on which it sat.
- [57] The appellant also exhibited other receipts at pages 98 to 115 of the hearing bundles. Some of these are in the name of Nathaniel King and some in her own name. The sum paid by Mr. King as reflected in those receipts is on average approximately \$82.00 and those payments are endorsed as made for “Town

²² Seen at page 75 of the Appeal hearing Bundle.

Rates". None of those receipts identifies to which, if any, property those payments related. The other receipts are endorsed simply "for taxes".

[58] In short, on the evidence adduced, the only identified property for which Nathaniel King paid taxes was the small timber structure or board house, which sat on the disputed land. This was conceded by the appellant under cross-examination when she accepted that the tax receipts she had exhibited which bore a property ID at all were in relation to the small timber structure on the land.²³

[59] There is therefore no evidence that her father paid taxes on the disputed land. The magistrate's finding of fact in this regard is therefore unassailable.

[60] Furthermore, as the magistrate correctly held, the appellant produced no documentary proof that her father held title to the land. Indeed, she conceded this under cross-examination when she admitted: "Nathaniel King has no Deed to the land".²⁴

[61] By contrast, the magistrate had before her the Deed of Assent vesting title to the land in the landlords. Additionally, there was undisputed evidence from the respondent that the appellant had paid rent to her over a period of years which the magistrate evidently accepted:

"Years ago Marie Prince rented the piece of land to Nathaniel King, who was Sally King's father and after some time Sally started paying rent for the land. Sally King was paying the rent to me because by that time my aunt had got sick. Sally King was paying \$50.00 per year for the rent. I had to go to Sally King to collect the rent and most of the time the rent was paid there would be an excuse. There were different excuses. I have receipt the rent was paid. (Witness shows receipt)."²⁵

²³ Record of Appeal, p. 30.

²⁴ *ibid.*

²⁵ Record of Appeal, p. 26.

[62] The appellant admitted in cross-examination that she paid rent to the respondent:

“Mrs. Paynter approached me in 2001 to pay rent. I can't remember if I used to pay land taxes or town rates on behalf of my father long before 2000. Mrs. Paynter approached me in 2001 to pay rent. I paid up to 2009. She wrote up the receipts and brought the receipts to me. My father was still alive at the time. He was living in the wall house next to me. I did not question him. I have been a senior accounts clerk at the post office for many years. I still paid Mrs. Paynter even though I knew my father owned the property... I was paying rent to Mrs. Paynter accepting her as representing the landlords.” (emphasis added)

[63] This was cogent evidence on which the magistrate was entitled to find that the appellant had clearly acknowledged the landlords' title. It also undermined the appellant's assertion that she stopped paying rent only after discovering that her father owned the land. On her own evidence, she continued to pay rent to the respondent despite believing that her father owned the property. She therefore cannot say that, when paying rent, she was ignorant of what she now asserts to have been the true state of the title.

[64] Collectively, the evidence adduced clearly established the landlords' title, the authority of the respondent to act as their agent and that the appellant clearly acknowledged the landlords' title by paying rent for years. The doctrine of estoppel that prevents a tenant from denying their landlord's title therefore holds firmly in this case. This is so even if legal title were in doubt because the evidence established that Marie Prince put Nathaniel King into possession of the land; that he was paying rent to her; and the appellant subsequently paid rent to the respondent. The payment of rent provided prima facie evidence of the landlords' title, and the appellant is estopped from denying the landlords' title in the absence of fraud or misrepresentation and having failed to establish any better title. The appellant has failed to prove fraud and therefore cannot deny the landlords' title.

[65] It follows that I can discern no basis whatsoever for disturbing the magistrate's findings of fact which were properly open to her on the evidence presented during the trial.

[66] For the foregoing reasons, I would dismiss the appeal. The appellant shall pay the respondent's costs to be assessed if not agreed within 21 days of the date of delivery of this judgment.

I concur.
Vicki Ann Ellis
Justice of Appeal

I concur.
Cadie St. Rose-Albertini
Justice of Appeal [Ag.]

By the Court

Chief Registrar