



[2026] JMSC Civ 26

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CLAIM NO. 2008 HCV 00663**

<b>BETWEEN</b>	<b>TROPICROP MUSHROOMS LIMITED</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>THE SAINT THOMAS PARISH COUNCIL</b>	<b>DEFENDANT</b>

**CONSOLIDATED WITH:**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CLAIM NO. HCV 04099 of 2008**

<b>BETWEEN</b>	<b>ALFRED SAMUEL EDWARDS</b>	<b>1<sup>ST</sup> CLAIMANT</b>
<b>AND</b>	<b>IAN HARRIOTT</b>	<b>2<sup>ND</sup> CLAIMANT</b>
<b>AND</b>	<b>RUPERT BROWN</b>	<b>3<sup>RD</sup> CLAIMANT</b>
<b>AND</b>	<b>SHANE BROWN</b>	<b>4<sup>TH</sup> CLAIMANT</b>
<b>AND</b>	<b>PATRICK PATTERSON</b>	<b>5<sup>TH</sup> CLAIMANT</b>
<b>AND</b>	<b>MARCUS STEWART</b>	<b>6<sup>TH</sup> CLAIMANT</b>
<b>AND</b>	<b>SINCLAIR MCDONALD</b>	<b>7<sup>TH</sup> CLAIMANT</b>
<b>AND</b>	<b>TROPICROP MUSHROOMS LIMITED</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>MOSSMANS PEAK FARMS LIMITED</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**In Open Court**

**Ms. Amanda Montaque and Ms. Kandi Chin instructed by Myers Fletcher and Gordon for the Claimant/ 1<sup>st</sup> Defendant.**

**Mr. Joseph Jarrett instructed by Joseph Jarrett and Company for the Defendant /Claimants.**

**Mrs. Donna Ruffus instructed by Nicholson Phillips for the 2<sup>nd</sup> Defendant.**

**Prescription - Sections 4, 14, 35, 36, 37 and 40 of the Parochial Roads Act – Section 3 of the Main Roads Act – Whether the reserved road that runs through property owned by Tropicrop Mushrooms Limited is a public or private road - Sections 2 and 5 of the Prescription Act – Whether the Claimants have acquired a right of way over the reserved road - Section 68 of the Registration of Titles Act – Sections 3 and 30 of the Limitation of Actions Act – Whether the Claimants have a right to farm on land registered in the name of Tropicrop Mushrooms Limited and Mossmans Peak Farms Limited by virtue of adverse possession.**

**Heard: January 12 – 22, 2026 and February 27, 2026.**

**CARR, J**

## **Introduction**

- [1]** Tropicrop Mushrooms Limited (**Tropicrop**) are the proprietors of land comprised in Certificate of Title registered at Volume 1322 Folio 20 of the Register Book of Titles (**Abbey Green Estate**). The land was formerly comprised in Certificate of Title registered at Volume 1034 Folio 50. Sometime in 2007 Tropicrop erected an iron gate at the beginning of a reserved road which is on the property. In January of 2008 the St. Thomas Parish Council (**STPC**) served them with a notice to remove the iron gate. Tropicrop filed a claim seeking a declaration that the road is a private road.
- [2]** STPC filed a defence and counter claim seeking a declaration that the road is a parochial road that falls under their jurisdiction and as such Tropicrop was not entitled to prevent access and egress to the roadway.
- [3]** A claim was also filed on behalf of local farmers who alleged that they had acquired the right to farm on the land belonging to Tropicrop by virtue of adverse possession. In their amended defence and counter claim, filed July 7, 2010, Tropicrop also claimed an order for recovery of possession.

[4] The claims were consolidated by order of the court on August 12, 2008.

**Claim Form filed on behalf of Tropicrop**

[5] The claim on behalf of Tropicrop was filed on February 11, 2008. The following relief was sought:

- a. A declaration that the reserved road which services the land registered at Volume 1322 Folio 20 of the Register Book of Titles situated at Abbey Green, Saint Thomas is a private road;
- b. A declaration that the St. Thomas Parish Council is not entitled to remove the iron gate erected on the said road by the Claimant; and
- c. Costs of the claim.

**Amended Claim Form on behalf of STPC and the farmers**

[6] At the instance of the court an order was made for an amended claim form to be filed consolidating the relief sought by STPC and the farmers. The amended claim form was filed on June 17, 2009, and it is set out below:

- a. The Claimants claim damages for loss of income, including loss of profit, to be assessed for the obstruction of the reserved parochial road at Abbey Green by the Defendant from the 15<sup>th</sup> of December 2007 to the 11<sup>th</sup> of March 2008 or date of judgment;
- b. Interest thereon;
- c. Costs;
- d. An injunction restraining the Defendant, by themselves or by their agents or servants, or otherwise howsoever, from the repetition or continuance of the acts above complained of or of acts similar thereto;
- e. A declaration that the Claimants have a right to farm on land claimed by the Defendant by way of adverse possession.

- f. A declaration that the Claimants have a right of way over the subject reserved parochial road.

## **Background**

- [7] The STPC filed a defence and counter claim to the claim filed by Tropicrop; and Tropicrop filed a defence and counter claim with respect to the claim filed on behalf of the local farmers. The details of those claims are set out later in the judgment as a part of the discussion on the issues where they are deemed to be relevant.
- [8] Due to the passage of time several key witnesses for Tropicrop, STPC and the local farmers died. The evidence of Mr. Charles Lyn, Mr. Blindford McDonald, Mr. Bromley Edwards, and Mr. Marcus Stewart was admitted as hearsay documents by order of the court.
- [9] At the commencement of the trial the defendants Mr. Ian Harriott and Mr. Rupert Brown did not attend, and counsel Mr. Jarrett indicated that he was unable to take instructions on their behalf. No evidence having been led with respect to their claims, judgment is entered for the Defendants on those claims.

## **Issues**

- [10] I have distilled the issues in this case as set out below.
- a. Whether the reserved road which runs through Abbey Green Estate is a private or public road.
  - b. If the road is held to be a private road has the STPC and the local farmers acquired a (public) right of way over the road.
  - c. If the reserved road is a public road or a public right of way over the road has been established, are the STPC and the local farmers entitled to damages for the obstruction of the reserved road; and/or an injunction restraining Tropicrop from restricting access to the reserved road.

- d. Whether the local farmers have dispossessed Tropicrop and Mossmans Peak Farms Limited (**Mossmans**) of sections of Abbey Green Estate.

## **Analysis**

### **Whether the reserved road which runs through Abbey Green Estate is a private or public road.**

- [11] The discussion surrounding this issue requires an analysis of the legal definition of a public and private road. Counsel for the parties were unable to identify any legislation that defined these terms. What is clear however is that there are three categories of roads in Jamaica. There is the main road which is governed by the Main Roads Act (**MRA**), parochial roads that are governed by the Parochial Roads Act (**PRA**), and private roads.
- [12] Under the MRA main roads are either listed in the schedule of main roads or classified as such at the direction of the minister by way of a gazette. There is no dispute in this case that the reserved road is not a main road and that there is no gazette authorizing it as such.
- [13] Under the PRA the parish council for each parish has the jurisdiction over all public roads as set out in Section 4 below.

*Each Parish Council shall have the exclusive care, jurisdiction management, control and superintendence of all highways, and of all public roads, thoroughfares, streets, lanes, aqueducts, and bridges, in the parish for which it is appointed, except such roads as are otherwise governed and regulated under laws of this Island, specially relating thereto, and except the roads under the superintendence of the Chief Technical Director.*

- [14] The STPC therefore has control over all public roads that are not main roads. Section 37 of the PRA is instructive as to the classification of a private road.

*Every such private road, when so laid out, shall be for the use of the applicant, his heirs and assigns, but not to be converted to any other use or purpose than that of a road; and such applicant shall be compelled to keep up and maintain fit and proper fences on each side of such road.*

- [15]** Any six freeholders can make an application to lay a new road according to Section 21 of the PRA and Section 35 gives the parish council the right by way of resolution to alter, discontinue or lay out a new road.

Section 35 PRA:

*It shall be lawful for the Parish Council of any parish, without receiving any application from freeholders, to come to a resolution that it is expedient to consider the advisability of altering or discontinuing any road or any part of any road, or laying out a new road, and thereupon such Council shall proceed as if application had been made to it under the provisions of section 21, and it had thought fit to entertain such application:*

*Provided always that in any case it shall be lawful for the Council, if it shall see fit, out of the moneys at its disposal applicable to the repair and maintenance of the roads, to pay the charges of the Commissioned Surveyor authorized by it to enter on lands and properties under section 23.*

- [16]** It is my interpretation of these provisions that a group of six freeholders can make an application to lay a new private road. Once this application is granted that road becomes the responsibility of the applicants, his heirs and assigns.
- [17]** The STPC can by way of a resolution alter a private road and make it public however they would have to follow the steps as outlined in Section 21 of the PRA. Which may require them to employ a commissioned surveyor and compensate the freeholders for the land.
- [18]** Section 40 of the PRA makes it plain that for a roadway to be taken over by a parish council certain factors must first be satisfied.

*In cases in which lands are laid out by the owner or owners thereof with roads, streets or lanes, intersecting the same, such roads, streets or lanes, shall not be taken over or repairable by the Parish Council until the owner or owners of such lands shall have thoroughly constructed the same to the satisfaction of the Parish council and the owners of any such lands shall also pay all the costs of and incident to the transfer of such roads, streets and lanes, to the Parish Council.*

**[19]** Ms. Montague submitted that there is no evidence produced by the STPC that supports a finding that the reserved road through Tropicrop's property is a parochial road. Mr. Jarrett argued that the road was identified on the St. Thomas Parish Council's schedule of roads.

**[20]** There are two factors or sub issues for consideration arising from the legislative provisions as set out and the submissions of counsel on behalf of the parties.

a. Was the reserved road a public road listed on the schedule of parish council roads.

b. If the road was a private road did the STPC alter its status by way of resolution.

*Was the reserved road listed on the schedule of parish council roads.*

**[21]** The evidence in this case was voluminous, and Counsel's submissions were lengthy. I do not propose to recite all of this in the judgment and as such I will refer to the evidence and the submissions where relevant in determining the disputed issues.

**[22]** Tropicrop relied on the evidence of the following persons:

a. Alli Morgan

b. Dr. Hugh Vaughan

c. Ronald Thwaites

d. Michael Lyn

e. Leslie Mae

f. Peter Edman

g. John Allgrove

h. Witness statement of Charles Lyn (deceased)

**[23]** The STPC called two witnesses in support of their case and the statement of another was admitted as a hearsay document as set out below.

- a. Clinton Gordon
- b. Deverell Dwyer
- c. Richard Stewart (agreed hearsay document).

**[24]** The witness statements of those who were present for the trial stood as their evidence in chief, and they were cross-examined. I remind myself that the evidence contained in hearsay documents for which the maker was not called is to be considered carefully as they were not present to be cross-examined. The weight to be given to these statements is therefore entirely up to me.

**[25]** The parties agreed 54 documents<sup>1</sup> which were admitted as evidence in this case. For this aspect of the discussion exhibit 2<sup>2</sup> and exhibit 13<sup>3</sup> are critical.

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<sup>1</sup> See List of Exhibits

<sup>2</sup> The Schedule of Allotments on Parochial Roads in the Parish of St. Thomas from April 1, 1955, to March 31, 1961

<sup>3</sup> The St. Thomas Parish Council Roads as of January 9, 2008

- [26] Mr. Clinton Gordon told the court that at the time Tropicrop erected the iron gate he was the Secretary Manager of the STPC and that this was on or around December 5, 2007. He indicated that the STPC is the local road authority for the parish of St. Thomas under the PRA as well as the local planning authority under the Town and Country Planning Act.
- [27] He was asked if he was familiar with exhibits 2 and 13 and whether he could read and interpret them and he said yes. He was shown both documents and asked if he could identify the reserved road. With respect to exhibit 2 he said that he could not say for certain if the road was there. When shown exhibit 13 he stated that he could not see the disputed road from what was described there.
- [28] It was his evidence that the reserved road was an off shoot of road 205 and that road 205 appears on the Schedule of Roads. It is noted that Road 205 is listed on exhibit 13 and described as *“from Junction Road No. 294 at Abbey Green to Portland Gap.”*
- [29] Mr. Gordon further indicated that to the best of his knowledge the reserved road was once a track or foot path that was used by the public and local farmers until it was widened to allow vehicular access. He agreed that he did not see when the road was widened and that the first time he went to Abbey Green was in 2007. Despite having access to the files of the STPC he could not say when the road was constructed or widened. However, he said that it was the STPC that caused the road to be widened some time in 1989. From the records and information provided it was his belief that the road was widened from a bridle track to 33 feet.
- [30] In cross-examination he was asked if he had ever visited Abbey Green Estate, he said once. He was asked if he understood that it was private property he said that he didn't know. He accepted that there was a road beyond the gate, and that this road was not a highway. He also agreed that the road was not a main road and that it did not run between two public highways. The road he said did not connect towns and he could not say if it connected communities.

- [31] Mr. Gordon's evidence is tenuous at best. He has not provided the records that he relied on to show that the reserved road was a public road. He could not identify the roads on exhibits 2 and 13. Ms. Montaque suggested to him that the bridle road that was widened was not the reserved road but the bridle road that runs from Penlyne Castle, he disagreed.
- [32] I did not find his evidence useful on this point in issue. It would seem to me that Mr. Gordon's role in this case was to regurgitate what was told to him about the application for sub-division approval.
- [33] The cross-examination of Mr. Dwyer focused on exhibits 2 and 13 (Ms. Montaque has asked that the record reflect that during the cross-examination of Mr. Gordon, Mr. Dwyer was present). He agreed that the roads under the jurisdiction of the STPC would be contained in these documents.
- [34] On exhibit 2, he identified the road at number 102. On exhibit 13 he identified road number 133. He described it as the carriage road from Junction number 35 road to the main road at Whitehall. He said that number 102 in exhibit 2 and number 133 in exhibit 13 are the same road.
- [35] On a careful perusal of exhibit 2 the road referred to by Mr. Dwyer at number 102 is described as:

*From line of the Parishes at Green River through Whitfield Hall Works to Junction 110 Bridle at Farm Hill Gap.*

- [36] There is no reference in that description to Abbey Green. Ms. Montaque pointed to Roads numbered 100, 105, 107 and 115 of the said document and asked the court to find that these were the only references to Abbey Green and that it did not include the reserved road that is now in dispute between the parties. It was further submitted that the description outlined confirms that there was a gate at Abbey Green and that the road was always a private road.

- [37]** The heading of that section including 100, 102, 105, 107 and 115 is titled Bridle Roads. Road number 100 is *“from Green Valley through Sheldon to Abbey Green Gate”*. Road number 105 is *“from Junction No. 100 Bridle at Abbey Green Gate through Radnor to main Road Hagley Gap and from junction No. 100 Bridle at Whitfield Hall Gate to junction No. 105 Bridle.”* Road number 107, *“from Junction No. 105 Bridle at Abbey Green Portland Gap”*. Road number 115, *“from Junction with No. 100 Bridle Road at Abbey Green into Penlyne Castle District”*.
- [38]** The parties commissioned land surveyors to do a plan of the area for the benefit of the court. Those maps were admitted by agreement into evidence as exhibit 50<sup>4</sup>, exhibit 51<sup>5</sup>, and exhibit 52<sup>6</sup>
- [39]** Mr. Dwyer was shown exhibit 51 and asked to show the court Whitfield Hall Works. At first, he pointed to an area in Circuit 2 and then he corrected his answer and said that it was outside of Circuit 2. He indicated that Junction 110 Bridle at Farm Hill Gap was not on that map. He said that Green River is the Sally River that is by the Swaby Line. He said the disputed road runs from east to west and must come through Abbey Green Estate. He accepted that Farm Hill Gap leads to Penlyne Castle. The reserved road as described by Mr. Dwyer does not correspond with the reserved road as identified on exhibit 51 and it is not any of the roads referred to in exhibit 2 as the road described as 102 does not go through Abbey Green Estate.

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<sup>4</sup> Map survey done by Horace Brandon and Associates

<sup>5</sup> Map survey done by Richard Stewart

<sup>6</sup> Map survey done by Leslie Mae.

- [40] The road marked reserved road on exhibit 51 starts at the Abbey Green Gate and runs through Abbey Green and ends at the Swaby Line. None of the roads referred to in exhibit 2 depicts this road.
- [41] Exhibit 13 was also carefully examined. Road number 133 as identified by Mr. Dwyer refers to a Carriage Road *“from Junction No. 36 Road to Main Road at White Hall. Formerly No. 72 Bridle Road.”* Mr. Dwyer’s evidence is that Road number 102 is the same as Road Number 133. That cannot be the case as the Road was formerly No. 72 Bridle Road. The road which was formerly 102 is now Road 201 in exhibit 13. It is described as *“from the line of the parishes at Green River through Whitefield Hall Works to the Junction of Road No. 207 at Farm Hill Gap.”*
- [42] Mr. Richard Stewart Commissioned Land Surveyor in his report and witness statement on behalf of the STPC indicated that the reserved road does not appear on exhibit 2 this is in stark contrast to the evidence of Mr. Dwyer.
- [43] I cannot accept Mr. Dwyer’s evidence that he was able to find the reserved road through Abbey Green on either exhibit 2 or 13. His evidence does not accord with the documentation. Further the description of the reserved road by him does not align with the evidence of Mr. Gordon that it is an offshoot of Road 205, and their evidence is contradicted by that of Mr. Stewart.
- [44] The fact that exhibit 13 is the schedule of public roads within the parish of St. Thomas as of 2008 is important. If the reserved road was not set out in that schedule as a public road, how can it be accepted that it was? Mr. Dwyer had indicated that not all the public roads were accounted for in the early days. This may very well be so however what would account for the failure to include it in 2008?
- [45] Ms. Montaque drew the court’s attention to the roads that mentioned Abbey Green in exhibit 13. Road number 200 formally number 100 Bridle Road. Road number 204 that was formerly number 105 Bridle Road. Road number 205 formerly number

107 Bridle Road and Road number 209 formerly number 115 Bridle Road. These are the only roads that refer to Abbey Green, and they do not go through the Abbey Green Estate towards the Sally River/ Green River/ Swaby Line.

- [46]** Her submissions are buttressed by the evidence on behalf of Tropicrop. Mr. John Allgrove told the court of the history of the lands called Abbey Green Estate. He is now 89 years old. I will state at the outset that I found him to be a credible witness, and I did not find that he was shaken in cross-examination.
- [47]** He is the registered proprietor of property known as Whitfield Hall which is adjacent to Abbey Green Estate. He spent all his childhood in or around Whitfield Hall, Penlyne Castle, Abbey Green and Epping Farm. He identified three roads that he considered to be important. Parish Council Road 100 that is currently Road 200 which starts just below Mavis Bank at the Green River, comes up through the Village of Penlyne Castle and terminates at Abbey Green Greathouse. This road he indicated stops near to the location of the iron gate at Abbey Green.
- [48]** The second road he described as road 104 that is now 204 from Whitfield Hall through Radnor property and continues below Abbey Green and terminates at Sherwood Forest near the Hagley Gap.
- [49]** The third road is 105 now 205 which starts at the termination of what is now road 200 and continues up to and terminates at the Blue Mountain Peak.
- [50]** It is his evidence that since he has known Abbey Green there has always been a private road that runs from the Abbey Green Greathouse where the parish council road number 200 terminates to a part of Abbey Green Estate known as Backfield. The road terminates on the Abbey Green Estate at a place called Turpin.
- [51]** He states that the land at Abbey Green, Farm Hill and Whitfield Hall were part of lands owned by Robert Stott who left the properties in trust to Barclay's Bank. Barclay's Bank sold Abbey Green to Cecil Langford. In those days the private road had a gate that was made of timber wood.

- [52] Under the ownership of Mr. Langford in the 1960's Abbey Green was utilized as a cattle and sheep farm, and a steel pipe was installed as a gate to the private road. The gate was near to the Abbey Green Greathouse. Eventually Mr. Langford sold Abbey Green to a company, Abbey Green Estate Limited (**the company**) and one of the owners of that company was Mr. Ronald Thwaites.
- [53] Mr. Thwaites told the court that he was a director of the company in 1983 when they purchased Abbey Green Estate which at the time was comprised in Certificate of Title registered at Volume 1034 Folio 50 (**exhibit 3**). The property was purchased from Cecil Langford and Colonel Charles Stuart. In or around 1987 the company filed an application with the STPC for subdivision approval to divide Abbey Green Estate into two lots.
- [54] The application was approved and that approval was communicated by way of letter dated October 30, 1987(**exhibit 8**), subject to certain conditions. A resolution was passed in 1989 setting out those terms and conditions.
- [55] The company sold that parcel of land described as Circuits 1, 3a and 3b, which was now registered at Volume 1322 Folio 20 to Tropicrop and the title was issued on December 16, 1988 (**exhibit 12**). The remaining lot described as Circuit 2 was eventually sold to Tropicrop and Mossmans in or about May 2009. In crossexamination it was suggested to him that the road on Abbey Green Estate was a public road. He did not agree.
- [56] I found Mr. Thwaites to be a credible witness. I accepted his evidence and that of Mr. Allgrove on this issue. I find that the reserved road was a private road and this is why it does not appear on exhibits 2 or 13.
- [57] In summary, the evidence of the witnesses for STPC is contradictory and antithetical to that which is contained in exhibits 2 and 13. The evidence on behalf of Tropicrop is accepted as being consistent with the finding that the reserved road was not a public road by virtue of the STPC schedule of roads.

*If the road was a private road did the STPC alter its status by way of resolution.*

**[58]** Mr. Jarrett's argument before this court as to the status of the reserved road is twofold. If I am not inclined to accept that the reserved road was a public road described in exhibits 2 and 13, then the STPC utilizing section 35 of the PRA altered the status of the road by way of resolution.

**[59]** That being the case it is argued that the reserved road is therefore a parochial road under the direct supervision of the STPC which has the power to remove any nuisance over a roadway as per Section 14 of the PRA which states:

*It shall be lawful for the Parish Councils of the several parishes to ... to give directions for the repairing of the roads, streets, bridges, highways, and watercourses, and for the immediate removal of all nuisances therefrom...*

**[60]** There were two resolutions passed by the STPC: Exhibit 47<sup>7</sup> and Exhibit 54<sup>8</sup>. Exhibit 47 refers to exhibit 54 and reaffirms the conditions for sub-division approval that were set out in that document.

**[61]** Ms. Montaque in her submissions has suggested that this argument must also fail. It was submitted that a careful examination of exhibit 54<sup>9</sup>, will show that there was no condition set out in the application for subdivision approval that caused the reserved road to become a public road.

**[62]** In paragraph 15 of his witness statement Mr. Gordon states, "*...to the best of my knowledge and belief once land is subdivided and sold the access road is a public*

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<sup>7</sup> The resolution passed by the STPC on May 8, 2008

<sup>8</sup> The resolution passed by the STPC on May 8, 1989

<sup>9</sup> The resolution passed by the STPC on May 8, 1989.

*road and no longer private. This is subject to whether the road enjoyed public access prior to the subdivision as in the case of the subject reserved road.”*

**[63]** It was also his view that, “...even if the subject reserved road was a private road the Defendant (STPC) has the power to discontinue its use as a private road under the PRA as the local road authority for the parish of Saint Thomas. As long as it is not a main road the Defendant will always have jurisdiction over it.”

**[64]** He was shown exhibit 54<sup>10</sup>; he agreed that he was not at that time the secretary of the STPC. He indicated that this was the resolution that caused him to say that the reserved road was a public road. He specifically referred to condition number 5 that reads:

*That if and when 1 is developed the bridle road shall be improved to a minimum width of thirty-three (33) feet and the land transferred free of cost to the Commissioner of Lands.*

Mr. Gordon stated that the acceptance of this condition by the parties involved in the sale of Abbey Green Estate was necessary for subdivision approval to be granted. Once granted three titles were issued. He said the land was then divided into two agricultural lots and a reserved road.

**[65]** When confronted with exhibit 54<sup>11</sup> he agreed that there was nothing on that document to suggest that there would be three titles and that in fact only two titles were issued for agricultural lots.

**[66]** He agreed that there was no document produced by him to show that the STPC had title to the reserved road, a gazette declaring the road to be a public road, a

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<sup>10</sup> Resolution passed by the St. Thomas Parish Council May 8,1989

<sup>11</sup> Resolution passed by the St. Thomas Parish Council May 8,1989

conveyance or transfer of the road to the STPC, or an order for compulsory acquisition of the reserved road.

**[67]** When asked by me as to what he understood a reserved road to be he said that it was the land reserved for a roadway. A reserved road could either be on private lands or lands belonging to the government. He described a parochial road as a public road, or any roadway that provides access to the public or is open to the public where there is no statement on title to the property surrounding it that indicates that they are part owner of that roadway.

**[68]** Mr. Thwaites indicated that at no time did the STPC propose that the road that runs through the property between Circuit 3a and Circuit 2 should be a public road. It was suggested to him that once the sub-division approval was granted the reserved roads in the sub-division application came within the jurisdiction of the STPC. He said that he could not agree with that suggestion as for that to be the case Abbey Green Estate would have been left entirely unprotected and vulnerable.

**[69]** An examination of the resolution passed regarding the subdivision approval shows that the following conditions were set out:

1. That there shall be no breach of existing covenants or supportable objections.
2. That the means of access to the lots shall be to the satisfaction of the Parish Council and/or Public Works Department.
3. That natural drainage onto the lots shall be unimpeded.
4. **That road alignment and lot boundaries (including the quantity of lots) shall be subject to confirmation on the ground by the Parish Council Superintendent after setting out and the pre-checked plan shall be adjusted accordingly.**

5. **That if and when 1 is developed the bridle road shall be improved to a minimum width of thirty-three (33) feet and the land transferred free of cost to the Commissioner of Lands.**
6. **That both lots shall be retained and maintained in agriculture until specific permission is given to remove it. (My emphasis)**
7. That agricultural practices shall be restricted to the present denuded area.
8. That the present strips of indigenous forest shall be left untouched.

[70] Mr. Gordon, Mr. Dwyer and Mr. Stewart are of the view that clause 5 changed the status of the reserved road to a public road. The challenge that I have with this evidence is that clause 5 is conditional upon "*1 being developed*".

[71] Ms. Montaque has contended that 1 refers to Lot 1 and that there has been no development of Lot 1 that would trigger condition number 5.

[72] The provision under Section 35 of the PRA is pellucid. If the STPC intends to exercise their right by resolution to alter the status of a roadway it must do so as if there was an application under Section 21.

[73] Section 40 of the PRA is also applicable; it speaks to a change in status of roads from private to public after the subdivision process. The section dictates that roads will not fall under the jurisdiction of the parish council until completed in a way satisfactory to the council and then transferred to them.

[74] Mr. Dwyer agreed in cross-examination that any land that is taken by the STPC for the purpose of a roadway ought to be as he said at the brunt of the landowner. That is exactly what is set out in clause 5. When and if the land is developed the bridle road shall be improved to a width of 33 feet and that land shall be transferred at the expense of the landowner to the Commissioner of Lands.

**[75]** There is no evidence that the lands at Abbey Green Estate were developed. Further condition number 6 would have to be met before the lands could be taken out of agricultural use.

*Both lots shall be retained and maintained in agriculture until permission is given to remove it.*

There is no indication from the evidence that permission was given for this purpose. In my considered opinion 1 does not refer to Lot 1 but simply any one of the two lots. None of the lots has been developed and therefore the condition having not been triggered the road remains a private road.

**[76]** Exhibit 54,<sup>11</sup> in my estimation, presupposes that the road is private and would only acquire public status upon clauses 6, with the permission of the STPC, then 5 being triggered. The work would then have to be completed to the satisfaction of the STPC and then a transfer of the land to the Commissioner of Lands.

**[77]** The fact of a transfer to the Commissioner of Lands is critical. If there is no transfer of the lands, what would the STPC have as proof to establish that the road which was previously private is now a public road according to the statutory provisions?

**[78]** Section 24 of the PRA is the answer to that question. The section outlines the procedure to be followed by the STPC once they decide to entertain an application to convert a private road to a public road under Section 21. The council must prepare a report to the General Council for confirmation and a certificate is to be subscribed indicating their decision and containing a plan of the road to be altered and this plan should be kept with the Secretary of the Council and it shall be the

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<sup>11</sup> Resolution passed by the St. Thomas Parish Council May 8, 1989

duty of such Secretary to exhibit the certificate and plan to any person who may require to examine them.

**[79]** In this case there is no such documentation that has been presented to the court. I find that it would be an absurdity for the STPC to simply by resolution alter the status of a private road and assume jurisdiction over it by merely a say so. The PRA provides for the compensation of those who may be affected by any such decision. If it was the intention of the STPC to alter the status of the road and to make it a public road this ought to be clearly stated in the resolution and there should be a certificate and a plan outlining the decision as well as the layout of the roadway that is accessible to anyone that requires it. Additionally, there is no evidence that the land was transferred to the Commissioner of Lands.

**[80]** In the circumstances therefore, there is no basis to find that the STPC is now the owner of the reserved road thereby making it a public road. In short, I am not persuaded by the evidence put forward on behalf of the STPC that the reserved road was converted to a public road under Section 35 of the PRA. I therefore find and accept on a balance of probabilities that the reserved road is a private road that is under the control of Tropicrop.

*Has the STPC and the farmers acquired a (public) right of way over the road.*

**[81]** Before embarking on this discussion, I wish to state that when making his oral submissions Mr. Jarrett indicated that he did not intend to address this issue as it was always the contention of the STPC that the road was a public road. However, when asked if he was abandoning that aspect of the claim, he said that he was not, and that he would leave the decision in the hands of the court.

**[82]** The STPC in their counter claim to the Tropicrop claim sought a declaration that a right of way over the reserved road had been acquired by prescription. The farmers asked for a declaration that they had a “public” right of way over the reserved road.

**[83]** How does one acquire a right of way? A right of way has been described as a right to use land in a particular way without conferring on the user a right to possession or a right to take any produce from the land. A right of way is classified as an easement and can only be acquired by express grant, custom or prescription.

**[84]** Ms. Montaque has argued that even though the STPC and the local farmers failed to properly set out the grounds upon which they have made their claim for a right of way they would still be unable to discharge their burden of proof based on the requirements of the Prescription Act.

**[85]** I commence the discussion on this issue therefore by referring to the provisions of the Prescription Act. Section 2 states:

*When any profit or benefit, or any way or easement, or any watercourse, or the use of any water, a claim to which may be lawfully made at the common law, by custom, prescription or grant, shall have been actually enjoyed or derived upon, over or from any land or water of Her Majesty the Queen, or of any person, or of any body corporate, by any person claiming right thereto, without interruption for the full period of twenty years, the right thereto shall, subject to the provisos hereinafter contained be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.*

**[86]** Section 5 is also relevant.

*Each of the respective periods hereinbefore mentioned shall be deemed and taken to be the period before some action or suit wherein the claim or matter to which such period may relate shall have been, or shall be brought in question; and no act or other matter shall be deemed to be an interruption within the meaning of this Act unless the same shall have been, or shall be, submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof and of the person making or authorizing the same.*

**[87]** Ms. Montaque submitted that the period of twenty years which is mandatory as per section 2 had not been met because for the period up to the date of the subdivision of the land at Abbey Green Estate there was only one title and one owner of the property. It was argued that there can be no right of way which accrues by way of prescription over land which is owned by the same person.

[88] Time would only start to run once the land had been subdivided and the titles split in 1988. The claim therefore would not have crystallized until December 16, 2008. The STPC and the local farmers filed their claim in March of 2008.

[89] This principle was examined in the case of **Kilgour v. Gaddes**<sup>12</sup>. In that case the claimant and the defendant were assignees of a lease that was granted by the same landlord. The claimant sought an injunction to restrain the defendant from wrongfully entering their premises to obtain water from a pump. The defendant countered that he had acquired a prescriptive right of way to the use of the pump since he had been doing so for over forty years. He relied on section 2 of the Prescription Act.

[90] In the judgment delivered by Matthew LJ, it was stated:

*In this case, the fee simple of the supposed dominant and servient tenements belonged to the same person. It is clear that, under such circumstances, an easement like a right of way could not have been created by prescription at common law. Such an easement can only be acquired by prescription at common law where the dominant and servient tenements respectively belong to different owners in fee, the essential nature of such an easement being that it is a right acquired by the owner in fee of the dominant tenement against the owner in fee of the servient tenement.*

[91] The evidence of the local farmers is that they utilized the reserved road to farm on plots that were registered to either Mr. Langford, the company or Tropicrop. STPC's claim is that the reserved road was a parochial road and was utilized by the public.

[92] The witness statement of Mr. Bromley Edwards was admitted as a hearsay document. At the time he gave his statement he was 84 years old. He told the court that he used to work for Mr. Robert Stott, and he remembered when Mr. Langford

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<sup>12</sup> [1904] 1 K.B

bought the property at Abbey Green in or around 1967. It was his evidence that the reserved road was used to access Crown lands adjoining Abbey Green. He indicated that he enjoyed unrestricted access to the reserved road for over sixty years. He did not say that he used the reserved road to access the Crown lands. Apart from this, there is no evidence as to the use of the reserved road for any purpose other than that described by the local farmers.

**[93]** The local farmers, therefore, would have been traversing over the land that was registered to one titled owner up until the subdivision in 1988. There would therefore not be a dominant and servient tenement as required at common law to establish an easement.

**[94]** Even if the court finds that the local farmers have a claim in adverse possession, it still could not be argued that there would be two separate owners of the property, as there has been no application for title by any of the local farmers that would result in a dominant and servient tenement.

**[95]** Based on Section 2 this mandatory twenty-year period is applicable to any of the common law categories of easements: custom, prescription or grant. It therefore does not matter whether the local farmers had set out which category of easement they were relying on, or as in the case of the STPC that the claim was based on prescription, the statutory period has not been met since there was one title and one owner of the lands at Abbey Green Estate up until 1988. The claim as to a right of way over the road also fails.

**[96]** Based on these findings it follows that the STPC and the local farmers have no right in law that fall to be protected by injunctive relief, neither are they entitled to damages.

**Whether the local farmers have dispossessed Tropicrop and Mossmans of sections of Abbey Green Estate.**

**[97]** The amended claim filed on behalf of the local farmers sought a declaration that they had a right to farm on land claimed by the defendants (Tropicrop and Mossmans) by way of adverse possession. They did not seek orders for title to the land, nor the cancellation of the title of the defendants. It is their contention therefore that the defendants are estopped from re-entering and taking possession of the said land.

**[98]** In their amended defence and counter claim Tropicrop claimed an order for recovery of possession of all the land registered at Volume 1322 Folio 20 and Volume 1034 Folio 50 of the Register Book of Titles. Although Mossmans filed a defence they did not call any witnesses. Mrs. Ruffus in her submissions adopted the submissions of Ms. Montaque on behalf of Tropicrop.

**[99]** It is a well-established principle of law that a registered title is proof of the particulars of ownership which is contained in it and therefore indefeasible, this is captured in section 68 of the Registration of Titles Act (**RTA**). The provision is set out below.

*No certificate of title registered and granted under this Act shall 'be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in, or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power.*

**[100]** The law provides a time frame within which a person can bring a claim for recovery of possession of registered land, and such a claim must be brought before the expiration of a twelve-year period as at the date the right first accrued. This is set out in section 3 of the Limitation of Actions Act (**LAA**).

*No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring*

*such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same.*

**[101]** Section 30 of the LAA states:

*At the determination of the period limited by this part to any person for making an entry or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, action or suit responsible might have been made or brought within such period shall be extinguished.*

**[102]** It is this failure to assert your rights that gives rise to claims for what is termed adverse possession. In the text **The Law of Real Property**, the doctrine of adverse possession was explained as follows:

*... it merely means possession inconsistent with and in denial of the title of the true owner, and not e.g. possession under a licence from him or under some contract or trust. There is a presumption that the owner of the land with the paper title is in possession of the land. To establish adverse possession, a squatter must prove that he had both factual possession of the land and the requisite intention to possess (animus possidendi). If the person is in possession of land with the permission of the true owner, his possession cannot be adverse. That permission may be expressly given or implied.*

**[103]** In the often-cited case of **JA Pye (Oxford) Ltd and another v Graham and another**<sup>13</sup> it was held that a sufficient degree of physical custody and control (factual possession) and an intention to exercise such custody and control, (an intention to possess) are the elements that must be satisfied in a claim for adverse possession.

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<sup>13</sup> [2002] UKHL 30

**[104]** In the case **Evelet Cunningham – Darling v Hillary Samuels and another**<sup>14</sup> Fraser J (as he then was) at paragraph 77 citing the case of **J A Pye (Oxford) Ltd v Graham** outlined the modern approach to the doctrine of adverse possession:

*... in order for a squatter to gain title by lapse of time he has to act adversely to the paper title owner. It is said that he has to "oust" the true owner in order to dispossess him; that he has to intend to exclude the whole world including the true owner; that the squatter's use of the land has to be inconsistent with any present or future use by the true owner. In my judgment much confusion and complication would be avoided if reference to adverse possession were to be avoided so far as possible and effect given to the clear words of the Acts. The question is simply whether the defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner.*

**[105]** There is no dispute in this case that Tropicrop and Mossmans are the registered owners of the lands at Abbey Green Estate. It is accepted that a claim for adverse possession is not affected by the sale of lands to another party so that if the local farmers establish their case the sale of Circuit 2 to Tropicrop and Mossman's would not prevent a finding in their favour. The local farmers will each have to show that they had the requisite factual possession as well as the intention to possess a section of Abbey Green Estate.

**[106]** The case turns entirely on the credibility of the witnesses. Ms. Montaque has asked the court to disregard the evidence of the local farmers. It was pointed out that they each had almost identical statements that was clearly not in their own words. They were unable to explain the references to legal or other terms and as such ought not to be accepted as witnesses of truth. Mr. Jarrett submitted that despite the similarities in their statements the local farmers were truthful and were supported

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<sup>14</sup> [2019] JMSC Civ 231

in their evidence by the evidence contained in the witness statement of Richard Stewart.

***The case for Alfred Edwards***

- [107]** Mr. Edwards stated in evidence in chief that he has a farm located on lands at Abbey Green Estate on what he referred to as Circuit 2. In reliance on the survey report of Mr. Richard Stewart he indicated that the land under his control was approximately 8215 square metres. He stated that he had been farming on that land for upwards of twenty years and that he has enjoyed exclusive and undisturbed possession occupation and control.
- [108]** On or around May 9, 10 and 28 2009, Tropicrop and Mossmans encroached upon his land by planting coffee, preventing him from weeding his land and replanting his crops of thyme and scallion. He reported Michael Lyn to the Cedar Valley Police Station on May 28, 2009.
- [109]** In cross-examination Mr. Edwards agreed that his statement was not entirely in his own words. He said that he was a farmer and that this is what he did for a living. He was fifteen when he started farming and this was about 1970. When asked about the different circuits that made up Abbey Green Estate, he said that he didn't understand the circuit thing, but he knows that the area is called Backfield and Abbey Green, that is what he grew up and know it as.
- [110]** He said that his farm is on Backfield. He was not the only one who used to farm on Backfield. He agreed that Tropicrop also had coffee on Backfield. The plot he has on Backfield is planted with coffee. He enters his plot by using another road that was cut by Dr. Lyn and his son Michael Lyn. That road runs through his plot and is used by vehicles as well as other farmers.
- [111]** He said he did not see Dr. Lyn's workers until 2009 somewhere about that. He doesn't remember if that was when the road was cut it might have been 2008. He

knew Cecil Langford and he would see him a lot when he used to go to Backfield with his grandfather. Mr. Langford would raise sheep and cow and plant coffee.

[112] Mr. Thwaites told the court that after 1983 six squatters came on to the land and the land was sold to Tropicrop subject to those squatters in 1988. There were no squatters on the remainder of the land from the time the company purchased in 1983 to 1997 when he ceased management of the company.

[113] In re-examination he was asked if any of the persons present in court were among the six persons so mentioned and he said no. He could not speak to the period after 2008 as he was no longer involved with the company at that time.

[114] I previously indicated that I have accepted the evidence of Mr. Thwaites as truthful. I observed his demeanour as he gave his evidence and I did not find that he was discredited in cross-examination.

[115] The witness statement of Dr. Charles Lyn although not tested in cross-examination was supported by the evidence of Mr. Thwaites. It was outlined that in or about 1988 he visited the property with Mr. Thwaites for the purpose of identifying the area of land that Tropicrop would purchase. The boundaries of the property were identified, and it was divided into circuits 1, 3a and 3b.

[116] The agreement for sale (**exhibit 7**) between Tropicrop and the company specifically stated that Tropicrop would purchase the land with six squatters who occupied a section of the land which was marked on the surveyor's plan in red. In or about 1989 he gave the six squatters notice to remove. In 1995 five of them vacated the property and the local farmers in this claim were not included in that number.

[117] The sole remaining person was Enos McDonald who was given permission to farm on the property on the condition that he would prevent other squatters from coming on to the property and that he would supply Dr. Lyn's family with thyme, scallion and other vegetables.

**[118]** Mr. Peter Edman was employed as the Operations Manager to Tropicrop in January 1994. In his evidence in chief, he indicated that there were persons in the forest reserve at that time and a lady who farmed on Tropicrop's property, she left in 1996. Further, there was no coffee planted on Backfield as it was largely forest until 1998. It was sometime between 1997 and 1998 when the farm manager for Mr. Thwaites died that persons invaded Backfield.

**[119]** In cross-examination he was asked why the persons were not prevented from invading Backfield and he said that at the time the property was not owned by Tropicrop but Mr. Thwaites. He however indicated that due to a drought and the inability to access water most of those persons left and never returned for the duration of the time that he was employed to Tropicrop. At no point was he challenged as to the fact that no one was farming on Backfield in 1994.

**[120]** The evidence of Alli Morgan is that in 2002 he along with Dr. Lyn went to Circuit 2 to conduct a survey using GPS technology of the area the squatters were located. The only local farmers mentioned in that survey was Patrick Patterson, Marcus Stewart, Shane Brown and Rupert Brown.

**[121]** In 2005-2006 Dr. Lyn negotiated with the then owners of the remaining section of Abbey Green Estate and along with Mossmans purchased the lot now called Circuit 2. It is at this time that he first mentions Mr. Edwards.

**[122]** Mr. Edwards was advised some time in 2005 of the purchase of Circuit 2 and was asked to vacate the property. He left and returned some time in 2009. Due to an altercation with a security guard, he eventually left permanently and began to farm on Radnor.

**[123]** Mr. Edwards said that he started farming in 1970, he therefore ought to have been one of the squatters noted in 1983 when the company purchased the property. He was not identified by Mr. Thwaites nor Dr. Lyn. Further he said that he farmed on Backfield, Mr. Edman's unchallenged evidence is that Backfield was forest up to 1998, how then could Mr. Edwards have been farming there since 1970?

[124] I did not find that Mr. Edwards was altogether truthful in his evidence before the court. He indicated that he started farming when he was fifteen years old. He mentions Mr. Langford but does not speak about Mr. Thwaites and only refers to Dr. Lyn sometime after 2008. I do not accept that he farmed the land for upwards of twenty years.

[125] Even if he did, it is clear from his evidence that his occupation of the plot he described as being on Backfield was not exclusive. His admission that he shared the plot with Tropicrop and that they both farmed coffee, is sufficient for me to find that he has not met one of the requirements of a claim in adverse possession. In the circumstances, Mr. Edwards has not satisfied me on a balance of probabilities that he was in exclusive possession of the land he claimed to have occupied for the requisite number of years.

#### ***The case for Shane Brown***

[126] Mr. Brown in his evidence in chief indicated that he is one of the farmers identified in the survey report of Richard Stewart. He has his farm on the section of Abbey Green known as circuit 3B and on a part of the land known as Radnor. His area was identified on the survey report as being approximately 14,200 square meters. He has enjoyed occupation and possession of the land for a period exceeding twenty years.

[127] In cross-examination it was discovered that Mr. Brown was unable to read. The option was taken by the court with the consent of the parties to read the witness statement to him. He accepted the contents as his own and indicated that it was true and correct. The witness statement was certified and the cross-examination continued.

[128] Mr. Brown agreed that at the time Mr. Thwaites purchased Abbey Green Estate he was two years old. At the time the lot was subdivided and sold to Tropicrop he was seven years old. He said that he started farming in 1995. This is inconsistent with his evidence in chief in which he states that he was farming on the land for more

than twenty years. He gave his statement on April 30, 2010, twenty years prior would be 1990. This is the essence of his claim how then can he be accepted as a truthful witness?

**[129]** He agreed that he farmed in Craigton and not Abbey Green. He says that he farms on Radnor, and that he farms along with Marcus Stewart and Patrick Patterson on that section of the land. He was asked if he was here to claim the piece of land on Radnor that he said was his and not Dr. Lyn's land he agreed. He said that he went to Radnor in 1995 to farm on his plot of land.

**[130]** Dr. Lyn's witness statement outlined that there was no squatting on Abbey Green Estate until sometime in 2001 when Rupert Brown and his son Shane Brown burned sections of the forest on circuit 3B. He gave written notices in September 2005 to at least five persons including Mr. Shane Brown.

**[131]** Mr. Brown's evidence is that he is not on the land owned by Tropicrop. Dr. Lyn's evidence is that he was given notice to vacate the land in 2005. I did not find that Mr. Brown was a credible witness. He was not truthful as to the period that he farmed on the land, and he seemed to be confused as to the ownership of the land that he was farming on.

**[132]** I accept the evidence of Mr. Thwaites and Dr. Lyn that at the time Abbey Green Estate was sold to Tropicrop that Mr. Brown was not one of the squatters farming there. I also accept his evidence in court that he is not in fact farming on Abbey Green Estate but on Radnor. As such there is no basis to find that he has a right to farm the lands at Abbey Green Estate by virtue of adverse possession.

### ***Case for Patrick Patterson***

**[133]** Mr. Patterson in his evidence in chief stated that he farms on that section of land known as circuit 3B and on the land known as Radnor. His plot was identified on the report of Richard Stewart to be approximately 14, 200 square meters. He said that he has enjoyed occupation of the land for a period exceeding twenty years.

- [134] In cross-examination he said that he was a farmer by profession and that he farms on Craigton. He started farming in 1995 and his mother used to work for Mr. Thwaites. He indicated that he shares the lot he is on with Marcus Stewart. His lot is on Radnor, and a little part is on the forest reserve.
- [135] He agreed that he used to work for Tropicrop but he could not pinpoint the year. He couldn't recall if Dr. Lyn owned the property at the time that he started farming. He wasn't employed directly to Dr. Lyn; he was more of a sub-contractor.
- [136] When asked if he had told Dr. Lyn to come off his property he said none of them were on his property. He was also asked if that is because his property was on Radnor and the forest reserve he said yes.
- [137] He admitted that it was not correct to say that he had been on the property for more than twenty years in his witness statement filed in 2010 as it would be fifteen years. This raises issues as to his credibility and it gives the impression that the period of twenty years and over was simply inserted in the witness statements of all the local farmers without any regard to whether the term stated was accurate.
- [138] Finally, he was asked if he was here in court because he wanted the plot on Radnor and the forest reserve and he said yes maybe he just needs access to it.
- [139] As with the case of Mr. Brown it would seem to me that Mr. Patterson is unaware of the land that he is occupying. He said that he is not on Abbey Green Estate, he has no intention to treat that land as his own, all he wants is access to the plot that he farms on Radnor and the forest reserve. I surmise that the access he speaks of is the reserved road. He therefore has not demonstrated through his evidence that he either has the intention to possess or that he is in factual possession of any land at Abbey Green Estate.

***The case for Marcus Stewart***

[140] Mr. Stewart died prior to the commencement of the trial. His wife was appointed as a personal representative of his estate, and his witness statement was admitted into evidence as a hearsay document. His wife did not give evidence at the trial.

[141] In his witness statement Mr. Stewart indicated that he farmed on the section of the land known as Circuit 3B and on a part of Radnor. He claimed to have enjoyed occupation and control of the land for a period exceeding twenty years and was in possession of his plot on circuit 3B before it was owned by Tropicrop.

[142] His evidence was not tested in cross-examination, and I must consider that it is almost identical to the evidence of the other local farmers especially with respect to the period that it is alleged that he was in occupation of the plot on Circuit 3B. That period has already proven to be inaccurate with respect to three of the local farmers.

[143] There is evidence however which supports his claim that he was on the land. Mr. Alli Morgan noted in 2002 that Mr. Stewart occupied a section of Abbey Green Estate as well as the forest reserve. Dr. Lyn's evidence is that this occupation was after his acquisition of the property.

[144] It is also noted that Mr. Patterson's evidence is that he shares the lot with Mr. Stewart and that this lot is not on Abbey Green Estate but on Radnor. Given the uncertainty as to the evidence of Mr. Patterson as to where the lot he occupied and shared with Mr. Stewart exists, as well as the questions surrounding the veracity of the evidence as to the period of occupation, I am of the view that very little if indeed any weight at all ought to be placed on the hearsay statement of Mr. Stewart. I am not satisfied that a claim for adverse possession on his behalf can be made out in these circumstances.

#### ***The case for Sinclair McDonald***

[145] Mr. McDonald stated that he farmed on a section of the land known as circuit 2. Mr. R. Stewart identifies the size of his lot as 2000 square meters. He has been

farming on the land for over twenty years, and he has enjoyed exclusive and undisturbed possession occupation and control along with the other local farmers.

**[146]** In cross-examination, Mr. McDonald agreed that he was the son of Blindford McDonald. He was previously employed to Tropicrop as a truck driver some time in 1999. He started farming on his lot in 1995, this is inconsistent with his evidence in chief which suggested that he had farmed on the land for upwards of twenty years. His statement was dated April 2010 which means he would have started farming in 1990.

**[147]** He agreed that sometime between 2005 and 2007 Dr. Lyn raised a problem with him being on the land. Prior to that he would see Dr. Lyn or his workers along the road, and he would hear them on the farm.

**[148]** He agreed that Michael Lyn used his tractor to cut a road between the plot he farmed and his father's plot some time in 2007. In 2007 Michael Lyn pulled out his scallion while he was present. He could not recall the last time he did any farming on that plot, but he said he used to visit the plot.

**[149]** Dr. Lyn acknowledged that Mr. McDonald was employed to Tropicrop as a driver but was terminated when it was discovered that he was squatting on the land. Mr. McDonald was advised some time in 2005 of the purchase of Circuit 2, and he was asked to vacate the property. Towards the end of 2007 he abandoned the plot he was cultivating.

**[150]** Mr. McDonald's evidence speaks to an interruption in his occupation of the lands at Abbey Green Estate. He commenced farming in 1995, by 2005 (that is ten years later) Dr. Lyn told him he had a problem with him on the land. Dr. Lyn says notice was given to him to vacate.

**[151]** In 2007 (that is twelve years later) Michael Lyn came and pulled up all his crops. Since then, he has not been back to farm the lands, however he stated that he visits from time to time. I find and accept that Tropicrop's entry on to the plot

occupied by Mr. McDonald was within the twelve-year period as there was no indication as to a specific date when Mr. Sinclair commenced his occupation.

[152] Further his occupation was not unimpeded as he was advised to vacate in 2005, and a road was cut through the plot he occupied in 2007. His claim for adverse possession must therefore fail as his occupation was not exclusive and uninterrupted.

[153] In summary the local farmers have each failed to establish that they have ousted the registered owners of Abbey Green Estate. An examination and analysis of their evidence do not show that they intended to exclude either Tropicrop or Mossmans or the whole world by their occupation, as that occupation has not been inconsistent with the use of the land by the registered owners. They are all farmers and their intention was to use the land for farming. Further, the evidence as to the period of occupation is not credible and the evidence of the witnesses on behalf of Tropicrop is accepted on this issue. They have not satisfied me on a balance of probabilities that they had the intention to possess or that they were in factual possession for the requisite period.

### **Disposition**

[154] The reserved road that runs through Abbey Green Estate is a private road and is not subject to the jurisdiction of the STPC, and the local farmers have not acquired a right of way over the said road. Consequently, the STPC and the local farmers are not entitled to an injunction or damages because of the erection of the iron gate by Tropicrop.

[155] The local farmers have not dispossessed Tropicrop and or Mossmans of any part of Abbey Green Estate and are not entitled to a right to farm on those lands by way of adverse possession.

### **LIST OF EXHIBITS**

<b>DOCUMENT</b>	<b>EXHIBIT</b>
Gazette showing land declared Forest Reserves	<i>Exhibit 1</i>
St. Thomas Parish Council's Schedule of Roads from April 1, 1955, to March 31,1961	<i>Exhibit 2</i>
Certificate of Title registered at Volume 1034 Folio 50	<i>Exhibit 3</i>
Photograph of area	<i>Exhibit 4</i>
Approved Plan	<i>Exhibit 5</i>
Letter from Dennis Joslin Jamaica Inc dated March 10, 2008	<i>Exhibit 6</i>
Agreement for Sale by Abbey Green Estate Ltd to Tropicrop Mushrooms Ltd for Circuits 1, 3A and 3B	<i>Exhibit 7</i>
Letter from St. Thomas Parish Council to Thwaites, Fairclough, Watson and Daley dated October 30, 1987	<i>Exhibit 8</i>
Letter dated May 20,2009 from Pickersgill Dowding and Bayley Williams to Joseph Jarrett & Co	<i>Exhibit 9</i>

Approval to the Disposal of Agricultural Lands by land Development and Utilisation Commission	<i>Exhibit 10</i>
Instrument of Transfer dated November 8, 1988	<i>Exhibit 11</i>
Certificate of Title registered at Volume 1322 Folio 20	<i>Exhibit 12</i>
St. Thomas Parish Council's Schedule of Roads	<i>Exhibit 13</i>
Notice from the St. Thomas Parish Council dated January 11, 2008	<i>Exhibit 14</i>
Letter from Myers, Fletcher & Gordon to the St. Thomas Parish Council dated January 16, 2008	<i>Exhibit 15</i>
Letter from Myers, Fletcher & Gordon to the St. Thomas Parish Council dated February 1, 2008	<i>Exhibit 16</i>
Letter from Langford & Brown to the St. Thomas Parish Council dated February 12, 2008	<i>Exhibit 17</i>
Letter from Joseph Jarrett & Co. to Myers, Fletcher & Gordon dated February 29, 2008	<i>Exhibit 18</i>
Letter from Joseph Jarrett & Co to Myers, Fletcher & Gordon dated March 6, 2008	<i>Exhibit 19</i>

Agreement for Sale between Abbey Gren Estate Ltd and Mossmans Peaks Farms Ltd and Tropicrop Mushrooms Ltd dated March 7, 2008	<i>Exhibit 20</i>
Letter from Myers, Fletcher & Gordon to the St. Thomas Parish Council dated March 14, 2008	<i>Exhibit 21</i>
Letter from Joseph Jarrett & Co. to Myers, Fletcher & Gordon dated March 18, 2008	<i>Exhibit 22</i>
Fax transmission from Myers, Fletcher & Gordon to Joseph Jarrett & Co dated March 19, 2008	<i>Exhibit 23</i>
Letter from Joseph Jarrett & Co. to Myers, Fletcher & Gordon dated March 19, 2008	<i>Exhibit 24</i>
Surveyors Notice to Tropicrop Mushrooms Ltd dated March 26, 2008	<i>Exhibit 25</i>
Letter from the Forestry Department to Myers, Fletcher & Gordon dated June 18, 2008	<i>Exhibit 26</i>
Reminder from the Collector of Taxes to Tropicrop Mushrooms Limited	<i>Exhibit 27</i>
Receipt from the Inland Revenue Department No. 95538	<i>Exhibit 28</i>

Receipt from the Inland Revenue Department No. 133892	<i>Exhibit 29</i>
Letter from Land Taxation (Relief) Board to Tropicrop Mushrooms Limited dated November 2, 1994	<i>Exhibit 30</i>
Receipt from the Inland Revenue Department No. 902115	<i>Exhibit 31</i>
Receipt from the Inland Revenue Department No. 903014	<i>Exhibit 32</i>
Receipt from the Inland Revenue Department No. 155157	<i>Exhibit 33</i>
Receipt from the Inland Revenue Department No. 155177	<i>Exhibit 34</i>
Receipt from the Inland Revenue Department No. 554491	<i>Exhibit 35</i>
Receipt from the Inland Revenue Department No. 011462	<i>Exhibit 36</i>
Receipt from the Inland Revenue Department No. 290106	<i>Exhibit 37</i>
Receipt from the Inland Revenue Department No. 319256	<i>Exhibit 38</i>
Receipt from the Inland Revenue Department No. 594121	<i>Exhibit 39</i>
Receipt from the Inland Revenue Department No. 6582634	<i>Exhibit 40</i>
Letter from Tropicrop Mushrooms Limited to Oniel Stewart, Keble James, Shane Brown and Oken Stewart respectively	<i>Exhibit 41</i>

Receipt from the Inland Revenue Department No. 9721892	<i>Exhibit 42</i>
Notices to Quit to Troy Brown, Kevin Edwards, Mr. Patterson, Shane Brown, Oniel Stewart and Mr. McDonald respectively	<i>Exhibit 43</i>
Certificate of Payment of Taxes	<i>Exhibit 44</i>
Receipt from the Inland Revenue Department No. 6731958	<i>Exhibit 45</i>
Receipt from the Inland Revenue Department No. 4243929	<i>Exhibit 46</i>
Resolution passed by the St.Thomas Parish Council dated May 8, 2008	<i>Exhibit 47</i>
Notice Under the Parochial Roads Act dated March 3, 2008	<i>Exhibit 48</i>
Certificate of Title registered at Volume 1181 Folio 160	<i>Exhibit 49</i>
Plan bearing Survey Department Examination Number 186623 dated June 23, 1986, prepared by Horace Brandon & Associated	<i>Exhibit 50</i>
Copy of Colour-Coded Survey Plan of Richard Stewart	<i>Exhibit 51</i>
Colour Coded Survey Map prepared by Leslie Mae dated July 27, 2009	<i>Exhibit 52</i>

Survey Report of Richard Stewart dated May 14, 2008	<i>Exhibit 53</i>
Resolution passed by the St. Thomas Parish Council May 8, 1989	<i>Exhibit 54</i>

**Orders:**

1. It is declared that the reserved road which services the land registered at Volume 1322 Folio 20 of the Register Book of Titles situated at Abbey Green, St. Thomas is a private road.
2. It is declared that the St. Thomas Parish Council is not entitled to remove the iron gate erected on the said road by the Claimant.
3. Ian Harriott and Rupert Brown are to quit and deliver up possession of the land contained in Certificates of Title registered at Volume 1322 Folio 20 and Volume 1034 Folio 50 of the Register Book of Titles forthwith.
4. It is declared that Alfred Edwards, Shane Brown, Patrick Patterson, Marcus Stewart and Sinclair McDonald are not entitled to a right to farm on land registered at Volume 1322 Folio 20 and Volume 1034 Folio 50 of the Register Book of Titles.
5. It is declared that Alfred Edwards, Shane Brown, Patrick Patterson, Marcus Stewart and Sinclair McDonald are not entitled to a public right of way over the reserved road which services the land registered at Volume 1322 Folio 20 of the Register Book of Titles situated at Abbey Green Estate, St. Thomas.
6. Costs to the Claimant in Claim No. 2008 HCV 00663 and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in Claim No. HCV 04099 of 2008 to be agreed or taxed.