**IN THE SUPREME COURT OF JUSTICE OF JAMAICA**
**IN COMMON LAW**
**SUIT NO: C.L. 2002 W 070**

| | | |
|---|---|---|
| **BETWEEN** | **SHIRLEY DOIG-WARNER** | **CLAIMANT** |
| **AND** | **THEODORE LEWIS** | **1ST DEFENDANT** |
| **AND** | **GERTRUDE LEWIS** | **2ND DEFENDANT** |

Mr. Joseph Jarrett instructed by Joseph Jarrett & Co for the Claimant; Mr. David Henry, instructed by Ms. Gail English of Gilroy English & Co. for the Defendants.

HEARD March 9, 10, 2005 and April 7, 2005

**ANDERSON J.**

This is a tale of two (2) properties and the persons who have now become embroiled in litigation because of their allegedly competing claims to at least a part of one. It is as counsel for the defendants indeed suggested in his closing submissions, a somewhat unfortunate situation. The properties involved in this dispute are No. 10 Swansea Avenue, Kingston 8 in the Parish of St. Andrew and registered in the Register Book of Titles at Volume 1242 Folio 510, and No. 8 Watson Drive, itself registered in the Register Book of Titles at Volume 1049 Folio 206.

In order to assist with clarifying the nature of the problem, and because a picture is worth a thousand words, taking a leaf out of the book of Sykes J.[1], I am attaching hereto copies of two (2) Surveyors' Reports, one prepared by Mr. Ronald Haddad of Ronald Haddad & Associates, dated March 1, 2005, and the other prepared by Angulu Associates, Commissioned Land Surveyors, and dated December 7, 2001. These reports were, by agreement, entered into the evidence as Exhibits 1 and 8 respectively, but they are attached to this judgment as Appendices A (Haddad) and B (Angulu).

[1] Sykes J.(Ag. as he then was) in the unreported case Pollock v Bee Homes

The protagonists in this unfortunate drama are the claimant, a retired banker on the one hand, and the defendants, Mr. Theodore and Mrs. Gertrude Lewis, retired Quality Control Inspector and retired Catering Supervisor respectively, and recently returned residents from the United Kingdom. The Claimant says she has spent much of her life at 10 Swansea Avenue which, on her testimony was acquired by her father in or around 1961. The Claimant seeks:

1. A declaration that I and my mother are the beneficial owners of an estate in fee simple and possession of the said triangular parcel of land bordering 10 Swansea Avenue Kingston 8 and formerly part of 8 Watson Drive, Kingston 8. That in the alternative, I claim ownership of the said land by way of prescription.

2. An order for possession of the said parcel of land.

3. An Order that the Certificate of Title in respect of the said parcel of land registered at Volume 1049 Folio 206 be rectified and the said land be spun off and attached to 10 Swansea Avenue, Volume 1242 Folio 510.

4. An injunction to prevent the Defendants or their agents from disturbing the possession and enjoyment of the Plaintiff in respect of the said parcel of land.

5. Damages.

6. Interest.

7. Costs.

8. Such further and other relief as this Honourable Court deems just in this matter.

When the matter came on for trial on March 9, 2005, the Claimant's attorney-at-law sought leave of the court to further amend his already amended pleadings in order to claim "ownership of the strip of land by adverse possession and that in the alternative a right of way over the aforementioned strip of land by way of prescription. The application was opposed by the attorneys for the defendants on the basis that this application flew in the face of CPR 20.4 dealing with amendments of statements of case. Even if the Court had the power to exercise a discretion to grant the amendment, it is clear that this would have required giving the defendants time to amend their defence in

an appropriate manner to respond to the changes. The Court was of the view that, given the time that had elapsed since the filing of the action and, in light of the fact that there had been a previous amendment of the Statement of Case, the provision of the Civil Procedure Rules, Rule 20.4(2) and indeed the overriding objective as set out in Rule 1 required that the application be denied, and I so ordered.

**The Evidence For The Claimant**

The Claimant avers that she is the registered owner of the property at 10 Swansea Avenue which she inherited from her father. She herself had lived there from 1960 until the late 1970's when she moved to live with her husband elsewhere and had returned to live there sometime in 1996, after her father's death in 1995. She claims that in 1968 her father had purchased the triangular strip of land from the then owner of 8 Watson Drive, one Ronald Karl Scott, for three hundred pounds, (£300), in order to allow access to Watson Drive, on one side of the premises. She claims that once the agreement was entered into between the parties, her father was given immediate possession of the land in question and fenced it off, and that her father, mother and she had continued in continuous and uninterrupted possession for over thirty (30) years. Regrettably, there is no writing evidencing this transaction and the Claimant had to concede in cross-examination that she had no personal knowledge of the transaction, such knowledge as she had, being from what she had been told by her mother. The requirement of the Statute of Frauds for a memorandum in writing clearly militates against the Claimant in this regard as she cannot show any proof of purchase which might, (and I put it no higher than *might*) have assisted her.

The Claimant also called in support of her claim, her brother Raymond Doig who said he had lived at the premises 10 Swansea Avenue from 1964 to about 1975. He had understood that his late step-father, Vincent Nathaniel Smith had purchased the triangular strip of land in question, but he had no personal knowledge of the transaction, nor was this witness aware of any attempt prior to the commencement of these proceedings to assert any proprietary right or dominion over the said property.

Mr. Ronald Haddad was also called in support of the Claimant's claim. Referring to the triangular strip in dispute, and in particular a portion which he said had "grass and

flowering plants and a part of the driveway that lead from Watson Drive into the premises No. 10 Swansea Avenue", he asserted that the Claimant "occupies this portion of Volume 1049 Folio 206 openly and exercises complete control over it". He could not say however, when that occupation commenced.

**The Evidence for the Defendants**

The Defendants in their evidence say that they purchased # 8 Watson Drive in or about December 2001 from one Karen Murphy. The Sale Agreement which was tendered as Exhibit 5 in this case shows that what the Lewises purchased was: "All that parcel of Land part of Number Fifty-Five Whitehall Avenue now known as Southfield Gardens in the parish of St. Andrew being the lot numbered "One" on the plan of Nos. 55A, 55 and 57 Whitehall Avenue aforesaid deposited in the Office of Titles on the 23rd of September 1959 of the shape and dimensions and butting as appears by the said plan thereof and being the land comprised in the Certificate of Title registered at Volume 1049 Folio 206 of the Register Book of Titles". The purchase price was Four Million Two Hundred Thousand Dollars ($4,200,000.00). The property occupied by the Claimant is that at 10 Swansea Avenue and registered at Volume 1242 Folio 510 of the Register Book.

It is common ground between the parties that the property as described in the sale agreement is the property with the street address # 8 Watson Drive. Indeed, the report prepared by Mr. Ronald Haddad on behalf of the Claimant, states: "The premises at No. 10 Swansea Avenue *as fenced* (my emphasis) consists of all the lands in the certificate of title registered at Volume 1242 Folio 510, *a portion of the lands (1005 sq. feet) in the certificate of title registered at Volume 1049 Folio 206*, (my emphasis) and a small portion of the road, Watson Drive". A look at either Appendix attached to this opinion shows the triangular shaded area between the Swansea Avenue property and the road, Watson Drive, which has a concrete wall along its Western "boundary", cutting it off from the rest of the Watson Drive property of which registered title it is acknowledged to be a part. According to Mr. Haddad's report, and this is clearly shown on Appendix A, there is a driveway across that triangular area which gives the Swansea Avenue property access to the road, Watson Drive. It is this triangular area which is the bone of contention between the parties.

In cross examination of the First Defendant, counsel for the Claimant suggested that he was aware at the time of his purchase of the property that it was in the possession of the Claimant, but this was denied by the Defendant. Nor was he aware, at the time of signing of the Agreement for Sale, of special condition g, which was to the following effect:

> The parties agree that the purchasers shall not make any claim nor take any proceedings whatsoever against the Vendor and shall indemnify and hold harmless the Vendor in respect of any proceedings, claim, or damages or cost regarding the matter of the reduction of the size of the property caused by the wall/fence erected at the South Eastern section of the property.

Further, he could not recall getting a copy of the report of Angulu Associates which had been prepared for his attorneys, and which indicated the existence of the fenced-off area.

**The Pleadings**

The Claimant essentially pleads that there has been "uninterrupted and undisturbed possession" by her father, mother and herself, for a period in excess of thirty years, and says that this gives her a prescriptive right to the property, and a right to be registered as the owner thereof. It is pleaded that in March 2002, the Claimant arranged for a survey of the disputed strip and that the Defendants objected thereto and sought to remove the concrete fence which was in place "with a view to taking possession of the strip of land claiming ownership of it.

The Defendants deny that the Claimant has been in uninterrupted possession of the said land for the period claimed and put the Claimant to strict proof of its pleading. The Defendants for their part plead that they purchased the property in good faith from one Karen Murphy and rely upon the fact that a caveat search done on December 6, 2001 for which search certificate 1169735 was issued, revealed that there was nothing to prevent the registration of a dealing by the registered proprietor, Karen Murphy. They rely upon the search certificate, the registered title to the property as well as the report of surveyors Angulu and Associates dated December 7, 2001 and the Agreement for Sale for their full terms and effect.

In addition, by way of counterclaim, the Defendants seek an order directing the claimant to remove the fence allegedly on the Defendants' property; an order that the Claimant give up possession of the said "portion of the Defendants' property wrongfully occupied by her", and damages for trespass and costs.

**The Submissions for the Claimant**

Counsel for the Claimant submitted that the evidence of uninterrupted and undisturbed possession for over thirty (30) years, allows the Claimant to set up a claim for *ownership* by virtue of adverse possession. He submitted that the term prescriptive rights should be widely construed to apply to more than those rights which may be acquired under the Prescription Act. He submitted further that the rights the Claimant was seeking to enforce were the rights of a "purchaser in possession, albeit a purchase which was incomplete". It was in this context, he submitted, that he had sought leave to further amend the Statement of Claim to allege a claim based upon prescription. That term, as defined by Collins English Dictionary, 2nd Edition 1986, is taken to mean: "The barring of adverse claims to property etc., after a specified time has elapsed, allowing the possessor to acquire title". I note that Mr. Jarrett, after reviewing the evidence on behalf of his client, suggests that "to ignore the aforementioned would be to cause an injustice to the Claimant and be contrary to the overriding objective of doing justice and applying principles of fairness when dealing with matters before this Honourable Court and as specified in Part 1 of the Civil Procedure Rules". I need hardly remind counsel that the CPR deals with rules of procedure. His client's claim is one of substantive law; that is a claim to property.

Counsel for the Claimant submits that his client is not seeking specific performance of any contract, and indeed it is clear that any such claim would fail on the basis of the requirements of the Statute of Frauds. He says he is seeking a "declaration" as to the ownership of the disputed land based upon adverse possession.

Mr. Jarrett further submitted that "the Defendants' registered title is subject to the prior occupation of the Claimant, and this is why physical inspection of a property is always recommended in conveyance of land". Regrettably, Mr. Jarrett does not provide any authority for that proposition although he cited section 26 of The Registration of Titles Act (the Act), which is in the following terms:

A person registered under this Act as proprietor of any land with an absolute title shall be entitled to hold such land in fee simple, together with all rights, privileges and appurtenances belonging or appurtenant thereto subject as follows:

(a) to the incumbrances if any entered on the certificate of title; and

(b) **to such liabilities, rights and interests, as may under the provisions of this Act subsist over land brought under the operation of this Act without being entered on the certificate of title** as incumbrances, but free from all other estates and interests whatsoever including estates and interests of Her Majesty, her heirs and successors, save only quit rents, property tax or other impost, charged generally on land in the Island, that have accrued due since the land was brought under the operation of this Act.

Mr. Jarrett submits that on the basis of this section: "It is clear from section 26 (b) that the title is subject to rights and interests not entered on the title, and these cannot be discovered by caveat search alone". However, it should be apparent that what is protected are not "rights and interests not entered on the title" but such rights and interests "as may *under the provisions of this Act subsist over land brought under the operation of this Act without being entered on the certificate of title*". (My emphasis) It must be clear from the foregoing what is to be proven by the Claimant, in the context of the Act. He submits that the surveyor's report of December 7, 2001, and their visit to the property gave both actual and constructive notice of the Claimant's occupation of the strip of land.

Mr. Jarrett further submits that by virtue of section 3 of the Limitations of Actions Act, the Defendants cannot force the Claimant off the property by way of the counterclaim, since she inherited the property in 1998 from her father and "by then any action against him by the original vendor of 8 Watson Drive and his successors, including the Defendants, would have been statute barred".

Counsel for the Claimant cites the English authority of ***BRIDGES V MEES [1957] 2 All E.R. 577*** as support for the proposition that under an uncompleted contract for the sale of land, time runs against the vendor and his successors if the purchaser is let into possession for the purposes of the Limitations of Actions Act. He asserts that that case which established that proposition was based upon the United Kingdom Land

Registration Act of 1925, which purportedly was "similar to section 25(b)". A look at the case in question however, reveals that the Court was concerned with the implications of unregistered rights or interests which were within the statutory definition of "Overriding interests". The term was defined to mean, "all the incumbrances, interests, rights, and powers not entered on the register but subject to which registered dispositions are by this Act to take effect". The Land Registration Act also provided as follows.

> All registered land shall, unless under the provisions of this Act the contrary is expressed on the register, be deemed to be subject to such of the following overriding interests as may be for the time being subsisting in reference thereto, and such interests shall not be treated as incumbrances within the meaning of this Act".

Two of the so called "overriding interests" are stated to be (1) "rights acquired or in the course of being acquired under the Limitation Acts" and (2) "the rights of every person in actual occupation of the land or in receipt of the rents and profits thereof". Upon examination, I do not agree that the English section is "similar to section 26(b)".

Finally, counsel for the Claimant submits that the Defendants' counterclaim must fail as they are estopped from asserting any such claim given their knowledge of the existence of the wall on their property and the special condition of the Agreement for Sale by virtue of which the vendor was indemnified from any claim arising from a discovery that the amount of land conveyed was in fact less than contracted for. I should mention for completeness that Claimant's counsel also cited a few other authorities in his skeleton arguments. However, I do not believe that they assist him. They dealt mostly with acquisition of easements and none dealt with the position where the Torrens system was the context of any claim. Interestingly, one of those authorities, Hyde v Pearce (1982) 1 All E.R. 1029, is cited as supporting the proposition that "A plaintiff who relies on a contract of sale to support continued occupation of property cannot thereafter assert title by adverse possession". This seems to be contrary to the earlier submissions of counsel.

**The Submissions for the Defendants**

Mr. Henry, counsel for the Defendants, submitted that the Claimant's claim to ownership of the strip of land in question is, indeed, firstly, based upon the allegation of purchase by

her late father of the strip from the then owner in 1968. Unfortunately, there is no evidence of any agreement in writing to support her claim. It seems that what the Claimant is asking this Court to do is to enforce an alleged agreement between A and B against C who was not a party to the agreement and is in fact a bona fide purchaser for value without notice. While it is true, as counsel for the Claimant states, that the Claimant is not seeking "specific performance" *per se* of an agreement, if the court were to make the orders sought by the Claimant, it would have the effect of granting specific performance of an agreement which on the evidence before me, is in breach of the Statute of Frauds. It seems to me that such a claim must fail as the only claim which would be maintainable if at all, would be one against the original vendor to the Claimant's father, and perhaps only for damages and then only on the assumption that it was not statute-barred.

It was submitted that the second basis on which the claim to ownership of the subject land is made is that the Claimant, her father and her mother have been in "uninterrupted and undisturbed possession of the land in dispute for a period in excess of thirty (30) years". Unfortunately, it is to the Act that the Claimant must turn for redress. It was submitted that for the Claimant to maintain a claim for an estate or interest in the land, the Claimant must show, at a minimum, that a caveat had been lodged, pursuant to section 139 of the Act, against the title of the Watson Drive property. The lodging of such a caveat would have provided for the Claimant the protection available under section 140 of the RTA, as it would have allowed the Claimant to defend her right to demonstrate that she had an interest which was entitled to protection under the Act upon a challenge to the caveat.

Counsel for the Defendants submitted that the Defendants had done what was required of them when they instituted a caveat search as evidenced by the search certificate tendered into evidence. The certificate indicated that "there is nothing to prevent the registration of a dealing by the registered proprietor". It was submitted therefore that the Registrar had no option but to register the "dealing in the land" as contemplated by the duly executed transfer under the Act. In this regard, it is useful to advert to an article, "Caveatable

Interests – The Common Lore Distinguished" in Murdoch University Law Journal 1993, Volume 1 No: 1, by Sandra Boyle. She wrote:

> What is a caveat? It is itself a statutory injunction. It has all the characteristics of that equitable remedy. It restrains the Registrar of Titles from registering a dealing that is inconsistent with, or at the very least, not made subject to, the caveator's alleged claim. It effectively prohibits a registered proprietor from dealing with his land in a manner inconsistent with rights and obligations that he may have created.
>
> It confers no proprietary interest itself. Its purpose and function is to maintain the status quo to preserve and protect the rights of a caveator. It prohibits the caveator's interest from being defeated by the registration of a dealing without the caveator having first had the opportunity to invoke the assistance of a Court to give effect to the interest. The interest may arise through the application of legal rules and principles or it may arise because a specific equitable remedy exists to protect it.

As far as the Claimant's alternative claim to be registered as the owner of the strip of land *by virtue of prescription* is concerned, counsel for the Defendants submitted that such was "a legal impossibility". The idea that the registered title of the Defendants could be defeated under the Torrens system as articulated by the Act, by prescription, indicated a lack of appreciation of the essence of that system. He said that having regard to the wording of section 2 of the Prescription Act, there could be no contemplation of the transfer of title. Section 2 of the Prescription Act is in the following terms:

> 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 provisions 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.

It seems clear from the terms of the section that what is contemplated is the acquisition of an easement by prescription. Counsel submitted that whatever may have been the result of a claim for an easement if one had been made, this was not a claim being made in this action.

Finally, it was submitted by counsel for the Defendants that the title of the Defendants was indefeasible by virtue of section 68 of the Act. That section provides as follows:

> No certificate of title registered or 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.

It was submitted that the Defendants' title is accordingly indefeasible. Based upon this section, the Court must accept the certificate as that tendered herein as an exhibit in respect of the Defendants' property, as "conclusive evidence that the person named in such certificate as the proprietor of .... the land therein described, is seised or possessed of such estate or interest". The Defendants must therefore succeed on both the claim and the counterclaim. Mr. Henry also submitted that the case of **Bridges v Mees** cited by Mr. Jarrett for the Claimant, was based upon statutory provisions quite dissimilar to those found in the Jamaican Registration of Titles Act. As noted above, having examined the English statute I agree with Mr. Henry's submission. Finally, it was submitted that in light of the fact that the Claimant could not establish any rights under the Act, the Defendants were entitled to the reliefs sought in the Counterclaim.

**The Law**

In the article by Boyle referred to above, the learned author, in speaking to the core of the Torrens System, (a version of which is operated here in Jamaica), had this to say.

> When the High Court handed down its judgment in **Leros Pty Ltd v Terara Pty Ltd. [1992] 66 ALJR 399** a quaking of seismic proportions should have been recorded emanating from conveyancing lawyers in Western Australia. In Leros the High Court reminded us all that under a Torrens System a person who seeks to preserve an unregistered interest against a subsequent inconsistent dealing must at the very least, lodge a caveat to preserve and maintain it, or that interest will be extinguished. It cannot be reasserted against a later registered proprietor, or the holder of a later and inconsistent registered interest. The strictness of the principle

of indefeasibility is common to all the Torrens statutes and injustice can easily be effected where a right is ignored or remains unprotected.

In **Colin Harold Parramore v Valda Frances Duggan, F.C. 95/042** heard in the High Court of Australia, in April 1995, Brennan J. giving the decision of the Court in a matter dealing with the Land Titles Act of Tasmania, (a "Torrens System" statute) had this to say:

> "The essential characteristic of the Torrens system is stated by Barwick CJ in Breskvar v Wall:
>
> > "The Torrens system of registered title of which the Act is a form is not a system of registration of title but a system of title by registration. That which the certificate of title describes is not the title which the registered proprietor formerly had, or which but for registration would have had. The title it certifies is not historical or derivative. It is the title which registration itself has vested in the proprietor."
> >
> > A Torrens system statute necessarily contains two key provisions: one, a provision that makes a certificate (or duplicate certificate) of title conclusive proof of the title of the registered proprietor so that no other person can be heard to claim that he or she is the proprietor of the title to which the certificate relates; and, two, a provision that makes that title immune from defeasance by a paramount title.

I adopt these propositions as they apply to the construction of our own Registration of Titles Act. The comparable sections would of course be section 68 to which reference has already been made above, and sections 70 and 71. Those sections are very instructive and are set out below.

> 70. Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, *except in case of fraud*, (My emphasis) hold the same as the same may be described or identified in the certificate of title, subject to all qualification that may be specified in the certificate, and to such incumbrances as may be notified on the *folium* of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser:

> Provided always that the land which shall be included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, conditions and powers (if any), contained in the patent thereof, and to any rights acquired over such land since the same was brought under the operation of this Act under any statute of limitations, and to any public rights of way, and to any easement acquired by enjoyment or user, or subsisting over or upon or affecting such land, and to any unpaid rates and assessments, quit rents or taxes, that have accrued due since the land was brought under the operation of this Act, and also to the interests of any tenant of the land for a term not exceeding three years, notwithstanding the same respectively may not be specially notified as incumbrances in such certificate or instrument.

> **71.** Except in the case of fraud, no person contracting or dealing with, or proposing to take a transfer from the proprietor of any registered land, lease, mortgage or charge, shall be required or in any manner concerned to enquire or ascertain the circumstances under, or the consideration for which, such proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase or consideration money, or shall be affected by notice, actual or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

It will be clear from the above that the registered proprietor is fully protected except there is *actual fraud*, or the existence of prior interests such as those referred to in the proviso to section 70, which are protected by the statute. Further, as section 71 also makes clear, the registered proprietor is not affected by notice, even *actual or constructive* "of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud".

I will make one further observation on the issue of what has been termed in some Torrens title type cases, the "imprescribility" of Torrens title land. It will be recalled that counsel for the Defendants had adverted to this principle in his submissions. In this regard, I find support for the proposition of imprescribility in the following dicta. In one case from the

Phillipines[2] where a version of Torrens is also in force, there was a suit asking for reconveyance of registered land, and it was stated that:

> "It is well settled that one who deals with property registered under the Torrens system need not go beyond the same, but only has to rely on the title. He is charged with notice only of such burdens and claims as are annotated on the title".

In another case from the Phillipines[3], it was stated:

> Neither would prescription aid the cause of private respondents, not only because the acquisitive prescription of 10 years of possession provided under Article 1134 of the Civil Code of the Phillipines has not yet transpired (private respondents entered the eastern portion in 1969 while the complaint to quiet title was filed on April 1, 1975), but also because ownership of registered land under the Torrens System is imprescriptible (St. Peter Memorial Park, Inc. vs. Cleofas, 92 SCRA 389 [1979]; J.M. Tuason & Co., Inc. vs. Court of Appeals, 93 SCRA 146 [1979]).

I conclude therefore that on the issue of the validity of title, a certificate of title serves as evidence of an indefeasible title to the property in favour of the person whose name appears thereon. In those circumstances, I am obliged to find in favour of the Defendants and against the Claimant. I also grant costs of the action to the Defendants to be agreed or taxed. I should observe that while there was at least some credible evidence that may have supported a claim for an easement of way over the disputed property, that issue was not pleaded and I am not required to make any finding in relation thereto.

In so far as the counterclaim is concerned, I order that the Claimant remove such encroachment as may have been placed the on Defendants' property. I will, however, stay that order for thirty days to allow the Claimant to consider her options and perhaps pursue the suggestion of Defendants' counsel. I do not, however, consider it necessary to order the Claimant to give up possession as the right to possession, or indeed the right to use the particular section of the property, may be the subject of separate legal issues that have not been canvassed here before me. For the same reason, I am unable to award damages for trespass, as that would require a finding that there had been a trespass. The fact of a trespass would, of course, have to be proven by the Defendants, and it is not

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[2]; Ernesto David and Others v Cristito Malay and others: (Phillipines Supreme Court) G.R 132644 November 19, 1999

[3] G.R. No. 93365 September 21, 1993 Hilariona Fortaleza Dablo, Juanito Dablo and Marta Dablo, vs. Court of Appeals, Cesaria Daban, and Remegio Daban.

clear that that has been established. It is axiomatic, that there are circumstances which may negate a finding of a trespass; for example, if the possessor was a licensee or had acquired an easement.

MEMBER
THE LAND SURVEYORS ASSOCIATION OF JAMAICA

# Ronald Haddad & Associates

COMMISSIONED LAND SURVEYORS

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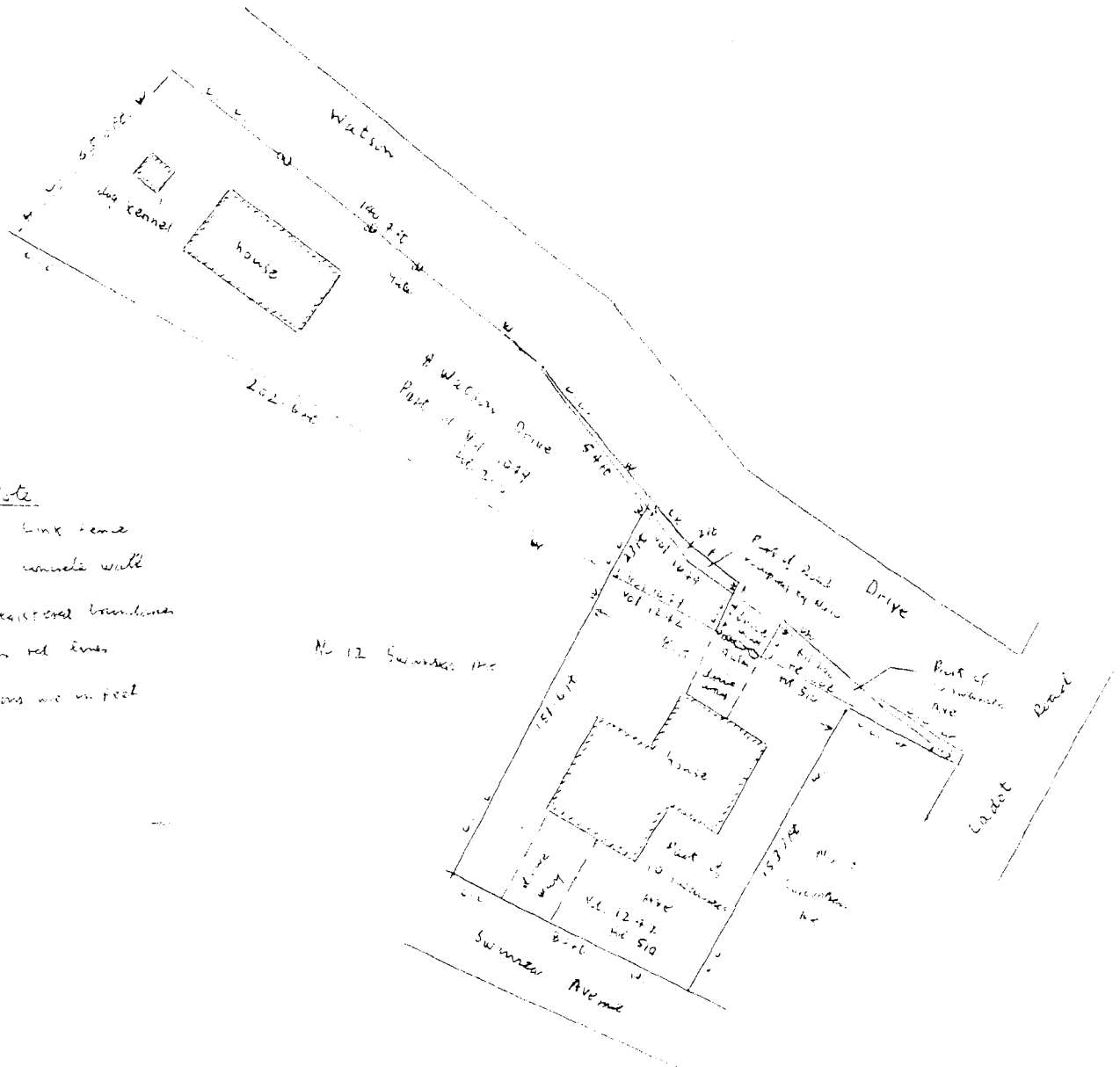



Note

Lk. f --- Link fence

c.c.w --- concrete wall

Intended registered boundaries are shown in red lines

All dimensions are in feet

SKETCH PLAN OF No 8 WATSON DRIVE

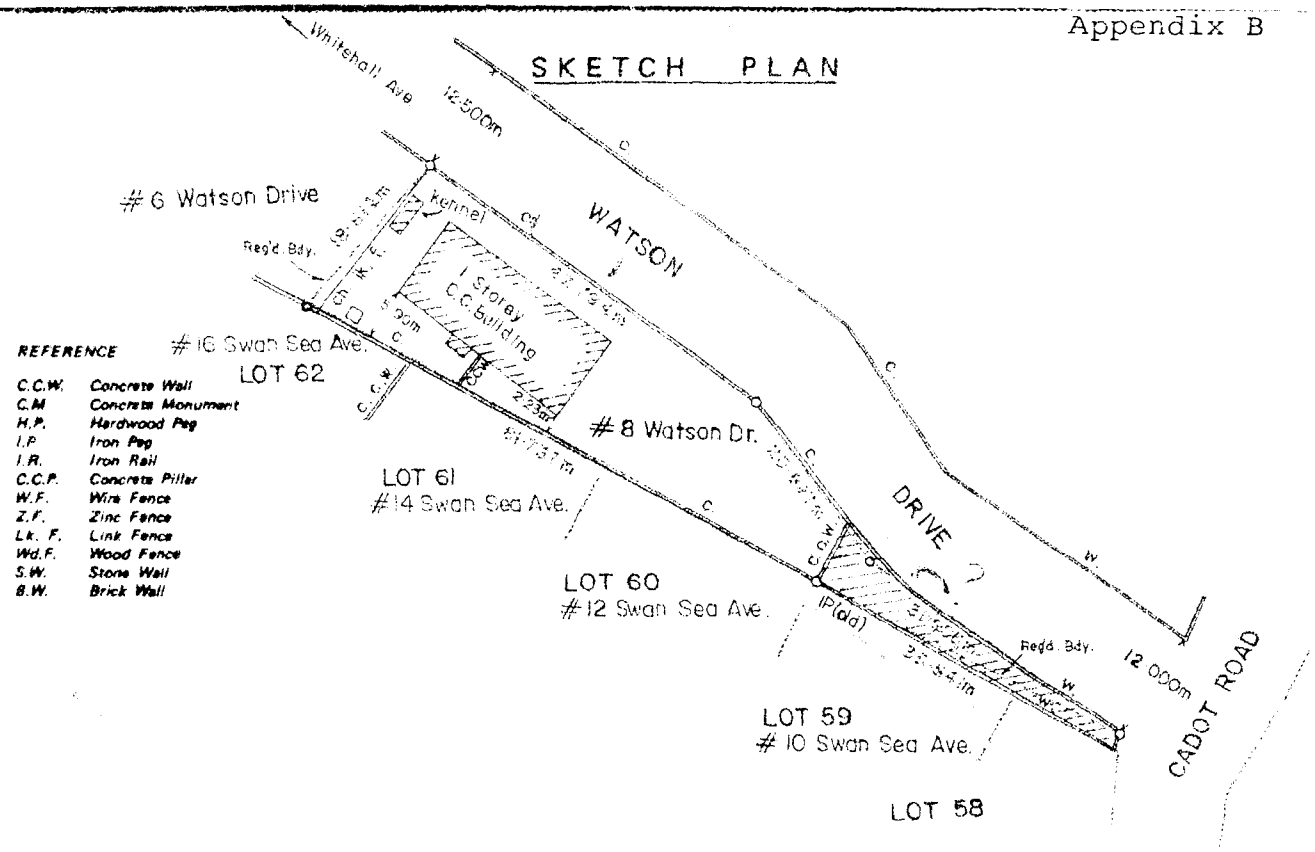
AND No 10 SWANSEA AVE, ST. ANDREW

Contract Recorded

Prepared by - Ronald Haddad

Scale 1, 1000

## SKETCH PLAN




**REFERENCE**

| | |
|---|---|
| C.C.W. | Concrete Wall |
| C.M | Concrete Monument |
| H.P. | Hardwood Peg |
| I.P | Iron Peg |
| I.R. | Iron Rail |
| C.C.P. | Concrete Pillar |
| W.F. | Wire Fence |
| Z.F. | Zinc Fence |
| Lk. F. | Link Fence |
| Wd.F. | Wood Fence |
| S.W. | Stone Wall |
| B.W. | Brick Wall |

To Gilroy English & Co.

Attorneys-at-law

14 Union Square, Kingston 5

ISA ANGULU
COMMISSIONED LAND SURVEYOR

December 7, 2001

**This certificate has been prepared in accordance with the notes set out on the reverse hereof.**