

**THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: SVGHCV2010/0397



[1] STEPHEN ADAMS

Claimant

and

[1] MUSTIQUE COMPANY LTD.

Defendant

Appearances:

Mrs. Kay Bacchus-Browne for the Claimant.

Mr. P.R. Campbell Q.C. and Ms. Simone Churaman for the Defendant.

2012: October 8, November 14, December 20
2013: April 11

JUDGMENT

- [1] **THOM J.:** Mr. Stephen Adams is a former member of the Royal Saint Vincent and the Grenadines Police Force. He served on the Island of Mustique as a Sergeant of Police during the period 21st May 1979 to 28th February 1981. He was then employed by the Mustique Company (the Company) as Chief Security Officer until August 2009. When Mr. Adams assumed the post of Chief Security Officer he was provided with living quarters ("Unit J") owned by the Company.
- [2] On the 19th day of December 1996 Mr. Adams applied to the Company to purchase a parcel of land pursuant to section 1 of Appendix IV of the Mustique Company Limited Act 1989 (the 1989 Act). His application was not successful. On December 26, 2007, Mr. Adams wrote again to the Board of Directors of the Company requesting to purchase a parcel of land. He also wrote to the Managing Director of the Company on May 19, 2009 and on August 22, 2009.

- [3] By letter dated August 27, 2009, the Company informed Mr. Adams that his application was not approved. Mr. Adams was also informed that he would not be permitted to remain in Unit J after his retirement.
- [4] Mr. Adams being dissatisfied with the Company's decision instituted these proceedings in which he seeks the following reliefs:
- (a) A prohibitory injunction preventing the Company from evicting him from Unit J until determination of the matter.
 - (b) A mandatory order compelling the Company to grant him a lease of a parcel of land on the Island of Mustique pursuant to Section 1(b) of the Mustique Company Act No. 48 of 2002.
 - (c) Alternatively, a declaration that he has a life interest in Unit J pursuant to Section 12 (i) and (ii) of the Mustique Company Act No. 48 of 2002.
- [5] The Company in its defence contends that Mr. Adams is not entitled to the reliefs sought having regard to the effect of the statutory provisions in the Mustique Company Act No. 48 of 2002. The Company did not make a counterclaim for possession.

ISSUES

- [6] (1) Whether Section 1(b) of the Mustique Company Act 2002 confers an absolute right on a qualified person to be granted a lease.
- (2) Whether Unit J is within the definition of "Company owned family dwellings" as set out in Section 12 (i) of Appendix IV of the Mustique Company Act 2002.
- (3) Whether Section 12 confers an absolute right of a life tenancy to "a qualified individual" who elects not to purchase a lease.

EVIDENCE

- [7] Mr. Adams testified on his own behalf. He called no witnesses. Mr. Adams testified that he resides at Arnos Vale on the Island of Saint Vincent and he also resides at Lovell Village on the Island of Mustique. In 1996 having lived and worked on the Island of Mustique for fifteen (15) years, he applied to the Company to lease a lot of land behind the

Mustique Church in Lovell Village in accordance with the provisions of the 1989 Act. The Managing Director at the time, Mr. Brian Alexander responded advising him that the area he requested to purchase was outside of the Development Plan. He subsequently pointed out an area in Lovell Village to Mr. Alexander. Mr. Alexander consulted with Mr. Cardinal Simon, the Chairman of the Mustique Indigenous People Association (MIPA) and they agreed the land could be developed and sold in accordance with the provisions of the 1989 Act to persons who qualified. Five lots were surveyed and distributed but he did not receive one of the five lots.

- [8] In December 2007 he wrote to the Chairman and members of the Board of the Company requesting to purchase a parcel of land. He did not receive a response. In May 2009 he wrote to the Managing Director concerning his request to purchase a parcel of land. He again wrote to the Managing Director on August 22, 2009. On August 27, 2009 the Managing Director responded to him indicating that his application was not approved. Further section 12 (i) of the Mustique Company Limited Act 2000 (the 2002 Act) did not give him a right to remain in the accommodation built by the Company for its employees.
- [9] Mr. Brian Alexander the former Managing Director and Mr. Pritchard the current Managing Director of the Company testified on behalf of the Company. Mr. Alexander testified that he was resident on Mustique since 1968. He worked part-time with the Company and in 1979 he was appointed Managing Director. He held that position until 2008 when he retired. He now serves as a consultant to the Company.
- [10] Mr. Alexander further testified that the term "Company owned family dwelling" which is not defined in the Act has a specific meaning and referred to certain specific houses. These were the houses built by Mr. Colin Tennant for the indigenous people who were relocated from Endeavour Point to Lovell Village. Unit J is not one of those houses. When the Company commenced development of Mustique in 1968 – 1969, hundreds of workers from Saint Vincent were recruited to work on Mustique. Several living quarters were constructed for those workers. Unit J is one of those living quarters.

- [11] It was always made clear to Mr. Adams that Unit J was not a Company owned family dwelling but an employee housing unit. Unit J is urgently needed for staff accommodation. There is a shortage of staff accommodation.
- [12] Mr. Alexander denied that he gave any commitment to Mr. Adams that he would be sold a parcel of land since he had no authority to do so. It was for the Board to make the decision in relation to all sale of land. In doing so, the Board would consult with MIPA. While the Board valued the recommendations of MIPA, the Board always made the final decision. There has always been more applications to purchase land than land available for distribution.
- [13] Mr. Roger Pritchard in his testimony stated that in May 2009 he received a letter from Mr. Adams in which he claimed to have a legal right to purchase a lot of land or to remain in his present quarters for the remainder of his lifetime. He received a similar letter from Mr. Adams in August 2009. He discussed the matter with the Board of Directors and the Consultant Mr. Alexander. The application was not approved by the Board. There are no lots available for purchase in Lovell Village.

SUBMISSIONS

- [14] Mrs. Kay Bacchus-Browne submitted that based on the evidence before the Court, Mr. Adams has satisfied all of the requirements of sections 1 (b) and 12 (i) of Appendix IV of the 2002 Act. Unit J which Mr. Adams occupies is situated within Lovell Village and is a company owned family dwelling within the meaning of section 12 (i). While company owned family dwelling is not defined in the 2002 Act, it does not refer to the houses built by Mr. Colin Tennant as those houses were either unavailable or demolished by the time of the enactment of the 1989 Act when the term was first introduced in legislation relating to Mustique. The Collin Tennant buildings fell within section 11 while Unit J and other units constructed at that time fell within section 12.
- [15] Mrs. Bacchus-Browne further submitted that the provisions of section 5 of Appendix IV of the 1989 Act which is headed "Social Development Plan" required the Company to build

accommodations for its permanent employees. Once those accommodations were built in Lovell Village they would be regarded as Company owned family dwellings.

- [16] Mrs. Bacchus-Browne further submitted that once a person qualified under Appendix IV the person has a right to be leased a parcel of land in Lovell Village. The Company has no discretion in the matter. The 2002 Act does not provide any procedure for the Company to follow as the Company has no discretion in the matter. Section 12 gives the person who qualifies the option of getting a lease or remaining in his dwelling for a lifetime. Where the Company does not grant a lease to a person who has qualified for a lease they must give a compelling justification for not doing so.
- [17] Mrs. Bacchus-Browne further submitted that while Mr. Adams is not a party to the Agreement between the Company and the Government of Saint Vincent and the Grenadines, the Agreement having been given the force of law by Act of Parliament Mr. Adams can maintain an action for breach of the Agreement. The principle of legitimate expectation applies. The Company must be held to a standard akin to a public authority, they must act fairly, consistently and with transparency – Gerald Joseph v Eulie Baptiste; Michel Magloire v The Judicial and Legal Services Commission and the Attorney-General (SLUHCv No. 0372/2005); Lennox Linton v The Attorney-General of Antigua and Barbuda No. 0354 of 2007; and Next Level Engineering Ltd v The Attorney-General et al ANUHCv 2006/0283. The Company has dealt unfairly with Mr. Adams in that:
- (1) The Company took years to respond to Mr. Adams.
 - (2) There is no clear procedure for approving or not approving the sale of land to qualified persons.
 - (3) The claim of the Company that Unit J is needed for other staff is not sufficient reason for refusing to grant a lease since there is land available at Grand Bay for staff.
 - (4) The zoning plan shows three separate areas for staff housing and space is available there.

(5) The Company gave a lease to one Mrs. Cadet for four times the stipulated size after they refused to grant Mr. Adams a lease.

[18] Mr. P.R. Campbell Q.C. submitted that the Mustique Act is a Private Act not a Public Act. The provisions are specific to the locality of Mustique and they primarily give statutory force to contracts between the Company and the Government of Saint Vincent and the Grenadines (the Government). In interpreting the provisions of the Act the Court ought to apply the principles of contract law rather than the ordinary principles of statutory interpretation. The question the Court must ask is what did the contracting parties intend, not what Parliament intended. See **Craies on Statute Law** pp. 564 – 565. The burden therefore is on Mr. Adams to show that his interpretation of the contract is correct and the interpretation of the contracting parties is incorrect. The Government has a representative on the Board of the Company. Therefore it must be assumed that the contracting parties agreed that on the interpretation of the Act Mr. Adams was not entitled to a lease or a life tenancy.

[19] Mr. P.R. Campbell Q.C. further submitted that the rights alleged by Mr. Adams are in the nature of third party claims. Appendix IV does not create an absolute mandatory obligation on the Company to provide a lease for each and every applicant or to approve every application regardless of the circumstances. The use of the word "shall" in Division A of Appendix IV does not make the provision mandatory. Mr. Adams had a right to submit an application and for the application to be considered by the Board of the Company. The evidence shows that Mr. Adams applied under the 2002 Act for a lease. His application was considered by the Board of Directors and was not approved. The Company therefore discharged its obligation to Mr. Adams under Appendix IV of the 2002 Act.

[20] Mr. P.R. Campbell Q.C. also submitted that Mr. Adams' allegation relating to the involvement of MIPA was a non-issue since the Company had a discretion and it was well within the exercise of the discretion for the Company to consult with MIPA which is involved in the social fabric of Mustique. Also the alleged promise by Mr. Brian Alexander is a non-issue since such a promise (which in any event Mr. Alexander denied that he

made) could not bind the Company in the absence of specific instructions to act on its behalf. Further, an oral arrangement for a lease cannot be binding in the absence of consideration.

[21] Mr. P.R. Campbell Q.C. also submitted that the Court should take judicial notice that Mustique is a small island with a finite amount of land. The evidence of Mr. Alexander under cross-examination is that there are more applications for lease than land that is available. Thus, even if the Company was under a mandatory obligation to approve Mr. Adam's application, it had to be dependant on the availability of land in Lovell Village.

[22] In relation to the claim for a life tenancy in Unit J, Mr. P.R. Campbell Q.C. submitted that section 12 of Appendix IV of the 2002 Act had its origin in section 14 of Appendix IV of the 1989 Act. Under the 1989 Act only persons who were resident in Mustique prior to 1969 and who occupied Company owned family dwellings were entitled to a "life tenancy". The evidence of the Company's witnesses is that the expression "Company owned family dwelling" referred to ten specific buildings which had been constructed by Mr. Colin Tennant the original owner of Mustique. By 2002 only two such houses remained unsold and Unit J was not one of the houses built by Mr. Colin Tennant. Further, Mr. Adams was not a person who was offered a lease and elected not to accept the lease. The words used in section 12, "may remain in their existing residence" shows that the Company had a discretion. The legal authorities establish that clear words are required in a contract or in an enactment in order to deprive a property owner of its rights over its own property particularly when there is no consideration to accompany the deprivation and no compensation for it.

[23] Mr. P.R. Campbell Q.C. further submitted that even if Unit J was a company owned family dwelling and Mr. Adams qualified for a life tenancy he would still not be entitled to a mandatory order for the following reasons:

- (i) Mr. Adams' testimony is that he visits Mustique once or twice per month on weekends. He lives in Arnos Vale.
- (ii) There is a shortage for workers' accommodation in Mustique.

(iii) Unit J houses the Armory.

[24] Mr. P.R. Campbell Q.C. also submitted that the principle of legitimate expectation is not applicable in this case since the Mustique Company is not an administrative body charged with executing functions of a public nature involving public property and public rights. The Company is rather a private body administering its own property.

FINDINGS

[25] Having regard to the nature of the claim, I find it is necessary to give a brief background to the development of Mustique. In 1968 the Mustique Company purchased the Island of Mustique. The Mustique Company entered into an Agreement with the Government of Saint Vincent and the Grenadines (the Government) for the development of Mustique. The period of the Agreement was twenty (20) years. In April 1969 the Legislative Council passed the Mustique Company Act 1969 which gave statutory force to the said Agreement.

[26] At the end of the Agreement in 1989, the Mustique Company and the Government entered into a new Agreement for a period of fifteen (15) years. This new Agreement was also given the force of law by the Mustique Company Act 1989 (the 1989 Act). It was in the 1989 Act that the issue of lease of land and sale of houses to qualified persons by the Company was first addressed.

[27] In 2002, the Company and the Government entered into another Agreement, the period of the Agreement being seventeen (17) years. This Agreement was also given the force of law by the Mustique Company Limited Act 2002.

[28] In 1989 as part of the development of Mustique, the Mustique Company and the Government agreed to a Social Development Plan a section of which dealt specifically with the area designated Lovell Village where the indigenous people reside. The terms agreed were outlined in Section 5 of the 1989 Act and read as follows:

“5. The Company undertakes to carry out the following Social Development Plan:

- (a) (i) from the date hereof over a period of 3 years to spend a total of EC\$500,000 in improving Lovell Village, its buildings, sanitation, landscaping, roads and construction of new buildings;
- (ii) provide a minimum of four two-bedroom houses and six one-person studio quarters which shall be made available for letting to employees of either the Company or its licensees such employees to be selected by the Company on such terms as the Company at its sole discretion considers appropriate;
- (iii) make available for sale leasehold building plots and/or houses in Lovell Village. The congruent individuals will be nominated by the Company in consultation with the Government (see Appendix VIII (sic).

Leases will be for a period of 99 years each and the rights, restrictions and stipulations will be similar to those which apply to owners of freehold property in Mustique (see Appendix IV). The leases will be sold at the prevailing price for similar building plots and/or houses in Mustique and other parts of Saint Vincent and the Grenadine Islands.

- (iv) build accommodations for its permanent employees."

[29] In furtherance of the Social Development Plan as it relates to Lovell Village, Part A of Appendix IV of the 1989 Act dealt specifically with the sale of leasehold building lots and sale of houses in Lovell Village. Appendix IV defined which persons were qualified for a lease of land in Lovell Village and among other things, the size of the land to be leased, the manner of calculating the price of the land, the period of the lease and the type of building to be constructed on the land.

[30] In the 2002 Act, the focus of the Social Development Plan shifted from distribution of land and building of houses to development of businesses by qualified individuals. Section 5 of the 2002 Act reads as follows:

- "5. In order to help Qualifying Individuals as defined under Appendix IV A (1) to establish their own businesses in Mustique, the Company will build and rent to Qualifying Individuals the following premises:

- (a) (i) In the area behind Core's Food Store and Treasure Boutique three (3) retail shops. The types of businesses to be carried out in these shops and the hours of operation shall be designated by the Company, and the hours of operation shall be similar to those of the existing shops in that area; and
- (ii) In the Building Yard area, 3 workshops for three (3) core trades.

All of the businesses in (a) (i) and (ii) above will be operated pursuant to Commercial Licenses issued by the Company and the terms and conditions of these licenses will be the same as for all commercial licenses. The Company in consultation with the Government will review the number of these businesses every five (5) years.

The Government acknowledges the interest of the Company in regulating the number and types of businesses being carried out on Mustique and agrees to support the Company in preventing the establishment and operation of any business that does not possess a Commercial License issued by the Company.

- (b) The Company will build within 2 years from 1st January 2003, a community, educational and training centre to be operated by the Mustique Community Association."

[31] The 2002 Act contains a similar appendix IV to that contained in the 1989 Act. The provisions of Appendix IV of the 2002 Act must be construed in the context of the entire Agreement. The 2002 Agreement follows two other Agreements of the Company and the Government relating to the development of Mustique. In **Halsbury's Law of England** vol 44 (1) 4th edition at paragraphs 1415-1416 the Learned Authors emphasized the importance of the pre-enacting history in construing the provisions of a legislation as follows:

"1415. Nature of pre-enacting history. The court cannot judge soundly what mischief an enactment is intended to remedy unless it knows the previous state of the law, the defects found to exist in that law, and the facts that caused the legislator to pass the Act in question. It follows that the court should take into account the state of the law at the time the enactment was passed. Where a subject has been dealt with by a developing series of Acts, the court often find it necessary, in construing the latest Act to trace the course of this development. By seeing what changes have been made in the relevant provisions, and why they have been made, the court can better assess the meaning of the current Act.

1416. Presumption that words are used in previous sense. Where an Act uses a form of words with a previous legal history, this may be relevant in interpretation, the question being whether or not Parliament intended to use the term in the sense given by this earlier history. The presumption is that it did, and this presumption is strengthened if the two enactments are contained in Acts which are in *pari materia*. The doctrine of precedent operates independently of, but often concurrently with this guide to construction. The meaning of a word in a new Act should not, however be "cluttered with ancient baggage", particularly when this would not leave that meaning as something which the ordinary person would understand it to be."

LEASE OF LAND

[32] Mr. Adams claims he has an absolute right to purchase a lot of land in Lovell Village pursuant to Part A (1) (b) of Appendix IV of the 2002 Act. The section reads as follows:

"A. The Company shall lease lands to Vincentian nationals in the area designated as Lovell Village in the Zoning and Conservation Plan attached as Appendix VII. The persons will be selected subject to the following criteria:

1. (a) Persons resident in Mustique before 1969 and continuously resident since that date.
- (b) Nationals of Saint Vincent permanently living and continuously working in Mustique from 1st January 1988.
- (c) Persons born in Mustique."

[33] Both sides agree that Mr. Adams falls within sub-section (b).

[34] Section (1) in effect requires the Company to lease lands in Lovell Village to Vincentians and it stipulates those Vincentians who qualify to be granted leases. The Company was given the right to select the persons who were to be granted leases from the three categories of persons. Thus, while a person may fall within one of the stipulated categories, he/she does not have an absolute right to a lease. He/she still has to be selected by the Company. The 2002 Act gives the Company even more latitude in selecting persons than the 1989 Act. In the 1989 Act sub-sections (a), (b) and (c) were in order of priority. The Company had to select persons in order of priority of the sub-sections. The 2002 Act does not contain the priority provision. In keeping with this right to select, paragraph 4 required applicants to register at the Company's office. Further the

grant of a lease will also always be dependent on the availability of land in Lovell Village. The size of Lovell Village has been demarcated.

[35] The evidence of both Mr. Alexander and Mr. Pritchard is that there are always more applicants than lots available for lease. This evidence was not contradicted. I accept this evidence. I also accept Mr. Pritchard's evidence that presently land is not available for lease in Lovell Village. Mr. Pritchard acknowledged under cross-examination that there are persons who were granted leases but who have been unable to construct houses within the time stipulated in Section 8 of the 2002 Act due to financial constraints. Whether the Company can be compelled to exercise its right to repurchase any or all of those lots does not arise in this case.

[36] In view of the above, I agree with the submission of Mr. P.R. Campbell Q.C. that the 2002 Act gives Mr. Adams a right to apply for a lease and for his application to be considered by the Company, but it does not give Mr. Adams an absolute right to a lease of land in Lovell Village.

[37] Both witnesses testified that the Board of the Company in selecting applicants would consult with MIPA and they would also take into consideration the needs of the applicants. I am of the view that under the 2002 Act the Company cannot disqualify a person who is qualified under Section (1) based on the persons' wealth. Thus if land is available for lease in Lovell Village the fact that the applicant is perceived to be wealthy, cannot disqualify him/her from obtaining a lease. Mr. Adams under cross-examination did agree that he has assets in excess of EC\$2 million. This does not disqualify Mr. Adams from obtaining a lease of land in Lovell Village if land becomes available.

LIFE TENANCY

[38] Mr. Adams claims that he has a life interest in Unit J by virtue of the provisions of Section 12 (i) of Appendix IV of the 2002 Act. Section 12 reads as follows:

"12. (i) Individuals qualifying under paragraph 1 above at the date of this Agreement and living in Company owned family dwellings (not including bunk houses) who elect not to purchase a lease in the

above designated area may remain in their existing residence for their lifetime.

- (ii) Should the Company decide to offer for sale any of these family dwellings the beneficiary of the right to reside shall be given the right of first refusal. As soon as the property is not used personally by the beneficiary of this paragraph, the use of the property will revert to the Company."

[39] As stated earlier it is not disputed that Mr. Adams is a qualified individual within the meaning of section 1. What is in dispute is whether Unit J is a Company owned family dwelling and whether section 12 (i) confers an automatic life tenancy.

[40] The phrase "Company owned family dwellings" was first used in Appendix IV of the 1989 Act. The phrase was not defined in the 1989 Act and it is also not defined in the 2002 Act.

[41] Mr. Alexander who is a consultant to the Company and who has been resident in Mustique and worked with the Company since October 1968 and was appointed Managing Director in 1979 testified that Mr. Colin Tennant in the 1960's had relocated the indigenous population on Mustique from Endeavour Point to Lovell Village where he constructed new houses for the people. When the development of Mustique began pursuant to the Agreement and the Act, several workers from St. Vincent were employed and the Mustique Company built several housing units to accommodate them. Unit J was one such housing unit. This evidence of Mr. Alexander was not challenged and I accept it. Mr. Alexander also testified that by 2002 all of the original houses built by Mr. Colin Tennant save two were sold. Of the two, one was earmarked for Mr. Vincent Hutchins and the other was being used by the Mustique Trust for its teachers. Mr. Alexander testified that only the original houses built by Mr. Colin Tennant are Company owned family dwellings. Mr. Adams on the other hand contends all of the dwellings owned by the Company in Lovell Village in which employees are housed are company owned family dwellings.

[42] It is not disputed that Unit J was not one of the houses built by Mr. Colin Tennant. Having regard to the documentary evidence, I find that Unit J is situate within Lovell Village.

[43] The relevant provisions in Appendix IV of the 1989 Act are sections 11, 12 and 14. They read as follows:

- "11. All buildings within the boundaries of Lovell Village not to be sold or used by the occupants of the village and in addition the three wooden bunk houses mentioned in paragraph 14 (iii) will be removed within three years of the coming into operation of the Agreement.
- 12. The Company will not build or maintain living accommodations within the boundaries of Lovell Village except when the purpose is for leasing to qualified individuals.
- 14. (i) Individuals qualifying under paragraph 1 (a) above at the date of this Agreement and living in Company owned family dwellings (not including bunk houses) who elect not to purchase a lease in the above designated area may remain in their existing residence for their lifetime, one plot will be kept available for each concerned family. Should the Company decide to offer for sale any of these family dwellings the beneficiary of the right to reside shall be given the right of first refusal. As soon as the property is not used personally by the beneficiary of this paragraph, the use of the property will revert to the Company.
 - (ii) The individuals here referred to shall notify the Company of their intentions within six months of the coming into effect of this Agreement. Within one month of the Company receiving such notification the Company shall inform the Government of the details of the person concerned.
 - (iii) Paragraphs 11 and 12 shall not apply to the areas where the properties referred to in paragraph 14 above are located except for the three used bunk houses that shall be removed within three years of the coming into operation of this Agreement."

[44] Section 14 (i) limited the application of the section to persons who were resident in Mustique before 1969 and continuously resident there since that date. Those persons were given special treatment. Those persons were not necessarily employees of the Company. The year 1969 is significant because that is the year when the first agreement between the Mustique Company and the Government was given the force of law. Under subsection (ii) the persons had to indicate their intention to the Company within six months whether they were interested in a lease or whether they wish to remain in their dwelling. It must be remembered that one plot was reserved for each such family. The Company was required to notify the Government of the details of the persons concerned.

[45] In Section 14 the 1989 Act, special provisions were made for a particular group of persons. In other words the residences referred to as Company owned family dwellings were limited to those dwellings occupied by persons who were resident in Mustique prior to 1969 and consistently resident there. Only those persons were given an option. A lot of land was reserved for each family. They could elect to purchase a lease or remain in their residence subject to the right of the Company to sell the property in which instance they were to be given the right of first refusal. The 1989 Act referred to some specific houses in Lovell Village thus 14(iii) specifically excluded the operation of sections 11 and 12 from those houses. Having regard to the evidence of Mr. Alexander which I indicated earlier was not contradicted, those houses could only be the houses built by Mr. Colin Tennant. Those houses were occupied by persons who were resident in Mustique prior to 1969. Special provisions were made for those occupants.

[46] Both Mr. Alexander and Mr. Pritchard testified that by 2002 the Colin Tennant houses were already sold, save two, of which one was earmarked for Mr. Hutchins and was subsequently sold to him and the other was occupied by the Mustique Trust for its teachers. The evidence of Mr. Adams does not differ materially. In paragraph 23 of his witness statement he states as follows:

"In 1964/65 Colin Tennant built ten houses in Lovell Village. Those houses are identified as AA, BB, CC, DD, EE, FF, GG, HH, II and JJ". When the Mustique Act 2002 took effect, seven of those houses were already sold, one was occupied by Mera James, one was given to the Mustique Educational Trust for teachers accommodation and another was rented to Basil Charles was earmarked for Vincent Hutchins".

[47] Mrs. Kay Bacchus-Browne contends that having regard to the evidence the phrase Company owned family dwellings in section 12 of the 2002 Act does not refer to the Colin Tennant houses but rather it refers to the accommodation in Lovell Village built by the Company for its employees. The company had agreed in the Social Development Plan outlined in the 1989 act to build accommodations for its permanent employees.

[48] Appendix IV of the 2002 act is slightly different from Appendix IV of the 1989 Act. The differences in the two Appendices are, in Appendix IV of the 2002 Act sections 11 and 12 of the 1989 Act are omitted and three amendments were made to section 14 of Appendix

IV of the 1989 Act which is now section 12 of Appendix IV of the 2002 Act. Section 12 reads:

- "12 (i) Individuals qualifying under paragraph 1 above at the date of this Agreement and living in Company owned family dwellings (not including bunk houses) who elect not to purchase a lease in the above designated area may remain in their existing residence for their lifetime.
- (ii) Should the Company decide to offer for sale any of these family dwellings the beneficiary of the right to reside shall be given the right of first refusal. As soon as the property is not used personally by the beneficiary of this paragraph the use of the property will revert to the company."

The amendments are:

- (a) Under section 14 of the 1989 Act only persons who were resident in Mustique prior to 1st January, 1969 were qualified persons, while under section 12 of the 2002 Act all three categories of persons in section 1 as amended are qualified persons.
- (b) The provision under the 1989 Act that one parcel of land had to be reserved for each family that qualified was removed. This was done because the persons who qualified under section 14 of the 1989 Act had to elect to purchase a lease within six months of the effective date of the Agreement between the Company and the Government.
- (c) Section 14 (iii) which specifically excluded the application of sections 11 and 12 of the 1989 Act to section 14 (1) was also not included in section 12 of the 2002 Act. This was due to the fact that sections 11 and 12 of the 1989 Act were not included in the 2002 Act.

[49] The question that arises is whether in view of the differences between section 14 and section 12, "Company owned family dwellings" has a different meaning in section 12 to that of section 14.

[50] The same term is used in both Appendices. The 1989 Act made special provisions of the indigenous families who occupied the Company's buildings prior to 1969. Hence the houses were referred to as "Company owned family dwellings". In 2002 based on the evidence of Mr. Adams three of those houses remained unsold. They were still owned by the Company. Those houses were no longer occupied by persons mentioned in section (1) (a). In my opinion if the Company and the Government in 2002 intended to deal with other

residences they would have used a different term in the Agreement. Further the development of Mustique is ongoing. It is not disputed that the Company has several employees and because of the location of Mustique the Company provides housing for their employees. In my opinion neither the Company and the Government nor the Parliament intended for persons who were not even employed by the Company but who were merely permanently resident and working continuously in Mustique from 1989 or who were born in Mustique and lived in buildings constructed by the Company for living accommodation for its employees to have an option to remain in the buildings. A careful reading of section 1 shows that a qualified person does not necessarily have to be a person employed by the Company. The evidence shows that there are other persons working in Mustique who are not employees of the Company.

- [51] Mr. Adams testified that in some instances members of family resided with an employee in the residence provided by the Company. In paragraph 13 of his witness statement Mr. Adams stated

“...From 1981-1983 my wife and I lived there. Other families live in the same dwelling...”

And at paragraph 24 Mr. Adams states:

‘I deny that workers in the village occasionally share units with family. In most cases workers who live in units which the Defendant refers to as “Employee Housing” have had their children attended school and have seen a second generation of children all living in the same unit’.

- [52] Thus if Mr. Adams' contention is correct that Company owned family dwelling means all of the living accommodations in Lovell Village built by the Company, it would mean that those family members who lived and worked in Mustique from January 1988 and those born in Mustique would have an option to remain in the Company's buildings if their parents resigned or retired and left Mustique, or died. In my opinion, having regard to the nature and purpose of the Act being for the development of Mustique which requires a continuous workforce who must be resident in Mustique it was not the intention of the Company and the Government nor the Parliament for Company owned family dwellings to refer to all of the Company's living accommodations in Lovell Village.

- [53] In view of the above, I find that "Company owned family dwellings" has the same meaning in section 14 of Appendix IV of the 1989 Act and section 12 of Appendix IV of the 2002 Act. It does not mean all of the living accommodations in Lovell Village that were built by the Company.
- [54] Notwithstanding my finding on the meaning of "Company owned family dwellings", I will consider the other provisions of section 12 of the 2002 Act.
- [55] I do not agree with the submissions of Mr. P.R. Campbell Q.C. that the phrase "a person who elects not to purchase a lease" means a person who has applied for a lease and was selected by the Company for the grant of a lease and the person elected not to purchase the lease. This would mean that a person who does not wish to purchase a parcel of land but is desirous of remaining in his residence would have to make an application to purchase a lease. The parties did not intend a qualified person to have to engage in such a futile exercise. When read in the context of Appendix IV the phrase means a person who has elected not to apply to purchase a lease.
- [56] The next question that arises is whether a person who qualifies under Section 1 and who is living in a Company owned family dwelling and is desirous of remaining in his residence automatically has an absolute right to remain in his residence for his lifetime.
- [57] Section 12 (i) and (ii) must be read conjointly. The right of a qualified person to remain in the existing residence is not an absolute right to remain for a lifetime, since the Company could decide to sell the building at any time, albeit the Company has to give the person a right of first refusal. Further, if the person fails to use the property personally, the property reverts back to the Company. In other words, a qualified person may only remain in the residence as long as the Company does not wish to exercise its right to sell the building. The right to remain in the residence is subject to the Company's right to sell the property. In view of the above, I find that Mr. Adams is not entitled to a declaration that he is entitled to remain in his existing dwelling, being Unit J for a lifetime.

CONCLUSION

[58] In conclusion, I find that based on the provisions of Section 1 of Appendix IV of the 2002 Act, Mr. Adams is qualified to obtain a lease of a lot of land in Lovell Village but he does not have an absolute right to be granted a lease, therefore he is not entitled to the relief of a mandatory order compelling the Company to grant him a lease of land in Lovell Village. I also find that Mr. Adams is not entitled to a declaration that he is entitled to reside in Unit J for a lifetime since the Company has a right to sell the building at any time it chooses to do so.

[59] While I find that the Claimant is not entitled to any of the reliefs sought, Part 64.6(2) permits the Court in some instances to make no order as to costs. Having regard to the nature of the matter, this being the first time that the Court was asked to interpret the provisions of the Mustique Company Limited Act, I am of the view that this is a fit case where no order as to costs should be made.

[60] It is ordered that:

- (a) The Claim is hereby dismissed.
- (b) Each party shall bear their own costs.


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Gertel Thom
HIGH COURT JUDGE