

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2006 - 03612

BETWEEN

PHILLIP LUCAS

CLAIMANT

AND

JOSEPHINE JORDAN

DEFENDANT



Before The Hon. Madam Justice Pemberton

Appearances:

For the Claimant: Ms M. Regrello

For the Defendant: Mr A. Manwah

REASONS

[1] CLAIMANT'S CASE

The Claimant approached the court for an Order for Possession by way of Fixed Date Claim Form and Statement of Claim filed 14th November 2006. In 1994, the Claimant became seised and possessed of the property in dispute. The Defendant was in occupation at that time. On June 15th 1994 an action was filed by the Claimant to evict the Defendant. The Claimant was successful in the action at the High Court by judgment of Mendonca J. as he then was. The date of that judgment was 2001. The decision was overturned in 2002 on the basis that the yearly tenancy of the previous tenant had not been extinguished and so the Claimant could not sustain an action to evict the Defendant. The court by Warner J.A. directed that a Notice to Quit had to be delivered to the

Administrator General. This notice was to take effect on December 31st 2003. Thus this tenancy was terminated. This notice was served on that date.

- [2] Thereafter a Notice to Quit was sent to the Defendant to take effect from October 2005. The Defendant has failed to quit and deliver up the premises in compliance with the Notice.

[3] **DEFENDANT'S CASE**

Defendant's case was laid out in an affidavit filed in these proceedings. The Defendant stated that she lived all her life at the premises - that is since 1942. She has no documentary evidence of her title but bases her claim on a conversation with her grandmother allowing her to remain on the premises. She contributed towards maintenance and repair of the house on the strength of that conversation. No bills or other evidence were submitted in support of that contention. As a result of such activities, and the conversation with her deceased grandmother Ms Jordan thought that she had an interest in the premises. She never paid rent to anyone since, she assumed the premises belonged to her.

[4] **ANALYSIS AND CONCLUSION**

Mr Manwah located his client's defence within Sections 3, 4 and 22 of the **REAL PROPERTY LIMITATION ACT**.

- [5] From the facts however the Defendant has not satisfied the very first requirement that she had occupied the premises **ADVERSE** to the right and interest of the paper title owner **UNINTERRUPTEDLY** for sixteen (16) years. Her original entry was lawful if her facts are to be relied upon, in that she was there at the behest of her grandparents. She was therefore given permission to be there. Her adverse occupation would have started at best from 2003, when Mr Lucas's disability had been cleared, that is termination of the existing yearly tenancy of the previous tenant by service of the notice to quit on the Administrator General.

- [6] I think that on her own pleadings the Defendant has not laid a factual basis for describing herself as someone holding adversely to the rights of the true owner for the required period of sixteen (16) years so as to nudge Sections 3, 4 and 22 of the **REAL PROPERTY LIMITATION ACT** into effect. She certainly could not be regarded as a tenant since no rent had ever passed from her to anyone else.
- [7] The Defendant therefore has no interest in the subject property which entitles her to remain in possession.
- [8] She has asserted (no evidence supplied though), that she has contributed to the repair and maintenance of the subject property. All that would entitle her is reimbursement of those sums at the very highest. There are no pleaded facts or evidence on affidavit. That this case falls into the **ERRINGTON & ERRINGTON v WOODS** class is doubtful so that any approach for reimbursement would have to be made carefully.
- [9] In keeping with the court's mandate at Part 26, I now say that the Defendant by her own affidavit has not shown that she can defend this matter successfully. In the premises I make the following Order:
- (1) That there be judgment for the Claimant against the Defendant.
 - (2) That the Claimant is entitled to possession of the parcel of land described in the Statement of Case filed herein.
 - (3) That the Defendant do quit and deliver up possession of the said premises within six (6) months of the date of this Order.
 - (4) That the Defendant do pay the Claimant's costs prescribed in the sum of \$7,700.00.

Dated this 30th day of July 2009.

/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE