THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2015-00666

BETWEEN

RAJENDRA JAMOUNA

BOOLAMUATH SONNY

HARRYNARINE RAMESH

FRANK JAGROO

KRISHANA RAMLOCHAN

BALRAJ PERSAD

SUKHIYA RAMDIAL

RATTAN JAGROO

Claimants

AND

DARIO DES ETAGES

Defendant

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Claimants: Mr. Haresh Ramnath.

Defendant: Mr. Ronnie Persad instructed by Ms Amina Hasnain-Mohammed.

Date of Delivery: 6TH July, 2017.

DECISION ON PRELIMINARY ISSUES

BACKGROUND.

1. The Claim, CV2015-00666 was filed on 3rd March, 2015. The Claimants alleged that they have been tenants of about eight acres and two lots of land called the Rambert Estate (hereinafter referred to as "the disputed lands"). For upwards of sixty years, the Claimants have been paying rent to agents of the Rambert family, until the Defendant, as an agent of the Rambert family started collecting the rent. In March, about the 12th, 13th and 14th March 2005, the Defendant's servants and/or agents, with a bulldozer, damaged and destroyed dwelling homes and crops of the Claimants. The Claimants claim against the Defendant:

    i. Damages for trespass;
    ii. Aggravated and or exemplary damages;
    iii. A declaration that the Claimants are statutory tenants under the **Land Tenants (Security of Tenure) Act**[1] and or Agriculture Small Holdings Tenure Act[2];
    iv. An injunction restraining the Defendant and or his servants or agents or otherwise whosoever from entering or remaining or continuing in occupation or using the said lands or from destroying any crops or buildings thereon or from interfering with the Claimants use and occupation thereof from commencing or continuing any building or other works upon the said land or from threatening or using force or intimidating against the Claimants and;
    v. A declaration that Deed registered as Deed No. DE200100235699 is void for fraud.
    vi. Cost.
    vii. Such further or other relief as the Court may deem fit in the circumstances.

2. The Defendant in his defence filed on the 19th August, 2016 at paragraphs one to three submitted that the claim ought to be struck out and or be dismissed on the grounds that:
    i. The Claim is an abuse of process;
    ii. The issues encompassed by this claim are subject to the principles of estoppel;
    iii. The Claimants' Statement of Case, wholly or in part disclosed no grounds for bringing the claim and

[1] Chapter 59:54
[2] Chapter 59:53

iv. The Claimants claim is barred by the provisions of the **Limitation of Certain Actions Act**[3] **(**hereinafter referred to as the Limitations Act) and or the doctrine of laches.

3. On the 21st February, 2017 Justice Gobin ordered that the Defendant file and serve an affidavit in support of the abuse of process argument along with written submissions on the preliminary points on or before the 7th April, 2017. It was also ordered that the Claimants filed their affidavit and submissions in response on or before 19th May, 2017.

4. Both parties complied with this order.

PRELIMINARY ISSUES

5. The preliminary issues identified by the Defendant are as follows:

   i. Is the claim or any part thereof, barred by the **Limitations Act** or the doctrine of laches;

   ii. Should the Claimants' Statement of Case be struck out on the grounds that it discloses no grounds for bringing the Claim and in particular, for seeking the following declarations, namely:

      a. A declaration that the Claimants are [or any of them is] entitled to statutory tenancy under the **Land Tenants (Security of Tenure) Act 1981**[4] **(hereinafter referred to as the Land Tenants Act)** and or the **Agricultural Small Holdings Tenure Act 1961**[5].
      b. A declaration that the Defendant's deed is void for fraud.

   iii. Is the present claim an abuse of the process of the court; and or the issues encompassed by it subject to the principles of estoppel, by virtue of the fact that the Claimants had previously instituted virtually identical proceedings against the Defendant [the previous action], which was dismissed under **RSC Order 3 Rule 6A**.

[3] Chapter 7:09
[4] Chapter 59:54
[5] Chapter 59:53

PREVIOUS PROCEEDINGS

6. The writ for the previous action, **No. 693 of 2005,** was filed on March 18th, 2005. The Plaintiffs in that matter were Rajendra Jamuna Bharose, Bhawan Partap, Boolaunath Sonny, Harrynarine Ramesh, Frank Jagroo, Krishna Ramlochan, Balraj Persad, Sukhiya Ramdial and Rattan Jagroo. The Defendant in the previous action was Dario Des Etages.

7. On that date, March 18th 2005, an application for an injunction was made to restrain the Defendant whether by himself his servants and/or agents or otherwise howsoever from entering or remaining on or continuing in occupation or using the said lands or from destroying any crops or building thereon or from interfering with the Plaintiffs' use and occupation thereof or from commencing or continuing any building or other works upon the said lands or from threatening or using force or intimidation of the Plaintiffs pending the determination of this action or until further order. The application for the injunction was accompanied by an affidavit of Krishna Ramlochan.

8. On the 21st April, 2005 the Defendant entered an appearance. On 20th May, 2005 the Defendant filed an affidavit in response to the affidavit of Krishna Ramlochan. The Defendant gave an undertaking in terms of paragraph 1 of the application for the injunction.

9. On 14th June, 2005 one of the Plaintiffs Bhawan Partap filed a Notice of Discontinuance. On 28th June, 2005 Krishan Ramlochan filed an affidavit in response to the affidavit of the Defendant. Krishna Ramlochan filed another affidavit on 16th September, 2005.

10. On 3rd April, 2006 the Plaintiffs' attorney filed the statement of disputed facts and issues. The Statement of Claim was filed on 23 July, 2010.

11. On the 21st January, 2014 the Defendant filed an Application for an order that the Claimants application for an injunction be dismissed.

12. On the last court date, the 6th November, 2014 the Court records reflect that the attorney who appeared for the Claimants informed the Court that the matter was automatically dismissed pursuant to **Order 3 Rule 6A**.

THE MATTERS COMPARED

13. The Court has taken note of the following with regard to the previous proceedings **No. 693 of 2005** and the current proceedings **CV 2015-00666**:

    i. The parties in both claims are identical. (In the first claim there was an additional Plaintiff however, he filed a notice of discontinuance on 14th June, 2005). This former Plaintiff was not named in the current proceedings;

    ii. The reliefs sought in both claims are identical;

    iii. The Statement of Claim and Statement of Case in both matters are almost identical. The differences between the Statement of Claim filed in **No. 693 of 2005** and the Statement of Case filed in **CV 2015-00666** are very few; and

    iv. The same issues that arose in the previous action, arise in this proceeding.

ISSUE 1: IS THE CLAIM BARRED BY THE LIMITATION ACT 2004

Defendant's Submissions

14. The Defendant raised the limitation defence in respect of the Claimants both causes of action (trespass to land and fraud). The Defendant submitted that:

    i. The tort that the Claimants are alleging occurred in March 2005 and the fraud claim was reasonable discoverable in 2001. Therefore, this claim (which was filed in March 2015) was not filed within the period set out in the **Limitation Act 2004**. In this regard the Claimant relied on **sections 3 (1) and 14 (1) Limitation Act**.

    ii. Alternatively, the claim to have the deed set aside is barred by the doctrine of laches.

Claimants' Submissions

15. The Claimants submitted that the trespass to the land is a continuing cause of action. The trespass started in 2005, however the Defendant's placing of the "No Trespass" sign on the land makes the entering and interference a continuing one. The Claimants further contended that the Defendant at paragraph 24 of his

affidavit filed on the 6th April, 2017 admitted that after the 6th November, 2014 he entered the land from time to time to clean same. This admission the Claimants averred is an admission to trespass.

Trespass to the land

16. Firstly, I would consider whether the Claimants' claim to trespass to land is barred by the **Limitation Act**.

17. **Section 3. (1) Limitation Act** provides as follows:

> *"The following actions shall not be brought after the expiry of four years from the date on which the cause of action accrued, that is to say:*
>
> *a) actions founded on contract (other than a contract made by deed) on quasi-contract or in tort;*
>
> *b) actions to enforce the award of an arbitrator given under an arbitration agreement (other than an agreement made by deed); or*
>
> c) *actions to recover any sum recoverable by virtue of any enactment."*

18. In this case it is undisputed that the alleged trespass complained of by the Claimants would have occurred in March and April, 2005. At paragraph 7 of the defence, the Defendant admitted that on his instructions a bulldozer and tractor entered the land on the 12th March, 2005 to clear same. The Defendant however denied allegations of damage to houses, pillars, floor parts and or crops arising from the clearing process. Further at paragraph 23 the Defendant admitted that the disputed lands were cleared on the 12th, 13th and 14th March, 2005. The Defendant at paragraph 25 also admitted that he entered the disputed lands several times between 14th March, 2005 to 18th April, 2005.

19. The Defendant in his affidavit at paragraph 24 filed on 6th April, 2017 admitted that after the last hearing date of the previous action (6th November, 2014) he entered the disputed land from time to time to clear same. The Claimants contended that this is an admission to trespass. I have noted that in the Claimants pleadings there are no allegations of trespass occurring in November, 2014.

20. The Claimants in their pleadings only pleaded particulars of trespass in 2005. According to the Claimants' pleadings the trespass would have occurred in March and April, 2005 and continued as "No Trespass" signs were erected on the

disputed land. At paragraph 20 of the Claimants Statement of Case it was stated that:

> *"On the 14th March, 2005 the Defendants and/or his servants and/or agents erected a sign which read **"NO TRESPASSING"**.*

21. The Defendant in the defence did not respond to this allegation. In determining how I should treat with this I was guided by **MI.5 Investigations Limited and Centurion Protective Agency Limited**[6] Mendonca JA stated:

> *"Where a defence does not comply with Rule 10.5 (4) and set out reasons for denying an allegation or a different version of events for which the reasons for denying the allegation will be evident, the Court is entitled to treat the allegation in the claim form or statement of case as undisputed or the defence as containing no reasonable defence to that allegation".*

22. Accordingly, the Claimants claim that the "No Trespass" sign erected would be treated as undisputed. This is important as the Claimants are relying on this to prove that the trespass to the land is a continuing trespass.

23. In the text **Clerk and Lindsell on Tort**[7] the authors distinguished the two types of trespass to land.

- At Paragraph 31-19 the authors stated:
  " Whenever one person wrongfully puts something upon the land of another, he is not only liable to pay damages for the trespass in placing the thing there, but he is also under an obligation to remove it, and is guilty of a continuing trespass as long as he fails to do so".

- At Paragraph the authors 31-20 stated:
  "A continuing trespass must be distinguished from the consequences of trespass which, in accordance with the rules explained above, must be compensated for once and for all. Thus where a man wrongfully interferes with another's land otherwise than by placing some foreign substance on it, as for instance where he digs a hole in it, although such interference may, as a consequence of the trespass, create a continuing source of injury, he is liable only to pay compensation for the original trespass, and is under no further obligation to prevent the continuance of the state of things which he created".

[6] Civil Appeal No. 244 of 2008 at paragraph 10
[7] 21st edition page 2178

24. The Defendant relied on **Halsbury's Laws of England Volume 97[8].** The **authors stated:**

> "*It may be necessary to distinguish between continuing trespass and the continuing effects of a trespass. Continuing trespass occurs when a person who is or has become a trespasser remains on the land as a trespasser or when objects placed on or intruding into land by way of trespass remain unremoved. In these circumstances, a new trespass is committed from day to day, successive actions may be brought and the trespasser can be required to remove any trespassing material. The occupier may be entitled to damages resulting of intrusion from trespassory intrusion before he went into occupation.*
>
> *Where there are continuing effects of trespass there is one act of intrusion or contact causing persisting damage but no continuing trespassory contact or intrusion. Damages must be assessed in a single action and the trespasser cannot be required to make good the harm. The distinction between a continuing tort and the continuing effects of the tort may affect limitation.*
>
> *Footnote 7: Analogy with other torts suggests that, in the case of continuing effects, time runs from the commission of the tort, but* ***in the case of a continuing trespass time runs from day to day as long as the trespass continues***"[emphasis mine].

25. The present proceedings was commenced on 3rd March, 2015, ten years after the Defendant is alleged to have trespassed on the disputed lands. **Section 3 (1) Limitation Act** gives a period of four years for an action to be brought. In this case this is six years after the period prescribed by the legislation. The Claimants contended that the cause of action continues to be actionable based on the continued trespass. If the "no trespassing" sign or signs that were erected by the Defendant and or his servants or agents were erected on all or any parcel of land occupied by any one or more of the Claimants, that that would amount to a continuing tort by the Defendant and so the case of action would arise each and every day once the "no trespassing' sign or signs remain.

26. Paragraph 20 of the Claimants statement of case speaks to one sign being erected. However, in the affidavit of Rajendra Jamouna filed 16th May, 2017, at paragraph 7 he deposed:

> "*Up to a few days ago I observed that a sign is still there. There are about three such signs on different locations.*"

[8] (2015) 5th Edition, paragraph 569 and footnote 7.

The deponent is unclear as to whether there is one sign that he observed or more than one sign up to a few days ago.

27. The evidence and pleadings before me indicate that there may be a sign or signs still erected. However the location of the sign or signs is not known. Were the signs on lands of any one or more of the parcels of lands occupied by any one or more of the Claimants? If the "no trespassing" signs are on the lands of any one or more of the Claimants then for those Claimants there may be a cause of action because of a continuing tort. The Claimants were very clear in identifying paragraphs 3 to 10 of their Statement of Case the specific acts that amounted to a tort and the alleged damage and loss suffered. In none of those paragraphs did the Claimants identify the erection or planting of "no trespassing" sign or signs on the lands they occupied.

28. The Court cannot find a continuing tort on any one, or more, of the Claimants so as to decide that there is a cause of action subsisting for any one or more of them.

29. The tort otherwise complained of – by the entering on and the bulldozing of the lands and damaging and destroying property and crops, all occurred in 2005. These are not continuing torts, liability if any, would lie for those intrusions that occurred. Since the acts complained of occurred in 2005, they are statute barred pursuant to **section 3. (1) Limitation Act.**

Fraud

30. I now turn to the other part of these issues, whether the cause of action regarding fraud is barred by the **Limitation Act**. The Claimants are seeking a declaration that deed No. DE200100235699 is void for fraud.

31. **Section 14(1) Limitation Act** provides a postponement of limitation period in cases of fraud, concealment or mistake. **Section 14 (1) Limitation Act** provides as follows:

> 14. "*(1) Subject to subsection (3), where in the case of any action for which a period of limitation is prescribed by this Act, either –*
>
> *a) the action is based upon the fraud of the defendant;*
>
> *b) any fact relevant to the plaintiff's right of action was deliberately concealed from him by the defendant; or*

c) the action is for relief from the consequences of a mistake,

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it".

32. I am guided by **Halsbury's Laws of England**[9]

> *"The standard of diligence which the claimant needs to prove is high, except where he is entitled to rely on the other person; however, the meaning of 'reasonable diligence' varies according to the particular context.In order to prove that a person might have discovered a fraud, deliberate concealment or mistake with reasonable diligence at a particular time, it is not, it seems, sufficient to show that he might have discovered the fraud by pursuing an inquiry in some collateral matter; it must be shown that there has been something to put him on inquiry in respect of the matter itself and that if inquiry had been made it would have led to the discovery of the real facts. If, however, a considerable interval of time has elapsed between the alleged fraud, concealment or mistake and its discovery that of itself may be a reason for inferring that it might with reasonable diligence have been discovered much earlier".*

33. In **Allison and another v Horner**[10] the Court of Appeal discussed UK section 32 Limitation Act which is the identical to **section 14 (1) Limitation of Certain Action Act** stated:

> *"The first part of the test under s 32(1) of the 1980 Act was not whether the fact that the fraud was 'obvious', but whether or not the claimant had, in fact, discovered it. The second part of the test was not whether the claimant 'should have known' of the fraud, but whether he 'could have known' of it and the burden was on the claimant to show that he could not have known of it except by taking exceptional measures which it was not reasonable in the circumstances to expect him to take "*

34. I would now consider the pleadings of the Claimant regarding cause of action for fraud to determine whether **section 14 (1) Limitation Act** is applicable to this matter.

[9] Limitation Periods Volume 68 (2016), 1223
[10] [2014] EWCA Civ 117

Pleadings

35. The Claimants at paragraphs 12 of the Statement of Case pleaded:

> "*Sometime in 2001 some of the Defendants (should be Claimants) received a letter dated 15th March, 2001 from Winston Seenath, then Attorney-at-Law for the Defendants which stated inter alia that in November, 2001, the Defendant became the registered proprietor of the lands which the Claimants occupied*"

36. The Statement of Case at paragraph 16 then specifies that in 2001 Krishna Ramlochan and Harrynarine Ramesh were the Claimants who received the letter. The pleadings are silent on whether any of the other Claimants also received the letter.

37. At paragraph 14 of the Statement of Case the Claimants stated that a search was conducted at the Registrar General's Department where a deed was uncovered dated 13th November, 2000 made between Claudius Des Etages as "Donor" and Dario Des Etages as "Donee". However, the pleading is silent on who undertook this search and the date that this search was done.

38. The Court at this stage of proceedings does not intend to make a determination on the issue of fraud. The Court is simply determining whether the Claimants have filed the action within the prescribed limitation period.

39. **Section 14 (1) Limitation Act** allows the period of limitation to run from the date that the fraud was discovered or could with reasonable diligence have been discovered.

40. In this case **section 14 (1) (a) Limitation Act** is satisfied as the action is based on fraud. The Claimants' pleaded case is that two of the Claimants would have received letters indicating when the Defendant became the landlord of the disputed lands. **Section 14 (1) Limitation Act** provides that:

> "*the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it*".

41. In **Halsbury's** discussed above it was stated that '*reasonable diligence*' *varies according to the particular context.In order to prove that a person might have discovered*

a fraud, deliberate concealment or mistake with reasonable diligence at a particular time, it is not, it seems, sufficient to show that he might have discovered the fraud by pursuing an inquiry in some collateral matter; ***it must be shown that there has been something to put him on inquiry in respect of the matter itself and that if inquiry had been made it would have led to the discovery of the real facts****.[emphasise mine]*

42. In this case the Claimants pleaded that they were the tenants of Rambert. The letter that indicated that the Defendant is now the landlord can be viewed as the thing that put the Claimants on inquiry. In my view this is the case and this could be supported by the fact that at paragraph 14 the Claimants undertook a search at the Registry subsequent to receiving the letter. At the latest, the previous action filed in 2005, can also be viewed as another thing that put the Claimants on notice.

43. In view of the foregoing, the limitation period for this matter would have begun to run in 2001 or at the latest in 2005. There is nothing before me to suggest otherwise. Therefore, the limitation period for this action would have expired in 2005 or at the latest in 2009.

44. I am also of the view that the Claimants' have not pleaded any facts in its Statement of Case or Reply to bring themselves outside the provisions of the Limitation Act.

45. The Defendant's defence of limitation has been established. The Court's decision on issue 1 makes the determination of issues 2 and 3 largely academic.

ISSUE 2: STRIKING OUT THE CLAIMANTS' STATEMENT OF CASE

46. The issue specifically identified by the Defendant is that the Claimants' Statement of Case or part thereof be struck out on the grounds that it discloses no grounds for bringing the Claim and in particular for seeking the following declarations:
    i. A declaration that the Claimants are or any of them is entitled to a statutory tenancy under the **Land and Tenants Act** and or **Agricultural Small Holdings Tenure Act.**

    ii. A declaration that the Defendant's Deed is void for fraud.

47. The relevant parts of the **Civil Proceedings Rules (hereinafter referred to as "CPR")** our hereinafter outlined:

    i. **Rule 26.2(1) (c) CPR** provides that-

    (1) "The Court may strike out a statement of case or part of a statement of case if it appears to the court–

    (c) that the statement of case or the part to be struck out discloses no grounds for bringing or defending a claim;"

    ii. **Rule 8.6 CPR** provides that

    (1) "The claimant must include on the claim form or in his statement of case a short statement of all the facts on which he relies.

    (2) *The claim form or the statement of case must be identify or annex a copy of any document which the claimant considers necessary to his case*".

48. According to **Zuckerman on Civil Procedure Principles of Practice**[11] the authors stated:

    "*The full pre-trial and trial process is appropriate and useful for resolving serious or difficult controversies, but not where a party advances a groundless claim or defence or abuses the Court process. There is no justification for investing Court and litigant resources in following the pre-trial and trial process where the outcome is a foregone conclusion. In such cases the Court has therefore the power to strike out the offending claim or defence and thereby avoid unnecessary expense and delay .*"

49. **The University of Trinidad and Tobago v Julien and Others**,[12] Kokaram J. considered an application to dismiss a claim pursuant to **Rule 26.2 (c) CPR** or alternatively, pursuant to **Rule 15.2 (b)** on the basis that there was no realistic prospect of success on the claim. Kokaram J stated[13]:

    "*Essentially, at the risk of over simplifying the relevant tests and the nuances of interpretation of the respective rules, the primary caveat in considering these applications is that the Court should not conduct a mini trial without giving the*

[11] 3rd edition page 373, paragraph 9.36
CV No. 2013-00212
[13] Paragraph 5

parties ample opportunity to present their evidence through witness statements, the process of disclosure and further information. In considering these applications which I shall conveniently refer to collectively as "applications to dismiss a claim", the Court is engaged in an exercise of discretion to give effect to the overriding objective. In so doing it seeks to achieve what is just in the circumstances of the case which invariably is to arrive at a decision which is not only economical in light of saving expense and properly allocating the parties' and Court's resources, but also giving due regard to equality of arms and proportionality of orders in the overall management of a case. One also bears in mind that trial dates are no longer shrouded in mystery or lies beyond the litigant's reach in the far horizon. Under the CPR trial dates are fixed and achievable in a relatively short space of time. A Court is therefore always anxious not to strike out a claim prematurely. It is in this context that I view the well known tests of whether a claim discloses a ground for bringing the claim or whether there is any prospect of success in the claim. Both parties must be protected: the Claimant from being prematurely driven from the seat of judgment when its case deserves fuller investigation or the Defendants from expending unnecessary resources in defending a claim which is unmeritorious".

50. In **Export-Import Bank of Trinidad and Tobago v Water Works Limited and Others**[14], Jones J, applied the decision of the Court of Appeal in **Real Time Systems v Renraw Investment Limited and others**[15] stated at paragraph 10-11:

> "*The Real Time decision, therefore, requires the Court to perform a delicate balancing act so as to determine whether the facts presented establish a complete cause of action but are merely lacking sufficient particulars to allow a Defendant to properly defend the case or whether the lack of particularity has resulted in the Claimant failing to establish a complete cause of action.*
>
> *It would seem to me that what is required is a consideration of whether the facts pleaded by the Claimant establish a cause of action with respect to the various claims. If a cause of action is established but the claim lacks particularity, then an order for further and better particulars is usually appropriate. If, however, no cause of action is established or the claim is groundless, in the sense of having no merit or being doomed to fail in any event, then particulars of the pleading will not assist and an order for further and better particulars is inappropriate."*

[14] CV No. 2010-03594
[15] CV 2010-01412

51. Finally in **Beverley Ann Metivier v The Attorney General of Trinidad and Tobago and others**[16] Kokaram J explained at paragraph 4.7 and 4.8 stated:

> *"Of course, the power to strike out is one to be used sparingly and is not to be used to dispense with a trial where there are live issues to be tried. A. Zuckerman observed: "The most straightforward case for striking out is a claim that on its face fails to establish a recognisable cause of action… (Eg. A claim for damages for breach of contract which does not allege a breach). A statement of case may be hopeless not only where it is lacking a necessary factual ingredient but also where it advances an unsustainable point of law"*

52. Bearing these authorities in mind, I would now consider whether the Claimants' Statement of Case should be struck out as it discloses no grounds for the areas identified below.

A declaration that the Claimants are entitled to a statutory tenancy under the Land Tenancy Act

53. The Defendant submitted that a claim cannot be made simultaneously under both **Land and Tenants Act** and the **Agricultural Small Holdings Tenure Act**. This is so as **section 3 (2) Land and Tenants Act** specifically excludes agricultural lands. The Defendant averred that the Claimants in their pleadings did not identify whether they are claiming to be tenants under the **Land and Tenants Act** or the **Agricultural Small Holdings Tenure Act**.

54. The Defendant further contended that under **section 4 (2) Land and Tenants Act** a statutory lease originally established would have expired on 31st May, 2011. Further, according to section **4 (3) Land and Tenants Act** the tenant was required to serve a written notice of renewal on or before expiry. The Defendant contended that a crucial part of the Claimants case would have been alleging and proving that the tenancies have been renewed in accordance with the Act. This is not contained in the Statement of Case, therefore it does not comply with **Rule 8.6 CPR**.

55. The Defendant also averred that as the Claimants did not set out these facts or annex evidence to prove that the alleged tenancy they may have had under the **Land and Tenants Act** was renewed then there is no ground for bringing this part of the claim.

[16] HC. 387/2007

56. The Claimants did not make any submissions on this point.

The Pleadings

57. The pleadings in the Claimants' Statement of Case that relate to the Statutory Tenancy are as follows:

    i. Paragraph 1" *The parents and grandparents of the Claimants have been in occupation of about Eight Acres and Two Lots of land called the Rambert estate owned by the Rambert family for upwards of 60 years paying rent to Rembert's agents. These lands are situated at Church Street, Rambert Village. The Claimants' herein who rented lands from Rambert family are the children and grandchildren of their parents and grandparents*".

    ii. Paragraph 3: "*.....Rent was paid by the Bharose family from 1930 to 11th March, 1996".*

    iii. Paragraph 4: "*.....Sonny Jagroo paid rent from 1955 to 1991 to the Rambert Family's rent collector*".

    iv. Paragraph 5: Harrynarine Ramesh and family paid rent regularly from 1956 to 2001.

    v. Paragraph 6: Frank Jagroo rented one house lot and one acre cane land. (The pleadings are unclear as to when the tenancy would have started and up to what date he paid rent).

    vi. Paragraph 7: Krishna Ramlochan and family rented two acres of land. (The pleadings are unclear as to when the tenancy would have started and up to what date he paid rent).

    vii. Paragraph 8: Balraj Persad rented one lot of land. (The pleadings are unclear as to when the tenancy would have started and up to what date he paid rent).

    viii. Paragraph 9: Sukhiya Ramdial rented one acre of land and rent was paid regularly from 1940 to 2000.

ix. Paragraph 10: Rattan Jagroo paid rent from 1967 to 2000.

The Claimants' Reply to the Defence

58. Paragraph 6 of the Claimants' reply to the Defence states:

> *"In reply to paragraph 3 of the Defence.....further that the tenancy protection afforded under the land tenants security of tenure act extends to tenants at will and tenants at sufferance. They were therefore at the material times entitled to protection from the act complained off".*

59. Annexed to the Claimants' reply to the Defence are receipts. Some of these receipts were signed by George Des Etages and Claudius Des Etages.

The Affidavit of Rajendra Jamouna

60. The affidavit deposed to by Rajendra Jamouna filed on 19th May, 2017 at paragraph 9 he stated:

> "I *say further in reply to paragraphs 34-37 that whether there was a tenancy for the building lot and for agricultural land and whether same was renewed or not is not a matter or concern for the Defendant as he nor his family were the landlords and is not an issue between the Claimants and him".*

61. To determine whether the pleadings of the Claimants establishes a cause of action I would consider the **Land Tenants Act** and the requisite sections. The following are the relevant sections:

> *'3. (1) Subject to subsection (2), this Act applies to tenancies in respect of land in Trinidad and Tobago on which at the time specified in section 4(1) a chattel house used as a dwelling is erected or a chattel house intended to be used as a dwelling is in the actual process of being erected. (2) This Act does not apply to –*
>
> *(a) a tenancy of agricultural land;*
>
> *4. (1) Notwithstanding any law or agreement to the contrary but subject to this Act, every tenancy to which this Act applies subsisting immediately before the appointed day shall as from the appointed day become a statutory lease for the purposes of this Act.*

(2) A statutory lease shall be a lease for thirty years commencing from the appointed day and, subject to subsection (3), renewable by the tenant for a further period of thirty years.

(3) In order to exercise the right of renewal conferred by subsection (2), the tenant shall serve on the landlord a written notice of renewal on or before the expiration of the original term of the statutory lease.

(4) Upon service of the notice by the tenant under subsection (3), the statutory lease shall be deemed to be renewed for a period of thirty years subject to the same terms and conditions and to the same covenants, if any, as the original term of the statutory lease but excluding the option for renewal.

(5) Nothing in this section shall operate so as to affect any mortgage, charge or security existing at the appointed date upon any land the subject matter of a statutory lease and such mortgage, charge or security shall attach to the statutory lease".

For the purposes of the Act the appointed day is 1st June, 1981. Further in this Act a tenant is defined as:

"tenant" means any person entitled in possession to land under a contract of tenancy whether express or implied, and whether the interest of such person was acquired by original agreement or by assignment or by operation of law or otherwise; and includes a tenant at will and a tenant at sufferance and "tenancy" shall be construed accordingly".

62. In considering whether to strike out the Claimants case "I must assume that what is alleged in the Claimants Statement of Case are true and represents the Claimants best case"[17]. The Court has to determine whether the Claimants established a complete cause of action. In my view the pleadings were deficient as it does not contain necessary factual ingredients to establish which tenancy they were relying on. I am of the view that the pleadings needed a statement stating under which Act each of the Claimants were claiming a tenancy. This is essential as the **Land and Tenants Act** specifically excluded a tenancy of agricultural land.

63. The Second deficiency is that the Claimants did not plead that the tenancy was renewed on or before the time stipulated by the statute. The case of **Ian Simon**

[17] Paragraph 32 Cecily Legall- Busby and Gail Valentine and another CV 2013-02881

and Jean Pollonais and others[18] Justice Boodosingh considered whether a tenancy had expired due to the Defendants' failure to exercise their rights to renew the tenancy. The Judge considered **section 4 (3) Land and Tenants Act** and determined at paragraph 26 that the statutory lease expired by operation of law as the notice was not served within the prescribed time. This case illustrated that the continuity of a tenancy after thirty years under the act is dependent upon the tenant exercising their right to renew the tenancy as stipulated by the Act.

64. Given the deficiencies outlined above I now have to ask myself whether the facts as presented establishes a complete cause of action but merely lacks particulars. The Court is mindful that in making this determination it must balance the interest of the both parties.

65. I am of the view that a cause of action is not established. The Claimants wants the Court to make a declaration that they are entitled to a statutory tenancy. However, nowhere in the pleadings is it alleged that the tenants renewed the tenancy on the date stipulated by the Act. Similarly, no supporting documents were attached to the Statement of Case to establish same. Accordingly, the Court is constrained to strike out this part of the claim.

A declaration that the Claimants are or any of them is entitled to a tenancy under the Agricultural Small Holdings Tenure Act.

66. I am guided by the relevant sections of the **Agricultural Small Holdings Tenure Act.** These sections provides as follows:

> ***3.*** *(1) Notwithstanding any law or agreement to the contrary but subject to this Act, a contract of tenancy of a small holding, whether written or oral, shall –*
>
> *a) in the case of a small holding of cane land, be deemed to be a contract of tenancy for a term of five years;*
> *b) in the case of a small holding of banana land, be deemed to be a contract of tenancy for a term of five years;*
> *c) in the case of a small holding of rice land, be deemed to be a contract of tenancy for a term of three years;*
> *d) in the case of a small holding of market garden land, be deemed to be a contract of tenancy for a term of one year; and*
> *e) in the case of a small holding of an arboreal plantation, be deemed to be a contract of tenancy for a term of ten years.*

[18] CV 2011-2629

(2) For the purposes of subsection (1) the term of years therein limited for a contract of tenancy shall be computed from the date the contract of tenancy was entered into or extended or renewed, as the case may be.

(3) This section applies in respect of any land of the kind mentioned in subsection (1) that is deemed to be a small holding under section 2 (2).

***5.** (1) A contract of tenancy shall be evidenced by an instrument in writing called, in this Act, the tenancy instrument.*

(2) The tenancy instrument shall contain the names and addresses of the parties, the rent provided for, and the place at which the rent is to be paid, the purpose of the tenancy, the term of the contract of tenancy and such other particulars as may be prescribed.

(3) The tenancy instrument shall be in such form as may be prescribed and shall be signed by the parties thereto and attested before a justice of the peace.

(4) This section does not apply to a contract of tenancy of a small holding that was entered into before the commencement of this Act.

***8.** (1) A contract of tenancy of a small holding may be extended or renewed from time to time.*
(2) A tenant of a small holding who, for the term of his contract of tenancy –
(a) has cultivated the small holding in a manner consistent with the practice of good husbandry; and

(b) has committed no breach of the contract of tenancy, is, subject to the provisions of this Act relating to the termination of a contract of tenancy, entitled at the end of the term of the contract of tenancy to an extension of the contract of tenancy for a like term, and similarly at the end of that term or any subsequent extended term of the contract of tenancy.

(3) The aggregate of the original period of a contract of tenancy and the periods of extension thereof shall not, except with the consent in writing of the landlord, exceed twenty-five years.

(3) The Defendant submitted that the Claimants ought to have facts to show that the term of the tenancies extended after the initial term. The Defendant contended that the tenancies under the **Agricultural Small Holdings Tenure Act** have long expired given when each of the tenancies where created.

67. Similarly, I am of the view that the pleadings regarding tenancy under the **Agricultural Small Holdings Tenure Act** are deficient as it lacks essential factual ingredients. The pleadings did not identify the type of tenancy each of the Claimants were relying on. Further, the Claimants did not annex the tenancy instrument or any consent for an extension of time that is required under this Act. Accordingly, I am of the view that a cause of action has not been established and this part of the claim is also struck out.

ISSUE 3: ABUSE OF PROCESS

Defendant's Submissions

68. The Defendant submitted that the present claim is the same as the previous action filed by the Claimants (**No. 693 of 2005**). The both claims had the same parties, both Statement of Claim and the Statement of Case are virtually identical and the same reliefs are sought. The previous claim was automatically dismissed pursuant to **RSC Order 3 Rule 6A**.

69. The Defendant contended that the automatic dismissal of the claim pursuant to **RSC Order 3 Rule 6 A** should be treated in the same way as striking out of a claim on the grounds of inordinate and inexcusable delay and or for want of prosecution. The Defendant averred that the Court should take the approach outlined in **Secrum Finance Ltd v Ashton and Another**[19]**.**

70. The Defendant submitted that the Claimant had to demonstrate why the claim should not be struck out as an abuse of process. Further, the Claimants have to identify some special reason for bringing the second claim.

71. The Defendant averred that the Court should take the following into consideration when deciding whether the matter should be struck out:

    i. The previous claim was actively case managed between April 2005 and 10th November, 2008. During this period several directions were given and a trial date was fixed. After this there was inactivity by the Claimants until July, 2010. The present claim contains no fresh allegations or different reliefs. The Claimants were given sufficient opportunity to pursue the action on the first occasion.

[19] [200] 3 WLR 1400

ii. The Defendant gave an undertaking at the first hearing which was 21st April, 2005 inter alia, not to enter upon, use or continue any works on the disputed lands until further order. No further order was given, as such the Defendant was deprived of using the disputed lands until November, 2014.

iii. The Statement of Claim for the previous action was filed five years after the Writ of Summons was issued. There is no evidence that the Statement of Claim was served on the Defendant's attorney, therefore the Defendant was unaware of some aspects of the claim and was only notified of same when the present action was filed.

iv. The Claimants did not issue a pre-action protocol letter prior to filing the second claim.

v. The Claimants failed to indicate when filing that the present matter that the present matter was related to the previous matter causing the matter to be docketed before another judge. The Defendant contended that this action demonstrates the Claimants abuse and manipulation of the Court's process.

vi. The effluxion of time between the filing of the two claim caused further issues to be raised that were not relevant when the previous matter was filed. These issues include the limitation issue discussed above as well as the expiry of the statutory tenancy under the Land and Tenant Act. These additional issues would require additional court resources.

vii. The Defendant submitted that it would be unjust to allocate additional court resources to this matter. This so as the Claimants in the first trial had the opportunity to have their cases heard and the previous claim was at one stage fixed for trial.

viii. The Defendant contended that the Claimants failed to comply with provisions of the CPR when they did not attach their rent receipts to the Statement of Case. This was attached subsequently when the reply to the defence was filed. The Defendant submitted that this demonstrates that the Claimants are not serious about this claim.

ix. The Defendant disposed of a portion of the parent parcel described in the Deed in favour of his former spouse. The Defendant's former spouse

disposed of two plots. The Defendant is contending that if this claim continues all these conveyances may be affected.

Claimants' Submissions

72. The Claimants submitted that **Order 6A (1) (2)** provides that a dismissal of an action pursuant to this rule shall not prevent a party from filing new proceedings in respect of the same cause within the relevant period of limitation. The Claimant submitted that the trespass subsists therefore a fresh action is maintainable.

73. The Claimants contended that it is immaterial that the matter is now governed under the CPR, as the CPR cannot retroactively debar a party who had a right under the Rules of the Supreme Court. In this regard the Claimant relied on **Ashram Neeranjan v Ispat P.C**.[20]

74. The Claimant also submitted that the trespass to the disputed lands is a continuing one therefore, a fresh action is maintainable. The Claimants averred that if the filing of subsequent proceedings amount to an abuse of process it would imply that a party cannot sue for a continuing wrong.

The Law

75. **RSC Order 3 Rule 6 A** provides as follows:-

[1]" Where, in any cause or matter which has not been set down on the general list of cases for trial and in which no judgment has yet been entered:

a. No step has been taken by the party instituting it, whether it be by way of claim or counterclaim, for a period of more than two years; or
b. A period of more than two years has elapsed since the determination of the last proceedings in such cause or matter,

Whichever shall be later, the said cause or matter shall stand dismissed and the other party shall be entitled to his costs occasioned by the claim or counterclaim, as the case may be, incurred up to the last step taken in the cause or matter or the date of determination of the last proceeding, whichever shall be later.

[20] PC No. 464 of 2007

[2] the dismissal of the cause or matter at paragraph [1] shall not prevent a party from filing new proceedings in respect of the same cause or matter within the relevant limitation period.

[3] the Registrar as a matter of record only, shall notify the parties to the cause or matter dismissed under paragraph [1] as and when the Registrar removes the said cause or matter from his list of pending actions".

76. **Rule 26.2(1) (b) CPR** provides that-

(1) "The Court may strike out a statement of case or part of a statement of case if it appears to the court–

(b) that the statement of case or the part to be struck out is an abuse of the process of the Court".

77. In **Balkissoon and Persaud and J.S.P Holding Limited**[21] Justice Jamadar (as he then was) dealt with an application for abuse of process. The facts were that the Claimants commenced a claim H.C.A No. 402 of 2002 under the Rules of the Supreme Court. In this matter the parties entered into an agreement, however the Defendant breached the terms of the agreement. The Claimant brought another action H.C.A 848 of 2002 based on the said agreement. There was no determination of this matter on the merits. The Court of Appeal held that the proceedings were automatically dismissed pursuant to **Order 3 Rule 6**. While the appeal was pending the Claimant filed another claim CV 2006-00639. Jamadar J at page 8 stated:

"First, the prior action brought by the Claimant on the agreement of the 10th April, 2002 was never determined on the merits, but stood 'automatically' dismissed by operation of Order 3 Rule 6A of the RSC 1975.

Indeed, under that very rule it is provided that such a dismissal "should not prevent a party from filing new proceedings in respect of the same cause or matter within the relevant period of limitation". In these circumstances there was clearly no question of res judicata with respect to the dismissal of the earlier action, since this dismissal was not "the result of a trial, admissions, pleading default or otherwise in any sense a decision on the merits", but by reason of default".

78. Similarly in this case the matter was dismissed automatically pursuant to **Order 3 Rule 6**. Therefore, this case was not dismissed based on the merits of the case. As

[21] CV 2006-00639

outlined above the issues in this claim are identical to the issue raised in the previous claim. In **David Walcott v ScotiaBank Trinidad and Tobago Limited**[22]

> *"3. …..it is an abuse of the process for this Court to manage and try a claim which is identical to a claim previously dismissed for itself being as an abuse of process and which claim raises issues which could have been articulated in yet an earlier action. Although there has been no prior determination of the merits on those issues, that is not determinative of the question whether the successive action is an abuse of process. There are many circumstances in which a successive action which articulates the same issues as an earlier action is an abuse of process where there has not been a determination on the merits in the earlier action. This case is but one example. Here the Claimant has made a conscious choice not to appeal the earlier decision dismissing his claim as an abuse of process, when it was open to him to do so, but rather to litigate the identical matter afresh. This is to encourage the circumvention of an appellate process which in itself enshrines and protects the litigant's right to access to justice. It makes a mockery of the appellate process if litigants when faced with an unfavourable decision on a procedural issue or which results in its dismissal to simply re-file the claim."*

79. In **Urtis Mendoza and Daily News Limited and others**[23] in this case Justice Rajnauth-Lee (as she then was) dealt with an application to strike out a claim as an abuse of process of the Court. The grounds of the Defendants' application to strike out were as follows:-

> *"(a) The libel action complained of is a repeat of an earlier libel matter that the Claimant commended by way of Writ of Summons and Statement of Claimant filed on 9th November 2004 and served on 10th November 2004, but due to want of prosecution of the matter by the Claimant and/or his failure to comply with the directions to provide discovery and for inspection to be completed, to settle the issues in the matter and to set down the matter for trial, made by Assistant Registrar Madame Marissa Robertson on 14th November 2005, the action stood dismissed as of 19th November 2007 pursuant to Order 3 Rule 6A of the Rules of the Supreme Court 1975 further to the request of the Defendant by Notice dated 19th November 2007;*
>
> *(b) The Defendant will also rely upon the Claimant's failure to comply with the Pre-Action Protocol – Appendix C and his failure to give any reason for not so complying."*

[22] CV 2012-04235
[23] CV 2008-03176

80. In this case Justice Rajnauth-Lee referred to the authority of **Securum Finance Ltd v Ashton and another**[24]. The facts of **Securum** case are as follows:

> *In that case, in 1989 a bank commenced proceedings against a debtor for the repayment of a loan, and against the two guarantors of the loan, a husband and wife who had granted the bank a legal charge over their property. In 1997 those proceedings were struck out for delay. In 1998 the plaintiff, as the bank's assignee, brought a second action against the defendant guarantors, claiming to enforce the bank's rights to payment under the legal charge and to enforce its security by orders for possession and sale of the mortgaged property. The defendants contended that the second action involved relitigating issues raised in the first, and applied to strike it out on grounds of delay and abuse of process. The judge declined to strike it out, considering himself bound by previous authority to the effect that, in the absence of intentional and contumelious default, a litigant's action should not be struck out for delay or abuse of process where the relevant limitation period remained unexpired.*
>
> *Indeed at paragraph 34 of the judgment of the Court of Appeal, Chadwick L J said: For my part, I think that the time has come for this Court to hold that the "change of culture" which has taken place in the last three years and, in particular, the advent of the Civil Procedure Rules – has led to a position in which it is no longer open to a litigant whose action has been struck out on the grounds of inordinate and inexcusable delay to rely on the principle that a second action commenced within the limitation period will not be struck out save in exceptional cases. The position, now, is that the Court must address the application to strike out the second action with the overriding objective of the Civil Procedure Rules in mind – and must consider whether the claimant's wish to have "a second bite at the cherry" outweighs the need to allot its own limited resources to other cases. The Courts should now follow the guidance given by this Court in the Arbuthnot Latham case [1998] 1 W.L.R.1426, 1436-1437: "The question whether a fresh action can be commenced will then be a matter for the discretion of the Court when considering any application to strike out that action and any excuse given for the misconduct of the previous action see Janov v Morris [1981] 1 W.L.R. 1389. The position is the same as it is under the first limb of Birkett v. James. In exercising its discretion as to whether to strike out the second action, that Court should start with the assumption that if a party has had one action struck out for abuse of process some special reason has to be identified to justify a second action being allowed to proceed."*

[24] 2000 3 WLR 1400.

*In **Urtis Mendoza** the Court was of the view that:*

> *That the Claimant had no answer to the Securum case. In fact, the Court's orders that the Defendants file affidavits and written submissions were inexplicably ignored. In actively managing litigation and in deciding whether to strike out a claim commenced under the Civil Proceedings Rules, 1998, the Court had to consider the overriding objective set out in Part 1.1(1) of doing justice and to decide whether the Claimant's wish to pursue a second case against the same defendants outweighed the need to allot the court's limited resources to other cases.*
>
> *In all the circumstances and in the exercise of the Court's discretion, the Court considered that the Claimant's wish to pursue a second case against the same defendant did not outweigh the need to allot the Court's limited resources to other cases. The Claimant has given no excuse for his inaction in the first action and has not justified a second action being allowed to be proceeded with. In considering the overriding objective in Part 1.1(1), therefore, the Court granted the application and ordered that the Claimant's Claim Form and Statement of Case filed on the 20th August, 2008 be struck out as an abuse of process."*

81. The principles outlined in the abovementioned authorities are clear. A dismissal of a case without a determination of the merits, does not mean, ipso facto, that once the claimant is within the period of limitation – there can be no abuse of process. The Court has to consider the overriding objective of the CPR as amended "to enable the Court to deal with cases justly".

82. The Court considered a number to factors, including:

    i. Whether some special reason has been identified to justify a second action being allowed to proceed;

    ii. The time lapse between the filing of the first and second causes of action;

    iii. That the Claimants had the opportunity in the first proceedings to go to trial and have the matter determined;

    iv. That there was no appeal filed following the automatic dismissal of the previous action;

    v. That the Defendant was deprived of the use of the property since giving an undertaking in 2005, the lapse of time between the filing of the previous action and this claim (approximately nine years); and

vi. The lapse of time of four months between the automatic dismissal and the filing of these proceeding (which are on almost identical terms).

83. The Court has determined that in the circumstances of this case and the application and dealing with the case justly, that it would be unjust for the Court to allot any more of the Court's resources to hear this matter.

84. Further, the Court is of the view that it would be an abuse of process to allow the Claimants "a second bite of the cherry". If, assuming that the limitation defence had not been successful, the Court would have ordered the striking out of the Statement of Case as an abuse of process of the Court under the **CPR** as amended pursuant to **Part 26.2 (b).**

IT IS HEREBY ORDERED

1. The Defendant's defence of limitation has been established, the claim is statute barred pursuant to the **Limitation of Certain Actions Act**.
2. The Claimants' claim is dismissed.
3. The parties are invited to address the Court on the issue of an appropriate order for cost.

Dated this 6th day of July 2017

Avason Quinlan-Williams

Judge