Republic of Trinidad and Tobago

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2015-04309

Between

TUDOR JOHN

WILFRED JOHN

Claimants

And

NIGEL LLOYD

ANDREA LLOYD

Defendants

Before the Honourable Mr Justice James C Aboud

Date of delivery: 20 December 2019

Representation:

- Mr Justin Junkere instructed by Ms Alana Praimdass for the claimant
- Mr Saeed Trotter instructed by Ms Sindy Beach for the defendants

JUDGMENT (DELIVERED ORALLY)

[1] This court will deliver an oral judgment and reserves the right, if it becomes necessary, to put it into writing and to amplify any of the ideas or to correct errors of language.

[2] In this case the claimants are Tudor John and Wilfred John. They claim possession of a property situated at No. 13, Caratal Road, Gasparillo. Their case regarding the legal title to the property is supported by documentary evidence.

[3] These are the background facts, almost all of which are uncontested. The property at No. 13, Caratal Road, which I hereafter call 'the property'. It is currently occupied by Nigel Lloyd, the first defendant. The second defendant, Andrea Lloyd, was his girlfriend. A British citizen, she is no longer participating in the proceedings and has apparently returned to England. The legal title to the property which Nigel Lloyd occupies can be traced back to Deed No. 7176 of 1965 in which one Ivan Lloyd transferred his legal title in the property to his sister, Gloria John neé Lloyd.

[4] The property originally had a wooden dwelling house that was constructed by Ivan Lloyd. It was constructed for the occupation of his parents. In 1965 Gloria became the legal title owner of this property with the wooden dwelling upon it. Gloria's parents remaining living in that house, but the title was vested in Gloria in 1965. Gloria's mother's name was Mildred. Living at that house as well were Gloria's other brothers and sisters. There was also a young child. That child was Nigel Lloyd, the first defendant. According to the evidence, Nigel was Gloria's "adopted son". At times during the course of the trial he referred to her as 'Aunty' and at other times as 'Mommy'. I accept that Gloria regarded Nigel as a child of her family. Gloria Lloyd got married to Wilfred John in 1973. He is now a Catholic priest. At first they moved to a

property at No. 37 Harmony Hall, Gasparillo. When they moved there, they left Gloria's parents living there together with some of her siblings and the first defendant, Nigel Lloyd. In 1974 Gloria demolished the wooden dwelling house and constructed a concrete dwelling house. It is the same structure that exists to this day, almost 35 years ago. The property continued in the occupation of the parents and Nigel together with some of Gloria's siblings. It is pleaded in the Statement of Case that Gloria never held out any promises to any of them of acquiring an interest in the property. It seems to me that during the time of her parents' lives she was responsible for their maintenance and upkeep and also the maintenance and upkeep of the house.

[5] Mildred, Gloria's mother, died in 1988. Her husband predeceased her. There is evidence that there was a meeting of the family in 1988, sometime after her passing. It may have been the same year, 1988, or in 1989, I am not sure. At this point, Nigel was the sole occupant of the property and according to the Statement of Case and the claimants' evidence, since he was unwilling to contribute to the expenses, outgoings and upkeep or maintenance, they wanted him out. It is said that he violently protested the decision. It is pleaded at para 6.6 that Gloria permitted him to remain in the property temporarily with the understanding that he should find employment and vacate the property within a reasonable time.

[6] It is the claimants' case and evidence that he remained in possession under a bare license and that Gloria never held out any promise to him that he had acquired an interest in the property. That was Nigel Lloyd's pleaded case. It is pleaded that he did not contribute to the expenses, outgoings, general care, or maintenance of the property.

[7] Sometime after that meeting, Nigel Lloyd had a child with his then-girlfriend, Sade, and it is pleaded that Gloria also maintained that child. Sade left the property after a short while. It is pleaded that Nigel Lloyd was violent. According to the claimants' case Nigel Lloyd was allowed to remain in the property and during her lifetime Gloria continued maintaining the house and paying for all the outgoings and utilities of the property while he occupied it. It was alleged that she tolerated his occupation for the sake of peace and to prevent the family becoming victim to his allegedly vicious outbursts.

[8] Gloria John died on 13 February 1999. It has been conceded by Nigel Lloyd's counsel, despite what is pleaded in the Defence and Counterclaim, and despite what is stated in Nigel Lloyd's witness statement, that an attempt at an entry into possession was made in the year 2000 by the two claimants and that Nigel Lloyd refused them entry into the premises. The variance in the evidence is that the claimants suggest in their pleading that they were violently ejected from the property. Nigel, in his pleadings and his witness statement, never admitted that they ever came to the property to eject him in the year 2000 or at all, but the evidence proved otherwise. I must thank Mr Trotter for conceding what would have been an inevitable finding. I therefore accept that there was a confrontation at the property in 2000 and that Nigel Lloyd aggressively refused to vacate.

[9] From the time of that event in 2000, the bills in relation to the property continued to be paid by both claimants, namely Tudor John (Gloria's son) and Wilfred John (Gloria's husband). T&TEC and WASA bills formed part of the claimants' evidence. It is pleaded that a letter was written in 2007 by the claimant's then-attorney, Mr Bartley, but a copy of the letter has been lost. They say that after the letter was sent, they received very hostile telephone calls.

[10] A Notice to Quit was served in 2015. The claimants say that they are in fear that the property will be at risk because, as it has been conceded by Nigel Lloyd, he was arrested by the police and is now in the process of answering charges in the Magistrates' Court for possession of marijuana and 32 rounds of ammunition. He said in evidence that they were planted there by the police at the direction of his cousin. That is a matter for the Magistrate to decide.

[11] The defence is a straightforward denial of everything that I have just said, save and except in relation to the claimants' paper title established by the Deeds. Nigel Lloyd's case, to put it in a nutshell, is that he has lived there since childhood and no one ever gave him any license to live there. He lives there as of right: *Nec clam, nec vi, nec precario,* in adverse possession of the property. Now, there are a few red herrings in the case which I would ignore, for example, as to whether he has a violent disposition or not, and I will focus instead on what the law tells me in relation to the uncontested facts.

[12] The Counterclaim seeks a declaration of adverse possession. Mr Junkere described the test of adverse possession as "standing on a tripod" and I think I will adopt that helpful metaphor. In order to succeed on the Counterclaim there must be factual possession in terms as described in *Powell v Mc Farlane* [1977] 38 P & CR 452. Secondly, there must be an intention to possess as owner, otherwise known as an *animus possidendi*. Thirdly, there must 16 years of continuous, undisturbed and exclusive possession.

[13] Let us first examine the factual possession. Mr Justice Slade in *Powell v McFarlane* gave the classic definition of factual possession. This is what he said:

> "Factual possession signifies an appropriate degree of physical control. It must be a single and exclusive possession though there can be a single possession exercised by or on behalf of several persons jointly. Thus, an owner and a person intruding on that land without his consent cannot both be in possession of the land at the same time. . .The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances of the case, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. Everything must depend on the particular circumstances but broadly I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupied owner might have been expected to deal with it and that no one else has done so". I emphasize the last phrase.

[14] Applying Justice Slade's *dicta* in relation to the facts of this case, I take note of the uncontested fact that during Gloria's lifetime and up until her death in 1999, she maintained the property and paid all the outgoings. In the language of Justice Slade, she dealt with the property as an occupying owner might have been expected to deal with it. She paid all the bills, she paid people to cut the grass, she maintained the property, she fixed it, she paved it, she did all sorts of things. Nigel Lloyd did not act like this. I believe the evidence of Tudor John and his father on this. I paid close attention to their testimony in cross-examination. I found they were very believable witnesses and consistent in relation to Gloria's activities prior to her death.

[15] Therefore, during her lifetime and up until 1999 the claim for adverse possession by Nigel Lloyd is unmaintainable. Time must therefore begin running from the date of her death in 1999 or the attempted entry in 2000.

[16] What has the first defendant done in the years since 1999 or 2000 that could be described as acts that an occupying owner might be expected to do, and that no one else has done? One important thing that he has actually done is that he has lived there. But, in the circumstances of this case, that is not enough. A son or daughter cannot acquire rights by merely living in the family home. Nigel Lloyd testified that, occasionally, he spent money on the property. I looked at the bills attached to the counterclaim and they altogether add up to maybe twelve or thirteen hundred dollars. Very few bills were adduced. There is a bill from 2010 for $700 worth of Aluzinc roofing but it does not give the customer's name. There is another bill from 2010 from the same supplier, this time in Nigel's name, for $380, again for Aluzinc that was delivered to the property. There is a bill from 2008 for $86 for a variety of wall plugs etc. There is a bill from 2007 for $184 and one from 2007 for $15 for small items. There is a bill from 2008 where the customer's name is not given for $230 for a door panel. There is a bill from Bhagwansingh's for $159 in the name of Nigel Lloyd for a sheet of plywood. There is a bill from 2006 for $54. That is the extent of the documentary evidence of expenditure. These bills are all dated after Gloria's death. Nigel Lloyd was therefore in occupation and he provided some limited proof of expenditure on the property.

[17] According to the claimants' evidence, they were paying the water bills, the electricity bills and the land and building taxes. Insofar as the water bills are concerned, there is a big bill for some $3,000 that was paid to W.A.S.A. The legal title to the property became vested in the claimants in 2007 by Deed of Assent. W.A.S.A has a statutory right to sell property to recover debts owed to it on its water and sewerage bills. Payment of this W.A.S.A bill for a property the legal owner doesn't occupy cannot be described as an act of

generosity. It is an obligation that an owner is expected to do in order to avoid W.A.S.A exercising its statutory lien over the property for an unpaid bill.

[18] It is the same thing with the T&TEC bills: paying the bills is what an owner is expected to do. The T&TEC bills were in Gloria's name and then after Gloria's death, the evidence shows that they were transferred to the name of Tudor John in 2008. Those T&TEC bills were paid by Tudor John. They were mailed to the service address. Nigel Lloyd lives at the service address. He received the bills, but they were paid by Tudor John from 2008 to 2015, that is, for 7 years.

[19] There were 42 bills that were mailed to the property and they were issued in the name of Tudor John. During this time the property was occupied by Nigel Lloyd. Nigel's case is that he is not there on a license—he says that he is there in his own right. The court is curious why he does not pay the bills for the water and the electricity that he is consuming, or the land and building taxes. How did Tudor John get hold of those T&TEC bills? It was never disclosed in evidence. There is a possibility that somebody (maybe Nigel Lloyd) delivered those bills to Tudor John or that Tudor John made enquiries at T&TEC to find out what were the amounts due and paid them. That is speculation. It's not determinative of the issue. However, the payment of 42 T&TEC bills by Tudor John is hardly an insignificant fact.

[20] Sometime in 2015 Nigel Lloyd approached Tudor John and asked him to transfer the T&TEC account to himself. That is an act of an occupier treating the property as his own. Tudor John transferred the account. It is possible that Tudor John did not want to be saddled any more with the T&TEC bills, after having paid 42 of them, especially when the electricity was consumed by someone else. It is also possible that he agreed to transfer it because he

considered Nigel Lloyd to be the licenced occupier of the property and the consumer of the electricity. Nigel Lloyd's approach to Tudor John for the account-transfer is an acknowledgment of title. The law is however clear that if a possessory title has been created by adverse possession the occupier does not lose the right to extinguish the true owner's legal title by merely acknowledging the legal owner's paper title.

[21] The evidence reveals that Nigel Lloyd approached Tudor John sometime in 2014. I say this because the first T&TEC bill in Nigel Lloyd's name is dated 8 January 2015. It is therefore highly probable that the transfer took place in late 2014.

[22] If Nigel Lloyd had acquired a possessory right by adverse possession, it could not be lost in 2014 when he approached Tudor John for a transfer of the T&TEC account, for the reason I gave above.

[23] A first question to ask is whether 16 years of continuous, undisturbed, exclusive possession with the necessary intention had passed by the time Nigel Lloyd got the T&TEC transfer in 2014 (which I view as the type of act expected of a person that regards himself as an owner). Gloria died in 1999, so that is one year short of 16. In any event, the tests of adverse possession have not been passed. I have already held that Nigel Lloyd did not extinguish Gloria's title during her lifetime. After her death there is evidence of some minimal expenditure by Nigel Lloyd but no evidence of the payment of rates and taxes. Fixing some leaks in a roof and carrying out a few minor repairs could be said to be acts designed to make a house habitable or comfortable. I think that something more than this is required to demonstrate the requisite control and a sense of ownership. Also, the possession was not exclusive as

other members of the Lloyd family could have stayed there as of right, according to Nigel Lloyd's testimony, which I will come to in a moment.

[24] The claimants testified that Nigel Lloyd was a person who could not keep a job and was perennially unemployed. I got the impression from the evidence of both claimants that he was always down on his luck and had not made much of his life. A third witness, Gloria's sister Martha, also testified. She was in her mid-90s. She was not lucid and her mind strayed. At times she seemed lost. I assess this as due to her advanced age. I paid less regard to the accuracy of her evidence. Her evidence was poor and disjointed and she did not seem to understand what was happening.

[25] Briefly stated, the claimants' testified that Nigel Lloyd was a person who was short on funds, could not keep a job, and needed assistance. What is clear to the court is that, as of 2014 and 2015, no extinguishment of Gloria's or Tudor's titles by adverse possession had occurred.

[26] Insofar as the *animus possedendi* is concerned, the intention to possess must be an intention to possess to the exclusion of all others including the paper-title owner. The *animus possedendi* is what is operational in the mind of the possessor. What is operational in the mind of anyone is very often provable by the facts as they have been established. From those facts we work backwards and determine what the pre-existent intention was. What a possessor says about his possession in a courtroom after the fact is not as important as how the possessor acts at the material time as found in a court of law. The conduct is more likely to prove how the occupier thinks and it will disclose the particular intention to which he is giving effect by his proven actions.

[27] Firstly, Nigel Lloyd did not possess the property to the exclusion of all others in Gloria's lifetime. Secondly, even after Gloria's death, other relatives visited and stayed at the premises. For about 10 years after her death, he said that on at least 10 occasions his brothers came and stayed there. During that period, two other people stayed in the property. They are cousins of Tudor John. One of them was Nigel Lloyd's brother. According to Nigel's case and according to the law, his intention to possess cannot be nullified if he invites people to stay with him. I agree with that. During his cross-examination I was however confused about his evidence and I indicated to the attorneys that I wanted to ask a few questions at the end of his cross-examination.

[28] During his answers to me, one of the first things he said was taken from an allegation in the witness statement of his brother Richard. Although Richard filed a witness statement, it was never adduced as Richard never appeared. I was dissatisfied with Richard's non-appearance. I was not satisfied with Nigel's answer: it repeated something found in the witness statement of someone who did not appear. It should rightfully have been in Nigel Lloyd's witness statement.

[29] I was also not satisfied that he did not go to Nyron Lloyd and ask him for a witness statement. I asked him why. He admitted that Nyron's evidence would be relevant but added, "I did not want his attitude here as it would spoil things for me". I find that explanation to be unsatisfactory. It was not clarified in re-examination. When I look at the history of the property, Nyron would have been a very helpful witness, had he testified.

[30] What I can say is that having read Richard Lloyd's witness statement, it corroborated what Nigel Lloyd said. His evidence would have been useful but the fact that he did not appear to face cross-examination leads me to draw an adverse inference for his non-appearance. When I asked Mr Trotter about

this, he said "My Lord it costs money for transportation and it costs money to come to court". I find that to be a disappointing explanation, especially if a witness is important to your case. Transportation costs by maxi-taxi or bus are not as perilous as the known risks of adverse inferences that are occasioned by a witness's non-appearance to adduce his or her witness statement.

[31] The second question I asked him was in relation to the occupation of the property being exclusive to him and his intention to possess it. This is what he told me: "Any of the other Lloyds could come and live there. They have the right. If they came, I would not turn them away". That is an acknowledgment of the right of persons with the surname Lloyd to occupy a family home. I asked him why he would deny Tudor John since his mother was a Lloyd, but he did not answer me. Nigel apparently recognises the right of other persons to come and live at the property if they carry the surname "Lloyd". The second leg of the tripod of an *animus possedendi* is now considerably weakened if not collapsed.

[32] The third leg of the tripod is the possession being exclusive, continuous and undisturbed for a period of sixteen or more years. In this case, that is mostly a matter of arithmetic. Mr Trotter conceded and the evidence was that in the year 2000, Tudor John and his father attempted to gain entry into the premises and were denied entry. When Mr Trotter conceded this, I noticed that he looked at his client for permission to make the concession and he obtained it. His client allowed him to make that concession. But Nigel Lloyd's evidence was that no attempt had ever been made at a re-entry or to come into the premises. If Mr Trotter did not concede the point, the evidence would still support a finding that an entry had been attempted and resisted. I am satisfied that this event took place. I believe Tudor John's evidence that in 2000 an attempt was made to enter into the property and that it was resisted.

Nigel Lloyd's resistance indicates an assertion of a right to possess, but it cannot be looked at in isolation. This assertion of ownership or seisin is made less than 16 years before the Counterclaim was filed in 2015. Following that assertion of control, the occupier did little else to demonstrate control and ownership. Importantly, he did not pay water rates or electricity bills. He conceded that members of the Lloyd family had rights to stay there.

[33] What I consider material is that time starts running from the year 1999 or at best 2000. From 2000, according to the evidence, I think Tudor John started treating the property as his own. He was paying the rates and taxes. He got the legal title in 2007 by Deed of Assent. Sixteen years from the year 1999 is 2016, and 16 years from 2000 is 2016. This action was filed in 2015 so it is short of the mark. The requisite sixteen-year period was not attained.

[34] In my opinion this is a very sad case indeed and it gives me no pleasure in determining it in the way that I must. I find that the first defendant lived in the property on the basis of a family arrangement. All the evidence points to it. A child grows up in their parents' home on the basis of a unverbalized license to occupy. A father need not tell his son, "I hereby grant you a license to occupy the property for as long as you want". It is just an understanding. It is a family arrangement. Indeed, the law requires parents to take care of their children. You cannot throw your minor children out of the home to be vagrants on the streets. There is a general legal obligation (subject to rare exceptions) to provide shelter for your minor children and it does not require a license to be verbalized or to be recorded in writing.

[35] During Gloria's lifetime her acts and conduct typify the behaviour of someone who is the true legal owner of the property. She acts as the owner and maintains her adopted son by paying bills and providing food and shelter for him. After her death there is no requirement for the family arrangement to

be verbalized to the first defendant. It was allowed to continue. In fact, the acts of Gloria were now taken up by her son and her husband. All that she did was now done by them, that is, the payment of the W.A.S.A bills, the payment of the T& TEC bills and the payment of the land and building taxes. When Nigel Lloyd was asked how that could be so, he said "if they went to pay, then so be it, they paid the bill. I did not ask them to pay it, but they went and pay the bills". That is not the action of somebody who treats the property as an owner. The family arrangement continued after Gloria's death. The transfer of the T&TEC account is something that Mr Trotter heavily relied upon, but I do not consider it as relevant as he does. There is an obvious economic burden in paying 42 electricity bills when the occupier contributes nothing.

[36] In all the circumstances there shall be judgment for the claimants against the defendants.

[37] I therefore make an order for possession of the property situated at No. 13 Caratal Road, Gasparillo. I suspend the order for possession for a period of 6 months. Such a suspension is in keeping with the parties' kinship and blood relations.

[38] I will now hear the attorneys on the issue of costs.

James Christopher Aboud

Judge