

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Cv. No. 2006/03842

BETWEEN

MARTIN PHILLIP REVENALES

CLAIMANT

AND

ERIC CHARLES

DEFENDANT

**BEFORE THE HONOURABLE MADAME JUSTICE DEAN-ARMORER**

**APPEARANCES**

Mr. Ramnath for the Claimant.

Mr. Persad-Maharaj for the Defendant.

## JUDGMENT

### Introduction

1. This was a claim for possession of five (5) acres of land at Cito Lane, Tabaquite, in the Ward of Montserrat (“the subject lands”). Although the Claimant had lived in continuous undisturbed possession for thirty-eight (38) years, he never sought a declaration as to his entitlement to the subject lands. The Defendant claimed that he purchased the land and sought to eject the Claimant by the use of bulldozers and other forceful methods. The Court considered whether the Claimant was justified in instituting proceedings in trespass.

### Procedural History

2. On the 28<sup>th</sup> November, 2006, the Claimant filed a Claim Form pursuant to Rule 8.1 (3) of the *Civil Proceedings Rules 1998* seeking the following relief:

- “1. *An injunction restraining the Defendant his workmen, agents or any person acting on his behalf from trespassing or interfering or entering upon the said lands.*
2. *Damages.*
3. *Costs.*
4. *Any other relief that the Court may deem just ...”*

3. On the same day, the Claimant filed a Notice of Application, seeking the following order:

*“That the Defendant, his workmen, agents or any person acting on his behalf [be restrained] from trespassing or interfering or entering upon my*

*said property. To remove part of the shed from my lot and reinstate my galvanized iron fence to its original form.”*

4. The Notice of Application was supported by the affidavit of the Claimant, Mr. Revenales, and came up for hearing before the Honourable Justice Narine on the 6<sup>th</sup> December, 2006. The Honourable Justice Narine directed that the documents be served on the Defendant.
5. On the 7<sup>th</sup> February, 2007, the Court ordered by consent that the Claimant be permitted to occupy the portion of land on which his house stands as well as to reap his crops.
6. On that day, the Court also directed by consent that the parties commission a report from a professional surveyor. The purpose of the survey was to “... *identify the land in dispute...*”
7. By the 11<sup>th</sup> July, 2007, the parties had agreed to commission a report from Harvey Ramreksingh. A perusal of the file, however, suggests that this was never done. Instead, parties placed before the Court a survey plan by Mr. Yip. This plan was placed in the unagreed Bundle of Documents for the Claimant and eventually tendered in evidence as “MR 2” as part of a larger bundle.
8. The Court heard and determined evidential objections to witness statements and struck portions of statements filed on behalf of the Claimant.
9. The trial was heard over two days and submissions reduced to writing before the Court reserved its judgment.
10. It was curious that no Statement of Case was ever filed in this matter and there was no order directing that the Claimant’s affidavit be thus treated. Nevertheless, no objection

was taken and the trial proceeded with an affidavit instead of a Statement of Case from the Claimant.

11. The issues canvassed in this Claim were really questions of fact for the Court's determination. For this reason, there is set out below a synopsis of the evidence of each witness in these proceedings.

### **The Evidence**

12. Five witnesses testified on behalf of the Claimant:

- The Claimant himself;
- Stephanie Stewart;
- Selwyn Frederick;
- Anslem Phillip Revenales; and
- Norman Joseph.

13. The evidence of Valuator Faizal Hosein was excluded because of the failure of the Claimant to seek or to obtain the Court's permission, as required by Part 33.10 of the *Civil Proceedings Rules*.

14. The Court heard arguments as to whether Part 33.10 applied to experts who were not Court appointed, but who were intended to testify in favour of a particular party. The Court held that all experts under the *Civil Proceedings Rules* have a duty to provide independent assistance to the Court. Moreover, failure to provide information required by Part 33.10 of the *Civil Proceedings Rules* is fatal and would result in the Court's rejection of the expert report. Mr. Ramnath sought to amplify the witness statement of

Mr. Faizal Hosein with a view to including his expert qualifications and other information required by Part 33. Permission to amplify was refused.

***Evidence for the Claimant***

15. In his witness statement, the Claimant testified that he was a fifty-two (52) year old gardener and that he lived opposite to his parents.
16. He testified that in 1968, when he was fifteen to sixteen years of age, he built a carat house on the subject lands. He started a cohabitational relationship with Stephanie Stewart in 1972. They continued to clear lands and by 1973 they had cleared a five acre plot and planted seasonal crops, corn, peas, peppers and also fig trees.
17. The Claimant and Ms. Stewart sold their crops in the market. Five children were born to them "*on the land ...*".
18. The Claimant testified that in 1980 to 1981, they started building a second house next to the carat house. The dimensions were 31 x 20.5 feet with an extension of 18 x 18 feet.
19. In April 2006, the Defendant came to the lands with a surveyor. The Claimant alleged that the Defendant asked him to point out the boundaries, saying that he, the Defendant, had bought thirteen (13) acres of land, which included the Claimant's land.
20. The Claimant alleged that the Defendant started bulldozing. He testified further that the Defendant bulldozed seven hundred and fifty (750) trees standing on his land.
21. Mr. Revenales testified that upon returning home on the 22<sup>nd</sup> November, 2006, he discovered that his belongings had been placed outside his house and that felled trees had fallen on top of his home.

22. Under cross-examination, Mr. Revenales remained unshaken. Of relevance to this action was his evidence that the land belonged originally to Texaco and that he began occupying the lands in 1967. Mr. Revenales was questioned as to the damage to his house on the 22<sup>nd</sup> November, 2006. This witness told the Court that on returning home on the 22<sup>nd</sup> November, 2006, he found “*everything mashed up ...*” and that fruit trees and a long mango tree had fallen on the structure.
23. Mr. Revenales under cross-examination described the demolished house as being “*concrete covered with galvanize with a kitchen to the front. The walls were made of plastered bricks and the dimensions were 20 x 31 feet with an extra piece of 8 x 16 feet.*”
24. In cross-examination, Learned Counsel asked Mr. Revenales whether he knew that the Defendant Company was the owner of the thirteen (13) acre parcel. Mr. Revenales answered that he was not so aware and stated that the Defendant told him that he (the Defendant) bought 13 acres from Mr. Gomes and that the Defendant gave him his business card, bearing the words “*Real Estate Agent – Eric Charles ...*”

### ***Evidence of Anslem Revenales***

25. Anslem Revenales is the Claimant’s son. He testified as to the destruction of his father’s home on the 22<sup>nd</sup> November, 2006. In his evidence in chief, Anslem testified that upon arriving at his parents’ home, he saw a police jeep and two other unmarked vehicles. The police officers told him that they were working for Mr. Charles. He observed that when he arrived, the house was 80% destroyed. Anslem’s testimony remained unshaken in cross-examination.

### ***Evidence of Norman Joseph***

26. Norman Joseph testified that as a Minister in the Jehovah Witness church he visited the Claimant and his family at Cito Land and knew them to be residing there for the past twenty (20) years. Mr. Joseph also testified that he taught both the Claimant and Ms. Stewart and had been acquainted with them for the past forty (40) years.
27. Under cross-examination, Mr. Joseph described the Claimant's house as being a concrete structure with dimensions 20 x 30 feet. He told the Court that apart from the house, there was a shed.

### ***Evidence of Selwyn Frederick***

28. This witness testified that he was seventy-four (74) years old and that he was well acquainted with the Claimant, where he lived and the parcel of land which he occupied. Mr. Frederick testified that he knew the Claimant for the past fifty (50) years and he knew him to be living on the parcel of land for over thirty-eight (38) years.
29. Mr. Frederick stated that he assisted the Claimant in the planting of crops and various types of trees on the Claimant's land. He also helped the Claimant reconstruct his home from a wooden structure to a concrete one approximately twenty-five (25) years ago. Mr. Frederick added that, as far as he was aware, no one claimed ownership and the Claimant's land has always been under the purview of Texaco Company Limited.

### ***Evidence for the Defendant***

30. Two witnesses testified in support of the defence: the Defendant himself and Land Surveyor and Photogrammetric Engineer, Paul Anthony Williams. One additional

witness statement had been filed on the Defendant's behalf. The witness, Deosaran Deonarine, did not submit himself for cross-examination. It was agreed that the Court should disregard his evidence.

***Evidence of Paul Anthony Williams***

31. The expertise of Mr. Williams as a Land Surveyor and Photogrammetric Engineer has not been disputed. Mr. Williams testified that on the 20<sup>th</sup> November, 2007, he had been retained by Stress Free Real Estate and Construction Company Limited to obtain interpret and present aerial photography of a thirteen (13) acre parcel of land at Tabaquite. Mr. Williams testified that he obtained aerial photographs for 1994, 1998 and 2003.

32. Mr. Williams spoke of the disputed land at paragraph 19 and 20:

*“19. During my visit I observed that the parcel in dispute that is visible in the photograph is some distance away from where the new boundary lines have been established.*

*20. The disputed parcel is isolated by a cordon of trees...I estimate the area of the 13 acre parcel that is now occupied by the Claimant's house and the surrounding area to be in the order of 7000 – 10,000 square feet ...”*

33. Mr. Williams referred to the 1998 photographs, saying that he saw no evidence of agricultural crops for an area as large as four acres. Similar statements were made in respect of a 2003 and a 2004 aerial photograph and an orthophoto from the Lands and

Surveys Department. Under cross-examination, Mr. Williams identified the instructions received from his employer in this way:

*“To examine photos to determine whether there was occupation and the extent of it ...”*

Mr. Williams was required to consider a sixteen year period beginning with 1969.

34. Mr. Williams was questioned further as to the ambit of his instructions. His understanding of the parcel in dispute was “... *the area occupied by the building...*”. Mr. Williams was cross-examined extensively as to his omission to include the 1969 photo and admitted under cross-examination that this photo would have been important to demonstrate occupation within the sixteen year period. Mr. Williams also admitted that photos were taken from an altitude of 12,500 feet, with a photo scale of 1 in 25000 and a margin of error of + or – 1.25.

### ***Evidence of the Defendant***

35. In his evidence in chief, the Defendant testified that he was a director of a company, whose name was “Stress Free Real Estate and Construction Company Limited”. Interestingly, the registered office of the company is the home address of the Defendant at 40 Betsy Street, La Romaine. The Defendant testified that in September, 2005, the company purchased lands from “John Coldert Gomes”.
36. He told of an undated visit to the land with another director, Allison Charles, to see land comprising thirteen (13) acres without any houses. The Defendant spoke of weekly visits following his purchase. He described “a shack” which appeared abandoned and which the Claimant subsequently claimed as his own.

37. The Defendant told the Court that he provided the Claimant with the Certificate of Title and asked him to vacate the premises. The Defendant referred to discussions with neighbours who told him that the shack had only been constructed ten years prior to the purchase. In my view, the evidence contained at paragraphs 18 and 19 are clearly inadmissible and ought not to be given any weight.
38. The Defendant referred to his experience at the Town and Country Planning Division and his familiarity with aerial photograph for the year 2003. This evidence in my view is also inadmissible. The Defendant cannot provide the independent unbiased opinion envisaged by Part 33 of the *Civil Proceedings Rules* when providing an expert opinion in support of his own cause. In my view, no weight should be placed on this evidence.
39. The Defendant admitted that the house was demolished.
40. Under cross-examination, the Defendant told the Court of the nature of his employment with the company, saying that it was his duty “*to look for land to purchase and construct ...*”. The Defendant referred to three unnamed persons employed with the company.
41. The Defendant was unable to say why he did not join the company as a party. Asked why he produced nothing to show that he was acting on behalf of the company, the Defendant said that he produced the cadastral sheet. Learned Counsel, Mr. Ramnath, put to the Defendant that he produced nothing from the company showing his authority. His answer was that he was confused.
42. The Defendant admitted to demolishing the Claimant’s house and admitted that he produced no receipt for payment to police officers or backhoe operators, saying that he gave everything to his lawyer.

43. Under cross-examination, the Defendant contradicted himself in response to questions concerning service of a ninety (90) day notice on the Claimant. When first questioned, the Defendant denied that he served any notice. Learned Counsel, Mr. Ramnath, suggested that the Defendant reported to the police that notice was served. In reply, the Defendant, changing his story, insisted that the notice was served.

44. Leaned Counsel, Mr.Ramnath, continued cross-examination as to the notice to quit. When asked who served it, the Defendant replied:

*"The gentleman who brought the police and demolition people."*

The Defendant then stated that he was not aware when the notice was served and he was not present at the time of service.

45. The Defendant was then confronted with paragraph 25 of his witness statement:

*"I therefore concluded that the Claimant was making a purported claim to ownership of the shack spot and I accordingly on one of my visits to the lands gave him notice to quit and deliver up the lands."*

46. The Defendant presented himself as an unreliable witness. Although there was no denial of the existence of the Company, the Court found a general absence of documentary evidence which would normally have attended a defence premised on the existence and activity of a company.

47. For example, the Defendant produced no articles of association, no returns filed on behalf of the company, not even a company letterhead. Employees remained unnamed and the only named director, Allison Charles, who was alleged to have visited the land and who may have lent some credence to the Defendant's case, was not called as a witness.

48. The only scintilla of evidence which suggested the existence of the company was a copy of the Certificate of Title showing a transfer of 13 acres of land from John Coldert Gomes to the company. There is nothing, however, in this copy of the document to connect the named company to the Defendant. The Defendant has produced no contemporaneous documents to establish a link with the company. The Court is left to rely only on the self-serving evidence of the Defendant at the trial.

## **Law**

### *Trespass*

49. Trespass is in essence a tortious injury to a possessory right, and therefore the proper claimant in a claim of trespass is the person who was, or who is, deemed to have been in possession at the time of the trespass. A person in possession can sue although he neither is the owner nor derives title from the owner, and may even be in possession adverse to the owner.

50. It is sufficient for the Claimant, who commences an action in trespass, to prove his lawful occupation at the date of such trespass without proving his title to the land. In *Asher v Whitlock*<sup>1</sup>, *Cockburn C.J.* said:

*“But I take it as clearly established, that possession is good against all the world except the person who can shew a good title.”*

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<sup>1</sup> (1865-66) L.R. 1 Q.B.1 at page 5

51. A Claimant who can show that he is or was in fact in possession or entitled to possession at the time of the trespass would be entitled to maintain an action in trespass against a wrongdoer.

### **Findings of Fact and Decision**

52. Lands left of Cito Lane in Tabaquite had been owned by Texaco Limited. In or around 1968, the Claimant, then sixteen years old, constructed a carat house on a portion of those lands.
53. In 1972, the Claimant entered into a cohabitational relationship with Ms. Stephanie Stewart. Together they cleared five acres of land, planted trees and seasonal crops which they sold both at the market and from their home.
54. Five children were born to them. Both the Claimant and Ms. Stewart described it in this way: that the children were born “*on the land...*”. Learned Counsel for the Defendant underscored this evidence in order to attack the credibility of both the Claimant and Ms. Stewart, since at least one child had been born at San Fernando General Hospital. The Court recognizes however that birth “on the land” is a picturesque way of saying that the family lived on the land when the children were born.
55. The years rolled on and there was nothing to suggest that the Claimant enjoyed other than undisturbed occupation until 2006 when the Defendant entered the land claiming that it had been sold to his Company. The only evidence before this Court to contradict the Claimant’s evidence that he enjoyed more than thirty (30) years of continuous undisturbed possession was the expert evidence of Land Surveyor Paul Williams.

56. Mr. Williams produced an aerial photograph which captured the building which stood on the land. However, Mr. Williams testified that the photograph suggested that there was no surrounding vegetation. Mr. Williams admitted that an aerial photograph is taken from an altitude of 12,500 feet and that there is a margin of error.
57. In my view, the failure of the aerial photographs to capture vegetation has not affected the evidence of the Claimant. Mr. Williams does not purport to state categorically that there was no vegetation but simply provides a report as to the content of a photograph. In my view, this does not displace the evidence of both the Claimant and Ms. Stewart who testified that they actually planted crops on the land. More significantly, however, is the fact that the evidence of Mr. Williams does not address any time period before 1998. The result is that the Claimant's evidence remains unchallenged from 1968 to 1998. By virtue thereof the Claimant would have satisfied the sixteen (16) year requirement of the *Real Property Limitation Act*<sup>2</sup> and would be entitled to resist any actions brought by the title owner of the property.
58. The Claimant would therefore have a superior right to possession as against the holder of title to the land. The Claimant, at the date of the commencement of this action, would have been successful in proving his lawful occupation as of the date of the trespass and is therefore justified in instituting the proceedings.
59. The second issue to be determined is whether the Claimant ought to have instituted proceedings against the Company rather than against the Defendant, who has presented himself throughout the trial as the agent of the Company.
60. It is an elementary principle of law and accepted by all parties that proceedings should be instituted against the principal rather than the agent.

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<sup>2</sup> Ch. 56:03

61. In these proceedings, however, it is necessary for the Court to consider whether the Defendant, in his entry onto the Claimant's property, acted in his own capacity or as the agent of the Company. In considering this issue, the Court is mindful that the allegation of agency emanated from the Defendant and it is therefore his burden to prove that in his dealings with the Claimant, he, the Defendant, acted as agent.
62. As stated *supra*, it is my view that on the evidence before this Court, the only link between the Company and the Defendant was the Defendant's testimony at the trial. In my view, such evidence is self serving and ought not to be accepted.
63. In particular, the following deficiencies in the Defendant's evidence ought to be highlighted:
- i. The Defendant provided no documentary proof of his agency, no documentary proof of his directorship of the Company, and no testimony of any other director or employee of the Company;
  - ii. Under cross-examination, the Defendant was incapable of providing any explanation for his failure to produce receipts from the Company, from the police and from the bulldozing company. The Defendant was content to toss the problem into the metaphorical court of his attorney-at-law.  
  
This Court is fully aware that Mr. Persad-Maharaj, Learned Counsel for the Defendant is a knowledgeable and skilled advocate. It is therefore difficult to believe that Counsel would have simply kept relevant documents without producing them.
  - iii. The Defendant severely damaged his credibility in his answers concerning the notice to quit which, according to his witness statement, he served on the

Claimant. Under cross-examination, the Defendant stated that he was not present when the notice was served and that he did not know who served the notice. No notice was produced and the Court formed the view that there was no notice to quit. The Court therefore concluded that even if the Company existed, the Defendant has failed altogether to establish a link between himself and the Company. He must therefore accept the responsibility for having entered the Claimant's land and having destroyed his property.

64. Accordingly, it is my view and I hold that there be judgment for the Claimant as against the Defendant.
65. The uncontroverted valuation of Toney Beepath had survived objection by Learned Counsel for the Defendant. Mr. Beepath evaluated the Claimant's loss to be \$107,750.00.
66. There was no evidence as to the value of the structure which was destroyed. The Court ought not to embark on an exercise of speculation and will not grant any damages for the damage to the structure.

## **Orders**

1. The Defendant, his workmen, agents or any person acting on his behalf is hereby restrained from trespassing or interfering or entering upon the subject lands.
2. The Defendant do pay to the Claimant damages assessed at \$107,750.00.
3. Costs to be paid by the Defendant to the Claimant as prescribed in the sum of \$25,162.50 with a stay of 28 days.

Dated this 27<sup>th</sup> day of July, 2011.

M. Dean-Armorer  
Judge<sup>3</sup>

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<sup>3</sup> Judicial Research Officer ....Camille Warner  
Judicial Secretary .....Mrs. Irma Rampersad