

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2007-02718

BETWEEN

GILLIAN BELFORD JOSEPH

Claimant

AND

CHARLENE GLAUDE

Defendant

Before the Honourable Madam Justice Dean-Armorer

Appearances:

Ms. Ihezue for the Claimant

Mr. Alfred Pierre for the Defendant

JUDGMENT

1. This is an application by way of Fixed Date Claim, whereby the Claimant seeks an order for possession of a chattle house situated at O'Connor Street, Upper Village, Blanchisseuse.
2. The Claimant, Gillian Belford Joseph contends that she purchased a chattle house from Fanny Clarke for the sum of \$20, 000.00. The Claimant has produced a Certified Copy of a Mortgage Bill of Sale to prove her purchase and ownership of the chattle house.

3. The Claimant alleges that the Defendant entered occupation of the premises in 2006 and that the Defendant is a trespasser.
4. The Claimant has not attempted to prove any title to the land and has relied only on the Mortgage Bill of Sale which was made on the 1st May, 2007, less than three months before the commencement of proceedings in this matter.
5. Moreover, the Claimant admits that she never received keys to the premises and that the Vendor never gave her vacant possession.
6. On the other hand, the Defendant denies stoutly that she is a trespasser and claims that although she has no interest in the chattle house, that she was there at the invitation of her mother, who claims to be entitled to the estate of Unis Glaude, who in his lifetime had owned the premises.
7. It has not been disputed that the Defendant's mother, Clothilda Glaude was the child of Unis Glaude and Fanny Clarke, who signed the Mortgage Bill of sale as vendor transferring the Chattle House to the Claimant in these proceedings.
8. It is not disputed that Unis Glaude, now deceased and Fanny Clarke originally occupied the chattle house.
9. The Claimant contends that Unis Glaude and Fanny Clarke were joint owners of the chattle house and that by virtue of Glaude's death, Fanny Clarke became the absolute owner. The Claimant's contention is however unsupported by any evidence. The Claimant herself is a stranger to the history of the relationship between Unis Glaude and Fanny Clarke and Fanny Clarke herself never swore to an affidavit in these proceedings.
10. The Defendant's mother, Clothilda Glaude, on the other hand, deposed as the child of Fanny Clarke that the latter left Unis Glaude and the chattle house, when she, Clothilda was very young. Clothilda Glaude deposed, without contradiction that Unis Glaude continued to occupy the chattle house and built it up by replacing tapia with hollow clay

blocks. Clothilda Glaude also deposed without contradiction that, in Fanny's presence, Unis often claimed the house as his.

11. In my view, and on a balance of probabilities, the bald contention of the Claimant that Fanny Clarke was joint owner of the chattle house should be rejected. In my view, the Claimant has failed to prove any connection between Fanny Clarke and the subject house. In my view, Unis Clarke was the owner. Upon his death, his property both real and personal vested in the Administrator General pending a grant of letters of administration to his legal personal representative.¹

Law

12. The law in respect of an application for an order for possession was authoritatively set out by the late Sir Hugh Wooding CJ in the case of *Olga Charles v. Harrichand Singh and Or*².

The facts of Olga Charles are similar to those of the instant case, in that the respondents sought to recover possession of premises, which they had purchased by Deed mere months before commencing proceedings. The Appellant, Olga Charles was not a tenant of the Respondent, but according to the Respondents, the Appellant was a trespasser.

Sir Hugh Wooding, CJ stated the rule that possession is recovered on the strength of the Claimant's title:

"They could recover possession either on the footing that the Appellant was their tenant ... or they could get an order for recovery by the strength of their own title but without any regard to the weakness of hers ..."

Later in his judgment the learned Chief Justice said:

"Merely putting in a certified copy of a deed, whereby two or three months before they purchased a lot of land from the alleged owner of it is not a proof of title. It

1. See s. 10 (4) Administration of Estates Ordinance Ch. 8 No. 1 Laws of Trinidad and Tobago (1950)
2. CA No. 50 of 1960

would be necessary to show that the vendor of the lot had a right to sell ... a title which she could pass on.”

“... There is no presumption from the mere putting into evidence of a certified copy of a deed of such recent date and the appellant would be entitled to sit by quietly say nothing save merely to contend that title had not been proved against her ...”

13. The decision of the Court of Appeal in *Olga Charles*¹ has been applied on countless occasions in the jurisdiction² and is applicable to the facts of this case. The Claimant does not contend that the Defendant is a tenant but squarely insists that the Defendant is a trespasser. This places on the Claimant an obligation to prove title.

The Claimant however has done no more than produce a certified copy of a mortgage bill of sale. Her assertions that Fanny Clarke, from whom she bought the premises, is the owner, are, at best, hearsay.

14. In my view therefore the Claimant has failed to discharge the onus of proving title. The Application is accordingly dismissed, with costs fit for advocate attorney-at-law.

Dated the 8th January, 2009

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Mira Dean-Armorer

Judge

1. *Olga Charles v. Harrichand Singh* CA No. 50 of 1960
2. For Example: *Ramdhan v. Solomon* No. 522 of 1975
Man Hong v. Singh No. 1278 of 1980
Huggins v. Bernard H.C.A. No. 887 of 1998