

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. **CV2014-00218**

BETWEEN

**PRIMCHAN RAMBEHARRY**

Claimant

AND

**HEERALAL HARRIPERSAD**

Defendant

Appearances:

Mr. Haresh Ramnath, attorney-at-law for the Claimant

Mr. Gregory Delzin, instructed by Mr. Mudassar Karamath, attorneys-at-law for the Defendant

Before the **Honourable Madame Justice Mira Dean-Armorer**

**REASONS**

***Introduction***

1. In these proceedings, the Claimant contended that he had exercised exclusive possession and control over a strip of land measuring 48.5m<sup>2</sup> at Maharaj Trace, Mission Road, Freeport since 1993 and that he had acquired title to that land (the disputed portion).
2. The Claimant also alleged that his building, which was partly constructed on the disputed portion, had been damaged as a result of works, carried out by the Defendant. He therefore claimed damages in compensation.
3. The Defendant, on the other hand averred that the disputed portion belonged to him. He filed a counterclaim seeking damages for trespass and an injunction preventing the Claimant from entering the land.

4. On February 20, 2019, I entered judgment for the Claimant. My reasons for so doing are set out below.

***The Claim and Counter Claim***

5. By Claim Form and Statement of Case filed on January 20, 2014, the Claimant herein, moved the court for the following relief:

- a. A Declaration that the Claimant has been in adverse possession ALL and SINGULAR that piece of land comprising Forty eight point Five Square Metres(48.5m<sup>2</sup>) and bounded on the North by lands of Heeralal Harripersad, on the South by lands of the Claimant and partly of lands occupied by Ramona Roopnarine, on the West by lands occupied by the claimant and on the East by lands of Heeralal Harripersad (hereinafter referred to as “the said lands”);
- b. A declaration that the Defendant’s rights, [Sic] if any, to the said lands is extinguished by operation of law;
- c. Damages for trespass to the said lands and building
- d. Alternative to (c), damages in the sum of Seven Hundred and Seventy Seven Thousand, Six Hundred and Seventy Nine Dollars and Seventy Two Cents (\$777,679.72)
- e. An injunction restraining the Defendant from trespassing onto the said lands;
- f. Interest pursuant to the Supreme Court of Judicature Act at such a rate and for such a period as the Court deems fit;

g. Costs;

h. Such further and/or other relief as this Honourable Court deems fit.

6. The Defendant filed a Defence and Counterclaim on April 25, 2014 and the Claimant thereafter, file a Defence to the Counterclaim on May 22, 2014. The Defendant seeks the following relief:

1.Damages for trespass

2.An injunction preventing the Claimant from entering and/or erecting any structures on the said lands;

3.Costs;

4.Interest pursuant to the Supreme Court of Judicature Act at such rate and for such period as the Court deems fit;

5. Such further and/or other relief as the Honourable Court deems fit.

### ***The Evidence***

7. The Claimant relied on the evidence of three witness:

- The Claimant himself
- Canute Ed Spencer, a Chartered Quality Surveyor
- Paul Anthony Williams who was a Registered and Licenced Land Surveyor and a Photogrammetric Engineer.

By the date of trial, the Claimant was the only witness testifying on his own behalf. The Witness Statement of Canute Spencer was struck out and Paul Williams had died before the trial. The evidence of Paul Williams was presented by way of a hearsay notice.

8. Before the Court was the report of Atlantic Projects Consultants Ltd (APCL). This document, originally annexed to the witness statement of Canute Spencer, was also placed before the Court as an un-agreed Document. It was shown to Mr. Francis Antoine, witness for the Defendant without objection. The APCL Report was the only document before the Court expressing a professional opinion on the cost of reinstatement of the Claimant's building.
9. The Defendant relied on his own evidence as well as that of Rishi Mohan Mahabir, licensed surveyor, and Francis Antoine, a civil and structural engineer.

***Facts***

10. The Claimant, Mr. Rambeharry, became seised and possessed of lands described in Deed registered on November 5<sup>th</sup>, 1993 as Deed No. 7821 of 1994. The area of land measures 11,476 square feet. Mr. Rambeharry occupied the lands since then and operated a hardware business on it. It was the Claimant's case that when he entered occupation of his land, there was a chain link fence enclosing the disputed portion. He treated it as his own and later replaced the chain link fence with a galvanise fence.
11. The Defendant alleged that in the year 1997, he became the title owner of the lands described in the Certificate of Title Volume 3933, Folio 491, which he has annexed to his witness statement. The land, of which he alleged ownership, encompassed the disputed portion of lands in these proceedings. The disputed portion measures 48.5 square metres.
12. However, the certificate of title produced by the Defendant, identifies one Joseph Thorpe as the title owner. The Defendant, during the course of cross-examination admitted that his name did not appear on the certificate of title and was silent as to why no other documentation was produced to establish his ownership.

13. It was undisputed that the Defendant, since his alleged ownership and occupation of his portion of the land, carried out backfilling works due to the swamp like texture of soil.
14. It was also undisputed that in the year 2010, the Claimant erected a retaining wall on the disputed portion of land. The Claimant's action of constructing the retaining wall, led the Defendant to retain the services of a land surveyor, Rishi Mohan Mahabir. Mr. Mahabir gave evidence at trial, and confirmed that the Claimant in fact constructed a retaining wall, and that the area to the east of said wall was swampy.
15. The Defendant, had also caused some works to be done near the disputed area in order to facilitate drainage on his land. Mr. Mahabir, testifying for the Defendant told the Court that the land would have deteriorated further had there been no drainage.
16. Following the excavation and construction works, the Claimant's building was damaged. An issue arose as to whether the building had been damaged because of the nature of the soil on which it was constructed, because of poor workmanship on construction or because of the works carried out by the Defendant.

### ***Issues***

17. Whether the Claimant had exercised sufficient a degree of control and possession over the disputed portion (48.5 square metres) and produced evidence of the same for an undisturbed period of 16 years in order to establish his claim in adverse possession.
18. Whether the Claimant is entitled to compensation for damage to his building.
19. If the Claimant, is not deemed to an adverse possessor of the disputed portion, is the Defendant then entitled to damages for trespass.

## **Submissions**

20. Parties relied entirely on written submissions and both recognised that the law as it relates to adverse possession is well settled. A Claimant must prove that he has had both factual possession and the intention to possess the disputed lands. See **Pye v. Graham**.<sup>1</sup>
21. The importance and the indefeasibility of the paper title of the lawful owner was reiterated by Mr. Delzin, Learned Counsel for the Defendant. He relied on **Recreational Holdings (Jamaica) v. Lazarus**<sup>2</sup> where the Privy Council quoted the words of Lord Rodger of Earlsferry in **Pottinger v. Raffone 2007 UKPC 22**:
- i. *“the main aim of this system of registration of title is to ensure that once a person is registered as proprietor of the land in question, his title is secure and indefeasible except in certain limited circumstances.*
22. In **Gayadeen and another v. Attorney General of Trinidad and Tobago 2014 UKPC 16** a case relied on by Learned Counsel for the Defendants, their Lordships considered the issue of an intention to possess a carpark. It was held that a mere driver who parked in the carpark did meet the requirement of factual possession. In fact, Lord Hodge stated:
- ii. *“Such ephemeral use of part of the car park by a driver of a vehicle did not amount to factual possession and did not manifest any intention to possess”.*
23. Mr. Delzin referred to, the case **Cobham v. Frett [2000]** where, their Lordships addressed the issue of factual possession and noted that the right question for a judge to ask was

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<sup>1</sup> Pye v Graham [2002] UKHL 30

<sup>2</sup> 2016 89 WIR 411

whether the actions of the Defendant (in that case) were sufficient to exclude the possession of Mr. Cobham and his agents.

24. On the other hand, Mr. Ramnath, attorney-at-law for the Claimant, submitted that the Claimant was entitled to the relief sought. His case was that in the year 1994, the Claimant built his building which extended onto the disputed portion and that some eighteen years later in 2012, the Defendant demolished the wall on the disputed portion of the lands, which caused damaged to the Claimant's building.
25. Despite having sent a letter to the Claimant, no further steps were taken by the Defendant with regard to the alleged trespass on his land. Moreover, Mr. Ramnath was adamant that the fact that the Claimant relied on the 2010 survey plan as adduced into evidence by the Defendant, was irrelevant.
26. It was also submitted:
  - That the evidence of Paul Williams was not at all considered by the Defendant
  - That the plan of 2004, does not show an encroachment
  - That the certificate of title produced by the Defendant shows the swampy area of land to the north east of his property.
  - That the Defendant did not know what was happening on the lands.
27. In respect of damages Mr. Ramnath, referred to the cross examination of Mr. Antoine, and submitted that this witness failed to conduct soil testing and did not request building plans, or inspect the building, and accepted that there was no damage to other parts of the Claimant's building.

28. With regard to the APCL report, Mr. Ramnath submitted that the report itself was not challenged by the Defendant and although the Claimant admitted that the report was based on assumptions, the report speaks for itself.
29. In respect of special damages as pleaded by the Claimant, Mr. Ramnath cites a very old case **The Susquehand (1926) AC 655** where it was held:

*iii. "if there be any special damage which is attributable to the wrongful act that special damage must be averred and proved, and if proved, will be awarded. If the damage be general, then it must be averred that such damage has been suffered but the quantification is a jury question"*

### **Reasoning and Decision**

30. In these proceedings, the Claimant approached the Court for a declaration that he was the owner of the strip of land measuring 48.2m<sup>2</sup>. The strip of land is located between the Claimant's land and the Defendant's land.
31. The Claimant's land may be found at Lot No. 143, Arena Road, Freeport. He became seized of this property November 5, 1993 by Deed registered at No. 7821 of 1993.
32. It was the claimant's contention that at the time of his purchase, the disputed portion was enclosed with his property by a chain link fence and that he later replaced the chain link fence with a galvanise fence. The Claimant's evidence asserted that he had been continuous undisturbed possession of the disputed portion since then.
33. In support of his Claim, the Claimant relied on the report of Paul Williams, photogrammatrist and licensed surveyor. The evidence of Paul Williams had initially been



stuck out. Following submissions by Learned Counsel, Mr. Ramnath, the order striking Mr. Williams was vacated. By the date of trial however, Mr. Williams had died. His evidence was placed before the Court by way of hearsay notice.

34. I have examined the evidence of Paul Williams and I find it unreliable since the report was unclear and he was not available to assist the Court by cross-examination.
35. The Defendant for his part, alleged that he purchased the adjoining property from Joseph Thorpe in 1997. He claimed that the disputed land belonged to him and counterclaimed for an order in that regard.
36. In this factual context, the issue which arose was whether the Claimant had been in continuous undisturbed possession for 16 years as required by the ***Real Property Limitation Ordinance***.<sup>3</sup>
37. The law in respect of adverse possession is well settled. It begins with the indefeasibility of title holder of the land. This was alluded to by learned counsel, Mr. Delzin in his submissions, where reference was made too ***Recreational Holdings v Lazarus***.<sup>4</sup>
38. One of the ways in which title could be defeated is by adverse possession. It is well established that the person claiming adverse possession must show both factual possession and an intention to possess.
39. The Claimant asserted his occupation by referring to a chain link fence which enclosed the disputed strip since 1993.

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<sup>3</sup> Real Property and Limitation Ordinance Act 56:03

<sup>4</sup> Recreational Holdings v Lazarus [2016] UKPC 22

40. The Defendant by contrast, denied that there was a chain link fence and insisted that the Claimant only occupied the land from 2010. Under rigorous cross-examination, it was put to the Defendant that he only became aware of the Claimant's possession in the year 2010, when he conducted a survey.
41. It was my view that the Defendant had not established his familiarity with the land before 2010. He could not rebut the Claimant's case that there was no chain link fence. He also called no witness who was capable of adducing first hand evidence to contradict the Claimant. I therefore accepted the evidence of the Claimant.
42. Moreover, the Defendant had produced a Certificate of Title in support of his ownership of the lands. The Certificate of Title does not however reflect any ownership on the part of the Defendant. It was my view that the defendant had failed to establish title to the land. It was also my view that the on a balance of probabilities, the Claimant had established that he occupied the disputed portion since 1993 and in doing so has extinguished the right of the title holder.

### ***The issue of Damages***

43. I turn now to the issue of Damages. In his statement of case, the Claimant has given the following particulars of damages:

#### *"a. Foundation*

*a) To the north-west corner of the extension, the foundation has caved in and some of the sand fill has been displaced. As a result the entire foundation for the extension has been weakened.*

*b) There was also some plumbing works along the northern wall which had been damaged and would need replacement.*

*b) Superstructure*

*i. Due to hammering on the structure, in an attempt to demolish same, by Mr. Harripersad, the entire superstructure of the extension has been weakened and is leaning towards the northern end.*

*iv. there are cracks along the beams, walls, floors and column. There also exists spaced of approximately 1.5 inches to 2 inches wide between the concrete columns and steel columns (of the existing structure) where one expansions joints. (sic)”*

44. The Claimant alleged that the Defendant engaged in acts of trespass which resulted in damage to his land. The defendant dug a pond in 2012, broke down the Claimant’s wall with an excavator and by pounding and hammering caused damage to the Claimant’s building.

45. The Claimant relied on the report of Atlantic Project Constructs Ltd<sup>5</sup> in support of his claim for damages. At page 9, APCL report identified the damage done to the structure. The report noted that the workmanship was not a high quality. The Quantity Surveyor, in his expert opinion, suggested the sum of \$615,299.72 as the estimated cost of repairing the damage.

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<sup>5</sup> Atlantic Projects Consultants Ltd Quantity Surveyors

46. The Defendant adduced no evidence to contradict the opinion expressed in the Atlantic Project Report. It was therefore my view that the Claimant had established his entitlement to the cost reinstating his building.<sup>6</sup>

**Orders**

47. A Declaration that the Claimant has been in adverse possession ALL and SINGULAR that piece of land comprising Forty eight point Five Square Metres(48.5m<sup>2</sup>) and bounded on the North by lands of Heeralal Harripersad, on the South by lands of the Claimant and partly of lands occupied by Ramona Roopnarine, on the West by lands occupied by the claimant and on the East by lands of Heeralal Harripersad (hereinafter referred to as “the said lands”);
48. A declaration that the Defendant’s rights, if any, to the said lands is extinguished by operation of law;
49. Damages in the sum of \$615,299.72
50. A perpetual injunction restraining the Defendant from trespassing on to the said lands.

**Date of Delivery: January 28, 2021**

**Justice Dean-Armorer**

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<sup>6</sup> The measure of damages for damage to property being the cost of reinstatement. See 29 Halsbury’s laws of England (2019) paragraph 423.